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Proposals that drew attention

The 2017 Proxy Season, which spans across July to September, is on full swing. Barrages of proposals are being put forward by companies and their Boards for shareholder approval in the companies' AGMs. As a proxy advisory firm, we analyse these proposals in detail and give voting recommendations to our clients. Out of many of such proposals, two have stood out that deservedly have drawn investor's attention and ire.

Raymond, in its AGM on 5th June, proposed a contentious related party transaction where it wanted to sell one of its prime properties to its Chairman and some of his relatives at a price which was even lesser than 1/10th of the market value. While the company said through the explanatory statement that this would result in a loss for the company, we didn't see any reason as to why the Audit Committee and the Board didn't struck down the deal itself and blocked it from being put for shareholders' approval. Eventually, the proposal was voted against by 70.6% of voting shareholders, which included only non-promoters.

ITC, in its AGM on 28th July, is proposing appointment of its erstwhile Executive Chairman, YC Deveshwar as its Non-executive Chairman. His proposed salary of Rs. 12 Crore for the year is almost same to the Rs. 12.5 Crore of salary that he received in FY17, even though there has been a change in designation from Executive to a Non-executive. Also, the new CEO Sanjiv Puri's proposed salary of Rs. 1.4 Crore for the year is far lower than that of the Non-executive Chairman. It remains to be seen what investors vote on this proposal.



CNBC-TV18's The Governance Code

Our Managing Director Shriram Subramanian took part in a CNBC-TV18 discussion titled 'The Governance Code'.

M. Damodaran, former SEBI Chairman, Ketan Dalal, Managing Partner at Catalyst Advisors and V. K. Unni, Professor of Public Policy and Management at IIM Calcutta were the other members taking part in the discussion which was moderated by CNBC-TV18's Mridu Bhandari.

The topic of discussion was corporate governance in India – current environment, changing landscape and some wish-lists. Shriram spoke on topics related to need and impact of good governance and ESG practices, need for domestic institutions to be more engaging, pay practices and multip-tiered Boards, governance wish-lists for near future, etc.

The show was telecast on 15th July and 22nd July as a 2-part series with repeat telecasts on 16th July and 23rd July.

You can watch both parts of the discussion by clicking [here](#) and [here](#).

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Media Watch!

Directors' Liabilities under GST Laws

Section 89 and 137 of the CGST Act, 2017 are the sections that discuss liabilities of Directors in case of recovery of taxes, interests and penalties for offences. It is to be noted that these sections override the related sections of Companies Act, 2013.

Section 89: This section refers to recovery of taxes, interests and penalties from Directors in case of private companies only. The directors who were in office during the period when the tax was due will be held liable. Here, under absence of the term 'Director', the definition of Companies Act has to be taken which includes all Directors - Executives as well as Non-executives and Independents.

Section 137: This section refers to offences committed by and resulting punishment and penalties for all companies - private and public. Anybody involved in committing the offence - be it an officer or secretary or even director - will be held liable, proceeded against and punished accordingly.

From the above two sections of the CGST Act, it is understood that there is no liability for directors of public companies for non-payment of dues like taxes, interest and penalties. However, the directors of such companies are held liable, proceeded against and punished if they are involved in any offences committed by their companies. And such directors may not be exclusively whole-time directors but also include non-executive and independent directors. Also, there will be no liability if they are able to prove that the violation/ offence was not due to their negligence or misconduct.

You can read our note 'Liabilities of Directors under CGST Act' in detail on [Page 4](#) or can also download the PDF [from our website here](#).

Directors' liabilities are limited to private companies in case of non-payment of dues but includes all companies for offences committed

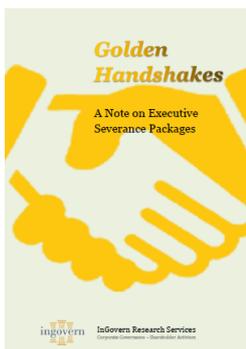
InGovern Note on Executive Severance Pay

InGovern recently published a note on Executive Severance Packages which attempts to answer the following oft-asked questions on severance pays and their necessity.:

- What is an Executive Severance Package?
- Why is an Executive Severance Package necessary?
(Benefits of Executive Severance Packages)
- How are they different from Severance Pays to other employees?
- When are the executives provided a severance package?
- What is the Quantum of Executive Severance Package?
- Can a Company provide Severance Package to an Executive whose Employment Agreement has not specified any Severance Pay?

