
Nomination and Remuneration Policy

Human Resources Department

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UGRO Capital Limited



Table of Contents

1	Introduction	4
2	Purpose	5
3	Appointment / Re-appointment of Board of Directors	6
3.1	Appointment criteria and Qualification	6
3.2	Size and Composition of Board	7
3.3	Tenure	8
3.4	Appointment of Independent Directors	8
3.5	Appointment of Key Managerial Personnel	9
4	Retirement/ Resignation/ Removal of Director	11
4.1	Retirement	11
4.2	Resignation	11
4.3	Removal	11
5	Remuneration	13
5.1	Remuneration to Managing Director / Whole-time Directors / KMPs	13
5.2	Remuneration to Non – Executive Directors / Independent Directors	13
5.3	Remuneration to Senior Employees/ Other Employees	13
5.4	Stock option	14
6	Board Evaluation	15
6.1	Feedback and Action Plan	15
7	Review of Policy	16
8	Annexure I: Section 149 of the Companies Act, 2013	17
9	Annexure II: Section 164 of the Companies Act, 2013	20
10	Annexure III: Section 203 of the Companies Act, 2013	21
11	Annexure IV: Clause 17 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015	22
12	Annexure V: Section 163 of the Companies Act, 2013	25
13	Annexure VI: Section 197 of the Companies Act, 2013	26

14	Annexure VII: Section 198 of the Companies Act, 2013	28
15	Annexure VIII: Schedule V of the Companies Act, 2013	30

1 Introduction

UGRO Capital Limited (hereinafter referred to as the “Company”) recognizes its human resources as a valuable asset and the Nomination and Remuneration Policy (hereinafter referred to as the “Policy”) ensures that the best industry practices have been considered while fixing the remuneration of the Board of Directors and other employees of the Company. The Policy ensures that the level of remuneration is sufficient to attract and retain the best talent required by the Company to meet its objectives.

The Policy lays down the criteria for the appointment/ reappointment of the Board of Directors and also ensures that the Board is adequately composed with members of diverse background and a broad range of experience in areas that are relevant for the business of the Company.

The Policy has been formulated pursuant to provisions of Section 178 of the Companies Act, 2013 (“the Act”) read with applicable rules and amendments thereto and ensures compliance to all the requirements of Securities and Exchange Board of India (“SEBI”) Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR”) and amendments thereto and Corporate Governance Code of the Company. It applies to Directors, Key Managerial Personnel (“KMP”), Senior Management and other employees of the Company.

The Policy has been approved by the Board in the meeting dated 2 November 2018.

2 Purpose

The purpose of framing the Policy is to:

- a) Identify prospective Directors and recommend to the Board the appointment and removal of Directors, KMPs and Senior Management.
- b) Recommend a policy to the Board on remuneration payable to the Directors, KMPs and the Senior Management of the Company.
- c) Establish standards of remuneration which shall include fixed and variable components, incentives and bonus. The same shall be developed in line with the applicable regulations and considering the best trends and practices prevailing in the industry.
- d) Carry out the evaluation of the performance of every Director and review the terms of remuneration of the Director based on their performance and defined assessment criteria.
- e) Formulate the criteria for evaluation of performance of the Independent Directors and determine whether to extend or continue the term of appointment of the Independent Director, basis of the report of performance evaluation.

3 Appointment / Re-appointment of Board of Directors

The Nomination and Remuneration Committee (hereinafter referred to as 'NRC') shall be responsible for ascertaining the criteria for appointment of Directors and ensuring the size of the Board is sufficient for the Company to achieve its objectives.

3.1 Appointment criteria and Qualification

- Identify and ascertain the integrity, reputation, qualification, industry related experience, positive attributes and independence of a person for his / her appointment as a Director / KMP / Senior Management and recommend to the Board their appointment
- Ensure a transparent process of Board nomination that promotes diversity, knowledge, experience, skills, age, gender, cultural and educational background
- Appoint Independent Directors, KMPs and other Directors as per the qualifications and disqualifications pursuant to Section 149 (refer Annexure I of the Policy), 164 (refer Annexure II of the Policy) and 203 of the Act (refer Annexure III of the Policy) read along with the rules thereto, Clause 17 of SEBI LODR and the amendments further (refer Annexure IV of the policy) and the Fit and Proper criteria of the Company.
- **4.1.1 – Criteria for members to be elected to the Nomination and Remuneration Committee**

