

KEY ISSUES IN FILING
ROC RETURNS
UNDER COMPANIES ACT, 2013

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- **The views expressed in the session is personal and shall not be interpreted as the views of the Institute(s) or Organizations or Council I am associated with;**
- **Please refer to the Act/Rules/Circular/Notification before forming a final opinion on the interpretations made by me.**

Outline of the presentation:-

- Annual Compliances
- Limit based Compliances
- Structure of Company Management
- Appointment of KMP / MD / WTD
- Mandatory Compliance to SSs
- Director's disqualification
- Striking-off & restoration of Company

ANNUAL COMPLIANCES

1.	Form MBP-1	S. 184(1)	Every Director of the Company in IST Meeting of the Board of Director in each Financial Year will disclose his interest in other entities. Fresh MBP-1 whenever there is change in his interest from the earlier given MBP-1.
2.	Form DIR- 8	164(2) 143(3)(g)	Every Director of the Company in each Financial Year will file with the Company disclosure of non- disqualification. .
3.	Annual Return	S.92	Form MGT-7 Company to file its AR within 60 days from the date of AGM. Period- 1st April to March 31st

4.	ANNUAL REPORT TO BE FILED WITH ROC	137	E-form: AOC-4 Balance Sheet along with Statement of Profit and Loss Account and Directors' Report in this form. Attachment: Balance Sheet, Statement of Profit & Loss Account, Directors' Report, Auditors' Report, Cash Flow Statement and Notice of AGM.
5.	Certificate From CS	92	E form MGT-8 Paid up Capital 10 Crores / Turnover Rs. 50 crores To be certified by a PCS.
6.	Directors' Report	134	TO BE SIGNED BY the " Chairperson " authorized by the Board, where he is not so authorized by at least TWO Directors one of whom shall be MD

7.	Adoption of Financial Statement & Director's Report	S. 179(3)	Adoption of Financial Statements and Director Report: Company to file MGT-14 along with copy of Board Resolution within 30 days of Board Meeting.
8.	Circulation of Annual Report	S. 136	Send to the Members of the Company approved Financial Statement (including consolidated Financial Statement), Cash Flow Statement, Directors' Report and Auditors' Report at least 21 clear days before the Annual General Meeting. (Except in case of AGM is called on Shorter Notice)
9.	Notice of AGM	101 & SS-II	<p>Comply with Section 101 of Companies Act 2013 and Secretarial Standard – II.</p> <p>E voting Facility – If more than 200 Members then give e-voting Facility.</p>

10.	Sending of Notice of AGM	101 & SS	Notice of AGM to be sent to <ul style="list-style-type: none"> • All Directors, Members, Statutory Auditor. • Secretarial Auditor, If any. • Debenture Trustee, if any.
11.	Board Meetings	173 & SS-I	<p>Minimum FOUR meetings every year</p> <p>Maximum gap between two meetings should not be more than 120 (One hundred twenty) days.</p>
12.	Appoint- ment of Auditor	139	E-form ADT-1 Auditors to be appointed for FIVE years Shareholder to ratify every year- NO need to file ADT-1 every year Rotation: Listed/ UL-Pb 10 / Pvt-20 crore Capital Pb or Pvt – borrowings 50 crore

12.	Appointment of Company Secretary	S. 203 & Rule 8A	Paid up share capital of Rs. 5 crore OR MORE required to appoint whole time Company Secretary.
	Appointment of KMP	S.203 & Rule 8	Every Listed company and Public company having paid up capital of Rs.10 crore shall appoint KMP
13.	Maintenance of Registers	S. 88	Maintain mandatory Registers: Register of Director, Director Shareholding, Members. Register of Loan, Guarantee, Investment made by the Company. Register of Contract with Related Parties
14.	Annual Return	S. 92	E form MGT-7 To be signed by PCS

