

**ROLES AND RESPONSIBILITIES OF DIRECTORS
AND KEY MANAGERIAL PERSONNEL UNDER
THE COMPANIES ACT, 2013
("the 2013 Act")**

Paresh H. Clerk

BANSI S. MEHTA & CO.,
11/13, Botawala Building, , 2nd Floor, Near Horniman Circle, Fort, Mumbai – 400 001.
Land Line :+91-22-2266 1255 Website : www.bsmco.net

1

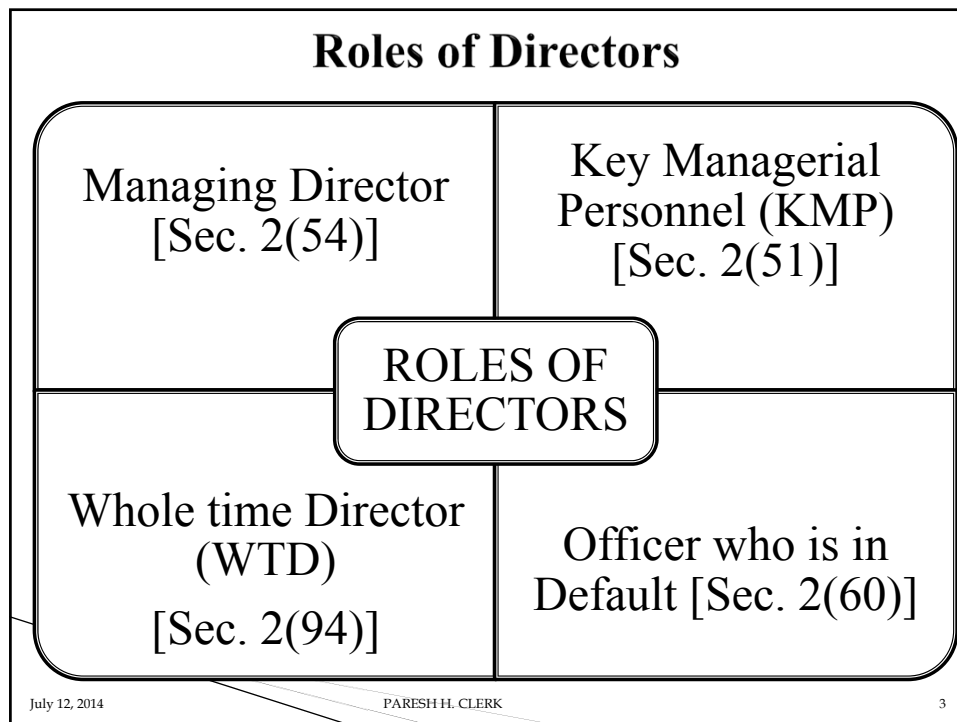
Synopsis...

- Role of Director
- Appointment and Qualification of Directors
- Resignation of Directors
- Appointment of KMP
- Register of Directors and KMPs
- Duties of Directors
- Managerial Remuneration
- Board Committees
- Related Party Transactions

July 12, 2014

PARESH H. CLERK

2



Managing Director [Section 2(54)]

- A director who, by virtue of
 - articles of a company; or
 - an agreement with the company; or
 - a resolution passed in its general meeting; or
 - by its BOD
- 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

July 12, 2014 PARESH H. CLERK 4

Manager [Section 2(53)]

- An individual who,
 - Subject to superintendence, control, and direction of BOD
 - Has the management of the whole, or substantially the whole, of the affairs of a company, and
- Includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not

July 12, 2014

PARESH H. CLERK

5

Key Managerial Personnel [Section 2(51)]

- KMP, in relation to a company means –
 - The Chief Executive Officer (CEO) or Managing Director or the Manager;
 - The Company Secretary;
 - The Whole-time Director;
 - The Chief Financial Officer;
 - Such other officer as may be prescribed
- WTD [Section 2(94)] includes a director in the whole-time employment of the company

July 12, 2014

PARESH H. CLERK

6

Officer in Default (“OD”) [Section 2(60)]...

- WTD
 - KMP
 - Where there is no KMP –
 - Such director/s as specified by the Board in this behalf, and
 - Who has/have given consent in writing to the Board to such specification, or
 - All directors, if no director is so specified
 - Any person who, under immediate authority of BOD or any KMP, is charged with any responsibility
 - authorises,
 - actively participates in,
 - knowingly permits, or
 - knowingly fails to take active steps to prevent,
- any default

July 12, 2014

PARESH H. CLERK

7

...Officer in Default (“OD”) [Section 2(60)]

- Any person in accordance with whose advice, directions or instructions the BOD of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity
- Every director, in respect of a contravention of any of the provisions of this Act –
 - Who is aware of such contravention by virtue of the receipts by him of any proceedings of the Board, or
 - Participation in such proceedings without objecting to the same, or
 - Where such contravention had taken place with his consent or connivance
- In respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer

July 12, 2014

PARESH H. CLERK

8

APPOINTMENT AND QUALIFICATIONS OF DIRECTORS

July 12, 2014

PARESH H. CLERK

9

Appointment and Qualifications Synopsis

- Number of Directors
- Woman Director
- Independent Director
- Appointment – Pre-requisites
 - Director Identification Number (“DIN”)
- Appointment by Members
 - Retiring or New
- Appointment by the BOD
 - Additional and Alternate
 - Casual Vacancy
 - Nominee Director
- Disqualifications
- No. of Directorship
- Vacation of Office

July 12, 2014

PARESH H. CLERK

10

Number of Directors...

- Sec. 149(1):
 - Minimum : Public Co. – 3, Private Co. – 2, OPC – 1
 - Maximum : Increased from 12 to 15
 - Special Resolution (“SR”) to appoint more than 15 directors instead of approval of the Central Government (“CG”)
- At least one Woman director - 2nd Proviso to Sec. 149(1)
- One Resident director whose stay in India is not less than 182 days in the previous calendar year - Sec. 149(3)
- Existing company to comply within one year from the date of commencement of the 2013 Act – Sec. 149(2)

July 12, 2014

PARESH H. CLERK

11

...Number of Directors...

