

Statutory Compliances

Related provisions on Government Companies
In compliance to meeting held on 26.09.2014
under the chairmanship of the Development
Commissioner of Bihar



Companies Act, 2013

Articles of Association

- ▶ Applicable section: 5(6)
- ▶ Articles of Association to be amended as per new provision (Table F, Schedule I) – Optional
- ▶ Amended Articles shall be placed before the Board for recommendation to Shareholders for approval after the cabinet's approval.
- ▶ The draft will have to be legally vetted by the Legal Dept. of Govt. of Bihar and to be approved by Cabinet before the approval of shareholders

Registered Office

S. 12(3) read with Rule 26 of the Company (Incorporation) Rules, 2014

- ▶ Every Company shall paint or affix the name and address of registered office and keep the same painted/affixed, outside every office or place in which its business is carried on, in conspicuous position and legible letters in Local and English language.
- ▶ Provided that where a company has changed its name or names during the last two years, it shall paint or affix or print, as the case may be, along with its name, the former name or names changed during the last two years.

Statutory Register

S. 88(1) read with Rules 3,4,5,8 & 28 of the Companies (Management and Administration) Rules, 2014

- ▶ Every Company to keep and maintain following Registers in the specified format:
 - Register of Members
 - Register of Debenture-holders
 - Register of other Security Holders
 - Index of the Registers (mandatory only if number of members exceed fifty)
- ▶ Entry in the Register to be done within 7 days of approval of Board or its duly constituted committee.

AGM and Signing of Annual Return

S. 96(1) & 92 (1) read with rules 11 & 15 of the Companies (Management and Administration) Rules, 2014

- ▶ Every Company shall prepare its Annual Return in Form No. MGT.7
- ▶ Annual Return shall be signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice
- ▶ To be filed within 60 days of AGM in each financial year & the AGM to be held on or before 30th September in each financial year on a working day and during working hours in the city of Registered Office

Certification of Annual Return

S.92(2) read with Rule 12 of the Companies (Registration Offices & Fees) Rules, 2014

- ▶ The annual return filed by a company having paid-up share capital of ten crore rupees or more or turnover of fifty crore rupees or more, shall be certified by a Company Secretary in practice and the certificate shall be in Form No. MGT.8
- ▶ An extract of the Annual Return, in such form as may be prescribed, shall form part of the Board's Report.

Corporate Social Responsibility Committee (CSRC)

S.135 read with Companies (Corporate Social Responsibility Policy) Rules, 2014

- ▶ Applicable to every Company having:
 - (a) Net Worth of Rs. 500 cr or more, or
 - (b) Turnover of Rs. 1000 cr or more, or
 - (c) Net Profit of Rs. 5 cr or more
- ▶ CSR activities to be approved by the CSR Committee and to utilize through self or a registered society with 3 yrs track record (if not an associate of co.) or a company established by the company u/s 8 of the Act.
- ▶ 2% of average Net Profit of three preceding financial years to be utilized. CSRC to be constituted by Board.
- ▶ Constitution: Three (3) or more directors, of which at least one (1) director shall be an Independent Director.
- ▶ Local Areas of operation to be preferred

Appointment of Internal Auditors

S. 138 read with Rule 13 of Companies (Accounts) Rules

- ▶ Applicability to every Public Company having–
 - (i) paid up share capital of Rs. 50 cr or more during the preceding FY; or
 - (ii) turnover of Rs. 200 crore or more during the preceding FY; or
 - (iii) outstanding loans or borrowings from banks or PFI exceeding Rs. 100 cr or more at any point of time during the preceding FY
- ▶ To be appointed by Board of Directors.
- ▶ Internal Auditors shall either be a Chartered Accountant or a Cost Accountant or such other professional as may be decided by the Board. Shall not be an employee of the company.

Appointment of Statutory Auditors

S.139(5) & 139(7)

- ▶ All Govt. Companies
- ▶ The Auditors in Govt. Companies are appointed by CAG. The company has to ensure that one auditor is not appointed for more than five (5) years
- ▶ CAG to appoint Auditor within 180 days of commencement of financial year and failing that BOD to appoint within next 30 days.

Appointment of Women Director

S. 149(1) read with Rule 3 of Companies (Appointment and qualification of Directors) Rules.

- ▶ Every public company having–
 - (I) Paid up share capital of Rs. 100 crore or more ; or
 - (II) Turnover of Rs 300 crore or more.
- ▶ If the Women Director is **Nominee** – has to be nominated by Govt. of Bihar.
- ▶ If **Independent** – Has to be proposed by BOD and confirmed by Shareholders in General Meeting
- ▶ The company is required to appoint at least One (1) Woman Director in the Board of Directors of the company

Appointment of Independent Director – At least 2 (two) nos.