The following criteria shall be followed to appoint members to the Committee. The points mentioned here are non - exhaustive list of the mix of skills, experience, characteristics and key attributes that can be considered to elect qualified members to the committee:

- a) Should possess impeccable reputation for integrity.
 - b) Should have leadership and management experience especially in related businesses as well as personal networks and external contacts.
 - c) Should have specialist and detailed knowledge of the industry and deep expertise and insights in sectors / areas that are relevant to the Company.
 - d) Should be a decision maker and be able to choose the option that will benefit the Company in a greater manner.
 - e) Should have the ability to contribute to the Company's growth.
 - f) Should have the ability to represent the Company to the various stakeholders.
 - g) Should have a strategic perspective and be able to identify opportunities and threats to the company.
- **4.1.2 – Criteria to ensure the independence of the directors**

In line with Section 149 (6) (refer Annexure I of the Policy) of the Companies Act, 2013 and Section 16 of SEBI (LODR) Regulations, 2015, as amended from time to time , an independent director will be a director other than managing director or a whole-time director or a nominee director,—

- a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience.
- b) who is or was not a promoter of the company or its holding, subsidiary or associate company or member of the promoter group of the listed entity

- c) who is not related to promoters or directors in the company, its holding, subsidiary or associate company.
- d) who, apart from receiving director's remuneration, has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year.
- e) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year.
- f) who, neither himself nor any of his relatives—
 - holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed.
 - is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of –
 - ❖ a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
 - ❖ any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm.
 - holds together with his relatives two per cent. or more of the total voting power of the company; or
 - is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or
 - is a material supplier, service provider or customer or a lessor or lessee of the Company.
- g) who possesses such other qualifications as may be prescribed.
- h) who is not less than 21 years of age.
- i) who is not a non-independent director of another company on the board of which any non-independent director of the listed entity is an independent director

3.2 Size and Composition of Board

- Ensure the Board of Directors consists of individuals as Directors and have at least three directors at all times. The maximum number of Directors shall not exceed fifteen, unless approved by a Special Resolution.
- Recommend to the Board, its set up and composition ensuring an optimum mix of Executive, Non-Executive and Independent Directors, with not less than 50% the Board of Directors comprising of Non-Executive Directors.
- Ensure the Board of Directors comprise of at least one Woman Director and at least one Director who has stayed in India for a total period of not less than 182 days in the previous calendar year.

- Ensure at least one-third of the Board of Directors consists of Independent Directors, when the Chairperson of the Company is a Non-Executive Director. If the Company does not have a regular Non-Executive Director as a Chairperson, at least half of the Board of Directors shall comprise of Independent Directors.
- Nominate candidates who brings diversity of background and opinion, having the ability to devote sufficient time to the affairs of the Company for the appointment on the Board.
- Ensure that the Company shall not appoint / re-appoint any person as a Managing Director or a Whole-time Director who has attained the age of seventy years and any person as a Non-Executive Director who has attained the age of seventy-five years. The term of the person holding this position may be extended beyond the age of seventy / seventy-five years with the approval of shareholders by passing a special resolution based on the explanatory statement annexed to the notice for such motion indicating the justification for extension of appointment beyond seventy / seventy-five years.
- Advise the Board in setting up, reviewing and refreshment of various Committees of the Board.

3.3 Tenure

The NRC shall ensure all appointments / re-appointments are within the tenure as mentioned below:

- **Managing Director / Whole-time Director**

The Managing Director and Whole-time Directors of the Company shall be appointed / re-appointed for a term not exceeding five years at a time. However, no re-appointment shall be made earlier than one year before the expiry of term.

- **Independent Director**

Independent Directors shall be appointed for a term of not more than five years, and shall be eligible for re-appointment for a term of another five years subject to the approval of shareholders by way of Special Resolution and disclosure of such appointment in the Board's Report.

Independent Directors shall not hold office for more than two consecutive terms; however, he/she shall be eligible for appointment after expiry of three years of ceasing to become an Independent Director. Provided that an Independent Director shall not, during the said period of three years, be appointed in or be associated with the Company in any other capacity, either directly or indirectly.