LIMIT BASED COMPLIANCES **FOR PUBLIC COMPANIES:**

S. No.		Section & Rules	Required Compliance	
1.	E- Forms Filing Requirements	Rule- 22 Chap. V	DPT- 3	Company if accept deposits during the year then it is required to file return of deposits within 30 days of end of financial year.
2.		196	MR-1	Return of appointment / re-appointment of Managing Director or Whole Time Director or Manager or KMP.
3.		149	DIR- 12	Appointment of Independent Director. L /UL-PB-Cap-100/T-300/B-200 crore
4.		149	DIR- 12	Appointment of Woman Director. Cap-100/ T-300 crore
5.		138	MGT-14 vinayak	Appointment of Internal Auditor. Listed/ Unlisted: Cap-50/ T-200 / B-100 / Dep-25 crore

6.	Secretarial Audit by PCS		<p>Compulsory Secretarial Audit by PCS (MR-3):-</p> <p>a) All Listed Companies</p> <p>b) Every Public Company having; Capital of Rs. 50 Crore / Turnover 250 crores</p>
7.	Audit Committee	S. 177	<p>Companies to Constitute AC Compulsorily:-</p> <p>Capital 10 Crores Turnover 100 Crores Borrowings 50 Crores</p>

8.	Nomination & Remuneration Committee	S.178	<p>Companies to Constitute NRC Compulsorily:-</p> <p>Capital 10 Crores Turnover 100 Crores Borrowings 50 Crores</p>
9.	Vigil Mechanism	S.178	<p>Companies Accepting Deposits OR Borrowed money from banks / FIs – 50 Crores</p>



STRUCTURE OF COMPANY'S **MANAGEMENT**

Composition of Board S.149

Minimum No. of Directors:-

Public Company- 3 directors

Private Company- 2 directors

One Person Company- 1 director

Woman Director

Independent director

**Maximum No. of directors restricted
to 15 (can be increased by passing SR)
[Not applicable to government companies]**

Number of Directorship- S.165

- A person may be **director in maximum 20 companies at same time including any alternate directorship**
- Maximum no. of **directorships in public companies shall not exceed 10**
[Not applicable to government companies]
- For reckoning the limit of public companies, directorship in private companies, that are either holding or subsidiary of a public company shall be included
- Members by **special resolution** may specify lesser no. of companies in which a person may act as director

APPOINTMENT OF KMP / MD/WTD/MANAGER

Key Managerial Personnel u/s 203(1) (2) & Rule 8

Board of every Listed company and Pb. company having Capital of Rs.10 crore or more shall appoint following as KMPs [defined in S.2(51)]:-

- ❖ Mg. Director / CEO / Manager and in their absence WTD
- ❖ Company Secretary and
- ❖ CFO

Every KMP shall be appointed by passing board resolution containing T & C

Section 196- Appointment of MD / WTD / Manager (Applies to both Pb & Pvt Cos)

- Cannot have MD and Manager at the same time
- Maximum term of appointment / re-appointment of MD, WTD, Manager is **FIVE YEARS**
- Reappointment not before one year of expiry of term
- Minimum age 21 years and maximum age 70 years
- Beyond 70, pass **special resolution** for appointment / reappointment

Other disqualifications for MD / WTD /

Manager:

- Undischarged insolvent / adjudged insolvent
- Suspended payment to creditors or made composition with them
- Convicted by court of offence and sentenced for more than 6 months

Appointment of MD / WTD / Manager in Public companies:

- Comply with provisions of Section 196, 197, Schedule V
- Appointment by board, subject to approval by members
- If terms of appointment in variance with Schedule V, Approval of Central Government required
- Form MR-1 to be filed within 60 days

**Conditions of appointment in Schedule V –
Part I: (In case of no profits or inadequate
profits)**

- Not sentenced to imprisonment / fine exceeding Rs. 1,000 under listed statutes (Prevention of Money Laundering Act)
- Not been detained under COFEPOSA
- **Completed 21 years and not attained 70 years**
- Managerial person in more than 1 company and draws remuneration from 1 or more companies within ceiling of Part II
- **Is resident of India**

Limits of remuneration – Section 197

A. In case of company having profits:

- Overall – not to exceed 11% of net profits as per section 198
- Central Govt approval to exceed 11% s.t. Schedule V Part II Section 1
- To 1 MD or WTD or manager – 5% of NP
- More than 1 – 10% of NP
- Other directors – 1% if MD / WTD / Manager
- 3% in other cases

Limits of remuneration – Section 197 contd...