S.149(4) read with Rules 4, 5 & 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014

- ▶ Public company –
 - having paid-up share capital of Rs. 10 Crore or more;
 - having turnover of Rs. 100 Crore or more;
 - having aggregate outstanding loan, Debentures and deposits exceeding Rs. 50 Crore.
- ▶ Board to propose and shareholders to confirm in General Meeting.
- ▶ An Independent Director shall hold office for a term of up to five consecutive years and shall be eligible for reappointment.
- ▶ An Independent Director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.
- ▶ The person shall not be related in any manner.

Constitution of Audit Committee

S. 177 read With Rule 6 of the Companies (Meetings of Board and its Power) Rules, 2014

- ▶ Public companies –
 - having paid-up share capital of Rs. 10 Crore or more;
 - having turnover of Rs. 100 Crore or more;
 - having outstanding loan/ debt/ deposits exceeding Rs. 50 Crore
- ▶ By Board of Directors
- ▶ To consist of minimum of 3 directors with independent directors forming majority. **Provided** that majority of members including chairperson shall be persons with ability to read and understand the financial statements.

To prepare a Policy on Vigil Mechanism to provide adequate safeguard against victimization of employees and directors

S. 177(9),(10) read with Rule 7 of the Companies (Meetings of Board and its Powers) Rules, 2014

- ▶ All public companies which
 - accepts deposits from public
 - having borrowing from banks/FIs exceeding Rs. 50 Crore
- ▶ To be prepared by Audit Committee.
- ▶ The Vigil Mechanism shall provide for adequate safeguards against victimization of employees and directors who avail of the Vigil Mechanism and also provide for direct access to the Chairperson of the Audit Committee

Nomination & Remuneration Committee

S.178(1), (2), (3) & (4) read with Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014

- ▶ Public companies having –
 - paid-up share capital of Rs. 10 Crore or more;
 - turnover of Rs. 100 Crore or more;
 - outstanding loan/debt/deposits exceeding Rs. 50 Crore
- ▶ By Board of Directors.
- ▶ The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the last audited Financial Statements shall be taken into account for the purpose of this rule.
- ▶ (1) The Committee shall consist of three or more non-executive directors out of which not less than one half shall be Independent Director.
- ▶ (2) Chairperson (ED/NED) of the Company may join as member but not as Chairman of the Committee.

Disclosure of Interest by Directors

S. 184(1) read with Rule 9 of the Companies (Meetings of Board and its Powers) Rules, 2014

- ▶ Every Director at:
 - First meeting in which he participates as director;
 - First meeting of Board in every FY;
 - Whenever there is change in disclosures already made;
- ▶ shall disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals (including shareholding of 2% or above).
- ▶ Every director shall make such disclosure by giving a notice in writing in Form MBP 1.
- ▶ Disclosure is only required to be made if interest arise and for this purpose, interest in official capacity is not included
- ▶ The Board resolution of disclosure is required to be filed with ROC in Form MGT 14 within 30 days
- ▶ MBP 1 to be preserved for 8 yrs at the Registered Office by Company Secretary or person authorized by Board

Related Party Transaction

S. 188 read with Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014

- ▶ Except with the consent of the Board of Directors given by a resolution at a BM, no company shall enter into any contract or arrangement with any Related Party without prior approval of the Board of Directors and shareholders.
- ▶ Board of Directors and where the paid up capital is more than 10 Cr or value of transaction exceeds the limits in Rule 15 – by Special Resolution.
- ▶ Interested Directors to abstain from meeting & interested shareholder shall not vote on resolution
- ▶ Exception:
 - Ordinary Course of Business; and
 - Arms' Length

Appointment of Key Managerial Person

S. 203 read with Rule 8 of the Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014

- ▶ Public Companies having – paid-up share capital of Rs. 10 Crore or more shall have following whole time KMP:
 - MD or CEO or Manager or in their absence WTD;
 - CS;
 - CFO
- ▶ Every KMP shall be appointed by Board Resolution containing terms and conditions of the appointment, including Remuneration
- ▶ A whole-time KMP shall not hold office in more than one company except subsidiary company at the same time.
- ▶ Any casual vacancy to be filled in by the Board at its meeting within 6 months

Secretarial Audit

S. 204 read with Rule 9 of the Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014

- ▶ Public Companies having:
 - Paid-up capital of Rs. 50 Crore or more;
 - Turnover of Rs. 250 Crore or more.
- ▶ To be conducted annually by Practicing Company Secretary
- ▶ The company will have to annex with its Board's Report, the Secretarial Audit Report, given by a Company Secretary in Practice

