

## **CHECK LISTS**

While examining the statutory applications received from companies u/s 259, 269, 269, 309, 310 and 314(1B) and other applicable provisions of the Companies Act, 1956, it has been observed that requisite information / documents are not furnished by the companies at the time of making application which prolongs the time period required for disposal of application as deficient information are requisitioned from applicant company before a decision could be taken in the matter. In order to assist the companies to ensure that all the requisite information / documents are attached by them at the time of making application and to ensure speedy disposal of application, a check list has been prepared for applications made by the company under different section of the Companies Act, 1956.

Note: Depending upon specific circumstances of the case, additional documents may also be required for which no provisions has been made herein.

**I. Please ensure that the following information/ documents (as applicable) is to be furnished while filing the application to the Central Government under Section 269, 310, 198/309 of the Companies Act, 1956 (Appointment / re-appointment / payment of enhanced/ increased remuneration/ same remuneration –**

1. Certified copy of the resolution passed by the Board of Directors in favour of proposal;
2. Certified copy of resolution passed by the Remuneration Committee along with the minutes of the Remuneration Committee meeting. The composition and designation of the Remuneration committee members and as to whether they are Non Whole Time Independent Directors or Non Whole Time Non-Independent Directors of the Company is also to be furnished.
3. Certified copy of the Shareholders Special Resolution of the company in favour of proposal along with notice and explanatory statement pursuant to Section 173(2) of the Companies Act, 1956;
4. No Default Certificate duly certified by the Company stating that "it 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 personnel";
5. In case of default, No Objection Certificate / Letter from the Banks/ lenders of the Company clearly stating the purpose that it has no objection to appointment / re-appointment / payment of increased remuneration to Mr./Mrs.\_\_\_\_\_ as approved by the Board of Directors and Members' of the Company.
6. Auditors Certificate pursuant to Section 274(1)(g) of the Companies Act, 1956;
7. Certified copy of the Central Government earlier approval if any, regarding appointment and payment of remuneration to MD/ Whole time Director/ Manager in cases of re- appointment/increase in remuneration;

8. Certified copy of each of the notices preferably paper cutting published in the daily English Newspapers in English and daily Vernacular Language Newspaper in local language of the district in which the Registered Office of the Company is situated in pursuant of Section 640 B of the Companies Act, 1956;
9. Turnover, Net Profit/ loss as computed under Section 198 of the Companies Act, 195, divided pay out, if any and effective capital of the company for preceding three financial years duly certified by Chartered Accountant in whole time practice.
10. The monetary value of each of the perquisites and allowances and the total remuneration package to be paid to the appointee year-wise, during the period of proposal;
11. If the appointee falls under Ministry's Notification No. GSR 534 (E) dated 14.07.2011, a certificate is to be furnished by the Company Secretary of the company or Company Secretary / Chartered Accountant in whole time practice in the format given below.

"This is certified that Mr. \_\_\_\_\_ (the appointee), Managing Director / Whole time Director / Manager of the company falls under the Ministry's Notification No. GSR 534 (E) dated 14.07.2011 as;

- (i) He / she is not having any interest in the capital of the company or its holding company, directly or indirectly or through any other statutory structures and he / she is not having any direct or indirect interest or related to the directors or promoters of the company or its holding company at any time during last two years before or on the date of appointment;
- (ii) He / she is having a graduate level qualification with expert and specialized knowledge in the field of his profession";

If the appointee does not fall under above mentioned categories, then the number of equity shares held by the appointee and / or allotted to the appointee under any scheme meant for employees by the company including Employees Stock Option Plan (ESOP) along with the percentage (%) of his shareholding to the total paid up share capital of the company and face value of the shares held / allotted along with the mode of acquisition of those shares.