The Note also compares examples of executive severance packages of companies that are either India incorporated or have significant presence in the country. These include Infosys, Wipro, Tata Motors, Genpact, WNS Holdings, Syntel, Cognizant, Accenture, etc. It is to be noted that information on severance packages are not easily available for Indian listed companies since there is no requirement for the same.

You can read our 'InGovern Note on Executive Severance Packages' in detail on [Page 6](#) of this newsletter or can also download the PDF [from our website here](#).



Additional Exemptions Provided to Private Companies

Through its Notification dated 13th June 2017, the Ministry of Corporate Affairs (MCA), Govt. of India has granted additional exemptions of Companies Act, 2013 to private companies. This is in addition to exemptions already granted by MCA to private companies through its earlier notification dated 5th June 2015.

Few of the new exemptions include: exempting start-ups to prepare and file cash-flow statements, allowing start-ups to accept deposits from members, exempting small companies from providing detailed break-up of remuneration of Directors and KMP, signing of annual returns of small companies and one-person companies by the company secretary or a director, no comments by auditors on internal financial controls of small companies, inclusion of private companies to hold only 2 Board meetings during the year, interested directors to be considered for quorum requirements, etc.

You can read our note 'Additional Exemptions to Private Companies' in detail on [Page 12](#) or can also download the PDF [from our website here](#).



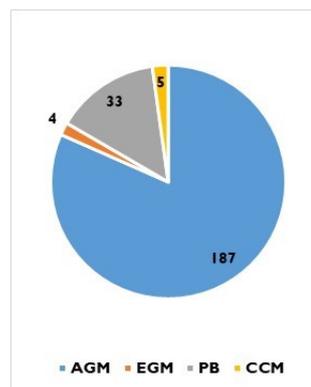
The Proxy Season 2017 so far ...

There were 229 shareholder meetings scheduled in July whose meeting details were collected by InGovern.

These included 187 AGMs, 4EGMs, 33 Postal Ballots and 5 CCMs.

Some of the large companies that held meetings during July are:

L&T	Ashok Leyland
HPCL	Reliance Industries
Apollo Tyres	Bharti Airtel
BPCL	HDFC Bank
UPL	HDFC
Bank of India	Axis Bank
Zee Ent.	Dabur
Hero Motocorp	Biocon
Vedanta	Dr. Reddy
Ultratech	IDFC
Wipro	ITC
Bajaj Auto	Godrej Cons.
Kotak Mahindra	



Please write to us at info@ingovern.com for vote recommendations on any company.

We are in the News!

Reuters: SEBI toughens rules for credit rating agencies ([Click here](#))

"These new guidelines makes it obligatory for rating agencies to provide closer monitoring," Shriram said, noting they would also encourage issuers to be "more transparent" with the agencies"

Economic Times: SEBI may ask companies to keep bourses in loop on defaults ([Click here](#))

"Any delay in interest and/or principal repayment is market information as it enables investors in equities and bonds to judge the financial health of the company said Shriram Subramanian. Additionally, making such disclosures mandatory ensures that the asymmetry of information is avoided. It also helps market participants to correctly price bonds and bond derivatives on the company."

Times of India: Small shareholders rise in Alembic ([Click here](#))

"As this is untested, company secretaries and lawyers are yet grappling with the implications of such a move. However, it empowers the minority shareholder and provides a way for small shareholders to get their nominee onto the board," said Shriram"



Directors' Liabilities under GST Laws

Section 89 and 137 of the CGST Act, 2017 are the sections that discuss liabilities of Directors in case of recovery of taxes, interests and penalties for offences. It is to be noted that these sections override the related sections of Companies Act, 2013.

Section 89 of CGST Act, 2017

Section 89: (1) Notwithstanding anything contained in the Companies Act, 2013, where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

(2) Where a private company is converted into a public company and the tax, interest or penalty in respect of any supply of goods or services or both for any period during which such company was a private company cannot be recovered before such conversion, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax, interest or penalty in respect of such supply of goods or services or both of such private company:

Provided that nothing contained in this sub-section shall apply to any personal penalty imposed on such director.

