

## COMMITTEES

### IMPLICATIONS UNDER THE COMPANIES (AMENDMENT) ACT, 2017

#### SECTION 135 – CORPORATE SOCIAL RESPONSIBILITY

Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

If a company is not required to appoint an independent director under section 149(4) of the Companies Act, 2013, it shall have in its Corporate Social Responsibility Committee two or more directors.

The Corporate Social Responsibility Committee shall formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII.

For the purposes of section 135 "net profit" shall not include such sums as may be prescribed\*, and shall be calculated in accordance with the provisions of section 198 of the Act.

#### SECTION 177(1) – AUDIT COMMITTEE

The Board of Directors of the following companies shall constitute an Audit Committee:

- (i) every listed public company;
- (ii) the public companies having paid up share capital of ten crore rupees or more; or
- (iii) the public companies having turnover of one hundred crore rupees or more; or
- (iv) the public companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees.

Earlier, every listed company and other public companies as specified were required to constitute an Audit Committee. But now every listed public company and other public companies as specified shall constitute an Audit Committee. Hence, listed private companies are not required to constitute an Audit Committee.

#### SECTION 177(4) (iv) – AUDIT COMMITTEE

The Audit Committee shall make recommendations to the Board for the transactions, other than transactions as referred to in section 188 and the same not approved by the Committee.

Where a director or officer of the company enters into a transaction involving any amount not exceeding one crore rupees without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee.

Further, if such transaction is with the related party to any director or is authorized by any other director, the director concerned shall indemnify the company against any loss incurred by it.

The above provision shall not apply to a transaction, other than the transaction referred to in section 188, between a holding company and its wholly owned subsidiary company.

#### **SECTION 178(1) – NOMINATION AND REMUNERATION COMMITTEE**

The Board of Directors of the following companies shall constitute Nomination and Remuneration Committee:

- (i) every listed public company;
- (ii) the public companies having paid up share capital of ten crore rupees or more; or
- (iii) the public companies having turnover of one hundred crore rupees or more; or
- (iv) the public companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees.

Earlier, every listed company and other public companies as specified were required to constitute a Nomination and Remuneration Committee. But now every listed public company and other public companies as specified shall constitute a Nomination and Remuneration Committee. Hence, listed private companies are not required to constitute Nomination and Remuneration Committee.

#### **SECTION 178(2) – SCOPE OF NOMINATION AND REMUNERATION COMMITTEE**

The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance.

The Nomination and Remuneration Committee shall formulate the manner of performance evaluation. The performance evaluation shall be done either by the Board, by the Nomination and Remuneration Committee or by an independent external agency. The Nomination and Remuneration Committee shall review the implementation and compliance of the manner of performance evaluation.

**SECTION 178(4)(c) – NOMINATION AND REMUNERATION POLICY**

The Nomination and Remuneration Policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report.

**SECTION 178(8) – PENALTY FOR CONTRAVENTION**

The inability to resolve or consider any grievance by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of section 178.

*DISCLAIMER: The information given in this document has been made on the basis of the provisions stated in the Companies (Amendment) Act, 2017 and Companies Act, 2013. It is based on the analysis and interpretation of applicable laws as on date. The information in this document is for general informational purposes only and is not a legal advice or a legal opinion. You should seek the advice of legal counsel of your choice before acting upon any of the information in this document. Under no circumstances whatsoever, we are not responsible for any loss, claim, liability, damage(s) resulting from the use, omission or inability to use the information provided in the document.*