

# FAQs



## FAQs on section 184: disclosure of directors' interests

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## *FAQs*

### **1. What is the inherent philosophy of section 184?**

The inherent philosophy is to ensure that the Directors never compromise on the fiduciary position that they occupy in relation to a Company and accordingly exclude themselves from the decision making in the matter of such contracts or arrangements wherein there is a personal interest involved.

### **2. There are two separate disclosure requirements in sec 184 – sec 184 (1) and sec 184 (2). What is the respective scheme of these two?**

**Disclosure u/s 184 (1)** is a general notice of disclosure given by every director about his concern or interest in any company (ies), bodies corporate, firms or other association of individuals, along with shareholding. This is required to be given on 3 occasions mentioned under answer to **Query 4**:

**Disclosure u/s 184 (2)** is a specific disclosure given by the director at the meeting of the Board in which a contract or arrangement is discussed and entered into/proposed to be entered into with any entity in which such director has interest in the manner/ to the extent specified therein.

### **3. Who all are covered by the disclosure requirements?**

All directors of a Company are covered under the disclosure requirement given u/s 184(1).

Disclosure u/s 184 (2) is a specific disclosure which is to be given when the Company enters/ proposes to enter into a contract with an entity.

Following directors are covered under the same in case of contract/ arrangement with a body corporate:

- Director who individually or in association with another director holds a shareholding of that body corporate of more than 2%.
- Director who is a promoter/manager/ CEO of the other body corporate.

Following directors are covered under the same in case of contract/ arrangement with a firm or other entity:

- Director who is partner/ owner or member of the firm/ other entity.

### **General disclosure u/s 184 (1):**

### **4. How often is the disclosure required under sub-section (1)?**



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**Disclosure u/s 184 (1)** is required to be given by every director on 3 occasions

- At the first Board Meeting in which he participates as a Director post appointment;
- At the first Board Meeting held in every financial year;
- At the first Board Meeting held after any change in the interest or concern in the disclosures already made earlier.
  - This means that the concerned director needs to evaluate the position from the last disclosure given and accordingly if there is any change the same has to be disclosed at the ensuing Board Meeting.

### **5. What is the manner of disclosure?**

The manner of disclosure has been specified under Rule 9 (1) of Companies (Meetings of Board and its Power) Rules, 2014. The same has to be given by the Director in form MBP-1.

### **6. Which all entities are covered by the list of disclosures?**

Companies, bodies corporate, firms and association of individuals are covered by the list of disclosures. Basically, all the entities where the director has a pecuniary interest. Club memberships need not be included in the disclosures.

### **7. Is it necessary for a director to give disclosure of his shareholdings in companies, irrespective of how much shareholding he has?**

Yes, it is necessary for a director to give disclosure of any of his shareholdings in companies while giving the general disclosure of interest on each of the 3 occasions stated under answer to **Query 4**. The exemption stated in section 184 (5) (b) becomes applicable at the time of entering contract or arrangement. However, there is no exemption from the compliance of provisions of section 184 (1). In order to ascertain whether any of the directors hold 2%, either individually or together with other directors, of the paid up share capital in any other company, it is essential to have details of shareholding held by each director in such entities. Disclosure of information in Form MBP-1 obtained from such directors will form the basis to decide the same.

### **Contract-related disclosures u/s 184 (2):**

#### **8. How is the disclosure to be made u/s 184 (2)?**

There is no particular format/ mode/ manner for the Disclosure. The only requirement is that the disclosure should be made at a Board Meeting.



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### **9. At what point is the disclosure required?**

Disclosure u/s 184 (2) is to be made by the Director at the meeting of the Board in which a contract or arrangement is discussed and entered into/proposed to be entered into with any entity in which such director has interest in the manner/ to the extent specified therein.

In case the Director becomes concerned or interested after the contract or arrangement is entered into, such disclosure is required to be made forthwith at the first meeting of the Board held after he becomes concerned or interested.

### **10. Is disclosure all in sec 184(2)?**

Section 184 (2) not only stipulates disclosure requirement by the interested director but also mandates to ensure that the interested Director does not participate in the Board proceedings at such meeting.

### **Register of contracts:**

### **11. What all particulars are required to be put into register of contracts?**

The details to be entered into the register of contracts is divided into two parts viz. Part A which pertains to details of contracts or arrangements with any related parties u/s 188 or in which any director is interested u/s 184 (2) and Part B which pertains to names of bodies corporate, forms or other association of individuals in which any director is having any concern and accordingly has given disclosure u/s 184(1).