Key takeaway:

- This Section refers to recovery of tax, interest and penalties in case of private companies.
- On non-payment of dues by the company, its directors are held liable.
- Only those directors who were in office during the period when the tax was due will be held liable.
- Neither the section nor the Act defines the term 'Director'. Hence, the definition as per Companies Act is to be accepted. Companies Act defines a Director as one who is appointed to the Board of a company. This includes Managing Director, Whole-time Directors as well as Non-Executive Directors which includes Independent Directors as well as Nominee Directors.
- There will be no liability on the director if he/she proves that the non-recovery of dues is not due to any gross neglect, misfeasance or breach of duty on his/ her part in relation to the affairs of the company.
- If the private company having dues converts into a public company, then the directors of the erstwhile private company cannot be held liable.
- Since there is no other section talking about liability of directors in public companies and as this section explicitly states that directors are not held liable if the company converts from a private company to public company, it can be understood that there is no liability of directors of public companies, which includes listed companies.

Section 137 of the CGST Act, 2017

Section 137: (1) Where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where an offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust, the partner or karta or managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly and the provisions of sub-section (2) shall, mutatis mutandis, apply to such persons.

(4) Nothing contained in this section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Explanation. —For the purposes of this section,—

- (i) “company” means a body corporate and includes a firm or other association of individuals; and
- (ii) “director”, in relation to a firm, means a partner in the firm.

Key takeaway

- This section refers to offences committed by and resulting punishment and penalties for all companies – private and public.
- For an offence committed by a company, the company as well as everyone who is in charge of and is responsible for conduct of business of the company will be held liable and punished accordingly.
- If it is found that any other person, who may be a director, manager, secretary or other officer, was also involved in committing the offence, he/she will also be held liable and punished accordingly.
- There will be no liability on the person if he/she proves that the offence committed was without his/ her knowledge and he/she had exercised all due-diligence for its prevention.

Conclusion

From the above two sections of the CGST Act, it is understood that there is no liability for directors of public companies for non-payment of dues like taxes, interest and penalties. However, the directors of such companies are held liable, proceeded against and punished if they are involved in any offences committed by their companies. And such directors may not be exclusively whole-time directors but also include non-executive and independent directors.

Additional info – What about Liability of Partners?

As per Section 90 of the CGST Act, partners of a partnership firm are liable to pay any GST dues irrespective of any clause of Partnership Deed or any other law. The partnership firm also includes Limited Liability Partnerships (LLPs). Additionally, the Commissioner must be informed by the firm or the retiring partner in case of retirement of a partner. The retiring partner could be held liable for dues under GST until the date of his retirement. If any intimation regarding the retirement is not given within 1 month, the retiring partner will be continued to be held liable till such intimation is received by the Commissioner.

A Note on Executive Severance Packages

What is an Executive Severance Package?

An executive severance package is a financial (monetary, stock-based, insurance coverage, etc.) compensation paid by a company to an 'executive' due to his/her termination from the company. The executive referred here is an individual employed in a key managerial or top management (CXO roles) capacity in the company.

Why is an Executive Severance Package necessary?

Executive severance packages are not a common compensation component around the world. In India, executive severance packages are a rare occurrence and mostly provided by few large companies, most of which have operations on a global scale. A reason for such packages not being common in India is that majority of Indian companies have promoters in key management roles who also have a significant equity stake in the companies. Hence, in such cases, severance packages doesn't make sense at all.

In regions like the US and Europe where ownership is not concentrated and Boards usually hire professionals to run the companies, severance packages are common occurrence. In such cases, an executive severance package is a necessary compensation as it becomes a tool to attract and retain best available talent and also provide them financial security in case of potential loss of employment.

Many companies also attach various non-compete and non-solicitation restrictions on the executives with the severance package which helps these companies protect themselves against potential loss of clients and business. However, such restrictions are subject to the law of the land of the place where the executive is employed.

How are they different from Severance Pays to other employees?

It depends upon the company. Companies may have a common severance policy for all the levels of employees or different policies for different levels or even no severance policy at all. Usually, companies that have executive severance plans, have a separate severance plan for executives and separate plan for other employees.

Since executives are senior managerial talent who are comparatively tougher for the company to attract and retain, the severance packages offered to them is much higher than that provided to other employees.

It has been seen that number of years served in the company is seen as an important factor while deciding severance packages for other employees. Interesting, this is usually not a deciding factor while determining executive severance packages.

When are the executives provided the severance package?