- Revised Clause 49 (“RC 49”) (to be effective from October 1, 2014): Optimum combination of Executive and Non-executive directors
 - $\geq 50\%$ to be Non-executive directors
- If Non-executive Chairman – at least 1/3rd of the Board as Independent directors
- If no regular Non-executive Chairman – at least 1/2 of the Board as independent directors:
 - Regular Non-executive Chairman is
 - Promoter; or
 - Related to promoter; or
 - Related to person occupying management position at the level or level below the board

July 12, 2014

PARESH H. CLERK

12

Woman Director

Rule 3 - Companies (Appointment and Qualification of Directors) Rules, 2014

- Every listed company
- Every other public company having, as per latest audited financial statements;
 - Paid –up share capital \geq ₹ 180 crore; or
 - Turnover of \geq ₹ 300 crore
- Company incorporated under the 2013 Act to appoint within six months from the date of incorporation
- Vacancy to be filled by the Board –
 - Before next board meeting; or
 - Three months from date of vacancy, whichever is later

July 12, 2014

PARESH H. CLERK

13

Independent Director (“ID”) ...

- ID to mean - Sec. 149(6)
 - In the opinion of the Board
 - A person of integrity
 - Possess relevant expertise and experience
 - Does not holds, together with the relatives more than 2% of the total voting power of the company.
 - Is not a CEO /Director of a NPO that receives 25% or more of its receipts
 - Is/ was not a promoter or related to promoter/directors*
 - Is not a key managerial personnel or an employee/past employee* during the three preceding financial year
 - Is/ has not been an employee/ proprietor/ partner (in immediately three preceding financial years) of -
 - a firm of auditors or company secretary or cost auditors*

July 12, 2014

PARESH H. CLERK

14

...Independent Director (“ID”) ...

- any legal or consultancy firm* having transaction amounting to \geq 10% of the gross turnover of such firm
- *of the company, its holding, subsidiary or associate company
- No pecuniary relationship**
 - Transactions in the ordinary course of business at arm's length price
 - Receipt of Remuneration by way of fees, reimbursement of expenses and profit related commission
- Whose relatives do not have/ had pecuniary relationship or transaction** of 2% or more of its gross turnover/total income or rupees fifty lakh, whichever is lower
- **of the company, its holding, subsidiary or associate company or their promoters/directors during the two immediately preceding financial years or the current financial year

July 12, 2014

PARESH H. CLERK

15

...Independent Director (“ID”) ...

- Every listed company – 1/3 of total directors – Sec.149(4)
- Every other public company having – at least 2 ID (as per latest audited financial statements) –
 - paid –up share capital of \geq ₹ 10 crore; or
 - turnover \geq ₹ 100 crore; or
 - outstanding loans, debentures and deposits, in aggregate \geq ₹ 50 crore
- Declaration from ID that he meets criteria of independence:
 - At the first Board Meeting;
 - At the first Board Meeting of every financial year
- Vacancy to be filled by Board –
 - before next board meeting; or
 - three months from date of vacancy, whichever is later

July 12, 2014

PARESH H. CLERK

16

...Independent Director (“ID”) ...

- Once ID is to be appointed, for 3 consecutive years the company has to continue to have ID, even if it does not meet any of the conditions - Third proviso to Rule 4
- Appointment to be approved in GM alongwith explanatory statement annexed with notice for GM for justification of appointment
- ID to possess skills, experience and knowledge in one or more fields of – Rule 5
 - Finance, Law, Management, etc.
- ID could be selected from a data bank containing names, addresses and qualifications of persons, eligible and willing to act as independent director – Sec. 150(1)
 - Data bank would be maintained by any body, institute or association as notified by the CG - Sec. 150(1)
 - Creation and maintenance of data bank - Rule 6

July 12, 2014

PARESH H. CLERK

17

...Independent Director (“ID”) ...

- ID to possess skills, experience and knowledge in one or more fields of – Rule 5
 - Finance, Law, Management, etc.
- ID could be selected from a data bank containing names, addresses and qualifications of persons, eligible and willing to act as independent director – Sec. 150(1)
 - Data bank would be maintained by any body, institute or association as notified by the CG - Sec. 150(1)
 - Creation and maintenance of data bank - Rule 6

July 12, 2014

PARESH H. CLERK

18

...Independent Director (“ID”) ...

- To hold office – Sec. 149(10)
 - For a term upto 5 consecutive years
 - SR for reappointment
- Can be appointed for a maximum of two terms of five years each. After two consecutive terms, eligible for appointment after expiry of 3 years - Sec. 149(11)
 - ID for 5 years or more as on October 01, 2014, then eligible for one more term of 5 years - RC 49
- During 3 years, not eligible to hold office in any other capacity - Proviso to Sec. 149(11)
- Not liable to be retire by rotation - Explanation to Sec. 152(6)

July 12, 2014

PARESH H. CLERK

19

...Independent Director (“ID”) ...

- Remuneration - Sec. 149(9)
 - No stock options
 - Sitting fees not exceeding ₹ 1 Lakh per meeting of board / committee as decided by Board / Remuneration Committee
 - Different sitting fees can be paid to ID and Non-ID
 - Profit related commission as approved by members
 - Reimbursement of expense for participating in Board and other meetings

July 12, 2014

PARESH H. CLERK

20

...Independent Director (“ID”) ...

- Separate meetings - Schedule IV and RC 49
 - To hold at least one meeting in a year without any non-ID and members of management
 - All IDs strive to be present
 - Meeting shall:
 - Review performance of ID, Board
 - Review performance of Chairperson, considering view of ED and Non-ED
 - Flow of information between Board and Management
- Vacancy of ID to be filled by appointment of new ID within 180 days from date of removal or resignation
- If without filling the vacancy, the Company fulfils the requirement of ID then it need not necessarily fill the vacancy.

July 12, 2014

PARESH H. CLERK

21

...Independent Director (“ID”)

- RC 49 – terms and conditions of appointment of ID of a listed company to be disclosed to Stock Exchanges in 1 working day from date of appointment
- ID for Subsidiary Company – RC 49
 - One ID of holding co. to be director on BOD of a material non-listed Indian subsidiary co.
 - material subsidiary means:
 - Investment in subsidiary > 20% consolidate net worth
 - Income of subsidiary – 20% of consolidated income
- RC 49 – listed company to give necessary training to ID. Training to be reported in Annual Report

July 12, 2014

PARESH H. CLERK

22

Appointment – Pre-requisites...

