

# Update



## Chapter VII (*Section 88-122*) of Companies Act, 2013 – note on draft rules issued by MCA

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## Chapter VII (Section 88-122) of Companies Act, 2013 – note on draft rules issued by MCA

### *Note*

The Ministry of Corporate Affairs (“MCA”) had come up with draft rules on 16 chapters of Companies Act, 2013 on September 9, 2013 under phase 1. Further, on 20<sup>th</sup> September, 2013, MCA came up with draft Rules on 9 chapters under phase 2. With 416 occurrences of the word “prescribed” in the Act, it was obvious that the Ministry would have to come up with rules well in advance before the enforcement of relevant sections of the Act to make it complete. The rules are still in the draft stage and those issued under phase 1 and 2 are open for public comments till October 8, 2013 and October 19, 2013 respectively.

We present below a Highlights discussion on the draft rules under Chapter VII, which pertains to *Management and Administration*.

#### **Register of Members (Rule 7.1)**

Every company shall maintain, from the date of its registration, register of members indicating separately for each class of equity and preference shares held by each member residing in or outside India in **Form No. 7.1**. The particulars to be specified in the register of members in case of Company not having share capital have been specified.

#### **Register of debenture holders or any other security holders. (Rule 7.2)**

Register shall be maintained in for each type of debentures or other securities in one or more books in **Form No.7.2**

#### **Maintenance of the Register of members etc. under section 88. (Rule 7.3)**

Entry in the register to be made simultaneously after the Board or Committee approves the allotment or transfer of shares, debentures or other securities. Register be maintained at registered office of the Company. Special resolution needs to be passed in a general meeting for keeping register at any other place other than registered office. Where shares, debentures or other securities are held with a depository, details of depository should be entered in register.

#### **Index of names to be included in Register (Rule 7.4)**

Index of the names needs to be entered and necessary entry on allotment or transfer should be made simultaneously.

#### **Foreign register of members, debenture holders, other security holders or beneficial owners residing outside India (Rule 7.5)**



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### *Note*

Company can maintain foreign register, if authorized by Articles, in any country outside India of members, debenture holders or of any other security holders or beneficial owners, resident in such country. Notice is to be given to Registrar within 30 days of opening of any foreign register and within 30 days of any change in situation of such office or discontinuance in **Form No. 7.3**.

Such register shall be deemed to be a part of the Principal register and be maintained in same format. Copy of foreign register shall be transmitted to registered office in India within 15 days after entry is made and a duplicate register shall be maintained at registered office of the Company.

#### **Declaration in respect of beneficial interest in any shares. (Rule 7.7)**

Declaration is to be made in **Form No. 7.4 in duplicate** within 30 days from the date on which the name of the person not holding beneficial interest in such shares (registered owners) is entered in the register of members or where any change has occurred in the beneficial interest in the shares.

The beneficial owner needs to file Registrar a declaration disclosing such interest in **Form No. 7.5 in duplicate** within 30 days of acquiring beneficial interest or any change in beneficial interest. The Company shall make note of such declaration received and within 30 days of receipt, file with the Registrar a return in **Form No. 7.6**.

#### **Closure of register of members/debenture holders/other security holders (Rule 7.8)**

Registers shall closed by the Company under Section 91 of the Act by giving notice by advertisement at least once in a vernacular newspaper in the principal vernacular language of the district and having a wide circulation in the place where the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district and having wide circulation in the place where the registered office of the company is situated .Notice needs to be published on the website as may be notified by the Central Government and on the website, if any, of the Company.

Private Company serving notice on all members of the private company atleast 7 days prior to closure of the Registers **need not comply** with the above-mentioned provisions.

#### **Annual Return (Rule 7.9)**

Annual Return to be prepared by every Company in **Form No. 7.7**.



## *Note*

Listed Company **or** Company with paid-up share capital of INR 5 crores **and** turnover of 25 crores or more, needs to be in **Form No. 7.8** and **needs to be certified** by Company Secretary in Practice.

### **Extract of Annual Return (Rule 7.10)**

Extract of Annual Return in **Form No. 7.9** needs to be attached with the Board's Report.