Executives are provided severance packages if their employment is terminated amicably under the following circumstances:

Involuntary termination without cause

In this case, the termination is triggered by the company not due to any specific cause. Hence, such events rule out any fraud/ felony/ violation committed on the part of the executive. Although poor performance too is ruled out, it is generally the 'unspoken' cause of many such terminations.

Such terminations effectively mean that the company is terminating the employment of the individual not for any fault of the individual but because of other factors like change in strategy, downsizing, etc.

Voluntary termination for good reason

In this case termination is triggered by the executive if they provide a good reason for doing so. Good reason may include events initiated by the company such as significant reduction in pay, relocation to another location, diminution of duties and responsibilities.

The quantum of severance package may be same or different in case of voluntary or involuntary termination and depends on the company's severance policies.

What is the Quantum of Executive Severance Package?

In companies that do not have a stock-based incentives (ESOPs, RSUs, etc.) in place, the severance package is usually a multiple of the base salary and a bonus amount. In other cases where stock-based awards are granted to executives, severance package includes the usual multiple of base salary and bonus along with accelerated/instant vesting of the ESOPs and RSUs. Companies in other countries also provide an insurance coverage for a definite number of months after termination.

As a common practice, as discussed in examples below in this note, a typical executive severance package includes 1 to 2 times the annual base salary plus 1 to 2 times the annual target bonus plus accelerated/ pro-rated vesting of stock-based incentives plus insurance coverages for the next 1-2 years.

Can a Company provide Severance Package to an Executive whose Employment Agreement has not specified any Severance Pay?

In India, components of an Executive Director's remuneration are approved by the shareholders. Paying any other component not included in their employment agreement would be in violation of the Companies Act unless shareholders' ratification is obtained.

In such cases (eg. as Infosys did with its erstwhile KMPs), the company makes the executive sign a 'Separation Agreement' which supersedes the original employment agreement. While such actions are technically legal, they tend to increase non-transparency and provide the executive control in dictating the package. Such arrangements must be avoided.

Examples of Executive Severance Packages in India and Around the World

India - IT

Infosys Limited – Mr. Vishal Sikka (Managing Director & CEO)

The Employment Agreement with Vishal Sikka states that Mr. Sikka is entitled to a severance package that includes

- 24 months of base pay and 24 months of liquidated pay-out, as cash components, in instalments.
- Accelerated vesting of ESOPs and RSUs granted
- Insurance (COBRA) coverage of upto 18 months from date of termination

Mr. Sikka's remuneration was revised w.e.f. 1st April 2016. His remuneration includes

- Annual base pay of USD 1 Mn
- Annual variable pay of USD 3 Mn
- RSUs of USD 2 Mn
- ESOPs of USD 5 Mn
- And other perquisite and benefits

In lines of these figures, depending on the date of termination, Mr. Sikka could receive a severance package of upto USD 15 Mn (Rs. 100 Crore).

It is to be noted that Mr. Sikka's severance package was revised from 18 months of base pay and liquidated pay-out to 24 months along with revision in his remuneration w.e.f. 1st April 2016.

Wipro Limited – Mr. Abidali Z. Neemuchwala (CEO)

The Employment Agreement with A. Z. Neemuchwala states that Mr. Neemuchwala is entitled to a severance package that includes

- 12 months of base pay

After becoming the CEO of Wipro, Mr. Neemuchwala's base pay was revised to be in the range of USD 66,667 to USD 100,000 per month. Hence, he is liable to be paid a severance package in the range of USD 0.8 Mn to USD 1.2 Mn upon termination.

Company	Infosys	Wipro
Name	Vishal Sikka	Abidali Z. Neemuchwala
Designation	CEO & MD	CEO
Salary	24 months of Base Pay	12 Months of Base Pay
Variables	24 months of Variable Pay	No
Stock Awards	Upto 1 Year of RSU & Stock Grants (Max USD 7 Mn)	No
Others	Other benefits such as insurance, etc	No
Total	Cash pay of USD 8 Mn and Stock Awards of upto USD 7 Mn (Total USD 15 Mn)	Cash pay in the range of USD 0.8 Mn to USD 1.2 Mn

India – Non IT

Tata Motors Limited – Mr. Guenter Butschek (Managing Director & CEO)

The Employment Agreement with Guenter Butschek states that Mr. Butschek is entitled to a severance package that includes

- 12 months of basic salary
- 12 months of living allowance
- 12 months of pro-rated incentive remuneration

Mr. Butschek is paid a remuneration that, among other components, includes

- Basic salary of Euro 27,500 per month
- Living allowances of Euro 110,000 per month
- Annual Incentives of Euro 1.10 Mn to 1.65 Mn

In lines of these figures, Mr. Butschek could be paid a severance of Euro 2.75 Million.

