

Solved
Scanner Appendix
CS Professional Programme Module - I
(New Syllabus)
(Solution of December - 2014)

Paper - 1: Advanced Company Law and Practice

Chapter - 1: Company Formation and Conversion

2014 - Dec [2] (b)

Private Company

As per Section 2(68) of the Companies Act, 2013, "private company" means a company having a minimum paid-up share capital of ₹ 1 lakh or such higher paid-up share capital as may be prescribed and which by its articles,:

- (i) restricts the right to transfer its shares;
- (ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this definition, be treated as a single member:

Provided further that the following persons shall not be included in the number of members:

- (a) persons who are in the employment of the company; and
- (b) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, and
- (iii) prohibits any invitation to the public to subscribe for any securities of the company.

Small Company

As per Section 2(85) "small company" means a company, other than a public company:

- (i) paid-up share capital of which does not exceed ₹ 50 lakhs or such higher amount as may be prescribed which shall not be more than ₹ 5 crores; or

- (ii) turnover of which as per its last profit and loss account does not exceed ₹ 2 crores or such higher amount as may be prescribed which shall not be more than ₹ 20 crores:
Provided that nothing in this definition shall apply to:
(a) a holding company or a subsidiary company;
(b) a company registered under section 8; or
(c) a company or body corporate governed by any special Act.

2014 - Dec [2A] (Or) (i)

Yes, it is a right steps

Expulsion of Member

- A question had arisen as to whether a public limited company has powers to insert a clause in its articles of association relating to expulsion of a member by the Board of Directors of the company where the directors are of the view that the activities or conduct of such a member is detrimental to the interests of the company.
- The then Department of Company Affairs (Now Ministry of Corporate Affairs) clarified that an article for expulsion of a member is opposed to the fundamental principles of the Company Jurisprudence and is *ultra vires* the company, the reason being that such a provision militates against the provisions of the Companies Act relating to the rights of a member in a company.
- According to Section 6 of the Companies Act, the Act overrides the memorandum and articles of association and any provision contained in these documents repugnant to the provisions of the Companies Act, is void.
- The erstwhile Department of Company Affairs has, therefore, clarified that any assumption of the powers by the Board of Directors to expel a member by alteration of articles of association shall be illegal and void. (Circular No. 32/7 dated November 1, 1975).

2014 - Dec [3A] (Or) (iv)

Section 2 (62) of the Companies Act, 2013 define “one person company” as a company which has only one person as member. OPC is a sub – domain of Private Company as per Section 2(68).

Rule 3 of the Companies (Incorporation) Rules 2014 say, only a natural person who is an Indian citizen and resident in India:

- (a) shall be eligible to incorporate a One Person Company;
- (b) shall be a nominee for the sole member of a One Person Company.

A person can incorporate only one "One Person Company.

The subscriber to the memorandum of a One Person Company shall nominate a person, after obtaining prior written consent of such person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of that One Person Company. The name of the person nominated shall be mentioned in the memorandum of One Person Company and such nomination in Form INC – 2 along with consent of such nominee obtained in Form INC – 3 and fee as provided in the Companies (Registration offices and fees) Rules, 2014 shall be filed with the Registrar at the time of incorporation of the company along with its memorandum and articles.

Form INC – 2 is form for incorporation of one person company. The form is similar to Form INC – 7 except this form contain Nomination details and particulars of nominee.

2014 - Dec [6] (a)

Procedure to Register a Foreign Company in India:

As per Section 2 (42) "foreign company" means any company or body corporate incorporated outside India which:

- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) conducts any business activity in India in any other manner;

Every foreign company shall, within thirty days of the establishment of its place of business in India, deliver to the Registrar for registration:

- (a) a certified copy of the charter, statute or memorandum and articles of the company or other instrument constituting or defining the constitution of the company and if the instrument is not in English language, a certified translation thereof in the English language;
- (b) the full address of the registered or principal office of the company;
- (c) a list of the directors and secretary of the company with particulars;
- (d) the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
- (e) the full address of the office of the company in India which is deemed to be its principal place of business in India;

- (f) particulars of opening and closing of a place of business in India on earlier occasions;
- (g) declaration that none of the directors of the company or authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; or
- (h) other prescribed particulars.

The directors of Foreign Company are not required to obtain DIN.

