

**JVR &  
Associates**

# Chapter VII

Management and  
Administration  
(Section 88 to 122)

**CA Augustine Jose**

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# Registers

## Section 88 and Rule 3 & 4

- Register of members
  - In Form No. **MGT - 1**
  - In the case of existing companies, registered under the Companies Act, 1956, particulars shall be compiled within six months from 1<sup>st</sup> April 2014
- Register of debenture – holders &
- Register of any other security holders
  - In Form No. **MGT - 2**

# Maintenance of Register – Rule 5

- The entries shall be made within 7 days after the BOD or its duly constituted committee approves
  - allotment or transfer of shares, debentures or any other securities,
  - forfeiture,
  - buy-back,
  - reduction, sub-division, consolidation or cancellation of shares,
  - issue of sweat equity shares,
  - transmission of shares,
  - shares issued under any scheme of arrangements, mergers, reconstitution or ESOP,
  - issue of duplicate or new share certificates or new debenture or other security certificates

# Change in status

- If any change occurs in the status of a member or debenture holder or any other security holder due to
  - death or
  - insolvency or
  - change of name or
  - transfer to Investor Education Protection Fund or
  - any other reason,

entries thereof explaining the change shall be made in the respective register

## Foreign register – Rule 7

- A company if authorised by its articles, keep in any country outside India, a part of the register of
  - Members
  - Debenture holders
  - Any other security holders
  - Beneficial owners

residing outside India called “foreign register” containing the names and particulars of the members, debenture holders, other security holders or beneficial owners

- A foreign register shall be deemed to be part of the company's principal register

# Notice of the situation of foreign office

- The company shall, within 30 days from the date of the opening of any foreign register, file with the Registrar notice of the situation of the office in Form No. **MGT - 3** along with the fee where such register is kept
- In the event of any change in the situation of such office or of its discontinuance, shall, within 30 days from the date of such change or discontinuance, as the case may be, file notice in Form No. **MGT - 3** with the Registrar of such change or discontinuance

# Entries in the Foreign Register

- Entries in the foreign register shall be made after the BOD or its duly constituted committee approves
  - the allotment or transfer of shares, debentures or any other securities,
- The company shall
  - transmit to its registered office in India a copy of every entry in any foreign register within 15 days after the entry is made; and
  - keep a duplicate register of every foreign register duly entered up from time to time

# Index of names to be included in Register – Rule 6

- Every register shall include an index of the names included therein
- Maintenance of index is not necessary in case the number of members is less than 50
- The company shall make the necessary entries in the index simultaneously with the entry for allotment or transfer of any security in the Register



# Authentication – Rule 8

- The entries in the registers and index shall be authenticated by the
  - CS of the company or
  - by any other person authorised by the BOD for the purpose,and the date of the board resolution authorising the same shall be mentioned
  
- The entries in the foreign register shall be authenticated by the
  - CS of the company or
  - person authorised by the BOD by appending his signature to each entry

## Declaration in respect of beneficial interest in any share Section 89 & Rule 9

- A person
  - ❖ Whose name is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares,

shall file with the company, a declaration in Form No. **MGT - 4** in duplicate, within a period of 30 days from the date on which his name is entered in the register

# Declaration by the beneficial owner

- Every person
  - ❖ acquiring a beneficial interest in shares of a company not registered in his name - “beneficial owner”

shall file with the company, a declaration in Form No. **MGT - 5** in duplicate, within 30 days after acquiring such beneficial interest in the shares of the company

# Return to the Registrar in respect of declaration

- Where any declaration is received by the company, the company shall
  - ❖ make a note of such declaration in the register of members
  - ❖ file, within a period of 30 days from the date of receipt of declaration by it, a return in Form No. MGT - 6 with the Registrar in respect of such declaration with fee

# Closure of Registers

## Section 91 & Rule 10

A company may close the registers for periods not exceeding 45 days in each year but not exceeding 30 days at any one time by