12. Whether the applicant company is a subsidiary (in case of Unlisted Company) of a listed company. If so, the details thereof;
13. No. of managerial personnel (managing directors/ whole time directors/ managers) in the company and the total remuneration proposed to be paid each of them for the period of proposed remuneration.
14. No. of managerial personnel (managing directors/ whole time directors/ managers) and Non Whole Time Directors of the Company and remuneration paid to each of them during the preceding three financial years including % of net profit u/s 198 of the Act and copy of Central Govt. approval obtained, if any, in respect to those managerial personnel during the preceding three years.

15. Full and proper justification in favour of the proposal.
16. An application under Section 637(B) of the Act for condonation of delay together with requisite fee if the application has not been made within 90 days of Date of Appointment;
17. Remuneration drawn by the appointee in preceding three financial years indicating the name of the organization and the position held by him.
18. Certified copy of the order of BIFR together with copy of rehabilitation of scheme, if the company is under BIFR;
19. Whether the appointee was working as MD/ Whole time Director/ Manager in more one than one company as provided for Section 316. If yes the remuneration drawn by him from those companies during last 3 years and the working results as well as the effective capital of those companies during last 3 financial years;
20. A copy of members' resolution regarding appointment / re-appointment of the managerial personnel where the application is for payment of enhanced remuneration.
21. Documentary proof regarding compliance of the provisions of Section 269(2) of the Companies Act, 1956 at the time of appointment/ re-appointment of the proposed appointee.
22. Draft agreement entered between the company and proposed appointee may be furnished, if any.
23. Comparative remuneration profile with respect to industry, size of the company, profile of the position and person (in case of expatriates the relevant details would be w.r.t. the country of the origin).

**II. Please ensure that the following information/ documents (as applicable) is to be furnished while filing the application to the Central Government for WAIVER OF RECOVERY OF EXCESS REMUNERATION paid to Managerial personnel's/ Directors U/s 309 (5B) of the Companies Act,1956**

1. Board Resolution for waiver of recovery of excess remuneration paid to the appointee;
2. Certificate from CA/CS in whole time practice along with calculation of excess remuneration paid to the appointee ;
3. Reasons for making over payment and detailed justification for the proposal;
4. Steps taken by the company to improve its financial performance;
5. Shareholders Special Resolution for appointment of the appointee as well as remuneration paid to the appointee during the period of proposal

OR

Shareholders Special Resolution for waiver of recovery of excess remuneration paid during the period along with explanatory statement issued to the member u/s 173(2) of the Companies Act, 1956;

6. No Default Certificate duly certified by the Company stating that "it 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 personnel";
7. In case of default, No Objection Certificate / Letter from the Banks/ lenders of the Company clearly stating the purpose that it has no objection to the remuneration already paid to Mr./Mrs. \_\_\_\_\_ in the financial year \_\_\_\_\_ as approved by the Board of Directors and Members' of the Company.
8. Remuneration Committee resolution from a properly constituted Remuneration Committee for waiver of excess remuneration paid to the appointee or Remuneration Committee resolution from a properly constituted Remuneration Committee for appointment and payment of remuneration to the appointee, whichever is applicable.
9. Auditors Certificate pursuant to Section 274(1)(g) of the Companies Act, 1956;
10. Turnover, Net Profit/ loss as computed under Section 198 of the Companies Act, 195, divided pay out, if any, and effective capital of the Company for preceding three financial years duly certified by Chartered Accountant, in whole time practice.
11. If the appointee falls under Ministry's Notification No. GSR 534 (E) dated 14.07.2011, a certificate is to be furnished by the Company Secretary of the company or Company Secretary / Chartered Accountant in whole time practice in the format given below.

"This is certified that Mr. \_\_\_\_\_(the appointee), Managing Director / Whole time Director / Manager of the company falls under the Ministry's Notification No. GSR 534 (E) dated 14.07.2011 as;

- (i) He / she is not having any interest in the capital of the company or its holding company, directly or indirectly or through any other statutory structures and he / she is not having any direct or indirect interest or related to the directors or promoters of the company or its holding company at any time during last two years before or on the date of appointment;
- (ii) He / she is having a graduate level qualification with expert and specialized knowledge in the field of his profession";

If the appointee does not fall under above mentioned categories, then the number of equity shares held by the appointee and / or allotted to the appointee under any scheme meant for employees by the company including Employees Stock Option Plan (ESOP) along with the percentage (%) of his shareholding to the total paid up share capital of the company and face value of the shares held / allotted along with the mode of acquisition of those shares.