Chapter - 2: Procedure for Alteration of Memorandum and Articles

2014 - Dec [4] (c)

Specimen of the Special Resolution for Altering Articles of a Private Company Converting it into a Public Company

“Resolved That:

- (i) pursuant to the applicable provisions of the Companies Act, 2013, the company be and is hereby converted into a public company;
- (ii) the name of the company be and is hereby changed from Private Limited to Limited; and
- (iii) the regulations contained in the document submitted for consideration and approval of this meeting and initialed by the chairman of the meeting for the purpose of identification, be and are hereby approved and adopted as the articles of association of the company in substitution for and to the exclusion of, the present articles of association of the company.”

Explanatory Statement

The Board of Directors of the company, at its meeting held on, discussed the pros and cons of a public limited company and a private limited company and decided to convert the company into a public limited company and also decided that the present articles of association of the company, which were adopted by the company when it was incorporated as a private limited company, be also substituted by a new set of articles.

Since the proposed alterations, deletions, insertions etc. to the present articles of association were numerous, the Board decided that it would be convenient to adopt an altogether new set of articles of association incorporating all the proposed alterations. Your directors commend the proposed special resolution for your consideration and adoption of the new

set of articles of association of the company in place of the existing articles of association of the company.

None of the directors is concerned or interested in the proposed resolution.

Chapter - 5: Issue and Redemption of Debentures and Bonds

2014 - Dec [3] (c)

Section 62 (3) of the Companies Act, 2013 states that the provisions of 62 shall not apply to the increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the companies to convert such debentures/loan into shares in the company. Further, the terms of issue of such debentures of loan containing such an option should have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in General Meeting. Thus in the given case, if the raising of loan is already approved by the shareholders by special resolution, then the financial institution can enforce the convertibility.

Chapter - 8: Key Managerial Personnel

2014 - Dec [1] (a)

Section 2(54) of the Companies Act, 2013, defines 'managing director'. It stipulates that a "managing director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

The explanation to Section 2(54) excludes administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, from the substantial powers of management.

2014 - Dec [3] (b)

As per clause 49 of the listing agreement, the expression 'independent director, shall mean a non-executive director, other than a nominee director of the company:

- (a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
- (b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;
(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;
- (c) apart from receiving director's remuneration, has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
- (d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent, or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
- (e) who, neither himself nor any of his relatives—
 - (i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
 - (ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of —
 - (A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
 - (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;
 - (iii) holds together with his relatives two per cent or more of the total voting power of the company; or
 - (iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent or more of its receipts from the company, any of its promoters, directors or its

- holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the company;
- (v) is material supplier, service provider or customer or a lessor or lessee of the company;
- (f) who is not less than 21 years of age.

2014 - Dec [3A] (Or) (ii)

Resignation of Director- Section 168 & Rule 15, 16

A director may resign from his office by giving notice in writing. The Board shall, on receipt of such notice within 30 days intimate the Registrar in Form DIR-12 and also place the fact of such resignation in the Directors' Report of subsequent general meeting of the company and post the information on its website.

The director shall also forward a copy of resignation alongwith detailed reasons for the resignation to the Registrar in Form DIR-11 within 30 days from the date of resignation. The notice shall become effective from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later. Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

If all the directors of a company resign from their office or vacate their office, the promoter or in his absence the Central Government shall appoint the required number of directors to hold office till the directors are appointed by the company in General Meeting.

2014 - Dec [5] (a)

Under Section 184 (2) of the Companies Act, 2013 every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—

- (a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or
- (b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be,

shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting.

It may be noted that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

A contract or arrangement entered into by the company without disclosure under section 184 (2) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.

In the given case also the interested director cannot participate in the item concerning the contract in which he is interested. The particulars of the contract have to be entered in the Register of contracts and placed at the next board meeting and signed by all the directors present at the meeting. The Register should also be produced and remain open and accessible at the commencement of every annual general meeting.

Chapter - 9: Company Secretary

2014 - Dec [3A] (Or) (iii)

Functions of Company Secretary:

According to Section 205 the functions of the company secretary shall include:

- (a) to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;
- (b) to ensure that the company complies with the applicable secretarial standards;
- (c) to discharge such other duties as may be prescribed.