B. In case of inadequacy of profits:

- Remuneration as per Schedule V – Part II Section II

Effective Capital	Limit of Yearly remuneration
Negative or Less than 5 Crore	60 Lakhs
5-100 crores	84 Lakhs
100-250 crores	120 Lakhs
250 crores & above	120 Lakhs + 0.01% in excess of 250 crores

- Above limits will be doubled if special resolution is passed
- If not, previous Central Govt approval

Limits of remuneration – Section 197 contd...

B. In case of inadequacy of profits:

- In special cases, Schedule V – Part II Section III:-

1. Remuneration paid by another company
2. Twice the limits permissible under section II
 - a. Newly incorporated company – up to 7 years
 - b. Sick company
 - c. Company of which resolution plan approved by NCLT under IBC 2016 (for 5 years)
3. Remuneration fixed by BIFR / CLB / NCLT
4. Company in SEZ s.t conditions

- Remuneration to directors may be paid as monthly payment or percentage of net profits or partly in both ways
- Remuneration to independent director – sitting fees, reimbursement of expenses for attending meeting, profit related commission approved by members **BUT NOT stock options**
- MD / WTD who receives commission from the company can receive remuneration or commission from holding company or subsidiary company, subject to disclosure in directors' report [section 197 (14)]

Important points to note

[pre – conditions to pay remuneration without CG approval]

Clause (ii) of third proviso in section 11 of part II of the Schedule V annexed to Companies Act 2013 provides as under: -

- the company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person

— and in case of default, the company obtains **prior approval from secured creditors** for the proposed remuneration and the fact of such prior approval having been obtained is mentioned in the explanatory statement to the notice convening general meeting.

Contd...

- Clause (iii) of third proviso in section II of part II of the Schedule V annexed to Companies Act 2013 provides as under: -

*“an ordinary resolution or a special resolution, as the case may be, has been passed for payment of remuneration as per the limits laid down in item (A) **OR** a special resolution has been passed for payment of remuneration as per item (B) at the general meeting of the company for a **period not exceeding three years.**”*

Mandatory compliance with
Secretarial Standards issued by
ICSI

Section 118(10) states that:-

Every company shall observe secretarial standards with respect to general meeting and board meetings specified by the ICSI and approved by CG.

SS-1 on Meeting of the Board of Directors;

SS-2 on General Meetings

Effective from 01.07.2015 to 30.09.2017

Revised SS-I & SS-II – effective from 01.10.2017

Key Highlights to SS-I:

- Exemption from Applicability to OPC & Sec 8 Companies
- Time, Place, Date & Day of meeting to be mentioned in Notice
- Any director can participate in the meeting through electronic means
- In case of the Meeting is conducted at a shorter Notice, the company may choose an expedient mode of sending Notice and Agenda
- Mode of attendance be recorded in minutes, attendance register be preserved for 8 years

Contd....(SS-I)

- Consideration of any item other than those included in the Agenda with the consent of majority of the Directors present at the Meeting and ratification thereof by majority.
- Notice, agenda, draft minutes to be sent through by hand / by speed post / registered post / by electronic means
- Proof of sending Notices, agenda, notes and **draft Minutes and its delivery** shall be maintained by the company for such period as decided by the Board, which shall not be less than three years from the date of the Meeting.
- The Report of the Board of Directors shall include a statement on compliances of applicable Secretarial Standards.

