

Section 299 of the Companies Act, 1956 (“Act”) relates to “**Disclosure of interests by Director**”. This Section along with its sister concerned Sections (Section 297, 300, 301, 314) are invariably taken into consideration when there are transactions between Group Companies or Companies under same Management. For the purpose of this Article, I will be focusing only on Section 299.

Section 299(1) states that “*Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into, by or on behalf of the company, shall disclose the nature of his concern or interest at a meeting of the Board of directors.*”

This Sub Section includes quite a few critical words like “directly”, “indirectly”, “concerned”, “interested”, “arrangement”, “nature of interest”. These have neither been defined in the Section nor in the Act. These terms in common parlance or even in legal jargon have a very wide practical implication; when we as professionals analyze a transaction between two entities from the viewpoint of Decision making and Compliance.

In Circular F.No.8/33 (299)/65–CLV, the Ministry has tried to explain the concept of “Indirect Interest”. The Circular (relevant part) states that:-

“Regarding the interpretation of the word ‘interest’ in Section 299(1) -, the principle is that the contract or arrangement hit by the Section is the one in which the Director has personal interest conflicting with his duties towards the company as its Director. Even where the director himself has no personal interest in any contract or arrangement but any of his relatives has, the director would be deemed to “indirectly interested” within the meaning of the Section.”

The other terms remain undefined. In *Firestone Tyre and Rubber Co V/s Synthesis and Chemicals Ltd.* (1971) 41 Comp Cas 377 (Bom); (1970) 2 Comp. Cas LJ 200 (Bom); it was held that “.....*In enacting Section 299 and 300, the legislature wisely did not attempt to define ‘concern’ and ‘interest’.* Since these were enacted in the interest of the shareholders, so that they may have the benefit of the independent, unbiased and collective judgments, opinion and wisdom of their Board of Directors; the words used in the Sections have been purposely used in as general a sense as possible. To have laid down any confining limits to the operations of these Sections may have resulted in defeating the very object for which these Sections were enacted....”

Therefore, the Directors have to disclose their “Interest or Concern” and also the “nature of interest or concern”. Section 299(1) contemplates complete and full disclosure by the Directors of the Company.

A. WHAT TO DISCLOSE?

In accordance with the provisions of Section 299(3)(a), a director shall give a General Notice (Form 24AA) to the Board of Directors to the effect that he is:-

- (a) a director of a specified Body Corporate or,
- (b) a member of a specified Body Corporate or,
- (c) a member of a Specified Firm.

B. WHEN NOTICE IS REQUIRED?

Section 299(3) (b) of the Act relates to the timing of General Notice (Form 24AA) to be given by a Director. Every Director of a Company shall give a notice which shall expire at the end of the Financial Year in which it is given. It can be renewed for a further period of one financial year, by giving a fresh notice in the last month of the said financial year.

C. SCOPE OF SECTION 299 :

A Comparative analysis of the parties covered under Section 297 and Section 299 of the Act are:-

Sr. No.	Parties U/s 297	Parties U/s 299
1	Director of the company	Director of a specified Body Corporate
2	Relative of a Director	Member of a specified Body Corporate
3	Firm in which a director is a partner	Member of a specified firm.
4	Firm in which relative is a partner	
5	Private company of which the Director is a Member	
6	Private company of which the Director is a Director,	

By plain reading of the above table, it can be said that the number of parties covered under Section 297 are more than the number of parties covered under Section 299 and hence, the scope of Section 297 is wider than that of Section 299.

But, Section 299 covers "Body Corporate" which is not covered under Section 297. The Concept of "Body Corporate" is defined in Section 2(7) of the Act as a company incorporated outside India but does not include a corporation sole, a co-operative society registered under any law relating to co-operative societies; any other body corporate (not being a company as defined in this Act), which....

Therefore, due to the inclusion of the concept of "Body Corporate" along with undefined terms like "interested", "indirectly", "arrangement", "concerned"; the scope of Section 299 has widened significantly.

The Ministry has also issued Circular No. 8 on 15th June, 1956 which states that:-

"There is no ambiguity regarding the scope of Section 299. As it refers to the interest of a director in "any way directly or indirectly", this section is wider in scope than Section 297 which refers to certain contracts only. In view of the Central Government, therefore the provisions of Section 299 also extend to the contracts with public as well as private companies in which directors are interested. In view of the above, the expression 'body corporate' occurring in 299(1)(a) is in conformity with the definition given in Section 2(7) of the Act and has not been use in limited sense so as to apply only to private companies."

D. EXCEPTION TO & CONFUSION BY SECTION 299(6):-

Section 299(6) carves out an exception to complete Section 299. It states that:-

"Nothing in this section shall apply to any contract or arrangement entered into or to be entered into between two companies where any of the directors of the one company or two or more of them together holds or hold

not more than two per cent of the paid-up share capital in the other company."

Section 299 (6) was inserted by the Companies (Amendment) Act, 1960 and to elucidate the intentions, the Ministry issued following Circular No. 4 [8/16(1)/61] dated 19th May 1961:-

"The Department is of the view that it is the collective responsibility of the directors of a company to see that requirements of Section 299(6) (or Section 300 for that matter) are duly complied with. In practice, an easy course for a director would be to give a general notice under Section 299(3) when his holding in another company exceeds 2 percent of its paid up capital and when his holding is less than that, to disclose the extent of his holding at the meeting of the board of directors in which a contract with such company is considered. It would be the duty of the other directors to disclose all their individual holdings in the said company at the same Board meeting. If, however, a director is absent from that meeting, his holding would, in that event, have to be ascertained."