3.4 Appointment of Independent Directors

The Nomination and Remuneration Committee shall recommend 1 (one) candidate for each vacancy or anticipated vacancy for the position of an Independent Director on the Board. The Board shall resolve, subject to the procedures required under the Code, whether to approve an appointment pursuant to such recommendation.

Further, an Independent Director who resigns or is removed from the Board shall be replaced by a new Independent Director by the Company at the earliest but not later than the immediate next meeting of the Board or 3 (three) months from the date of such vacancy, whichever is later.

An Independent Director shall not hold office for more than 2 (two) consecutive 5 (five) year terms. However, an Independent Director shall be eligible for appointment after the expiration of 3 (three) years of ceasing to become an Independent Director.

The Independent Directors shall hold at least 1 (one) meeting in a year, without the presence of non-Independent Directors and the Management Team, and all the Independent Directors shall strive to be present at such meeting.

The Independent Directors in the meeting shall, inter-alia:

- (a) review the performance of non-Independent Directors and the Board as a whole;
- (b) review the performance of the Chairman of the Board, taking into account the views of executive directors and non-executive Directors;
- (c) assess the quality, quantity and timeliness of flow of information between the Management Team and the Board that is necessary for the Board to effectively and reasonably perform their duties.

No person shall be appointed or continue as an alternate director for an independent director of the Company.

3.5 Appointment of Key Managerial Personnel

It shall be mandatory for the Company to have the following whole-time Key Managerial Personnel: (i) Managing Director; (ii) Company Secretary; (iii) CFO; and (iv) CRO, subject to the provisions of this Code and the approval of the Board.

The Company may appoint a CEO, subject to the provisions of this Code and approval of the Board, who shall also be a Key Managerial Personnel.

The Managing Director, CEO and the CFO shall provide a compliance certificate to the Board on a quarterly basis, certifying that:

- (a) They have reviewed financial statements and the cash flow statement for the year/ year till date and that to the best of their knowledge and belief:
 - (i) these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading; and
 - (ii) these statements together present a true and fair view of the Company's affairs and are in compliance with existing accounting standards, applicable laws and regulations;
- (b) There are, to the best of their knowledge and belief, no transactions entered into by the Company during the year/ year till date which are fraudulent, illegal or in violation of the Company's code of conduct;
- (c) They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the Company pertaining to financial reporting and have disclosed to the auditors and the audit committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies;
- (d) They have indicated to the auditors and the Audit Committee:
 - (i) significant changes in internal control over financial reporting during the year/ year till date;
 - (ii) significant changes in accounting policies during the year/ year till date and that the same have been disclosed in the notes to the financial statements;
 - (iii) details pertaining to all related party transactions between Key Managerial Personnel and their Related Party(ies) on a periodic basis; and
 - (iv) instances of significant fraud of which they have become aware and the involvement therein, if any, of the Management Team or an Employee having a significant role in the Company's internal control system over financial reporting.

The Company shall not appoint or re-appoint any person as its Managing Director, Whole-time Director or CEO for a term exceeding 5 (five) years at a time. Additionally, no re-appointment shall be made earlier than 1 (one) year before the expiry of the term of such Managing Director, Whole-time Director or CEO.

The appointment and replacement of, the terms and conditions for the appointment of, and the remuneration payable to, the Managing Director and CEO shall be subject to approval by the Board and the shareholders at the next General Meeting in accordance with this Code.

The Company Secretary shall act as the secretary to all the Board Committees.

4 Retirement/ Resignation/ Removal of Director

The NRC shall recommend the Board on retirement, re-appointment, resignation and removal of Directors.

4.1 Retirement

- At least two-thirds of the total number of Directors, excluding Independent Directors, shall be liable to retire by rotation. Of the eligible rotational Directors, one-third Directors shall retire at every Annual General Meeting of the Company or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office. The Directors to retire by rotation shall be those who have been longest in office since their last appointment.