For the purposes of Clause (c) of sub-section (1) of Section 205, the Central Government has prescribed that the duties of Company Secretary shall also include:

1. to provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;

2. to facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings;
3. to obtain approvals from the Board, general meetings, the Government and such other authorities as required under the provisions of the Act;
4. to represent before various regulators, Tribunal and other authorities under the Act in connection with discharge of various functions under the Act;
5. to assist the Board in the conduct of the affairs of the company;
6. to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and
7. to discharge such other duties as may be assigned by the Board from time to time;
8. such other duties as have been prescribed under the Act and Rules.

2014 - Dec [4] (b)

According to Section 188 (1) of the Companies Act, 2013 no company shall enter into any contract or arrangement with a related party with respect to certain transactions including the aspect of related party's appointment to any office or place of profit in the company, its subsidiary company or associate company. Section 2 (76) of the Companies Act, 2013 defines related party and Section 2 (77) defines relatives, which are also a related party

Accordingly, appointment of Mr. Ankit, who is a son of a director, as company secretary of the Company attracts section 188 of the Companies Act, Since the salary paid to Mr. Ankit is ₹ 1,00,000 which is less than the threshold limits specified for special resolution, the company has to obtain the consent of the Board of directors in a properly convened board meeting. The company has to file DIR - 12 with Registrar of Companies with respect to Mr. Ankit's appointment.

2014 - Dec [6] (b)

According to Section 204 of the Companies Act, 2013, every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report made in terms of sub-section (3) of section 134, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed

Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 prescribes the other class of companies as under:

- (a) every public company having a paid-up share capital of rupees fifty crore or more; or
- (b) every public company having a turnover of rupees two hundred fifty crore or more.

The Secretarial audit report shall be in Form MR-3.

2014 - Dec [6] (c)

Secretarial Audit: Secretarial audit is a comprehensive audit to check whether the concerned company is complying with the provisions of rules, regulations and procedures mentioned in various laws. Secretarial audit is carried out by an independent professional to ensure that the company has complied with the legal and procedural requirements and keeps proper books, records etc. It is essentially a mechanism to monitor compliance with the requirements of stated laws and processes.

Timely examination of compliance reduces risks as well as potential cost of non-compliance and also builds better corporate image. Secretarial audit establishes better compliance platform by checking the compliances with the provisions of various statutes, laws, rules & regulations, procedures by an independent professional to make necessary recommendations/remedies. The primary objective of compliance management backed secretarial audit is to safeguard the interest of the Directors & officers of the companies, shareholders, creditors, employees, customers etc.

Applicability: According to sub-section (1) of Section 204 of the Act, every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report made in terms of sub-section (3) of Section 134, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed.

Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 prescribes the other class of companies as under:

- (a) every public company having a paid-up share capital of ₹ 50 crores or more; or
- (b) every public company having a turnover of ₹ 250 crores or more.

Reporting Requirements

Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides that the format of the Secretarial Audit

Report shall be in Form No. **MR. 3**. The scope of reporting is very broad and the Company Secretary in practice has to ensure compliances of following statutory provisions in addition to Secretarial standards issued by The Institute of Company Secretaries of India.

1. The Listing Agreement;
2. The Companies Act, 2013 (including the rules made thereunder);
3. The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the rules made thereunder;
4. The Depositories Act, 1996 and the Regulations and Bye-laws framed thereunder;
5. Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings;
6. The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act'):
 - (a) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
 - (b) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992;
 - (c) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
 - (d) The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999;
 - (e) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;
 - (f) The Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;
 - (g) The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; and
 - (h) The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998;
7. any other laws as may be applicable specifically to the company.

Chapter - 10: Meetings

2014 - Dec [2] (a)

Quorum for Board Meetings : Section 174

One third of total strength or two directors, whichever is higher, shall be the quorum for a meeting.

If due to resignations or removal of director(s), the number of directors of the company is reduced below the quorum as fixed by the Articles of Association of the company, then, the continuing Directors may act for the purpose of increasing the number of Directors to that required for the quorum or for summoning a general meeting of the Company. It shall not act for any other purpose.

For the purpose of determining the quorum, the participation by a director through Video Conferencing or other audio visual means shall also be counted.

If at any time the number of interested directors exceeds or is equal to two-thirds of the total strength of the Board of Directors, the number of directors who are not interested and present at the meeting, being not less than two shall be the quorum during such time.