DISQUALIFICATION OF
DIRECTOR U/S 164 (2) OF
COMPANIES ACT, 2013

Section 164(2) Disqualification for appointment as director :

No person who is or has been a director of a company which: -

- **a) has not filed financial statements or annual returns for any continuous period of *three financial years*;**
- **b) 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.*

Vacation of Office u/s 167:-

Section 167 states that:

(1) The office of a director shall become vacant in case—

(a) he incurs any of the disqualifications specified in section 164;

(b) he absents himself from all the meetings of the Board of Directors held during a period of twelve months **with or without seeking leave of absence of the Board;**

(d) he **fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184**

Contd..

On a combined reading of both the section it could be inferred that the moment any person acquires any of the disqualification mentioned under section 164 he'll have to vacate his office under section 167 and he'll not be able to be re-appointed as Director under that Company and also not able to be appointed as Director in any other Company by virtue of Sec 164

Advisory Notice issued by MCA

Directors disqualified under Section 164(2)(a) of the Companies Act, 2013 and who are associated with struck off companies (S.248) are advised

- not to make any application for Name Availability(INC-1), Incorporation of Companies (INC-7/SPICe-INC-32/URC-1/INC-12).
- Forms filed by such Directors shall be rejected summarily by the Central Registration Centre (CRC).
- Further, attention is drawn to the provisions of Section 7(5) and 7(6) of the Act which, inter-alia, provides that furnishing of any false or incorrect particulars of any information or suppression of any material information shall attract punishment for fraud under Section 447.
- Attention is also drawn to the provisions of Section 448 and 449 which provide for punishment for false statement and punishment for false evidence respectively.

Addition of names of new directors:

Regional Director (NR) issued advisory to concerned Registrar of Companies to accept following documents for addition of names of newly appointed directors in MCA database:-

- 1. Copy of Notice issued to call GM
- 2. Proof of Dispatch of notice
- 3. Attendance record of the General Meeting
- 4. Consent and undertaking by new directors
- 5. Minutes of meeting along with extract of resolution