### **Return of changes in shareholding position of promoters and top ten shareholders. (Rule 7.11)**

Within 15 days of change of shareholding position of promoters and top ten shareholders of a Listed Company, return in **Form No. 7.10** needs to be filed with Registrar.

### **Inspection of registers returns etc. (Rule 7.12)**

Registers maintained under Section 88 and Annual return shall be open for inspection by any member, debenture holder, other security holder or beneficial owner, without payment of fees, during business hours.

Any other person can inspect the same on payment of such fees as specified in the Articles not exceeding INR 50 for each inspection.

Copy may be obtained by above mentioned persons on payment of such fees as specified in the Articles of the Company not exceeding INR 10 rupees for each page.

### **Preservation of register of members etc. and annual return (Rule 7.13)**

Register of members along with index and foreign register of members (unless discontinued) needs to be preserved permanently.

The Register of debenture holders or any other security holders along with the index and foreign registers of such holders needs to be preserved for a period of 15 years from the date of redemption of debentures or securities.

Copies of annual returns and certificates and documents annexed thereto needs to be preserved for a period of 8 years from the date of filing with Registrar.

Further, the rule specifies in whose custody the registers are to be kept.



## *Note*

### **Copies of registers and annual return (Rule 7.14)**

Copies of register of members, debenture holders or any other security holders, foreign register or entries therein and annual return can be obtained by any member, debenture holder, other security holder or beneficial owner or any other person on payment of such fees as the Articles may specify subject to a maximum of INR 10 for each page.

### **Calling of Extraordinary general meeting by requisitionists (Rule 7.15)**

Where the resolution proposed to be passed in a special resolution, notice needs to be given as required under Section 114 (2) of the Act. Notice should be signed by all the requisitionist or one such duly authorized in writing by all others on their behalf.

Explanatory statement under Section 102 is **not** required to be annexed to the notice of EGM to be convened by requisitionist.

Where the Board fails to convene the meeting within 45 days of receipt of requisition, the requisitionist shall have a right to receive and the Company will be bound to give a list of members together with registered addresses within 3 days from expiry of 45<sup>th</sup> day.

Notice shall be given under by ordinary post or registered post or through electronic mode.

### **Notice of meeting (Rule 7.16)**

Notice of meeting may be given through electronic mode. ‘Electronic mode’ shall mean any communication sent by a company through its authorized and secured computer programme which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the member

The Rule provides that Company may send notice through e-mail as a text or as an attachment to e-mail or as a notification providing electronic link/ Uniform Resource Locator (URL) for accessing such notice.

The Rule further provides whom the email shall be addressed to, what should be the subject line, various things to be ensured by Company while sending notice in the electronic form.

### **Proxies (Rule 7.17)**

Proxy is to be appointed in **Form No. 7.11**.



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### *Note*

As per third proviso to Section 105 (1) of the Act, Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy. In view of the same, a member of Section 8 Company (formed with charitable objects etc) can appoint other person as proxy only if such other person is also a member of the Company.

No person shall act as proxy on behalf of members not exceeding fifty and holding in the aggregate not more than ten percent of the total share capital of the company carrying voting rights

#### **Voting through electronic means (Rule 7.18)**

As per Section 108 of the Act, The Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means.

In view of the same, the Rule provides that every listed company or a Company with 500 or more shareholders may provide the facility to vote in general meeting by electronic means and a member may exercise the same and accordingly the Company may pass any resolution by electronic voting.

The Rule explains meaning of ‘voting by electronic means’ or ‘electronic voting system’, ‘secured system’ and ‘Cyber security’.

Lastly, the Rule provides the procedure to be followed by a Company which opts to provide facility of electronic voting to its members at any general meeting.

#### **Manner in which the Chairman of meeting shall get the poll process scrutinised and report thereon (Rule 7.19)**

Section 109 (5) of the Act requires the Chairman to appoint scrutinizers in order to scrutinise the poll process and votes given on the poll and to report the same to Chairman.