12. Whether the applicant company is a subsidiary (in case of Unlisted Company) of a listed company. If so, the details thereof;
13. No. of managerial personnel (managing directors/ whole time directors/ managers) in the company and the total remuneration paid to each of them during the period of proposal for waiver of recovery of excess remuneration along with its percentage of net profit (as computed u/s 198 of the Act).
14. No. of managerial personnel (managing directors/ whole time directors/ managers) and Non Whole Time Directors of the Company and remuneration paid to each of them during the preceding three financial years including % of net profit u/s 198 of the Act and copy of Central Govt. approval obtained, if any during the preceding three years.
15. Remuneration drawn by the appointee in preceding three financial years indicating the name of the organization and the position held by him.
16. Members Resolution regarding appointment and payment of remuneration to the appointee at the time of initial appointment / re-appointment.
17. Certified copy of the order of BIFR together with copy of rehabilitation of scheme, if the company is under BIFR

**III. Please ensure that the following information/ documents (as applicable) is to be furnished while filing the application to the Central Government under Section 269, 198/309 of the Companies Act, 1956 (for Appointment / re-appointment of a foreign national u/s 269 of the Act r/w under clause (e) of Part-I, Schedule XIII to the Act**

1. Certified copy of the resolution passed by the Board of Directors in favour of proposal;
2. In case of payment of remuneration exceeding the limit along with appointment / reappointment, a certified copy of resolution passed by the Remuneration Committee along with the minutes of the Remuneration Committee meeting. The composition and designation of the Remuneration committee members and as to whether they are Non Whole Time Independent Directors or Non Whole Time Non Independent Directors of the Company is also to be furnished (*when the proposal includes appointment / re-appointment as well as payment of remuneration*).
3. Certified copy of the Shareholders Resolution / Special Resolution of the company in favour of proposal along with notice and explanatory statement pursuant to Section 173(2) of the Companies Act, 1956;
4. No Default Certificate duly certified by the Company stating that it 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 personnel;

- 5 In case of default, No Objection Certificate / Letter from the Banks/ lenders of the Company clearly state the purpose of it has no objection to appointment / re-appointment / payment of increased remuneration to Mr./Mrs. \_\_\_\_\_ as passed in the Board of Directors and Members' of the Company.
- 6 Auditors Certificate pursuant to Section 274(1)(g) of the Companies Act, 1956;
- 7 Certified copy of the Central Government earlier approval if any, regarding appointment and payment of remuneration to MD/ Whole time Director/ Manager in cases of re- appointment/increase in remuneration;
- 8 Certified copy of each of the notices preferably paper cutting published in the daily English Newspapers in English and daily Vernacular Language Newspaper in local language of the district in which the Registered Office of the Company is situated in pursuant of Section 640 B of the Companies Act, 1956;
- 9 Turnover, Net Profit/ loss as computed under Section 198 of the Companies Act, 195, divided pay out, if any and effective capital for the preceding three financial years duly certified by Chartered Accountant, in whole time practice.
- 10 If the appointee falls under Ministry's Notification No. GSR 534 (E) dated 14.07.2011, a certificate is to be furnished by the Company Secretary of the company or Company Secretary / Chartered Accountant in whole time practice in the format given below.

"This is certified that Mr. \_\_\_\_\_ (the appointee), Managing Director / Whole time Director / Manager of the company falls under the Ministry's Notification No. GSR 534 (E) dated 14.07.2011 as;

- i. He / she is not having any interest in the capital of the company or its holding company, directly or indirectly or through any other statutory structures and he / she is not having any direct or indirect interest or related to the directors or promoters of the company or its holding company at any time during last two years before or on the date of appointment;
- ii. He / she is having a graduate level qualification with expert and specialized knowledge in the field of his profession";

If the appointee does not fall under above mentioned categories, then the number of equity shares held by the appointee and / or allotted to the appointee under any scheme meant for employees by the company including Employees Stock Option Plan (ESOP) along with the percentage (%) of his shareholding to the total paid up share capital of the company and face value of the shares held / allotted along with the mode of acquisition of those shares.

