



(Contributed by CS Gaurav Pingle)

Can a whole-time director be appointed by passing a Circular Resolution by the board of directors?

Section 196 of the Companies Act, 2013 ('the Act') relates to 'Appointment of managing director, whole-time director or manager'. Sub-section (4) of section 196 of the Act states that the subject to the provisions of section 197 of the Act and Schedule V, a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the board of directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company. Pursuant to sub-section

(4) of section 196 of the Act, a whole-time director cannot be appointed by passing of circular resolution by the board of directors. Sub-sections (1), (2) and (3) of Section 196 of the Act are applicable to private companies and sub-sections (4) and (5) of section 196 of the Act are not applicable to private companies [MCA Notification, GSR 464 (E)] dated June 5, 2015].

Can a company (whether private or public company) be incorporated with all the directors and subscribers as persons resident outside India?

Under the Companies Act, there is no restriction wherein the subscribers to the memorandum of association or articles

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of association are persons resident outside India. However, there is a provision under the Act relating to 'resident director'. Section 149 of the Act relates to 'Company to have board of directors'. Sub-section (3) of section 149 of the Act (pursuant to the amended Companies Act) provided that every company shall have at least one director who stays in India for a total period of not less than 182 days during the financial year. However, in case of a newly incorporated company the requirement shall apply proportionately at the end of the financial year in which it is incorporated. Therefore, for the appointment of directors, the criteria of 'resident director' shall be complied with from the date of incorporation of the company.

Under the Act, is there any restriction on company giving a loan to a director (director in a private company, where such director holds 80% of the total share capital)?

Section 185 of the Act relates to 'Loans to directors'. Sub-section (1) of section 185 of the Act completely prohibits a company (i.e., a private company or a public company) from directly or indirectly advancing any loan, including any loan represented by a book debt to, or giving any guarantee or providing any security in connection with any loan taken by the director of the company. Such prohibition is applicable irrespective of the fact whether the director holds 1 share or majority shares in a company.