The meeting shall be adjourned due to want of quorum, unless the articles provide shall be held to the same day at the same time and place in the next week or if the day is National Holiday, the next working day at the same time and place.

Quorum for Meetings

Quorum refers to the minimum number of members required to constitute a valid meeting. Following are the minimum numbers provided in Section 103, for various categories of companies. However the Articles of Association of the company may provide for a higher number.

(a) Public Company:

- (i) 5 members personally present if the number of members as on the date of meeting is not more than 1000;
- (ii) 15 members personally present if the number of members as on the date of meeting is more than 1000 but up to 5000;
- (iii) 30 members personally present if the number of members as on the date of the meeting exceeds 5000.

(b) Private Company:

- (i) 2 members personally present, shall be the quorum for a meeting of the company.

Absence of quorum

If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company:

- (a) the meeting shall stand adjourned to the same day in the next week at the same time and place or to such other date and such other time and place as the Board may determine; or
- (b) the meeting, if called by requisitionists, shall stand cancelled.

Adjourned meeting

In case of an adjourned meeting or of a change of day, time or place of meeting, the company shall give not less than 3 days notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated. If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

2014 - Dec [2] (d)

In the case of an annual general meeting, all business to be transacted at the meeting shall be deemed special, with the exemption of business relating to:

- (i) the consideration of the accounts, balance sheet, director's report and auditor's report,
 - (ii) the declaration of a dividend,
 - (iii) the appointment of directors in the place of retiring director and
 - (iv) the appointment of and the fixing of the remuneration of the auditors.
- Other business shall be special business to be transacted at the AGM. For example, Alteration of MOA and AOA.

In the case of any other meeting, all business shall be deemed special.

2014 - Dec [2A] (Or) (ii), (iii)

(ii) Items of business to be transacted through postal ballot

Pursuant to Clause (a) of sub-section (1) of Section 110, the following items of business shall be transacted only by means of voting through a postal ballot:

- (a) Alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the

- commencement of the Act, alteration of the main objects of the memorandum;
- (b) Alteration of articles of association in relation to insertion or removal of provisions which, under sub-section (68) of Section 2, are required to be included in the articles of a company in order to constitute it a private company;
 - (c) Change in place of registered office outside the local limits of any city, town or village as specified in sub-section (5) of Section 12;
 - (d) Change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised under sub-section (8) of Section 13;
 - (e) Issue of shares with differential rights as to voting or dividend or otherwise under sub-clause (ii) of clause (a) of Section 43;
 - (f) Variation in the rights attached to a class of shares or debentures or other securities as specified under section 48;
 - (g) Buy-back of shares by a company under sub-section (1) of Section 68;
 - (h) Election of a director under section 151 of the Act;
 - (i) Sale of the whole or substantially the whole of an undertaking of a company as specified under sub-clause (a) of sub-section (1) of Section 180;
 - (j) Giving loans or extending guarantee or providing security in excess of the limit specified under sub-section (3) of Section 186. [Rule 22(16)].
- (iii) It is true that all resolutions cannot be passed by the Board of Directors of a company by circulation. According to the provisions of **Section 179 of the Companies Act, 2013** the Board of Directors of a Company shall exercise the following powers on behalf of the Company only by means of resolutions passed at meetings of the Board and not by circulation :
- (a) the power to make calls on shareholders in respect of money unpaid on their shares;
 - (b) the power to authorize the buy back referred to in the first provision to **Clause (b) of Section 68 of Companies Act, 2013**
 - (c) the power to issue debentures;
 - (d) the power to borrow moneys otherwise than on debentures;
 - (e) the power to invest the funds of the company; and

(f) the power to make loans.

2014 - Dec [3] (a)

Notice of Board Meetings: A meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means. [Section 173].

A meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting. In case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

In the notice of Board Meeting, the following matters are required to be Specific Notice:

1. Appointment of Managing Director who is already a Managing Director or Manager of another company [Section 203(3)].
2. Appointment of Manager who is already a Manager or Managing Director of another company [Section 203(3)].

In case of a listed company, notice of the Board Meeting should also be given to the stock exchange(s), where the securities of the company are listed, in accordance with the various clauses of the listing agreement for the items like, unaudited quarterly results, annual accounts, issue of securities by way of public/ rights/ bonus or offer for sale, declaration/ recommendation of dividend etc.