The Section 299 (6) & the above Circular can be examined as under:-

- 1) It relates to the transaction between two companies and does not include the term "Body Corporate".
- 2) Therefore, a director of a Company has to; in any case, disclose if he/she is a Director or Member in a Body Corporate.
- 3) Determination of the Share Holding of Directors (held singly and together with other Directors) of one company in another Company, with which a contract or arrangement has been entered into or would be entered into.
- 4) It is a collective responsibility of Directors of a company to ensure compliance of Section 299 (6).
- 5) Director should give a general notice in Form 24AA

when his holding in another company exceeds 2% of its Paid Up Capital.

6) In case a Director's Shareholding is less than 2%, he shall disclose the extent of the holding at the meeting of the Board of Directors in which a contract

with such company is considered.

7) If, a director is absent for the said meeting, his shareholding in other company would have to be ascertained.

Following case studies will bring in more clarity to the subject.

XBRL Pvt. Ltd. ("XBRL") & PDF Pvt. Ltd ("PDF"):-

Sr. No.	Case Study	Nature of Transaction	Applicability of Section 299 of the Act	Reasons for Conclusion
1.	PDF: Shareholders: 100% by XBRL. Directors: M & N. XBRL: Shareholders: A & B, 50% each. Directors: M & N.	Purchase & Sale of Software.	M & N need not give Notice U/s 299 in PDF and XBRL.	Even though M and N are Directors in both Companies; their shareholding in either of the companies does not exceed 2% of the Paid Capital.
2.	PDF: Shareholders: M, N, O & P hold 25% of the Share Capital. Directors: M, N, O & P. XBRL: Shareholders: M & N hold 50% each. Directors: M & N.	Sale of Land by PDF to XBRL.	Directors of PDF and XBRL shall comply with provisions of Section 299.	Directors of both companies hold more than 2% (individually and together) of Paid Share Capital of Other company.
3.	PDF: Shareholders: M, N, O & P (hold 25% each). Directors: X & Y. XBRL: Shareholders: A & B each hold 50% of Capital of XBRL. Directors: M & N	Renting of Immovable Property by PDF to XBRL.	Directors of PDF are not required to comply with the provisions of Section 299. Directors of XBRL are required to comply with the provisions of Section 299.	For PDF: X and Y are not Directors in XBRL and X and Y do not hold shares in XBRL. For XBRL: M & N (who are Directors) are shareholders of PDF and they hold more than 2% of the Paid Up capital of PDF.
4.	ADOBE Inc, USA: Shareholders: 99% is held by M and 1% is held by X. Directors: X & Y. XBRL: Shareholders: ADOBE Inc, USA holds 99% & 1% is held by X. Directors: X & Z.	Import and Export of Software.	X, Director of XBRL, shall disclose his directorship and membership in ADOBE Inc, USA.	As per 299 (1), (3) and (6); a director of an Indian Company has to, in any case, disclose if he / she is a Director or Member in a Body Corporate.
5.	ADOBE Inc, USA: Shareholders: 100% is held by ADOBE, UK. Directors: M & N. XBRL, India: Shareholders: 100% by ADOBE Inc, USA. Directors: M & N.	Product Development and Consultancy Services.	M & N shall disclose their directorships in ADOBE Inc, USA to XBRL, India	As per 299 (1), (3) and (6); a director of an Indian Company has to, in any case, disclose if he / she is a Director or Member in a Body Corporate

E. SHORT & SWEET OF SECTION 299 (6):-

Section 299(6) intends to identify the shareholding of the Directors (of XBRL) in other company (PDF). If the shareholding of the Directors (singly or together) of XBRL is more than the prescribed limit (2% of the Paid Share Capital) in PDF, the Directors of XBRL are under an obligation to comply with the provisions Section 299 of the Act.

F. IN CASE OF CONTRAVENTION OF SECTION 299:-

(1) Section 299(4) states that "Every director who fails to comply with sub-section (1) or (2) shall be punishable with fine which may extend to Rupees. 50,000/-."

(2) Section 283 relates to the "Vacation of Office by Directors". Pursuant to Section 283(1) (i) of the Act, the office of a director shall become vacant if he acts in contravention of Section 299.

G. CONCLUSION:-

In my view, Section 299 is something more than just giving General Notices to the Company and complying with the disclosure requirements.

The underlying principle is that Directors have fiduciary duty towards the Company i.e. the Director should not make any secret profit on account of transaction or business of a company.

REQUIRED COMMERCIAL OFFICERS

Kumar Urban Development Ltd. is engaged in design, development, construction of Residential and Commercial Complexes. We are in urgent requirement of 2 posts for the vacancy of Commercial Officers in our group companies. The eligibility criteria are as below:

1. Jr. Commercial Officer

- 0-3 Yrs of exp.
- LLB Completed
- Pursuing or have completed Executive Prog. Of ICSI

2. Sr. Commercial Officer

- 3 yrs + exp.
- LLB Completed
- Qualified Company Secretary

Interested Candidates may contact on following email id's and contact no.:

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2.mayank.sharma@kul.co.in

3.020-41012200