- To furnish DIN and provide declaration that he is not disqualified - Sec. 152(4)
- To file DIN of all directors to ROC (or any other authority) within 15 days of the receipt of DIN – Sec. 157(1)
- Consent to act as director in Form DIR – 2 - Rule 8
- Company to file within 30 days of appointment, such consent in Form DIR – 12 with ROC

July 12, 2014

PARESH H. CLERK

23

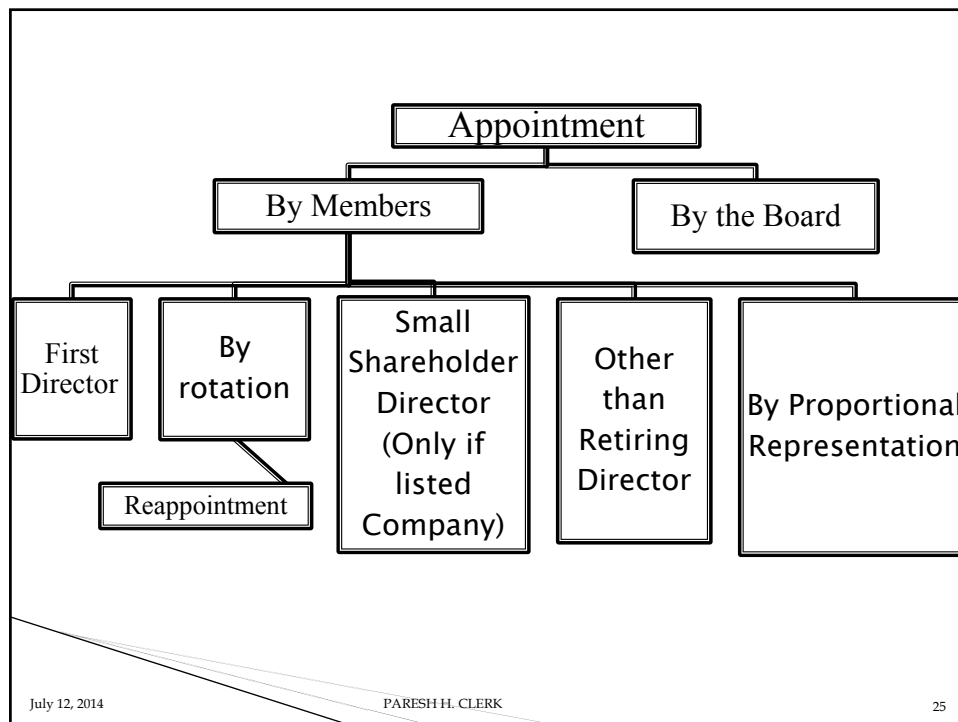
...Appointment – Pre-requisites

The 1956 Act	The 2013 Act
Sec. 266A – Every applicant to director identification number may be appointed as a director till allotment of DIN	Sec. 152(3) – No person shall be appointed as a director unless he has been allotted DIN

July 12, 2014

PARESH H. CLERK

24



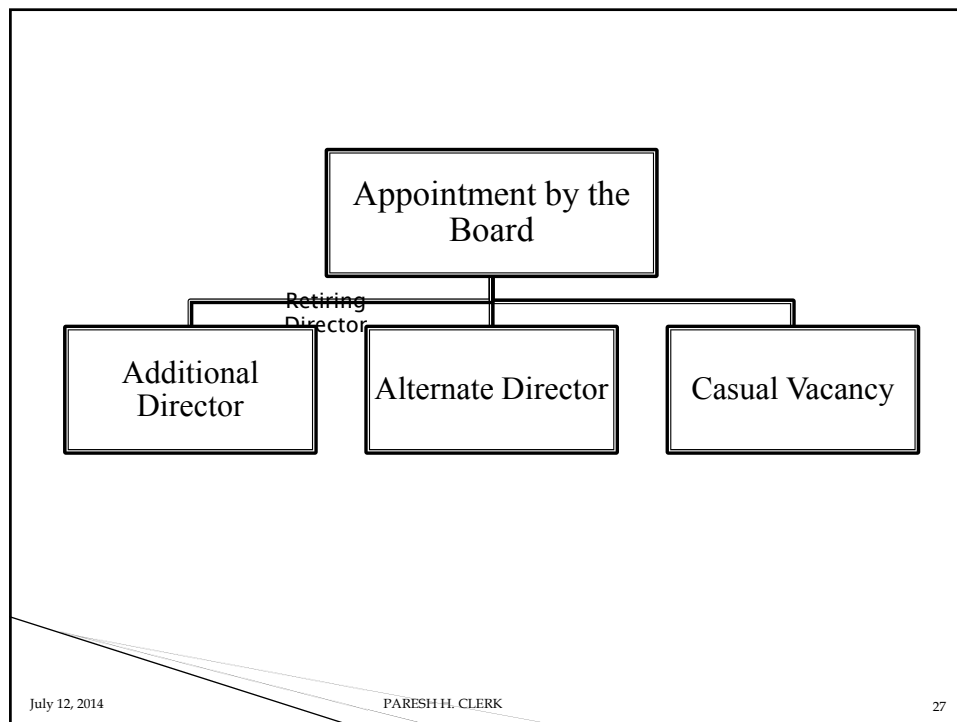
Appointment– Retire by Rotation

- Public Company – not less than $\frac{2}{3}$ rd of total number of directors shall be liable to retire by rotation - Sec. 152(6)(a)
 - Total number of directors shall not include ID
- $\frac{1}{3}$ rd of $\frac{2}{3}$ rd shall be liable to retire by rotation - Sec. 152(6)(c)
- Vacancy to be filled by reappointing the retiring director other than a retiring Director - Sec. 152(6)(e)
- If other than a retiring Director–
 - For candidature as director - deposit of ₹ 1 lakh or more as may be prescribed
 - Deposit would be refundable if person gets elected or gets more than 25% of total valid votes cast either on show of hands or on poll of such resolution

July 12, 2014

PARESH H. CLERK

26



Appointment – Additional and Alternate

- Additional Director – Sec. 161(1)
 - Cannot be a person who otherwise fails to get appointed as a director in a GM
 - Hold office upto next AGM or the last date on which AGM ought to have been held, whichever is earlier
- Alternate Director – Sec. 161(2)
 - Director to remain absent from India for not less than 3 months
 - Does not hold alternate directorship for any other director in the company
 - Alternate of ID should also be an ID

July 12, 2014

PARESH H. CLERK

28

...Appointment – Additional and Alternate...