- **Details to be entered into under Part A:**
  - Date of contract /arrangement;
  - Name of the party with which contract is entered into;
  - Name of interested director;
  - Relation with director/ company/ nature of concern or interest;
  - Principal terms and conditions;
  - Whether the transaction is at arm's length basis;
  - Date of approval at the meeting of the Board;
  - Details of voting on such resolution (No of directors present in the meeting, voting in favour, voting against, remaining neutral);
  - Date of the next meeting at which register was placed for signature;
  - Reference of specific items- (a) to (g) u/s 188 (1);
  - Amount of contract;
  - Date of shareholders approval, if any;
  - Signature and Remarks, if any.



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- **Details to be entered into under Part B:**
  - Names of the Companies/ bodies corporate/ firms/ association of individuals.
  - Name of the interested director;
  - Nature of interest or concern/ Change in interest or concern
  - Shareholding, if any;
  - Date on which interest or concern arose/ changed.

Proviso to Rule 16 (1) of the Companies (Meetings of Board and its Power) Rules, 2014 states that the particulars of the Company or companies or bodies corporate in which a director himself or together with any other director holds less than or equal to 2% of the paid up share capital would not be required to be entered in the register.

### **12. Section 189 requires not just the disclosures at the time of taking up an office, but also relinquishment of the office. Is this sensible?**

This requirement is similar to the requirement u/s 305 of the Companies Act, 1956. It is necessary in order to ensure that the register maintained is up-to-date and accordingly it may be determined whether provisions of section 188 become applicable in future while transacting with such company.

Further, subsequent to relinquishment of office, if the director also transfers the shares held in such company then any contract or arrangement with such company shall not attract provisions of Section 184 (2).

Thus, disclosure of relinquishment and change in director's shareholding in any of the companies is essential to determine applicability of provisions of Section 184 and 188.

### **13. Sec 189 seems to require the entering of the general disclosure u/s 184 (1) also in the register of contracts. Is that true?**

Yes, Part B of form MBP-4 requires entering every detail obtained from director in the form of general disclosure of interest u/s 184 (1) in form MBP.1 in the register of contracts.

### **14. Who all have the right to inspect the register of contracts?**

As per section 189 (3) read with Rule 16 (4) of the Companies (Meetings of Board and its Power) Rules, 2014, any member of the company has the right to inspect the register of contracts and the extracts from the register maintained may be furnished to any member



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of the company on payment of such fee as may be prescribed in the Articles but not exceeding ten rupees per page. It is not meant to be inspected by non-members or public at large.

### **15. Are the disclosures made in form MBP-1 also to be retained?**

Yes, pursuant to rule 8 (3) of the Companies (Meetings of Board and its Power) Rules, 2014, such disclosures in form MBP-1 needs to be kept at the registered office of the company and needs to be retained and preserved for a period of eight years from the end of the financial year to which it relates and needs to be kept in the custody of the company secretary of the company or any other person authorized by the Board for the purpose.

### **Taking of note of disclosures by the board:**

#### **16. How does the Board take note of the disclosures made by the directors?**

The Board is required to pass a resolution taking note of the disclosure given by a directors at the meeting of the Board in terms of Section 179 (3) (k) read with Rule 8 (5) of Companies (Meetings of Board and its Power) Rules, 2014.

#### **17. Does the Board have to take note of disclosures by the KMPs too?**

By virtue of provisions of Section 189 (2), KMPs are also required to disclose to the company the particulars mentioned in Section 184 (1) within a period of 30 days of his appointment or relinquishment of his office. Since there is no specific format stated for KMPs, the same may be given in Form MBP-1.

Further, the listing agreement even stipulates that Senior management (all members of management one level below the executive directors including all functional heads) shall make disclosures to the board relating to all material financial and commercial transactions, where they have personal interest that may have a potential conflict with the interest of the company at large (for e.g. dealing in company shares, commercial dealings with bodies, which have shareholding of management and their relatives etc.)

### **Filing of form MBP -1**

#### **18. Does form MBP-1 have to be filed anywhere, or attached with any form?**

Form MBP-1 need not be filed anywhere or attached to any form. The details need to be simply entered into the register of contracts maintained in form MBP-1. **Detailed** reasoning for the same has been discussed by Mr. Vinod Kothari in an Article titled – **[“Does MGT 14 have to be enclosed with disclosure of directors' interest?”](#)**



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### **Contravention of Provisions**

#### **19. What is the effect of non-compliance of the provisions pertaining to disclosure?**

By virtue of provisions of Section 184 (4), if a director contravenes the provisions of sub-section (1) or sub-section (2), such director shall be punishable with:

- imprisonment for a term which may extend to 1 year; **or**
- with fine which shall not be less than Rs. 50,000 but may extend to Rs. 1,00,000;
- or**
- Both

Further, by virtue of Section 189 (6), every director contravening provisions of the section shall be liable to a penalty of Rs. 25,000.

Contravention of provisions of Section 184 shall result in vacation of office of director by virtue of Section 167 (1) (c).

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