- giving at least 7 days previous notice by advertisement at least once in
  - a vernacular newspaper in the principal vernacular language of the district and having a wide circulation, and
  - 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

## Closure of Registers Cont..

- and publish the notice on the website as may be notified by the Central Government and on the website, if any, of the Company
- If such company is a listed company or intends to get its securities listed,
  - ❖ in such manner, as may be specified by SEBI,
- The provisions shall not be applicable to a private company provided that the notice has been served on all members of the private company not less than 7 days prior to closure of the registers

# Annual Return

## Section 92 & Rule 11 & 12

- Every company shall prepare its annual return in Form No. **MGT - 7** containing the particulars as they stood on the close of the financial year regarding
  - ❖ its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
  - ❖ its shares, debentures and other securities and shareholding pattern;
  - ❖ its indebtedness;
  - ❖ its members and debenture-holders along with changes therein since the close of the previous financial year;

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# Annual Return

# Cont..

- ❖ its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
- ❖ meetings of members or a class thereof, Board and its various committees along with attendance details;
- ❖ remuneration of directors and key managerial personnel;
- ❖ penalty or punishment imposed on the company, its directors or officers;
- ❖ matters related to certification of compliances and disclosures;
- ❖ details in respect of shares held by or on behalf of the FII's
- ❖ such other matters as may be prescribed



## Annual Return signing

- The 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
- in relation to
  - One Person Company and
  - Small Company,
    - shall be signed by the company secretary, or where there is no company secretary, by the director of the company
- In relation to
  - Listed Company or
  - a company having paid-up share capital of 10 crore rupees or more or
  - turnover of 50 crore rupees or more,
    - shall be certified by a Company Secretary in practice and the certificate shall be in Form No. **MGT - 8**

# Extract of annual return – Rule 12

- An extract of the annual return in Form No. **MGT - 9** to be attached with the Board's Report
- Every company shall file with the Registrar a copy of the annual return, with such fees as may be prescribed

## AGM held

- within 60 days from the date on which the AGM is held

## AGM not held

- within 60 days from the date on which the AGM should have been held
- statement specifying the reasons for not holding the AGM

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# Return of promoters' stake changes – Section 93 & Rule 13

- Every **listed company** shall file a return in Form No. **MGT - 10** along with the **fee**
  - with respect to changes relating to either increase or decrease of 2% or more in the shareholding position either value or volume of the shares
  - of each of the promoters and top 10 shareholders of the company,
- within 15 days of such change

# Place of keeping registers and returns – Section 94 & Rule 15

- The registers and copies of the annual return shall be maintained at the **registered office** of the company
- SR passed in GM shall authorise the keeping of the register at any other place
- A copy of the proposed SR in advance to be filed with the registrar at least 1 day before the date of GM of the company in Form No. **MGT - 14**
- Any other place => City, town or village in which the registered office is situated or any other place in India in which more than 1/10<sup>th</sup> of the total number of members entered in the register of members reside

# Inspection of registers and returns – Section 94 & Rule 14

- The registers and their indices, except when they are closed u/s 91, the copies of all the returns shall be open for inspection by
  - any member, debenture-holder, etc., without payment of any fees and
  - any other person on payment of such fees as may be specified in the AOA but not exceeding Rs.50

during business hours, at such reasonable time (not less than 2 hours) on every working day as the board may decide

# Preservation of registers and annual return – Rule 15

<b>Registers/Copies</b>	<b>Time Period</b>
Register of Members	Preserved permanently
Register of Debenture holders	Preserved for a period of 8 years from the date of redemption of debentures
Copies of all annual returns and certificates and documents required to be annexed thereto	Preserved for a period of 8 years from the date of filing with the Registrar

*The above shall be kept in the custody of the CS or any other person authorized by the Board for such purpose*

# Copies of the registers and annual return – Rule 16

- Any such member, debenture-holder, etc may—
  - (a) take extracts from any register, or index or return without payment of any fee; or
  - (b) furnish a copy of any such register or entries therein or return on payment of such fee as may be specified in the AOA of the company but not exceeding Rs.10 for each page.