The 1956 Act	The 2013 Act
<ul style="list-style-type: none"> Additional Director shall hold office up to the date of the next AGM 	<ul style="list-style-type: none"> Additional Director shall hold office up to: <ul style="list-style-type: none"> The date of the next AGM; or The last date on which the annual general meeting should have been held; whichever is earlier

July 12, 2014

PARESH H. CLERK

29

Appointment – Nominee Director Sec. 161(3)

- Subject to Articles of Association
- The Board to appoint
- Nominated by -
 - any institution
 - CG
 - SG by virtue of its shareholding

July 12, 2014

PARESH H. CLERK

30

Appointment – Casual Vacancy

- Casual Vacancy– Sec. 161(4)
- In the case of Public Company, if the office of any director appointed by the Company in the general meeting is vacated before his term expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of company, be filled by BOD

July 12, 2014

PARESH H. CLERK

31

Appointment – Disclosure to Shareholders under Revised Clause 49

- Brief resume of director
- Nature of his expertise in specific functional areas
- Companies where he holds directorship
- Members of committees of Board
- Shareholding of non-executive directors

July 12, 2014

PARESH H. CLERK

32

Disqualifications...

- Sec. 164 (1)
- A person shall not be eligible for appointment as a director of a Company, if –
 - he is of unsound mind;
 - he is an undischarged insolvent;
 - he has applied to be adjudicated as an insolvent and his application is pending;
 - has been convicted by a court of any offence
 - an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force
 - he has not paid any calls in respect of any shares of the company held by him whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;
 - he has been convicted of the offence dealing with related party transactions

July 12, 2014

PARESH H. CLERK

33

...Disqualifications...

- under section 188 at any time during the last preceding five years; or
- he has not complied with sub-section (3) of section 152
- Sec 164 (2)
- No person who is or has been a director of a company which—
 - has not filed financial statements or annual returns for any continuous period of three financial years; or
 - has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more,
- shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so

July 12, 2014

PARESH H. CLERK

34

...Disqualifications...

- Disqualifications u/s. 164(1)(d), (e) and (g) not to take effect –
 - For 30 days from the date of conviction or order, if no appeal / petition is preferred
 - Otherwise until expiry of seven days from the date on which appeal or petition against the order, is disposed off
 - Where any further appeal or petition is preferred within seven days, until such further appeal or petition is disposed off
- Additional disqualifications u/s. 164(2) -
 - Applicable to director of any company
 - If not eligible for appointment as director in any company

July 12, 2014

PARESH H. CLERK

35

Number of Directorship

- ≤ 20 companies - Sec. 165(1)
 - ≤ 10 public companies, or - Proviso to 165(1)
 - Any lesser no. as specified by SR - Sec. 165(2)
- RC 49 – As an ID
 - In not more than 7 listed companies
 - In not more than 3 listed companies, if he is a WTD of a listed company
- Number to include directorships - Sec. 165(1)
 - as alternate director
 - of an unlimited company;
 - of association not carrying on business for profit or which prohibits the payment of dividend
- Cooling period of one year, to comply with number of directorship - Sec. 165(5)

July 12, 2014

PARESH H. CLERK

36

...Number of Directorship...

The 1956 Act	The 2013 Act
<ul style="list-style-type: none"> ▪ S. 275 – Number of Directorship – not more than 15 companies 	<ul style="list-style-type: none"> ▪ S. 165(1) – Number of Directorships – not more than 20 companies
<ul style="list-style-type: none"> ▪ No such provision 	<ul style="list-style-type: none"> ▪ A person can act as a director in maximum of 10 public companies
<ul style="list-style-type: none"> ▪ No such provision 	<ul style="list-style-type: none"> ▪ Member may pass a special resolution specifying lesser number of companies in which a person may act as a director

July 12, 2014

PARESH H. CLERK

37

... Number of Directorship

The 1956 Act	The 2013 Act
<ul style="list-style-type: none"> ▪ S. 278 – For reckoning number of directorships, directorship in unlimited company, association not for profit, alternate directorships are excluded 	<ul style="list-style-type: none"> ▪ S. 165(1) – Explanation – No such provision
<ul style="list-style-type: none"> ▪ S. 279 – if directorship more than 15 – penalty of ₹ 50,000 for each those companies after the 15 companies 	<ul style="list-style-type: none"> ▪ S. 165(6) – if directorships more than 20 – penalty of ₹ 5000 which may extend to ₹ 25000 per day during which contravention continues

July 12, 2014

PARESH H. CLERK

38

Vacation of Office - Sec. 167

- Attracts any of the disqualifications u/s. 164
- Absence from all board meetings held during a period of twelve months even with leave of absence
- If all the directors vacate or resign their offices under any of the disqualifications prescribed u/s. 167(1), the promoter or in his absence, the Central Government shall appoint the required number of directors
 - To hold office till the directors are appointed in the GM - Sec. 168 (3)

July 12, 2014

PARESH H. CLERK

39

Vacation of Office - Sec. 167

The 1956 Act	The 2013 Act
S. 283 – Vacation of office by directors – Absent from board meeting for a continuous period of three months	S. 167 – Vacation of office by directors – Absent from all board meetings during a period of twelve months
If a person continues as a director even after knowing about the vacation due to circumstances enumerated u/s 283, he shall be punishable with fine which may extend to ₹ 5000 per day during which the default continues	If a person continues as a director even after knowing about the vacation due to circumstances enumerated u/s, 283, he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 5 lakh or with both
No such provision	If all directors are vacated due to S. 167, central government shall appoint required number of directors

July 12, 2014

PARESH H. CLERK

40

Resignation of Directors - Sec. 168

- Resignation – effective from date of receipt by the company or date mentioned therein, whichever is later.
- To intimate ROC in Form DIR 11 within 30 days of the Resignation - Rule 15
- Director to forward a copy of his resignation to ROC within 30 days in Form 10 - Rule 16
- Resignation to be disclosed / reported in
 - Director's report - Sec. 168(1)
 - On website not later than one working days - RC 49
 - Letter of resignation along with the detailed reasons to be forwarded to the stock exchanges not later than 1 working day - RC 49

July 12, 2014

PARESH H. CLERK

41

Sec. 196 - Appointment of KMP...