In view of the same, this Rule lays down various requirements that needs to be ensured by the Chairman while getting the poll processed by scrutinizers.

Polling paper needs to be in **Form No. 7.12** and the Scrutinizers report needs to be in **Form No. 7.13** and should be signed by all the Scrutinizers (in case more than one are appointed) and has to be submitted to the Chairman within 7 days from the date the poll is taken.

#### **Procedure to be followed for conducting business through postal ballot. (Rule 7.20)**



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## Note

As per Section 110 of the Act, a Company needs to transact following business only by means of 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 prescribed under sub-section (3) of section 186.

One Person Company and other Companies having members upto fifty are not required to transact any business through postal ballot.

Further, a Company can transact any special business by way of postal ballot except in respect of which directors or auditors have a right to be heard.

The Rule provides the procedure to be followed by the Company w.r.t. sending of notice, publishing of advertisement, matter to be specified in the advertisement, appointment of scrutinizer, register to be maintained by the scrutinizer etc. The scrutinizer is to submit his report within 7 days after the last date of receipt of postal ballot.

### **Special Notice (Rule 7.21)**

For resolutions requiring special notice under Section 115, the Rule provides that such notice shall be sent to the Company atleast 14 clear days before the date of meeting but not earlier than 3 months from the date of meeting.



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On receipt of notice, the Company shall give atleast 7 clear days notice to its members in the manner as it gives the same for any general meeting. Where the same is not practicable, the Company needs to publish the notice, atleast 7 clear days before the meeting, in English language in English newspaper and in vernacular language in a vernacular newspaper, both having wide circulation in the State where the registered office of the Company is situated and post the same on Company's website.

#### **Resolutions and agreements to be filed. (Rule 7.22)**

A copy of every resolution or any agreement specified in Section 117 (3) needs to be filed with the Registrar together with explanatory statement under Section 102 in **Form No. 7.14** within thirty days of the passing or making thereof.

#### **Minutes of proceedings of general meeting, meeting of Board of Directors and other meetings and resolutions passed by postal ballot (Rule 7.23)**

Distinct minute book needs to be maintained for General Meeting, meeting of creditors, Board Meeting and Committee Meeting. Minutes of proceedings to be entered in the minutes book within 30 days from the conclusion of meeting, along with date of such entry in book.

In case of recording of resolutions passed by postal ballot, in the minutes books of general meetings, a brief on postal ballot conducted shall also be entered.

The Rule further specifies about signing of minutes of Board, Committee and General meeting and resolution passed by postal ballot. The Minutes Books shall be kept at the registered office of the Company and preserved permanently. Board and Committee meeting minutes may be kept at a place other than registered office as may be approved by the Board.

#### **Copy of minute book of general meeting (Rule 7.24)**

Copy of any minutes of any general meeting needs to be furnished to any member requesting for the same, within 7 working days of making request, on payment of sums specified in the articles of the Company subject to a maximum of INR 10 for each page.

Soft copy of minutes of any previous general meeting held during a period of immediately preceding 3 financial years, if requested by member, shall be furnished free of cost.

#### **Maintenance and inspection of document in electronic form (Rule 7.26)**

Every listed company or a Company having atleast 1000 shareholders, debenture holders and other security holders, shall maintain its records which are required to be maintained under the



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Act or rules, in electronic form. The rule provides the manner in which the records shall be maintained in electronic form.

"Records" means any register, index, agreement, memorandum, minutes or any other document required by the Act or the rules made there under to be kept by a company.

Security of records maintained in electronic form shall be the responsibility of the Managing Director, Company Secretary or any other director or officer as the Board may decide.

The rule further provides for inspection and providing copies of records maintained in electronic form. Lastly, the rule also provides for penalty for non compliance of any provisions of the rules.

#### **Report on Annual General Meeting (Rule 7.26)**

As per Section 121 (1) of the Act, every listed public company is required to prepare report each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of this Act and the rules made thereunder, in addition to minutes of general meeting. The rule lays down provisions with respect to signing of such report, content of report etc. Such report is required to be filed with the Registrar within 30 days of the conclusion of the Annual General Meeting.

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