4.2 Resignation

- A Director may resign from his / her office, before the expiry of their tenure, by giving a notice in writing to the Board. The NRC and the Board shall take note of the same and also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the Company. The resignation of a Director shall take effect from the date on which the notice is received by the Company or the date, if any, specified by the director in the notice, whichever is later.
- The director who has resigned, shall be liable for the offences which occurred during his tenure, even after his resignation.
- In case of resignation of an independent director of the Company, within seven days from the date of resignation, the following disclosures shall be made to the stock exchanges by the Company:
 - i. Detailed reasons for the resignation of independent director as given by the said director shall be disclosed by the Company to the stock exchanges.
 - ii. The independent director shall, along with the detailed reasons, also provide a confirmation that there is no other material reasons other than those provided.
 - iii. The confirmation as provided by the independent director above shall also be disclosed by the Company to the stock exchanges along with the detailed reasons.

4.3 Removal

- In case a Director of the Company becomes disqualified to hold their office pursuant to the provisions of Section 164 of the Act (refer Annexure II of the Policy), or a Director ceases to be an Independent director as per Section 149(6) of the Act (refer Annexure I of the Policy), it shall be the responsibility of the NRC to advise to the Board on removal of such Director.
- The Company shall, by an ordinary resolution remove a director, not being a Director appointed pursuant to Section 163 of the Act (refer Annexure V of the Policy), before the expiry of the period of his / her office after giving a reasonable opportunity of being heard.
- The Company shall send a special notice to pass a resolution for removing a director or to appoint somebody in place of the director being removed at the meeting at which he / she is being removed.
- An Independent Director who resigns or is removed from the Board of the company shall be replaced by a new Independent Director within a period of not more than 180 days from the date of such resignation or

removal. Provided the company fulfils the requirement of Independent Directors in its Board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director shall not apply.

5 Remuneration

The Company strives to adopt the highest standard of Corporate Governance and ensures that its remuneration practices are consistent with the best-recognized practices.

The Board shall approve, as recommended by the NRC, the quantum of Remuneration / Commission / Incentives etc. payable to the Directors and KMPs of the Company.

While formulating the Policy, the NRC has considered the following factors as laid down under Section 178(4) of the Act:

- i. the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;
- ii. relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and
- iii. remuneration to Directors, KMPs and Senior Management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals.

5.1 Remuneration to Managing Director / Whole-time Directors / KMPs

- The Remuneration / Commission etc. to be paid to Director / Managing Director / KMP shall be within the limits prescribed under the provisions of Sections 197 (refer Annexure VI of the Policy), Section 198 (refer Annexure VII of the Policy) and Schedule V of the Act (refer Annexure VIII of the Policy), applicable rules made there under and any other enactment in force for the time being. However, the Company may authorize excess payment of remuneration with prior approval from the Shareholders or Central Government, as the case may be.
- The overall remuneration paid to the Directors and KMPs of the Company should be adequate to motivate and retain talented and qualified individuals required to meet the goals of the Company.

5.2 Remuneration to Non – Executive Directors / Independent Directors

- The Company shall pay its Independent Directors and Non-Executive Directors Commission and Sitting fees for attending the meetings of the Board and Committees, within the regulatory limits prescribed under the Act.
- On the basis of the evaluation of the performance of the Directors including Independent Directors, the NRC shall recommend to the Board all Commission / Remuneration comprising fixed and variable component and other perquisites.

5.3 Remuneration to Senior Employees/ Other Employees

- The Remuneration to the senior employees and other employees will be such as to ensure that the relationship of remuneration to performance is clear and meets appropriate performance benchmarks.

- It will involve a balance between fixed and incentive pay reflecting short and long term performance objectives appropriate to the working of the Company and its goals.
- The NRC shall recommend to the Board, all remuneration, in whatever form, payable to senior management.

5.4 Stock option

- Pursuant to the provisions of the Corporate Governance Code of the Company, the NRC shall formulate a policy for granting of variable and discretionary bonus / incentives to the KMP, Senior Employees and other Employees of the Company. The Managing Director shall be responsible for preparing the first draft of this policy for the review and approval of the NRC.
- The NRC shall also formulate and recommend to the Board for their approval, an Employee Stock Option Plan or a Sweat Equity Plan. No Independent Director shall be entitled to any Stock Options of the Company.
- The Company shall pay a certain percentage of the Annual Cost to Company as a bonus to the employees. This bonus shall be further segregated into Statutory Bonus and Variable Bonus.
- The statutory bonus shall be paid to the employees if the Company meets its targets for the year and the same shall be paid in accordance in with The Payments of Bonus Act, 1956 and the amendments thereafter.
- The variable bonus shall be paid to the employee if the individual targets are met.
- Company proposes to reserve a certain percentage equivalent of the overall capital pool for stock options allocation for its select employees.
- The NRC shall also formulate and recommend to the Board for their approval, an Employee Stock Option Plan or a Sweat Equity Plan
- The variable bonus of the employee shall be in accordance with certain parameters. The parameters of evaluation have been defined as per the 'Bonus/ Variable Pay Policy'.