- Applicability –
 - listed company;
 - every other company having paid-up capital of ₹ 5 crore or more
- Whole-time KMP – Sec. 2(51)
 - MD, CEO, Manager, Whole-time Director;
 - Company Secretary;
 - CFO

July 12, 2014

PARESH H. CLERK

42

...Appointment of KMP

- Restrictions –
 - Chairperson not be MD or CEO at the same time unless the Articles provide and company does not carry multiple business
 - KMP to hold office in one company only
 - Director in any other company with permission of the Board
 - MD of two companies with consent of all directors
 - KMP of a holding company can hold office as a KMP in its subsidiary at the same time

July 12, 2014

PARESH H. CLERK

43

Sec. 170 - Register of Directors and Key Managerial Personnel (“KMP”)...

- Particulars of Directors and KMPs as defined in Sec. 2(51)
 - As per Sec. 2(51), KMPs to cover:
 - CEO
 - MD
 - Company Secretary
 - Whole-time director
 - CFO
 - Such other officer as may be prescribed

July 12, 2014

PARESH H. CLERK

44

...Register of Directors and KMPs

- Register to contain:
 - Date of the Board Resolution for appointment
 - Date of appointment and reappointment
 - Date of cessation of office and reasons
 - Office of director or KMPs held or relinquished in any other body corporate
 - Company Secretary : Membership No. of the ICSI
 - Details of securities held by KMP in the company, its holding company, subsidiaries, subsidiaries of company's holding company or associate companies

July 12, 2014

PARESH H. CLERK

45

...Register of Directors and KMPs

The 1956 Act	The 2013 Act
S. 303 – Every Company to maintain Register of Directors, Managing Directors, Manager and Secretary	S. 170 – Every company to maintain Register of Directors and Key Managerial Personnel. KMP as per 2(51) are CEO, MD, Manager, Company Secretary, WTD, CFO and such other officer as may be prescribed
S. 307 – Register shall include information such as shares or debentures held by director in its holding company, subsidiary, subsidiary of company's holding company	S. 170 – Register shall include information such as securities held by director and KMP in company, in its holding company, subsidiary, subsidiary of company's holding company or associate companies
S. 307 – Penalty for contravention – ₹ 50,000 and ₹ 200 per day	S. 172 r.s.w. 170 – Minimum of ₹ 50,000 which may extend to ₹ 5,00,000

July 12, 2014

PARESH H. CLERK

46

Duties of Director...

- Section 166
- To act in accordance with Articles of Association
- To act in good faith in order to promote
 - the objects of the company for the benefit of its members as a whole;
 - in the best interests of the company, its employees, the shareholders, the community; and
 - for the protection of environment
- Exercise his duties with due and reasonable care, skill and diligence and independent judgment.
- Not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company

July 12, 2014

PARESH H. CLERK

47

...Duties of Director

- Not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates
- Not assign his office and any assignment so made shall be void.
- If the director contravenes the provisions, he shall be punishable with fine of not less than ₹ 1 lakh which may extend to ₹ 5 lakh

July 12, 2014

PARESH H. CLERK

48

Remuneration of Managerial Personnel...

Sec. 197 :

- Remuneration – Sec. 2(78)
- Any money or its equivalent
- To any person for services rendered by him, and
- Includes perquisites
- Fees – Sec. 197(5)
 - Fees for attending Board or Committee's meetings
 - For any other purpose [as per the Board's decision which shall not exceed the prescribed limits]
- Insurance Premium – Sec. 197 (13)
 - Insurance premium paid for indemnifying against any liability in respect of the Company only if he is proved to be guilty

July 12, 2014

PARESH H. CLERK

49

...Remuneration of Managerial Personnel...

Approval and resolutions

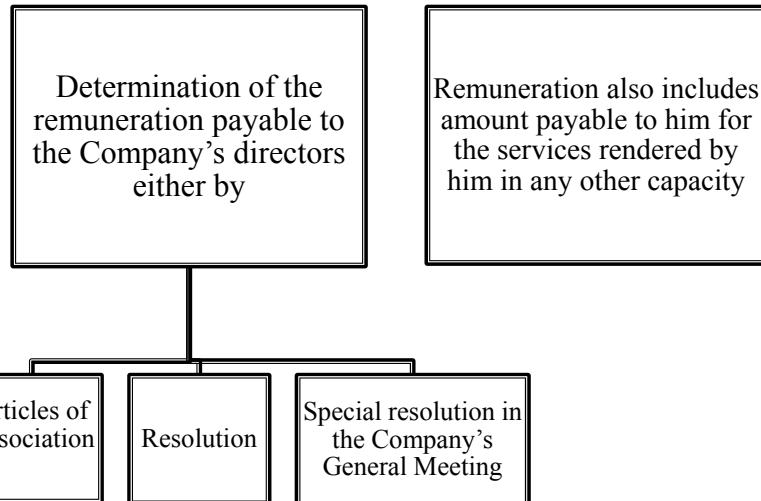
- Approval by BOD –
 - Terms and conditions of appointment and remuneration payable
 - Above is subject to approval by a resolution at the Company's next general meeting
 - In case of variance in the conditions specified in that Schedule
 - CG's approval is required
 - Return in the prescribed form MR 1 to be filed within 60 days of such appointment

July 12, 2014

PARESH H. CLERK

50

...Remuneration of Managerial Personnel...



July 12, 2014

PARESH H. CLERK

51

...Remuneration of Managerial Personnel...

