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Disclosure of Interest by Director



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A company under the companies' jurisprudence is a legal and juristic person, separate from its members. A company has independent corporate existence, limited liability, perpetual succession, common seal, capable of holding separate property in its own name, has transferable shares and capacity to sue and be sued. Act, 2013 has replaced the Companies Act, 1956. The Act has 470 sections and 7 schedules. The Companies Bill 2012 was passed by the Lok Sabha on 18th December 2012 and by the Rajya Sabha 8th August 2013. On receiving the assent of Hon'ble President of India on 29th August 2013, it was notified on 30th August 2013 as the Companies Act 2013.

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As per Section 184 Disclosure of Interest by Director of the Companies Act says that every director of the company shall disclose his interest by giving a notice in writing. It is a statutory duty arising out of distinctive position held by him. It is done to ensure that the directors never compromise on the fiduciary position that they occupy in relation to a company and accordingly exclude themselves from the decision making in the matter of such contracts or arrangements wherein there is a personal interest is involved.

Applicability:

As per section 184 (2) it applies to any contract or arrangement or proposed contract or arrangement entered into or to be entered into:

- Body Corporate: Such a director is in association with any director and holds more than 2% shareholding of the body corporate or is a promoter, manager, Chief Executive Officer of that body corporate
- Firm or other Entity: Such director is a partner, owner or member.

Where any director who is not so concerned or interested at the time of entering into such contract or arrangement, but he becomes concerned or interested after the contract or arrangement is entered into then he will disclose his concern or interest whenever he becomes concerned or interested or at the first meeting of the Board held after he becomes concerned or interested.

Manner:


As per Rule 9 of the Companies (Meetings of Boards and its Powers) Rules, 2014 says that every director shall disclose his interest or concern by giving a notice in FORM MBP 1. The director shall not participate at the meeting of the Board in which such a contract or arrangement is discussed in which the director is interested.

Note: As per section 184 (3), a contract or arrangement entered into by the company without disclosure or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.

Time: As per section 184 (1):

- At the first meeting of the board in which he participates as a Director and therefore at the first meeting of the Board in every financial year.
- When there is any change in the disclosures already made, then at the first Board Meeting held after such change, disclose his concern or interest.

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It shall be the duty of the director giving notice of interest to cause it to be disclosed at the meeting held immediately after the date of the notice.

Preservations of Notices of Disclosures:

All notices shall be kept at the registered office and such notices shall be preserved for a period of eight years from the end of the financial year to which it relates and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for the purpose.

Exceptions:

As per section 184 (5) it says that nothing in this section-

- shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company;

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- shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two percent. of the paid-up share capital in the other company or the body corporate

Penalty:

In 184 (4) If a director of the company contravenes the provisions of sub-section (1) or subsection (2), such director shall be punishable with imprisonment for a term which may extend to 1 year or with fine which may extend to Rs. 1 lakh, or with both.




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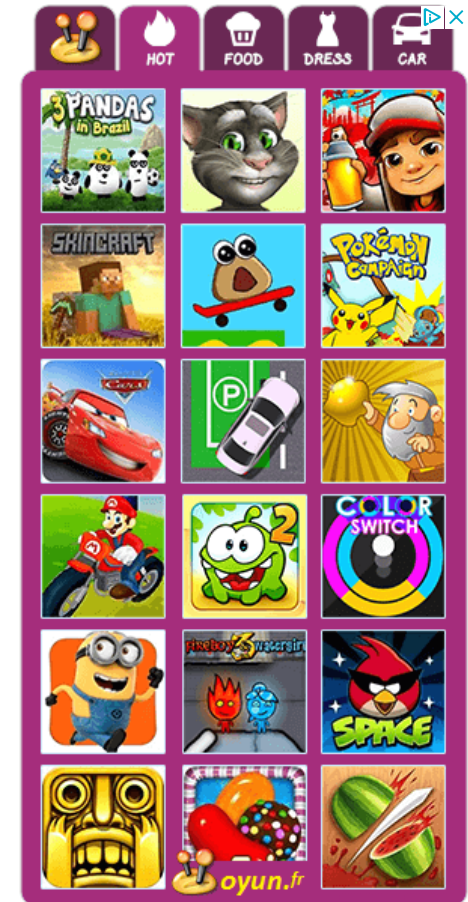


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