STRIKE OFF of COMPANIES



WAYS TO CLOSE A COMPANY

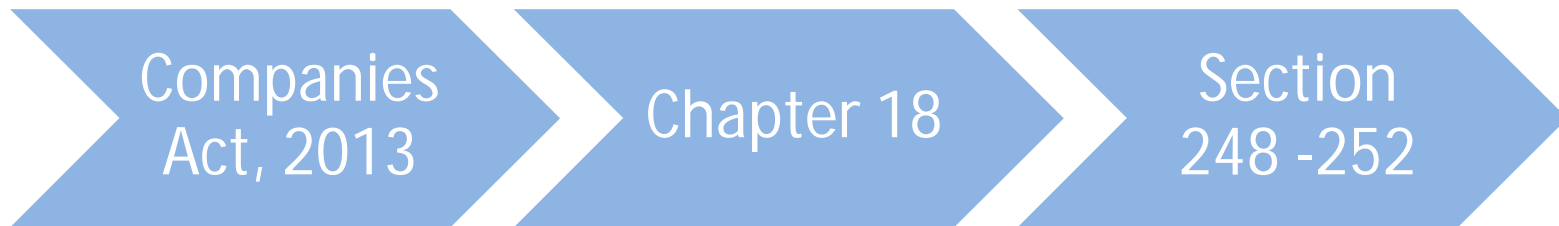


STRIKE - OFF
U/s 248 of CA 2013

WINDING - UP
UNDER
INSOLVENCY & BANKRUPTCY
CODE 2016



STRIKE OFF



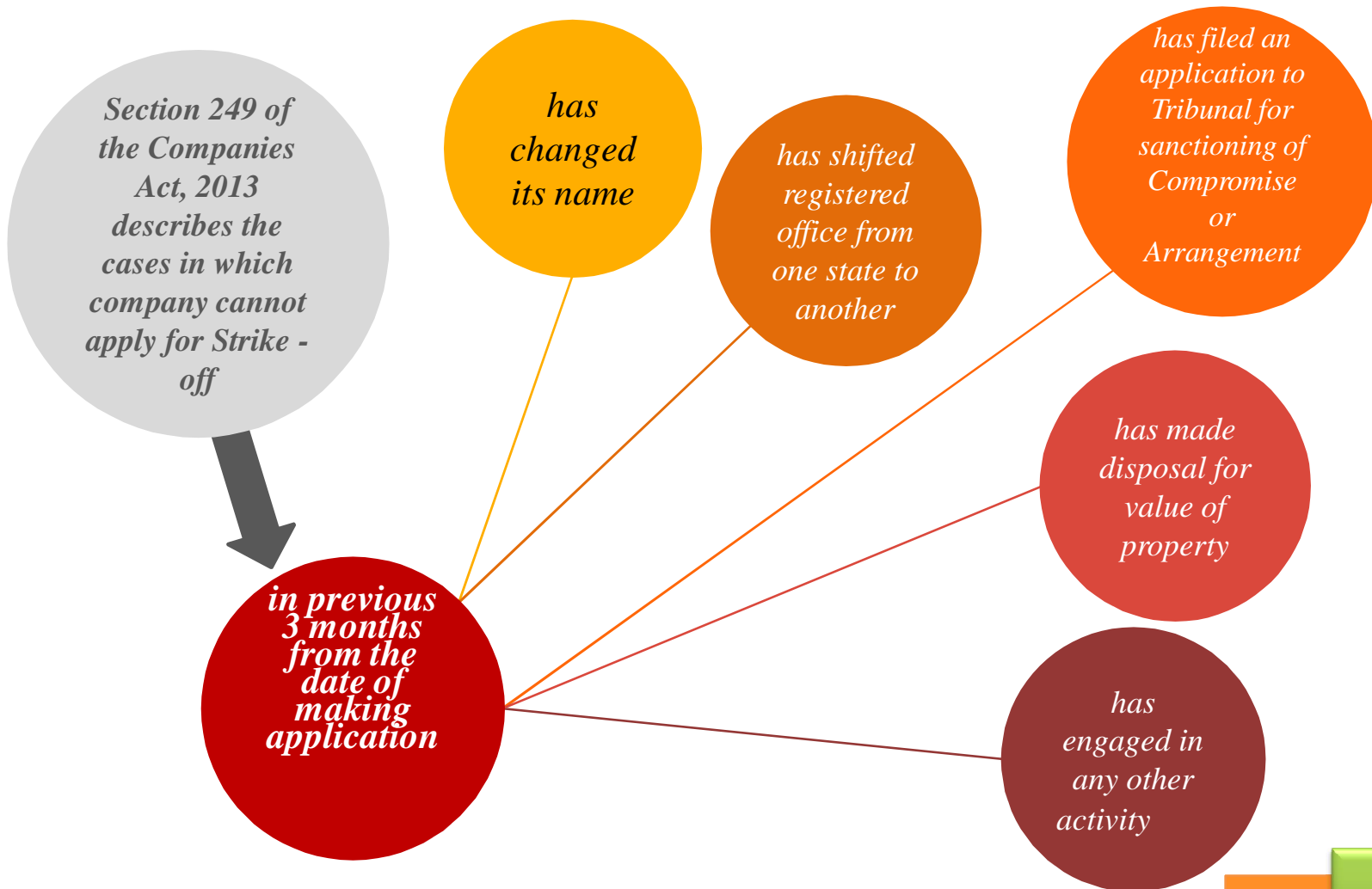
ELIGIBILITY FOR STRIKE-OFF

- BY Registrar of Companies- Section 248(1)
- By the company – Section 248(2)