6 Board Evaluation

The Company shall, pursuant to the provisions of the Act and SEBI (LODR) Regulations, carry out an annual evaluation of the performance of:

- i. The Board as a whole;
- ii. Individual Directors, including Independent Directors, CEO and Chairperson; and
- iii. Various Committees of the Board.

The Company shall follow the criteria for evaluation recommended under the 'Board Evaluation Policy'.

6.1 Feedback and Action Plan

- i. Feedback shall be sought from the Independent Directors on the assessment of the quality, quantity and timeliness of flow of information between the Company Management and the Board, necessary for the Board to effectively perform its duties.
- ii. Based on the analysis of the responses received on the performance of Independent and Non-Independent Directors, the Board as a whole, and of the Chairman of the Company, the NRC shall recommend to the Board an Action Plan.
- iii. The Action Plan shall include areas of improvement training, development programmes and skill building, as may be required for the members of the Board.

7 *Review of Policy*

The Board of Directors reserves its right to review and amend this policy to ascertain its appropriateness as per the needs of the company. Review shall be carried out at least once a year. In the event of any conflict between the provisions of this Policy and the Act or any other statutory enactments, rules, the provisions of such Act or statutory enactments, rules shall prevail over this Policy.

The Board may, subject to applicable laws amend any provision(s) or substitute any of the provision(s) with the new provision(s) or replace the Policy entirely with a new Policy.

8 *Annexure I: Section 149 of the Companies Act, 2013*

Appointment and Qualifications of Directors

Company to have Board of Directors.—

- (1) Every company shall have a Board of Directors consisting of individuals as directors and shall have—
 - a) a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and
 - b) a maximum of fifteen directors:

Provided that a company may appoint more than fifteen directors after passing a special resolution.

Provided further that such class or classes of companies as may be prescribed, shall have at least one woman director.

- (2) Every company existing on or before the date of commencement of this Act shall within one year from such commencement comply with the requirements of the provisions of sub-section (1).
- (3) Every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year.
- (4) Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.

Explanation.—For the purposes of this sub-section, any fraction contained in such one-third number shall be rounded off as one.

- (5) Every company existing on or before the date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules in this regard as may be applicable, comply with the requirements of the provisions of sub-section (4).
- (6) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—
 - a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
 - b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;
(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;
 - c) who has or had no pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed, with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
 - d) none of whose relatives –
 - i. is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year:

Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;

- ii. is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year;
- iii. has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or
- iv. has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);]

e) who, neither himself nor any of his relatives—

- i. holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years.

- ii. is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—
 - A. a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
 - B. any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;
- iii. holds together with his relatives two per cent. or more of the total voting power of the company; or
- iv. is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or

f) who possesses such other qualifications as may be prescribed.

- (7) Every independent director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence as provided in sub-section (6).

Explanation.—For the purposes of this section, —nominee director| means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests.

(8) The company and independent directors shall abide by the provisions specified in Schedule IV.

(9) Notwithstanding anything contained in any other provision of this Act, but subject to the provisions of sections 197 and 198, an independent director shall not be entitled to any stock option and may receive

remuneration by way of fee provided under sub-section (5) of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.

- (10) Subject to the provisions of section 152, an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.
- (11) Notwithstanding anything contained in sub-section (10), no independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director:

Provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.

Explanation.—For the purposes of sub-sections (10) and (11), any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under those sub-sections.

(12) Notwithstanding anything contained in this Act,—

- i. an independent director;
- ii. a non-executive director not being promoter or key managerial personnel,
- iii. shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

(13) The provisions of sub-sections (6) and (7) of section 152 in respect of retirement of directors by rotation shall not be applicable to appointment of independent directors.