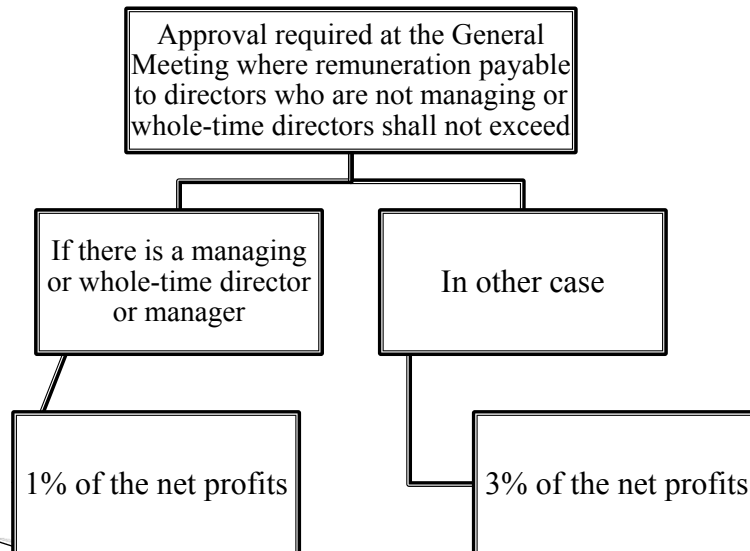
Serial No.	Type of Managerial Remuneration Payable to directors including managing director, whole-time director, and its manager	Prescribed Limit	Remuneration payable in case where it:	
			Does not exceed prescribed limits	Exceeds prescribed limits
1.	Total	11 % of the net profits of that financial year	No resolution is required for the same	Shall authorise at Company's general meeting and after CG's approval
2.	Payable to any one director	5% of the net profits	Approval required at the General Meeting	Where paid to more than 1 director, limit exceeds to 10% of the net profits for all the directors taken together

July 12, 2014

PARESH H. CLERK

52

...Remuneration of Managerial Personnel...



July 12, 2014

PARESH H. CLERK

53

...Remuneration of Managerial Personnel...

No / Inadequate Profits :

- Remuneration to be paid when [Sec. 197(3)] :
- ▶ Provisions of Schedule V are complied with where :
 - Sec. 197(11) - If there is any increase or has the effect of increasing the remuneration, it shall not have any effect unless it is in :
 - Accordance with the Schedule's provisions
 - If not, then approval of CG has to be obtained
- ▶ If it is not able to comply with Schedule's provisions, CG's previous approval is required

July 12, 2014

PARESH H. CLERK

54

...Remuneration of Managerial Personnel...

- In case of no or inadequate profits, as per Section II of Part II of Schedule V, remuneration will be higher of (A) & (B):

Part (A) :

Effective capital	Yearly remuneration shall not exceed
Negative or < 5 Cr.	30 lakhs
5 Cr. or more < 100 Cr.	42 lakhs
100 Cr. or more < 250 Cr.	60 lakhs
250 Cr. and above	60 lakhs + 0.01% * (Effective capital - 250 Cr.)

July 12, 2014

PARESH H. CLERK

55

...Remuneration of Managerial Personnel...

Part (B) :

- 2.5% of the current relevant profits, if managerial person is:
 - Not holding nominal value of securities which is five lakhs or more
 - An employee
 - A director
 - Not related to any director or promoter at any time during the two years prior to his appointment

July 12, 2014

PARESH H. CLERK

56

...Remuneration of Managerial Personnel...

Excess remuneration drawn and violation

- Remuneration is drawn in excess of the limits prescribed or without CG's approval, Director to:
 - Refund the amounts
 - Until the refund, hold it in trust for the Company
- In case of contravention - Fine of minimum ₹ 1 lakh and maximum ₹ 5 lakh

July 12, 2014

PARESH H. CLERK

57

...Remuneration of Managerial Personnel

- Annual report shall disclose: (RC 49)
 - All pecuniary relationship
 - Transactions of Non-executive directors vis-à-vis company
 - In Sec. of corporate governance:
 - Elements of remuneration to directors
 - Fixed component and performance linked incentives
 - Performance criteria
 - Service contracts
 - Notice period
 - Severance fees
 - Details of Stock options
 - Whether issued at discount
 - Period of accrual and exercisable

July 12, 2014

PARESH H. CLERK

58

...Managerial Remuneration

The 1956 Act	The 2013 Act
S. 268 – Managing director or Whole Time Director not required to be 21 years	S. 196(3) – Managing Director, Whole Time Director and manager to be 21

July 12, 2014

PARESH H. CLERK

59

Board Committees

Synopsis

- Audit Committee – Sec. 177
- Nomination and Remuneration Committee (“NRC”) – Sec. 178
 - Constitution
 - Obligation
- Shareholders Relationship Committee – Sec. 178
- CSR Committee – Sec. 135
- Risk Management Committee - RC 49
- Director as a “Member” of Committees

July 12, 2014

PARESH H. CLERK

60

Audit Committee...

- Rule 6
 - Every Listed Co., having as per latest audited financial statements
 - Paid-up capital of ₹ 10 crore or more;
 - Turnover of ₹ 100 crore or more;
 - Outstanding loans or borrowings or debentures or deposits, in aggregate, exceeding ₹ 50 crore or more
- Minimum 3 directors with ID in majority - Sec. 177(2)
 - 2/3rd of members shall be ID - RC 49
 - All members to be financially literate - RC 49
 - Members including Chairperson be equipped with ability to read and understand, the financial statements - RC 49

July 12, 2014

PARESH H. CLERK

61

...Audit Committee...

- Chairperson to be an ID - RC 49
 - To present at AGM to answer shareholder's queries
- Company Secretary to act as secretary - RC 49
- Existing Committees to be reconstituted within 1 year of the commencement of the 2013 Act - Sec. 177(3)
- Board's terms of reference also to include matters specified in Sec. 177(4)
- Board's report to disclose composition - Sec. 177(8)
- Establish a vigil mechanism - Sec. 177(9)
- Obligations - Sec. 177(4)
 - Appointment, remuneration and terms of appointment of auditors
 - Review and monitor auditor performance

July 12, 2014

PARESH H. CLERK

62

...Audit Committee...

- Examination of financial statements and auditor's report
- Review of transactions with related parties
- Scrutiny of inter-corporate loans and investments
- Valuation of undertaking
- Evaluation of internal financial control and risk management system
- Monitoring end use of funds
- To review financial statements of subsidiary company
 - In particular, investments of unlisted subsidiary company

July 12, 2014

PARESH H. CLERK

63

...Audit Committee...