Other Issues

- ▶ No person shall be appointed as a Director of a company unless he has been allotted the DIN (S. 154).
- ▶ The appointment of Directors to be done by Board or shareholders in General Meeting (S. 152).
- ▶ Nominee Directors are not liable to retire by rotation and hold office at the pleasure of their nominating authorities.
- ▶ No person shall be appointed as a Director in more than Twenty Companies including Ten Public Companies (165(1)).
- ▶ A Company shall not have more than fifteen directors, except by passing a Special Resolution (S. 149(1)).
- ▶ If any Director does not attend the Board Meeting for Twelve Months with or without leave, he shall be disqualified to be director (S. 167(1)(b))
- ▶ A Director who fails to provide his disclosure of interest shall also be disqualified as a director (S.184).

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- ▶ Board Meetings shall be held at least four times in each year in such a manner that not more than One Hundred and Twenty days shall intervene between two consecutive meetings of the Board. At least Seven days of notice required (173(1))
- ▶ Persons disqualified under section 164 shall not be appointed as director
- ▶ Resolutions or agreements approved by Board on matters falling u/s 179 read with Rule 8 of Chapter 12 and Special Resolutions required to be filed with ROC in MGT - 14 within 30 days of passing of resolution
- ▶ If any company fails to file Balance Sheet or Annual return for 3 consecutive FYs, it shall file a Report in DIR - 9 within 30 days of such default
- ▶ Policies & Procedures on Internal financial controls for safeguarding of Assets to be drafted - S134(3) r/w Rule 8 of Companies (Accounts) Rules
- ▶ Transfer of shares to be done through duly stamped and executed share transfer form

Proposal / Suggestion from Committee

- ▶ As the BoD is responsible for compliance of all laws/acts applicable to a Corporation, it is proposed that every Corporation shall place the quarterly compliance report under all acts before the Board in the format annexed as **'Annexure – A'**.
- ▶ As compliances and penalty for non-compliance under the new Companies Act have increased extensively, it is proposed that the Govt. shall initiate action to close down / strike -off / liquidate the non-functional or Dormant Corporations as per the list annexed as **'Annexure – B'**.

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- ▶ Corporations should be directed to strictly adhere to the following cut-off time for timely audit and filing of Accounts:
 - Internal Audit shall be completed by 30th May
 - Audit Committee and BoD to meet by 15th June
 - Statutory Audit to be completed by 15th July
 - CAG to be requested to complete review by 15th August
 - Audit Committee and BoD to meet by 30th August
 - AGM Notice to be issued by 2nd September
 - AGM to be held by 30th September
 - Filing of Audited Accounts and Annual Return to be done by 29th October.

Other applicable Acts

Indian Contract
Act, 1872

Workmen's
Compensation
Act, 1923

Trade Unions
Act, 1926

Payment of
Wages Act,
1936

Industrial
Disputes Act,
1947

Employees'
State Insurance
Act, 1948

Minimum Wages
Act, 1948

Employees' PF &
Miscellaneous
Provisions Act,
1952

Company Act,
1956, 2013

Apprentices
Act, 1961

Maternity
Benefits Act,
1961

Payment of
Bonus Act,
1965

Contract Labour
Act, 1970

Payment of
Gratuity Act,
1972

Professional
Tax Act, 1976

Sexual
Harassment Act

Child Labour
Act, 1986

Environment
Protection Act

- ▶ Indian Contract Act, 1872 – Branch of law which determines the circumstances in which promises made by the parties to a contract shall be legally binding on them.
- ▶ Workmen's Compensation Act, 1923 – To provide for the payment of compensation by certain classes of employers to their workmen for injury by accident.
- ▶ Trade Union Act, 1926 – To regulate the conditions governing the registration of trade unions. Obligations imposed upon a registered trade union and Rights & liabilities of registered trade unions
- ▶ Payment of wages Act, 1936 – To avoid with holding wages, delays in paying wages & making unreasonable deductions out of wages.
- ▶ The Industrial Employment (Standing Orders) Act, 1946 – To require employers in industrial establishments to define with sufficient precision the conditions of employment under them & to make the said conditions known to workmen employed by them.

