

Disclosure of interest and vacation of office of a director

A director holds fiduciary position in a company, it is expected that he/she acts in good faith and in the best interests of the company. Duties of directors as prescribed under section 166 of the Companies Act, 2013 (**'the Act'**), *inter-alia*, provides that a director shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates. Further, a director shall not involve in a situation in which he may have direct or indirect interest that conflicts, with the interest of the company. Therefore, to ensure fair dealing and to promote transparency, a director is required to make various disclosures to the company and stakeholders. Any non-compliance pertaining to statutory disclosure requirements may attract penalty on the director and even lead to vacation of his/her office.

In this article, we will discuss about one such disclosure obligation of director, failure of which may cause vacation of office of director.

Section 184(2) of the Act provides that:

Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into -

(a) *with a body corporate in which such director or such director in association with any other director, holds more than 2%shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or*

(b) *with a firm or other entity in which, such director is a partner, owner or member, as the case may be,*

shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting.

Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

It is pertinent to note that on account of difficulties being faced by the private limited companies (*mainly with 2 directors*) in approving the contracts with companies where directors were interested, Ministry of Corporate Affairs, exempted private companies from the requirement of interested director to not participate in the meeting thereby implying that the interested directors could approve the contracts in which they were interested after disclosing their interest in such contracts/arrangements.ⁱ

If a director violates the above provision of section 184, then the concerned director is liable to a penalty of INR 100,000, additionally, as per Section 167 of the Act, office of such director shall also become vacant.

If a contract or arrangement is entered into by the company without disclosure of interest or with participation of interested director in a public company, then such contract or arrangement is voidable at the option of the company.

Therefore, a director must disclose his/her interest in pursuance of the aforesaid provisions in order to prevent penalties and vacation of the office.

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ⁱ Ref. Ministry of Corporate Affairs notification dated June 5, 2015