9 *Annexure II: Section 164 of the Companies Act, 2013*

Disqualifications for appointment of director

- (1) A person shall not be eligible for appointment as a director of a company, if –
- a) he is of unsound mind and stands so declared by a competent court;
 - b) he is an undischarged insolvent;
 - c) he has applied to be adjudicated as an insolvent and his application is pending;
 - d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;

- e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
- f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;
- g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or
- h) he has not complied with sub-section (3) of section 152.
- i) He has not complied with the provisions of sub-section (1) of section 165

(2) 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; or
- 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.

Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.

(3) A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2):

Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification.

10 Annexure III: Section 203 of the Companies Act, 2013

Appointment of Key Managerial Personnel (KMP)

(1) Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,—

- i. Managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;
- ii. Company secretary; and
- iii. Chief Financial Officer:

Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,—

- a) the articles of such a company provide otherwise; or
- b) the company does not carry multiple businesses:

Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government.

- (2) Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.
- (3) A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time:

Provided that nothing contained in this sub-section shall disentitle a key managerial personnel from being a director of any company with the permission of the Board:

Provided further that whole-time key managerial personnel holding office in more than one company at the same time on the date of commencement of this Act, shall, within a period of six months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel:

Provided also that a company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

- (4) If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.
- (5) If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.

11 Annexure IV: Clause 17 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

Board of Directors

(1) The composition of board of directors of the listed entity shall be as follows:

- a) board of directors shall have an optimum combination of executive and nonexecutive directors with at least one woman director and not less than fifty percent of the board of directors shall comprise of non-executive directors;

“Provided that the Board of directors of the top 500 listed entities shall have at least one independent woman director by April 1, 2019 and the Board of directors of the top 1000 listed entities shall have at least one independent woman director by April 1, 2020;

Explanation: The top 500 and 1000 entities shall be determined on the basis of market capitalization, as at the end of the immediate previous financial year.”

- b) where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors:

Provided that where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors.

Explanation.- For the purpose of this clause, the expression “related to any promoter” shall have the following meaning:

- i. if the promoter is a listed entity, its directors other than the independent directors, its employees or its nominees shall be deemed to be related to it;
- ii. if the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.

c) The board of directors of the top 1000 listed entities (with effect from April 1, 2019) and the top 2000 listed entities (with effect from April 1, 2020) shall comprise of not less than six directors.

Explanation: The top 1000 and 2000 entities shall be determined on the basis of market capitalisation as at the end of the immediate previous financial year.”

(1A) No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.

(1B) With effect from April 1, 2020, the top 500 listed entities shall ensure that the Chairperson of the board of such listed entity shall -

(a) be a non-executive director;

(b) not be related to the Managing Director or the Chief Executive Officer as per the definition of the term “relative” defined under the Companies Act, 2013:

Provided that this sub-regulation shall not be applicable to the listed entities which do not have any identifiable promoters as per the shareholding pattern filed with stock exchanges.

Explanation - The top 500 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.”

The board of directors shall meet at least four times a year, with a maximum time gap of one hundred and twenty days between any two meetings.

- (2) The board of directors of the listed entity shall satisfy itself that plans are in place for orderly succession for appointment to the board of directors and senior management.

(2A) The quorum for every meeting of the board of directors of the top 1000 listed entities with effect from April 1, 2019 and of the top 2000 listed entities with effect from April 1, 2020 shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director ;

Explanation I – For removal of doubts, it is clarified that the participation of the directors by video conferencing or by other audio-visual means shall also be counted for the purposes of such quorum.

Explanation II - The top 1000 and 2000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.

- (3) The board of directors shall periodically review compliance reports pertaining to all laws applicable to the listed entity, prepared by the listed entity as well as steps taken by the listed entity to rectify instances of non-compliances.
- (4) The board of directors of the listed entity shall satisfy itself that plans are in place for orderly succession for appointment to the board of directors and senior management.

- (5) (a) The board of directors shall lay down a code of conduct for all members of board of directors and senior management of the listed entity.

(b) The code of conduct shall suitably incorporate the duties of independent directors as laid down in the Companies Act, 2013.

- (6) a) The board of directors shall recommend all fees or compensation, if any, paid to non-executive directors, including independent directors and shall require approval of shareholders in general meeting.

b) The requirement of obtaining approval of shareholders in general meeting shall not apply to payment of sitting fees to non-executive directors, if made within the limits prescribed under the Companies Act, 2013 for payment of sitting fees without approval of the Central Government.

c) The approval of shareholders mentioned in clause (a), shall specify the limits for the maximum number of stock options that may be granted to non-executive directors, in any financial year and in aggregate.