STRIKE OFF

CASES IN WHICH COMPANY CANNOT APPLY FOR STRIKE OFF



STRIKE OFF

Sec 250 – From the Date of Publication of Notice of Strike off U/s 248 (5)



Cease to operate



पंजीकरण प्रमाण-पत्र

कापॉरैट पहचान संख्या: U72900DL2012PT0235246 2012-2013

मैं एतद्वारा सत्यापित करता हूँ कि निम्नलिखित

NETLINGS WEBWORKS PRIVATE LIMITED

का पंजीकरण, कम्पनी अधिनियम 1956 (1956 का 1) के अंतर्गत आज किया जाता है और यह कम्पनी प्राइवेट लिमिटेड है।

यह निम्नलिखित पत्र आज दिनांक तीन मई दो हजार बारह को दिल्ली में जारी किया जाता है।

Form 1
Certificate of Incorporation

Corporate Identity Number: U72900DL2012PT0235246 2012-2013

I hereby certify that **NETLINGS WEBWORKS PRIVATE LIMITED** is this day incorporated under the Companies Act, 1956 (No. 1 of 1956) and that the company is Private Limited.

Given at Delhi this Third day of May Two Thousand Twelve.

Registrar of Companies, National Capital Territory of Delhi and NCT of Haryana

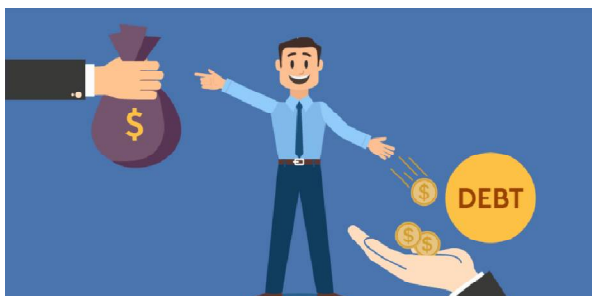
*Note: The corresponding form has been approved by KRUSHNA SHANKAR PRADHAN, Deputy Registrar of Companies and the Certificate has been digitally signed by the Registrar through a system generated digital signature under rule 507 of the Companies (Electronic Filing and Authentication of Documents) Rules, 2006. The digitally signed Certificate can be verified at the Ministry website (www.mca.gov.in)

कम्पनी रजिस्ट्रार के द्वारा जारी किया गया है।

Making Address as per record available in Registrar of Companies Office

NETLINGS WEBWORKS PRIVATE LIMITED
C-3/1, ASHOK VIHAR, PHASE-II,
DELHI-110052
Delhi, INDIA

COI Cancelled



Recovery of Due & Discharge of Liability



FRAUDULENT APPLICATION FOR REMOVAL OF NAME

As per Section 251 of the Companies Act, 2013, if fraudulent application is made for removal of name

To evade Company's liability

To deceive creditors



- ☐ *Company will be liable to person who has incurred losses*
- ☐ *Punishable for fraud u/s 447*
- ☐ *Registrar of Companies will recommend Prosecution*



RESTORATION OF STRIKE OFF COMPANIES



RESTORATION

Person aggrieved by the order of ROC may file an **APPEAL/ APPLICATION** to Tribunal

Section 252
of the
Companies
Act 2013

- Company
- Member
- Creditors
- Workman
- Any other person including director

Within **3 years / 20 years**
from date of ROC order

If removal of name is not justified, Tribunal will order restoration of name of company



WHERE TO APPLY?

APPEAL/ APPLICATION
SHALL BE MADE
TO THE

HON'BLE TRIBUNAL *

- 11 Benches
- Principal Bench at New Delhi

NCLAT,
Delhi

- Further Appeal
- With in 45 days

Supreme
Court, Delhi

- Further Appeal
- With in 60 days

**As per section 2 (90), " Tribunal" means the National Company Law Tribunal constituted under Section 408 of Companies Act, 2013*



QUESTION





Thank you

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