2014 - Dec [3] (d)

Regulation 49 of Table – F of Schedule - 1 of the Act provides that the Chairman may, with the consent of any Meeting at which a Quorum is present, and shall, if so directed by the Meeting, adjourn the Meeting from time to time and from place to place. He may also adjourn the Meeting for bona fide reasons. Once a Meeting is called, the Chairman cannot adjourn it arbitrarily. Its continuance or adjournment rests entirely on the will of the members. If a Chairman vacates the Chair or adjourns the Meeting regardless of the views of the majority, those remaining, even if a minority, can appoint a Chairman and conduct the business left unfinished by the former Chairman, [Catesby v. Burnett, (1916) 2 Ch 325 (Ch D)].

2014 - Dec [5] (b)

**Specimen Minutes of Annual General Meeting of Members PQR
Limited**
**Minutes of the Proceedings of the Second Annual General Meeting of
XYZ Limited**
**Held on Tuesday, 24th September 2014 at 3:30 p.m. At _____
(Address)**

The following were present:

1. Mr. W (in the Chair)
2. Mr. B (Director and Member)
3. Mr. C (Director)
4. Mr. D (Director and Member)
5. Mr. E (Director, Chairman of Audit Committee)
6. Mr. F (Company Secretary)
7. _____ (Members present in person) [state number]
8. _____ (Members present by Proxy) [state number]

Mr. G, Partner of M/s _____, Chartered Accountants, Auditors of the Company, was present. Mr. H, Practicing Company Secretary, was also present.

Chairman: In accordance with Article _____ of the Articles of Association, Mr. W, Chairman of the Board of Directors, took the Chair.

OR

{Mr. B was elected Chairman of the Meeting, in terms of Article _____ of the Articles of Association of the Company}.

The Chairman welcomed the Members and introduced the Directors seated on the dais.

The Chairman declared that the requisite Quorum was present and called the Meeting to order. The Register of Directors' shareholdings was placed at the Meeting and was available for inspection.

With the consent of the Members present, the Notice convening the Annual General Meeting of the Company was taken as read. The Chairman requested the Company Secretary to read the Auditors' Report.

After the Auditor's Report had been read, the Chairman delivered his speech.

The business of the Meeting as per the Notice thereof was thereafter taken up item wise.

1. Adoption of Accounts

The Chairman requested Mr. _____ to read the Ordinary Resolution for the adoption of the Accounts for the year ended 31st March, 2014 and Mr. _____ read out the Ordinary Resolution as follows:

“RESOLVED THAT the audited Balance Sheet of the Company as at 31st March, 2014 and the Profit and Loss Account of the Company for the financial year ended on that date, together with the Schedules and Notes attached thereto, along with the Reports thereon of the Directors and the Auditors, as circulated to the Members and laid before the Meeting, be and are hereby approved and adopted.”

After the above Resolution was proposed and seconded, but before it was put to the vote, the Chairman invited Members (other than those present by Proxy) to make observations and comments, if any, on the Report and Accounts, as well as on the other Resolutions set out in the Notice convening the Meeting.

Some Members made their observations and comments and raised queries on the Annual Report and Accounts and other items set out in the Notice and the Chairman answered their queries.

Before putting the Resolution to vote, the Chairman reminded the Meeting that Proxies were not eligible to vote on a show of hands. Thereafter, the Chairman put the Resolution for the adoption of the Accounts and the Reports thereon to the vote as an Ordinary Resolution. On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried by the requisite majority.

2. Declaration of Dividend

Mr. _____ read the following Resolution as an Ordinary Resolution:

“RESOLVED THAT the dividend @ ₹ 2 on the equity shares of ₹ 10 each, fully paid-up, be and is hereby declared for payment, after deduction of tax at source, if any, to those Members whose names appear on the Company’s Register of Members on Tuesday, 24th September, 2014”.

The Resolution was proposed by Mr. _____ and seconded by Mr. _____ and was put to the vote as an Ordinary Resolution.