(ca) The approval of shareholders by special resolution shall be obtained every year, in which the annual remuneration payable to a single non-executive director exceeds fifty per cent of the total annual remuneration payable to all non-executive directors, giving details of the remuneration thereof.

d) Independent directors shall not be entitled to any stock option.

e) The fees or compensation payable to executive directors who are promoters or members of the promoter group, shall be subject to the approval of the shareholders by special resolution in general meeting, if-

- the annual remuneration payable to such executive director exceeds rupees 5 crore or 2.5 per cent of the net profits of the listed entity, whichever is higher; or
- where there is more than one such director, the aggregate annual remuneration to such directors exceeds 5 per cent of the net profits of the listed entity:

Provided that the approval of the shareholders under this provision shall be valid only till the expiry of the term of such director.

Explanation: For the purposes of this clause, net profits shall be calculated as per section 198 of the Companies Act, 2013.” The minimum information to be placed before the board of directors is specified in Part A of Schedule II.

- (7) The chief executive officer and the chief financial officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II.
- (8) (a) The listed entity shall lay down procedures to inform members of board of directors about risk assessment and minimization procedures.
- b) The board of directors shall be responsible for framing, implementing and monitoring the risk management plan for the listed entity.
- (10) The evaluation of independent directors shall be done by the entire board of directors which shall include -
- (a) performance of the directors; and
- (b) fulfillment of the independence criteria as specified in these regulations and their independence from the management:

Provided that in the above evaluation, the directors who are subject to evaluation shall not participate

(11) The statement to be annexed to the notice as referred to in sub-section (1) of section 102 of the Companies Act, 2013 for each item of special business to be transacted at a general meeting shall also set forth clearly the recommendation of the board to the shareholders on each of the specific items.

17A. Maximum number of directorships. (Amendment dated May 9th, 2018)

The directors of listed entities shall comply with the following conditions with respect to the maximum number of directorships, including any alternate directorships that can be held by them at any point of time -

- (1) A person shall not be a director in more than eight listed entities with effect from April 1, 2019 and in not more than seven listed entities with effect from April 1, 2020:

Provided that a person shall not serve as an independent director in more than seven listed entities.

- (2) Notwithstanding the above, any person who is serving as a whole time director / managing director in any listed entity shall serve as an independent director in not more than three listed entities.

For the purpose of this sub-regulation, the count for the number of listed entities on which a person is a director / independent director shall be only those whose equity shares are listed on a stock exchange.”

12 Annexure V: Section 163 of the Companies Act, 2013

Option to adopt principle of proportional representation for appointment of directors

Notwithstanding anything contained in this Act, the articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a company in accordance with the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise and such appointments may be made once in every three years and casual vacancies of such directors shall be filled as provided in sub-section (4) of section 161.

13 Annexure VI: Section 197 of the Companies Act, 2013

Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits

- (1) The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent. of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits:

Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V:

Provided further that, except with the approval of the company in general meeting,—

- i. the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five per cent. of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together;
- ii. the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—
 - A. one per cent. of the net profits of the company, if there is a managing or whole-time director or manager;
 - B. three per cent. of the net profits in any other case.

Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.

- (2) The percentages aforesaid shall be exclusive of any fees payable to directors under sub-section (5).
- (3) Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole-time director or manager, by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V.
- (4) The remuneration payable to the directors of a company, including any managing or whole-time director or manager, shall be determined, in accordance with and subject to the provisions of this section, either by the articles of the company, or by a resolution or, if the articles so require, by a special resolution, passed by the company in general meeting and the remuneration payable to a director determined aforesaid shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity:

Provided that any remuneration for services rendered by any such director in other capacity shall not be so included if—

- a) the services rendered are of a professional nature; and

b) in the opinion of the Nomination and Remuneration Committee, if the company is covered under sub-section (1) of section 178, or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

- (5) A director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board:

Provided that the amount of such fees shall not exceed the amount as may be prescribed:

Provided further that different fees for different classes of companies and fees in respect of independent director may be such as may be prescribed.