- Sec. 177(5) - May call for comments of auditor comments about
 - Internal control systems
 - Scope of audit
 - Observation on financial statement
- Meetings of audit committee - RC 49
 - Four meetings in a year
 - Gap between two meetings not to exceed four months
- Quorum - RC 49
 - Two members; or
 - 1/3rd of members, whichever is higher
 - Minimum two ID to present

July 12, 2014

PARESH H. CLERK

64

Establishment of Vigil Mechanism

- Adequate safeguards against the victimization of directors and employees
- Companies covered:
 - Listed company
 - Companies accepting public deposits
 - Companies which have borrowed money from banks and public financial institutions exceeding ₹ 50 Crore
- Supervision by the Audit Committee
- If no Audit Committee, then BOD to nominate a director to play the role of Audit Committee for vigil mechanism
- Repeated frivolous complaints – suitable action against the concerned employee or director including reprimand

July 12, 2014

PARESH H. CLERK

65

Nomination and Remuneration Committee(NRC) - Constitution

- Every public company, having – (as per latest audited financial statements) (Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014)
 - Paid-up capital of ₹ 10 crore or more;
 - Turnover of ₹ 100 crore or more;
 - Outstanding loans or borrowings or debentures or deposits, in aggregate, exceeding ₹ 50 Crore or more
- Minimum 3 directors with ID in majority
- 3 or more non-executive directors out of which not less than 1/2 shall be ID - Sec. 178(1)
- Chairman to be ID
 - To remain present in AGM
- Chairperson can act as member, not as Chairman

July 12, 2014

PARESH H. CLERK

66

NRC – Obligation

- Identify person qualified to become directors and eligible for appointment in senior management
- Recommendation to the Board about their appointment and removal
- Evaluation of director's performance
- Formulate criteria for determining qualifications, positive attributes and independence of director
- Recommending to Board policy, relating to remuneration for directors, KMP and other employees
 - Policy to be disclosed in the Board's report

July 12, 2014

PARESH H. CLERK

67

Stakeholders Relationship Committee

- Required where shareholders, debenture holders, deposit holders, and any other security holders are in excess of 1,000 at any time during a financial year
- Constitution – Sec. 178(5) and RC 49
 - Chairperson,
 - Who is a non-executive director
 - Such other members, as the Board may decide
- To consider and resolve the grievances of security holders – Sec. 178(6) and RC 49
- Chairperson or in his absence, any member shall attend AGM Sec. 178(7)

July 12, 2014

PARESH H. CLERK

68

CSR Committee

- Every company having –
 - net worth of ₹ 500 crore or more; or
 - Turnover of ₹ 1000 crore or more; or
 - Net profit of ₹ 5 crore or more
- Constitution – three or more directors, one ID
- Responsibility-
 - To formulate CSR policy and recommend to Board
 - To recommend amount of expenditure on CSR
 - To monitor CSR policy

July 12, 2014

PARESH H. CLERK

69

Risk Management Committee - RC 49

- Board to define –
 - Roles
 - Responsibilities
 - Monitoring and reviewing of risk management plan
 - Such other functions as it may deem fit

July 12, 2014

PARESH H. CLERK

70

Director as a “Member of Committees”

- If acts as “member”, in not more than 10 committees
 - If acts as chairman, in not more than 5 committees
 - Committee shall include only :
 - Audit Committee
 - Stakeholders’ Relationship Committee
- Inform the company about the committee positions in other companies and any changes thereof
- Companies excluded:
 - Private limited company
 - Foreign company
 - Company u/s. 8 of the 2013 Act

July 12, 2014

PARESH H. CLERK

71

Related Party Transactions (“RPTs”)...

- Sec. 2(76) - “Related Party” (“RP”) to include:
 - a director or his relative;
 - a KMP or his relative;
 - a firm, in which a director, manager or his relative is a partner;
 - a private co. in which a director or manager is a member or director;
 - a public co. in which a director or manager
 - is a director and
 - holds alongwith his relatives more than 2% of paid-up share capital;

July 12, 2014

PARESH H. CLERK

72

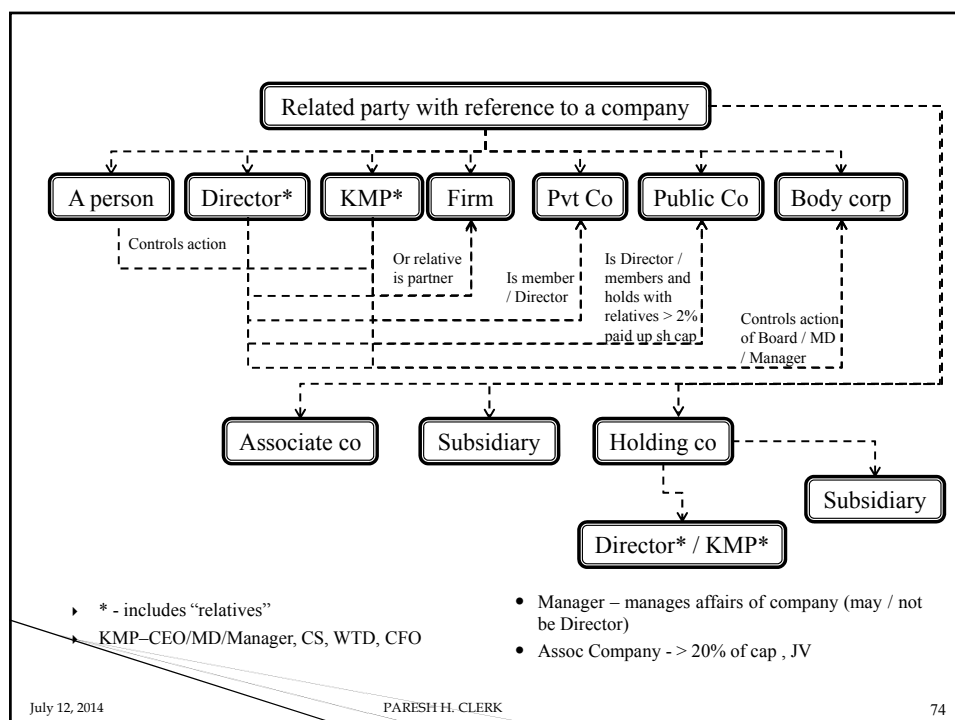
...RPTs...