- ▶ The Industrial Dispute Act, 1947 – To secure industrial peace. To improve the condition of workmen in industry
- ▶ Factories Act, 1948 – To protect children & to provide for some health & safety measures.
- ▶ Employees' State Insurance Act, 1948 – The Act is a piece of social security legislation conceived as a means of extinction of the evils of the society, namely, want, disease, dirt, ignorance and indigence
- ▶ Minimum Wages Act, 1948 – To secure the welfare of the workers in a competitive market by fixing the minimum rates of wages in certain employments
- ▶ Employees' Provident Fund & Miscellaneous Provisions Act, 1952 – It is a social security measure meant to induce employees to save a portion from their present earnings for a rainy day
- ▶ Maternity Benefits Act, 1961 – To regulate the employment of women in certain establishments for certain periods before & after child birth & to provide for maternity benefit & other certain benefits

- ▶ Payment of Bonus Act, 1965 – To maintain peace & harmony between labor & capital by allowing the employees, in recognition of their right, to share in the prosperity of the establishment reflected by the contributions made by capital, management & labor
- ▶ Contract Labour (Regulation & Abolition) Act, 1970 – To regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.
- ▶ Payment of Gratuity Act, 1972 – By faithful service over a long period, the employee is entitled to claim a certain amount as a retirement benefit
- ▶ Equal Remuneration Act, 1976 – To provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.
- ▶ Professional Tax Act, 1976 – To provide for the levy & collection of tax on professionals , trade callings & employment in the state.

- ▶ Child Labour (Prohibition and Regulation) Act, 1986 – To prohibit the engagement of children in certain employments and to regulate the conditions of work or children in certain other employments.
- ▶ Unorganized Workers Social Security Act, 2008 – To provide for the social security and welfare of unorganized workers and for other matters connected therewith or incidental thereto.
- ▶ The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 – An act to provide protection against sexual harassment of women at workplace and for the prevention, redressal of complaint of sexual harassment and for matters connected therewith or incidental thereto.

Checklist for statutory obligations

| Periodicity of compliance | S.N | Particulars | Due Dates | Form/ Challan |
|---------------------------|-----|---|---------------------------------------|---------------|
| Monthly | 1 | Service Tax payment | 5 th | ER – 6 |
| | 2 | Provident fund payment | 5 th | PF challan |
| | 3 | Monthly return of PF of employees leaving the service during preceding Month | 15 th | Form-10 |
| | 4 | Monthly return for employees joining Provident Fund during previous month along with declaration in Form 2 furnished by the employees | 15 th | Form 5 |
| | 5 | ESI payment | 20 th | A1 /B |
| | 6 | PF Returns | 25 th | Form 12A |
| | 7 | Professional tax payment | 20 th | 5A |
| | 8 | TDS/TCS Payment | 7 th | 281 |
| Quarterly | 10 | TDS/TCS Return | 15 th May, July, Oct, Jan | 24Q,26Q,27E Q |
| | 11 | Advance Tax | 15 th –June, Sep, Dec, Mar | 280 |

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| Periodicity of compliance | Sl.no. | Particulars | Due Dates | Form/Challan |
|---------------------------|--------|---|---|--------------|
| Half Yearly | 12 | Service Tax Returns | 25 th – Apr & Oct | ST-3 |
| | 13 | ESI returns | 11 th – May & Nov | ST –3 |
| | 14 | Certificate for minimum half yearly capitalisation norms (to be taken from Statutory Auditors) | 30 th April & 31 st Oct | ST –3 |
| Yearly | 15 | PF Returns | 30th April | ST-3 |
| | 16 | Submission of Annual Return on Foreign Liabilities and Assets with respect to FDI received and/or FDI made abroad with RBI | 31 st July | ST –3 |
| | 17 | Annual Certificate by statutory auditors that the company is engaged in NBFC MFI requiring it to hold CoR under Section 45 – 1A, of the RBI Act, 1934 & that the Company also fulfills all conditions stipulated to be classified as an NBFC MFI. The certificate should also indicate asset/ income pattern of NBFC. | 30 th April & 31 st Oct | ST –3 |

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| Periodicity of compliance | Sl.no. | Particulars | Due Dates | Form/Challan |
|---------------------------|--------|---|---------------------------------|--------------|
| Yearly | 18 | Submission of special return | Within 30 days of closure of FY | ST-3 |
| | 19 | Submission of annual financial statement | 15th July | ST -3 |
| | 24 | Registration under Shop & Establishment Act to be taken only when new branch is opened. | - | - |
| | 25 | Registration of establishment employing contract labour | As and when required | Form 1 |

THANK YOU!!



Presented By:

- Shri Ujjwal Kumar Dubey, Special Secretary, Department of Law, GoB (Chairman)
- Shri Ajay Kumar, Practicing Company Secretary; A. Kumar & Associates (Member)
- Shri Ravikant Dev, Asst. Prosecution Officer; Finance Department; GoB (Member)
- Ms. Ruchika P.Kalra, Company Secretary, BUIDCO (Member Secretary)
- Ms. Shilpi Chakravarty, Company Secretary, BRBCL (Member)