

Define the term “principal officer” in the Companies Act

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The term “principal officer” (PO) has not been defined in the earlier Companies Act, 1956, as well as in the Companies Act, 2013. However, in both the Acts, the term principal officer has been used in two important places, viz. (a) delegation of powers by the Board; and (b) winding up of unregistered companies. The principal officer is entrusted with the role performed by the key managerial personnel, i.e., managing director, manager or secretary. Therefore, the designation of a person as a principal officer is almost near to that of a managing director, manager or secretary. However, the term “officer” has been defined in the Act, to include any director, manager, key managerial personnel or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act.

II. Definition of principal officer elsewhere

The term principal officer has been defined under the Income Tax Act. It has defined the term “principal officer” as under -

Sec 2(35): “**Principal officer**”, used with reference to a local authority or a company or any other public body or any association of persons or any body of individuals, means—

(a) the secretary, treasurer, manager or agent of the authority, company, association or body, or

(b) any person connected with the management or administration of the local authority, company, association or body upon whom the Income-tax Officer has served a notice of his intention of treating him as the **principal officer** thereof;

Under the said Act, the principal officer is responsible for compliance including, (a) payment of proper taxes; (b) filing of proper returns; and (c) for all consequences for non-compliance of any of the provisions of the said Act. Further, under the said Act, it is also clear that the position of a Secretary in a company is that of a PO.

III. Can a company have more than one principal officer?

In the Companies Act, 1956, there was a section for converting a partnership firm into a company under Part IX. The term “principal officers”

of the company was used while authentication of statements of existing Companies and filed with the Registrar of Companies. The said statement was required to be duly verified by the declaration of any two or more directors or **“other principal officers”** of the company. Since it was required to be verified by at least two persons, one can understand from the said provision that there can be more than one principal officer in a company. In the corresponding part XXI in the Companies Act, 2013, of course, the term ‘principal officers’ is not used. The said provision of the Companies Act, 1956 was as under:

Authentication of statements of existing companies: The lists of members and directors and any other particulars relating to the company required to be delivered to the Registrar shall be duly verified by the declaration of any two or more directors or **other principal officers** of the company.

The first proviso to the relevant section of the Companies Act, 2013 for delegation of powers of the Board, (a) to borrow monies; (b) to invest the funds of the company; and (c) to grant loans or give guarantee or provide security in respect of loans, reads as under:

- Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other **principal officer** of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify.

The above said proviso clearly provides that where a company has more than one branch, every branch can have a principal officer which concludes that a company can have more than one principal officer.

Further, while issuing of Indian Depository Receipts (IDRs) by a company under the Companies Act, 2013 the prospectus or letter of offer shall contain certain particulars. One of such particulars is “the particulars of the management or Board (i.e. name and complete address(es) of directors, manager, managing director or other **principal officers** of the company”. This also very clearly shows that a company can have more than one principal officer. Therefore, there is no restriction on a company designating more than one person as principal officer of the company.

IV. Principal officer for same activity and different activities

The Income Tax Act definition makes it clear that a secretary of a company is a principal officer and is responsible for compliance of the Income Tax Act. Secretary, under the Companies Act, is defined as under:

“Company secretary” or “secretary” means a company secretary who is deemed to be in practice under sub section (2) of the Company Secretaries

Act, 1980 (56 of 1980) who is appointed by a company to perform the functions of a company secretary under the Act.

Extending the definition of Income Tax Act, the position of company secretary or secretary of a company satisfies that such position is the PO of the company for all the purposes of Companies Act.

Therefore, the Board of directors of a company can delegate the powers for borrowings, investment or giving loans or guarantees to a company secretary.

It is also possible for a company to designate different officers of a company to different activities. Every branch in charge of a company who is not a member of the Board of directors may be designated as principal officer of such branch and where a company has more than one branch, the company will have more than one principal officer.

V. Filing of returns with the Registrar of Companies

Considering the roles performed by the principal officer under the Act, the designation of a person as a principal officer is almost near to that of a managing director or manager or secretary of the company. However, the principal officer can also be any person other than managing director, manager or secretary of the company, example branch officer of company.

Companies Act doesn't require any intimation or return to be filed with the Registrar of Companies for the appointment or change in designation of the principal officer of the company. However, in contrast, the company is required to file the return for the appointment or for every change in the managing director or manager or secretary of the company.

Conclusion

The term "principal officers", as used in providing the particulars of management or Board in the prospectus or letter of offer issued for Indian Depository Receipts along with the names and addresses of directors, managing director, implies that the principal officers are part of the Board. The investing public in such receipts need to know the management or Board before investing their funds.

A company secretary is not a member of the Board of directors, but he/ she is delegated to borrow or invest or give loans or guarantees. The branch managers of a company are not part of the team of Board but they can be designated as principal officer of the company.

Therefore, there is a need for defining the term "principal officer" in the Companies Act, to avoid any confusion, and more particularly to delegate powers for borrowings, investments and giving guarantees or securities and to the information and understanding of all stakeholders.

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