- any body corporate whose BOD, MD or manager acting as per directions of a director or manager
 - other than in professional capacity;
- any person on whose advice, directions or instructions a director or manager is accustomed to act
 - other than in professional capacity;
- a holding, subsidiary or an associate company of such company;
- a fellow subsidiary
- such other person as may be prescribed
 - a director or relative of such director or KMP of the holding company

July 12, 2014

PARESH H. CLERK

73

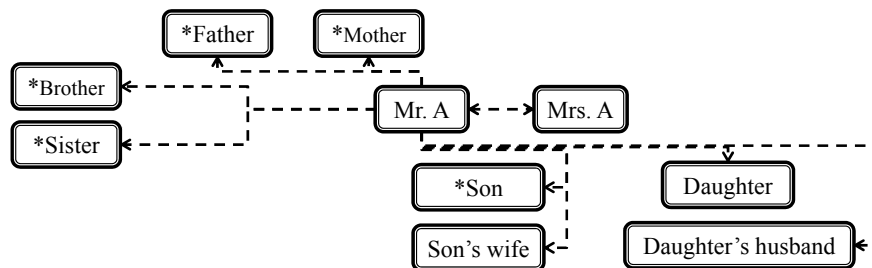


July 12, 2014

PARESH H. CLERK

74

Sec 2 (77) – Definition of relative



- ▶ Relatives include all members of HUF
- ▶ * includes Step-relations

July 12, 2014

PARESH H. CLERK

75

...RPTs...

- RC 49 has expanded the “RP” to include persons and entity having:
 - Control
 - Joint control
 - Significant influence

July 12, 2014

PARESH H. CLERK

76

...RPTs...

- RPTs to include - Sec. 188
 - sale, purchase or supply of any goods or materials;
 - selling or otherwise disposing of, or buying, property of any kind;
 - leasing of property of any kind;
 - availing or rendering of any services;
 - appointment of any agent for purchase or sale of goods, materials, services or property;
 - RPs appointment to any office or place of profit in the company, its subsidiary company or associate company; and
 - underwriting of securities or derivatives of company

July 12, 2014

PARESH H. CLERK

77

...RPTs...

- RC 49 - Transfer of :
 - Resources;
 - Services;
 - Obligations
 - Irrespective of price is charged or not

July 12, 2014

PARESH H. CLERK

78

...RPTs...

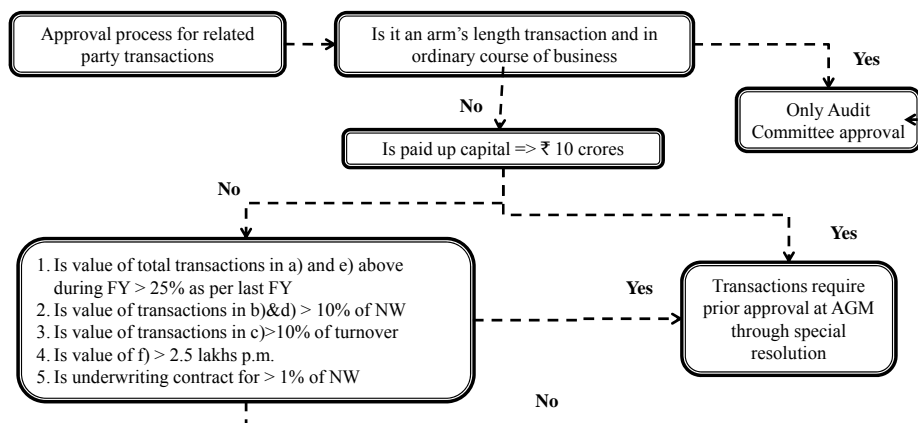
- Disclosure in Board's report alongwith justification for entering into such transaction and pricing and other commercial terms of RPTs
- Company to formulate policy on - RC 49
 - Materiality of RPT
 - Dealing with RPT
- Disclosure of RPTs - RC 49
 - Quarterly disclosure
 - alongwith report on corporate governance
 - Policy on dealing with RPTs
 - In annual report;
 - on website

July 12, 2014

PARESH H. CLERK

79

Sec 188 – Procedure for approval of Related party transactions..



- All related party transactions (RPT) to be pre-approved / ratified by Board / AGM within 3 months. Interested Director not to participate
- Interested member not to vote in AGM, for deciding approval

July 12, 2014

PARESH H. CLERK

80

...RPTs...

- Approval of audit committee for all RPTs - RC 49
- Proviso to Sec. 188 and the Companies (Meetings of Board and its Powers) Rules, 2014: Board's or Shareholders approval, if RPT is not:
 - At arm's length; or
 - In the ordinary course of business
 - Shareholder approval by SR, only if:
 - Material RPTs; RC 49
 - Paid-up capital > 10 crore; or
 - Sale, purchase or supply of goods > 25% of annual turnover
 - Selling or disposing of, or buying, property of any kind > 10% of net worth
 - Leasing of property > 10% of net worth or 10% of turnover
 - Availing or rendering services of > 10% of net worth
 - Appointment to place of profit, if monthly remuneration > ₹ 2.50 lacs
 - Remuneration for underwriting is > 1% of net worth

July 12, 2014

PARESH H. CLERK

81

...RPTs...

- For wholly owned subsidiary, SR passed by holding company shall be sufficient
 - For transactions between WOS and Holding Co.

July 12, 2014

PARESH H. CLERK

82

Miscellaneous

- Register of Contracts or Arrangements – Sec. 189
 - if value of sale, purchase or supply of any goods, materials or services exceeds five lakh rupees in the aggregate in any year
- Contract of employment with managing or whole-time directors - Sec. 190
 - Provisions does not apply to Private Co.

July 12, 2014

PARESH H. CLERK

83

THANK YOU!

Paresh H. Clerk
BANSI S. MEHTA & CO.
11/13, Botawala Building,
2nd Floor, Near Horniman Circle,
Fort, Mumbai – 400 001.
Mobile No.9820232640
Email – bsmco1@vsnl.net
Website : www.bsmco.net

July 12, 2014

PARESH H. CLERK

84