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

3. Appointment of Director

Proposed by : Mr. _____

Seconded by : Mr. _____

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to the vote as an Ordinary Resolution:

“RESOLVED THAT, pursuant to Section 152(6)(a) of the Companies Act, 2014, Mr. A, who retires by rotation and being eligible for re-appointment, offers himself for re-appointment, be and is hereby re-appointed as a Director of the Company and that his period of office be liable to determination by retirement of Directors by rotation.”

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

4. Appointment of Director

Proposed by : Mr. _____

Seconded by : Mr. _____

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to the vote as an Ordinary Resolution:

“RESOLVED THAT, pursuant to Section 152(6)(a) of the Companies Act, 2013, Mr. B, who retires by rotation and being eligible for re-appointment, offers himself for re-appointment, be and is hereby re-appointed as a Director of the Company and that his period of office be liable to determination by retirement of Directors by rotation.”

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

6. Appointment of Auditors

Proposed by : Mr. _____

Seconded by : Mr. _____

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to the vote as an Ordinary Resolution:

“RESOLVED THAT M/s. _____, Chartered Accountants, _____, be and are hereby re-appointed as Auditors of the Company to hold office from the conclusion of this Meeting until the

conclusion of the next Annual General Meeting of the Company on a remuneration of ₹ _____, plus applicable service tax and other out of pocket expenses incurred for the purposes of the audit”.

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

Chapter - 11: Auditors

2014 - Dec [1] (b)

Removal of Auditor Before Expiry of Term [Section 140(1) and Rule 7] of Companies (Audit and Auditors) Rules, 2014:

Section 140(1) of the Act provides for removal of auditor before the expiry of his term. The auditor may be removed from his office before expiry of his term only by a special resolution and after obtaining the previous approval of the Central Government.

However, before taking any such action, the auditor concerned shall be given reasonable opportunity of being heard.

Procedure for Obtaining Approval of Central Government and Passing of Special Resolution (Rule 7):

- (a) An application shall be made to Central Government for removal of auditor shall be made in **Form ADT-2** and shall be accompanied with fees as provided under the Companies (Registration offices and Fees) Rules, 2014.
- (b) The application shall be made within 30 days of the resolution passed by the Board.
- (c) The Company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.
- (d) Intimate the stock exchange promptly in respect of proceedings of the meeting.
- (e) Intimate the auditor who was removed with a certified copy of the resolution passed along with a copy of the approval of Central Government.
- (f) File MGT-14 with the Registrar with requisite fee and relevant annexures within 30 days of passing special resolution.
- (g) Send a certified copy of the proceedings of general meeting and inform about the change in auditor of the company to stock exchanges where the company is listed.

2014 - Dec [2] (c)

Difference between Internal Audit and Statutory Audit:

There are some differences between statutory audit and internal audit. The details are as given below:

1. **Appointment:** Internal Auditor is appointed by the management of the organization while the statutory auditor is appointed by owners i.e. shareholder for a company. First statutory auditors of a company are appointed by the board of directors.
2. **Qualification:** Qualifications of the statutory auditor are prescribed in the Companies Act, 2013. In case of a company, a practicing Chartered Accountants or a firm of practicing Chartered Accountants can only be appointed as a statutory auditor. There are no fixed qualifications for the position of an internal auditor.
3. **Objects:** The main object of the statutory audit is to form an opinion on the financial statement of the organization.
Auditor has to state that whether the financial statements are showing the true and fair view of the affairs of the organization or not. The main object of the internal audit is to detect and prevent the errors and frauds.
4. **Scope:** The scope of the statutory audit is fixed by the Companies Act, 2013. It cannot be changed by mutual consent between the auditor and the management of the audited business unit. The scope of the internal audit is fixed by the mutual consent of the auditor and the management of the unit under audit.
5. **Report:** The statutory auditor submits his report to the shareholder of the company in its general meeting. The internal auditor submits his report to the management of the company who is also his appointing authority.
6. **Removal:** The procedure of removal of the statutory auditor is very complex. Only the company in the general meeting can remove the auditor. It also has to take the permission of the Central Government. The management of the entity can early remove internal auditor. No permission of Central Government is require.