Such copy shall be supplied within 7 days of deposit of such fee

# Annual General Meeting

## Section 96

- Every company other than a One Person Company shall in each year hold in addition to any other meetings,
  - ❖ a general meeting as its AGM and
  - ❖ shall specify the meeting as such in the notices calling it, and
  - ❖ not more than 15 months shall elapse between the date of one AGM and that of the next
  - ❖ *Proviso - within a period of 6 months, from the date of closing of the financial year*
- First AGM shall be held within a period of 9 months from the date of closing of the 1<sup>st</sup> financial year of the company

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# Day, Time & Place of AGM

- Every annual general meeting shall be called during
  - ❖ business hours, i.e, between 9 a.m. and 6 p.m.
  - ❖ on any day that is not a National Holiday and
  - ❖ shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated

# Extraordinary General Meeting

## Section 100

- The Board shall, at the requisition made by
  - such number of members
  - who hold not less than 1/10<sup>th</sup> of the paid-up share capital
  - that carries the right of votingcall an EGM of the company not later than 45 days from the date of receipt of a valid requisition
  
- The requisition shall
  - Set out the matters for the consideration of which the meeting is to be called
  - be signed by the requisitionists
  - be sent to the registered office of the company
  - be provided in writing or through electronic mode

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# Calling of EGM by requisitionists

## Rule 17

- If the Board does not proceed to call a meeting,
  - within 21 days from the date of receipt of a valid requisition and
  - on a day not later than 45 days,the meeting may be called and held by the requisitionists themselves within a period of 3 months from the date of the requisition
- Any reasonable expenses incurred by the requisitionists in calling a meeting shall be reimbursed by the company

# Notice of meeting

## Section 101 & Rule 18

- A general meeting of a company may be called by giving
  - ❖ not less than clear 21 days' notice
  - ❖ either in writing or through electronic mode
  
- Every notice of a meeting shall
  - ❖ specify the place, date, day and the hour of the meeting and
  - ❖ contain a statement of the business to be transacted at such meeting
  
- The notice of every meeting of the company shall be given to
  - ❖ every member of the company
  - ❖ the auditor of the company and
  - ❖ every director of the company

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# Special Business

## Section 102(2)

- In the case of an AGM, all business to be transacted thereat shall be deemed special, other than –
  - (i) the consideration of financial statements and the reports of the Board of Directors and auditors;
  - (ii) the declaration of any dividend;
  - (iii) the appointment of directors in place of those retiring;
  - (iv) the appointment of, and the fixing of the remuneration of, the auditors;

# Statement to be annexed to notice – Section 102

- In respect of special business to be transacted at a GM, a statement setting out the following shall be annexed to the notice
  - (a) the nature of interest, financial or otherwise, if any, in respect of each items of—
    - (i) every director and the manager, if any;
    - (ii) every other key managerial personnel; and
    - (iii) relatives of the persons mentioned in sub-clauses (i) and (ii);
  - (b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon

# Report on annual general meeting – Section 121 & Rule 31

- Every **listed** public company shall prepare a report on each AGM
- The report shall contain the details in respect of the following, namely:-
  - (i) the day, date, hour and venue of the AGM;
  - (ii) confirmation with respect to appointment of Chairman of the meeting;
  - (iii) number of members attending the meeting;
  - (iv) confirmation of quorum;
  - (v) confirmation with respect to compliance of the Act and the Rules, secretarial standards made there under with respect to calling, convening and conducting the meeting;
  - (vi) business transacted at the meeting and result thereof;
  - (vii) particulars with respect to any adjournment, postponement of meeting, change in venue; and
  - (viii) any other points relevant for inclusion in the report

## Report on AGM Cont..

- The Report shall contain fair and correct summary of the proceedings of the meeting
- The copy of the report , shall be filed with the Registrar in Form No. **MGT – 15** within 30 days of the conclusion of the AGM along with the fee.
- The report shall be signed and dated by the Chairman of the meeting



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