- 11 The monetary value of each of the perquisites and allowances and the total remuneration package to be paid to the appointee year-wise, during the period of proposal; (*when the proposal includes appointment / re-appointment as well as payment of remuneration*).
- 12 Whether the applicant company is a subsidiary (in case of Unlisted Company) of a listed company. If so, the details thereof;

- 13 No. of managerial personnel (managing directors/ whole time directors/ managers) in the company and the total remuneration proposed to be paid each of them for the period of proposed remuneration (*when the proposal includes appointment / re-appointment as well as payment of remuneration*).
- 14 No. of managerial personnel (managing directors/ whole time directors/ managers) and Non Whole Time Directors of the Company and remuneration paid to each of them during the preceding three financial years including % of net profit u/s 198 of the Act and copy of Central Govt. approval obtained, if any during the preceding three years (*when the proposal includes appointment / re-appointment as well as payment of remuneration*).
- 15 Full and proper justification in favour of the proposal.
- 16 An application under Section 637(B) of the Act for condonation of delay together with requisite fee if the application has not been made within 90 days of Date of Appointment;
- 17 Remuneration drawn by the appointee in preceding three financial years indicating the name of the organization and the position held by him.
- 18 Certified copy of the order of BIFR together with copy of rehabilitation of scheme, if the company is under BIFR.
- 19 Whether the appointee was working as MD/ Whole time Director/ Manager in more one than one company as provided for Section 316. If yes, the remuneration drawn by him from those companies during last 3 years and the working results as well as the effective capital of those companies during last 3 financial years;
- 20 Certified copy of Passport and Employment Visa in respect of the appointee for the period of his tenure in India.
- 21 Documentary proof regarding compliance of the provisions of Section 269(2) of the Companies Act, 1956 at the time of appointment/ re-appointment of the proposed appointee.

**IV. Please ensure that the following information/ documents (as applicable) have been furnished while filing the application to the Central Government for EXPRESSION OF OPINION under Section 309 (1) of the Companies Act, 1956 –**

1. Certified copy of Board Resolution in favour of proposal.
2. Certified copies of Testimonials/ Bio- data of the appointee;
3. No Default Certificate from CS/ Directors of the company;
4. Reason(s) / detailed justification in favour of the proposal along with experience and remuneration drawn by the appointee during the preceding 3 years.
5. Auditors Certificate pursuant to Section 274(1)(g) of the Companies Act, 1956;

**V. Please ensure that the following information/ documents (as applicable) is to be furnished while filing the application to the Central Government for permission to hold an office or place of profit by a relative of a director u/s 314(1B) of the Act r/w the Director's Relatives (Office or place of Profit) Rules, 2011 OR the application for waiver of recovery of excess remuneration paid u/s 314 (2D) Act –**

1. An undertaking from the appointee that he/she will be in the exclusive employment of the company and will not hold a place of profit in any other company.
2. The monetary value of all allowances and perquisites and of total remuneration package (monthly/annually) proposed to be paid to the appointee and details of the services that will be rendered by him to the company.
3. Shareholding pattern particularly the shareholding of the directors along with his/her/their relatives, the public holding, institutional holding (each institution separately).
4. An undertaking from the Director/Company Secretary of the company that the similarly placed employees are getting the comparable salary.
5. List / Particulars of the employees who are in receipt of remuneration of Rs. 2,50,000/- per month or more along with their designation, level/grade in the organization, educational qualifications, experience and remuneration paid each of them along with relevant period.
6. The details of directors of the relatives working in the company as Directors and remuneration paid to each of them along with percentage of profits as calculated for the purpose of section 198 of the Companies Act, 1956;
7. Selection Committee approval in favour of the proposal along with its composition as required under the Director's Relatives (Office or Place of Profit) Rules, 2011.
8. Certified copy of the resolution passed by the Board of Directors in favour of proposal.
9. Shareholders Special Resolution of the company in favour of proposal along with notice and explanatory statement issued to the member u/s 173(2) of the Companies Act, 1956.
10. Certified copy of the Central Government earlier approval, if any, for holding of an office or place of profit in the company u/s 314(1B) of the Companies Act, 1956.
11. No Default Certificate duly certified by the Company stating that it has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon during the preceding financial year and also as on date.