2014 - Dec [4] (d)

Casual vacancy arising due to resignation: If casual vacancy is arising due to the resignation of auditor, it shall be filled within 30 days by the Board

of Directors and the appointment made by the Board shall be approved in a general meeting convened within 3 months from the date of recommendation of the Board. [Section 139 (8)]

Procedures:

1. Obtain certificate in writing from the proposed auditor confirming his eligibility to be appointed.
2. Convene a Board Meeting within 30 days of arising casual vacancy after giving notice to all directors and pass resolution appointing the new auditor in the place of old auditor.
3. Inform the auditor so appointed with a certified copy of resolution.
4. Issue notice to hold general meeting within 3 months from the date of recommendation of the Board to the members of the company.
5. Hold the general meeting and approve the appointment of auditor already made by the Board of Directors.
6. Inform the Registrar in prescribed form with requisite filing fees and annexures.
7. In case of listed company, forward promptly to the stock exchange the notice and proceedings of the general meeting.

Chapter - 12: Preparation & Presentation of Reports

2014 - Dec [3A] (Or) (i)

- (i) Directors responsibility statements is aimed at highlighting the accountability of the directors with a view to ensuring good corporate governance. It will make the directors accountable to safeguard the assets of the company and to take positive steps in this regard.
- (ii) under **Section 134(3) (c) of Companies Act, 2013** shall indicate there in --
 - (a) that in the preparation of annual accounts, the applicable accounting standards has been followed alongwith proper explanation relating to material departures.
 - (b) that the directors had selects such accounting policies and applies therein consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of financial year and of Profit or Loss Account for that period;
 - (c) that the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with

the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;

(d) that the directors had prepared the annual accounts on a going concern basis.

(iii) The statement should figure in the Board Report.

2014 - Dec [4] (a)

As per Section 134 (6) of the Companies Act, 2013 the Board's report and any annexures thereto shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.

The necessary resolution is also to be passed at the board meeting authorising the chairman to sign the same. If the directors' report contains reply to the auditor's qualifications/comments, the resolution should cover that aspect also.

Chapter - 13: Distribution of Profit

2014 - Dec [1] (c)

Before declaring an interim dividend, the directors must satisfy themselves that the financial position of the company allows the payment of such a dividend out of profits available for distribution. The company must have earned adequate profits to pay interim dividend after providing for depreciation for the full year. The directors of a company may be held personally liable in the event of wrong declaration of an interim dividend. Therefore, it is prudent on the part of the directors to have a proforma profit and loss account and balance sheet of the company prepared upto the latest possible

date of the financial year in respect of which interim dividend is proposed to be declared and provision must be made for all the working expenses and depreciation for the whole year.

Chapter - 16: E - filing

2014 - Dec [2A] (Or) (iv)

Section 117 of the Companies Act, 2013 provides that a copy of every resolution and an agreement in respect of matters specified therein together

with a explanatory statement shall be filed in Form No. MGT-14 with the Registrar within thirty days of its passing.

Resolutions and agreements to be filed with the Registrar are as under:

- (a) special resolutions;
- (b) resolutions which have been agreed to by all the members of a company, but which if not so agreed to, would not have been affective for their purpose unless they had been passed as special resolutions;
- (c) any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment or variation of the terms of appointment, of a managing director;
- (d) resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members;
- (e) resolutions passed by a company according consent to the exercise by its Board of Directors of any of the powers under clause (a) and clause (c) of sub-section (1) of section 180;
- (f) resolutions requiring a company to be wound up voluntarily passed in pursuance of section 304;
- (g) resolutions passed in pursuance of sub-section (3) of section 179, and
- (h) any other resolution or agreement as may be prescribed and placed in the public domain.

Chapter - 17: Striking Off Names of Companies

2014 - Dec [1] (d)

Position of Company's Creditors After Striking Off:

The striking off the name of a company does not materially affect the creditors of the company, because such creditors may:

- (i) enforce their claims against every director, secretaries and treasurers, manager or any other officer of the company and against every member of the company as if the name of the company had not been struck off; the liability being limited to the one existing prior to the dissolution of the company. The liability is not enhanced such as making them personally liable when they were not so liable before. *Shrikishen Dhoot v. Kamalapurkar*, (1965) 1 Comp LJ 233; or

- (ii) apply to the court for the winding-up of the company whose name has been struck off; or
- (iii) apply to the court, at any time within 20 years from the date of publication of the notice intimating that the name of the company has been struck off, for the restoration of the name of the company to the Register of Companies and on such application being made, court may order the name of the company to be restored to the register.

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