- (6) A director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other.
- (7) Omitted.
- (8) The net profits for the purposes of this section shall be computed in the manner referred to in section 198.
- (9) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company.
- (10) The company shall not waive the recovery of any sum refundable to it under sub-section (9) unless approved by the company by special resolution within two years from the date the sum becomes refundable.

Provided that where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver.

- (11) In cases where Schedule V is applicable on grounds of no profits or inadequate profits, any provision relating to the remuneration of any director which purports to increase or has the effect of increasing the amount thereof, whether the provision be contained in the company's memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or its Board, shall not have any effect unless such increase is in accordance with the conditions specified in that Schedule.
- (12) Every listed company shall disclose in the Board's report, the ratio of the remuneration of each director to the median employee's remuneration and such other details as may be prescribed.
- (13) Where any insurance is taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel:

Provided that if such person is proved to be guilty, the premium paid on such insurance shall be treated as part of the remuneration.

- (14) Subject to the provisions of this section, any director who is in receipt of any commission from the company and who is a managing or whole-time director of the company shall not be disqualified from receiving any remuneration or commission from any holding company or subsidiary company of such company subject to its disclosure by the company in the Board's report.
- (15) If any person contravenes the provisions of this section, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

14 Annexure VII: Section 198 of the Companies Act, 2013

Calculation of Profits

- (1) In computing the net profits of a company in any financial year for the purpose of section 197,—
 - a) credit shall be given for the sums specified in sub-section (2), and credit shall not be given for those specified in sub-section (3); and
 - b) the sums specified in sub-section (4) shall be deducted, and those specified in sub-section (5) shall not be deducted.
- (2) In making the computation aforesaid, credit shall be given for the bounties and subsidies received from any Government, or any public authority constituted or authorised in this behalf, by any Government, unless and except in so far as the Central Government otherwise directs.
- (3) In making the computation aforesaid, credit shall not be given for the following sums, namely:—
 - a) profits, by way of premium on shares or debentures of the company, which are issued or sold by the company;
 - b) profits on sales by the company of forfeited shares;
 - c) profits of a capital nature including profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof;
 - d) profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets:

Provided that where the amount for which any fixed asset is sold exceeds the written-down value thereof, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written-down value;
 - e) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.
 - f) any amount representing unrealised gains, notional gains or revaluation of assets.
- (4) In making the computation aforesaid, the following sums shall be deducted, namely:—
 - a) all the usual working charges;
 - b) directors' remuneration;
 - c) bonus or commission paid or payable to any member of the company's staff, or to any engineer, technician or person employed or engaged by the company, whether on a whole-time or on a part-time basis;
 - d) any tax notified by the Central Government as being in the nature of a tax on excess or abnormal profits;
 - e) any tax on business profits imposed for special reasons or in special circumstances and notified by the Central Government in this behalf;
 - f) interest on debentures issued by the company;

- g) interest on mortgages executed by the company and on loans and advances secured by a charge on its fixed or floating assets;
 - h) interest on unsecured loans and advances;
 - i) expenses on repairs, whether to immovable or to movable property, provided the repairs are not of a capital nature;
 - j) outgoings inclusive of contributions made under section 181;
 - k) depreciation to the extent specified in section 123;
 - l) the excess of expenditure over income, which had arisen in computing the net profits in accordance with this section in any year which begins at or after the commencement of this Act, in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained;
 - m) any compensation or damages to be paid in virtue of any legal liability including a liability arising from a breach of contract;
 - n) any sum paid by way of insurance against the risk of meeting any liability such as is referred to in clause (m);
 - o) debts considered bad and written off or adjusted during the year of account.
- (5) In making the computation aforesaid, the following sums shall not be deducted, namely:—
- a) income-tax and super-tax payable by the company under the Income-tax Act, 1961 (43 of 1961), or any other tax on the income of the company not falling under clauses (d) and (e) of sub-section (4);
 - b) any compensation, damages or payments made voluntarily, that is to say, otherwise than in virtue of a liability such as is referred to in clause (m) of sub-section (4);
 - c) loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company or of any part thereof not including any excess of the written-down value of any asset which is sold, discarded, demolished or destroyed over its sale proceeds or its scrap value;
 - d) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.

15 Annexure VIII: Schedule V of the Companies Act, 2013



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Figure 1 Schedule V of the Companies Act, 2013