12. Turnover, Net Profit/ loss as computed under Section 198 of the Companies Act, 195 and divided pay out, if any for the preceding three financial years duly certified by Chartered Accountant, in whole time practice.
13. The educational qualification / experience, pay scale, allowances and other benefits of similarly placed executives / employees in the Company.
14. Remuneration Committee resolution along with composition in case the proposal involves increase in remuneration.
15. Full and proper justification in favour of the proposal.
16. Hierarchical organizational structure of the company;
17. Whether appointee is working as a director in any other company. If so, details thereof. If not, a certificate to that effect from a Chartered Accountant / Company Secretary in whole time practice.

**VI. Please ensure that the following information/ documents (as applicable) is to be furnished while filing the application to the Central Government under Section 259 of the Companies Act, 1956 (for increase in number of directors)**

1. Certified copy of the resolution passed by the Board of Directors in favour of proposal;
2. Certified copy of the Shareholders Resolution of the company in favour of proposal along with notice and explanatory statement pursuant to Section 173(2) of the Companies Act, 1956;
3. Certified copy of the Shareholders Resolution of the company amending the Articles of Association of the Company u/s 31 of the Companies Act, 1956 to increase the No. of Directors along with notice and explanatory statement pursuant to Section 173(2) of the Companies Act, 1956;
4. No Default Certificate duly certified by the Company stating that "it 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 personnel";
5. In case of default, No Objection Certificate / Letter from the Banks/ lenders of the Company clearly stating the purpose that it has no objection to appointment / re-appointment / payment of increased remuneration to Mr./Mrs.\_\_\_\_\_ as approved by the Board of Directors and Members' of the Company.
6. Certified copy of each of the notices preferably paper cutting published in the daily English Newspapers in English and daily Vernacular Language Newspaper in local language of the district in which the Registered Office of the Company is situated in pursuant of Section 640 B of the Companies Act, 1956;

7. Details of present Board of Directors of the Company;
8. Details of proposed appointee to the expanded Board, if any.
9. Certified copy of the Central Government earlier approval if any, in favour of the proposal;
10. Certified copy of the Articles of Association of the company before amendments of the Articles and after the amendment of article of the Articles of Association of the Company.
11. Full and proper justification in favour of the proposal.

**VII. Please ensure that the following information/ documents (as applicable) is to be furnished while filing the application to the Central Government under Section 268 of the Companies Act, 1956 (For amendment of Articles of Association of the company)**

1. Certified copy of the resolution and proceeding of Board meeting in favour of proposal;
2. Certified copy of the resolution and proceeding of general meeting of the company in favour of proposal along with notice and explanatory statement pursuant to Section 173(2) of the Companies Act, 1956;
3. No Objection Certificate / Letter from the Banks/ lenders of the Company in favour of the proposal.
4. Certified copy of each of the notices preferably paper cutting published in the daily English Newspapers in English and daily Vernacular Language Newspaper in local language of the district in which the Registered Office of the Company is situated in pursuant of Section 640 B of the Companies Act, 1956;
5. Copy of the proceeding of the Annual General Meeting of the shareholders of the company;
6. Certified copy of the Articles of Association of the company before amendments of the Articles and after the amendment of article of the Articles of Association of the Company.
7. Certified copy of the Central Government earlier approval if any, in favour of the proposal;
8. Full and proper justification in favour of the proposal.