Genpact Limited – Mr. N. V. Tyagarajan (CEO)

The Employment Agreement with N. V. Tyagarajan states that Mr. Tyagarajan is entitled to a severance package that includes

- 2 times of current base salary
- 2 times of annual bonus in previous year
- Stock-based awards of USD 9.3 Mn in case of change of control
- Insurance coverage for 2 years

Accordingly, in event of termination with change of control, Mr. Tyagarajan could be paid a total severance package of USD 14 Mn which includes cash and stocks.

Company	Tata Motors	Genpact
Name	Guenter Butschek	NV Tyagarajan
Designation	CEO & MD	CEO
Salary	12 Months of Salary & Living Allowance	2 times of Annual Base Salary (24 Months)
Variables	Upto a Max of Euro 1.1 Mn	2 times of Annual Bonus (24 Months)
Stock Awards	No	USD 9.3 Mn (Under Change in Control)
Others	No	Other benefits such as insurance, etc
Total	Basic Salary of Euro 0.33 Mn, Living Allowance of Euro 1.32 Mn and Incentives upto Euro 1.1 Mn (Total Upto Euro 2.75 Mn)	Cash pay of USD 4.7 Mn and Stock Awards of USD 9.3 Mn (Total USD 14 Mn)

WNS (Holdings) Limited – Mr. Keshav R. Murugesh (CEO)

The Employment Agreement with Keshav Murugesh states that Mr. Murugesh is entitled to a severance package that includes

- Base salary of 12 months
- Target bonus for the year
- Accelerated vesting of RSUs/ stock-based incentives

As stated in the agreement, Mr. Murugesh's remuneration includes an annual basic salary of USD 0.67 Mn and a bonus of USD 0.84 Mn. In case he is terminated under change of control, he could be paid a severance package of USD 6.9 Mn.

Syntel, Inc – Mr. Nitin Rakesh (CEO & President)

The Employment Agreement with Nitin Rakesh states that Mr. Murugesh is entitled to no cash payments but only accelerated vesting of the stock-based incentives (RSUs) as severance package. Accordingly, his severance package will consist of accelerated vesting of RSUs worth USD 2.15 Mn.

Company	WNS (Holdings)	Syntel
Name	Keshav R Murugesh	Nitin Rakesh
Designation	CEO	CEO
Salary	12 Months of Base Salary	-
Variables	Bonus for the full Year (12 Months)	-
Stock Awards	RSUs of ~ USD 5.4 Mn	RSUs of USD 2.15 Mn
Others	-	-
Total	Basic Salary of USD 0.67 Mn, Bonus of USD 0.84 Mn and RSUs of USD 5.4 Mn (Total USD 6.9 Mn)	No Cash pay. RSUs worth USD 2.15 Mn

Abroad – Other IT/ Consulting

Cognizant Technology Solutions Corporation – Mr. Francisco D’ Souza (CEO)

The Employment Agreement with Francisco D’Souza states that Mr. D’Souza is entitled to a severance package that includes

- Base pay of 12 months
- Target annual cash incentive
- Immediate vesting of stock awards
- Insurance coverage for 1 year

Accordingly, in event of termination with change of control, Mr. D’Souza could be paid a total severance package of USD 22.5 Mn which includes cash and stocks.

Accenture plc – Mr. Pierre Nanterme (Chairman & CEO)

The Employment Agreement with Pierre Nanterme states that Mr. Nanterme is entitled to a severance package that includes

- 12 months of base compensation
- 12 months of bonus compensation
- 10 days of base and bonus compensation per year of service, upto max of 12 months

Accordingly, in event of termination, Mr. Nanterme could be paid a total severance package of USD 8.5 Mn.

Company	Cognizant	Accenture
Name	Francisco D’Souza	Pierre Nanterme
Designation	CEO	Chairman & CEO
Salary & Variable	12 Months of Pay	12 Months of Pay + 10 Days Pay for each year of service
Stock Awards	USD 21.3 Mn (Under Change in Control)	-
Others	Other benefits such as insurance, etc	-
Total	Cash pay of USD 1.2 Mn and Stock Awards of USD 21.2 Mn (Total USD 22.5 Mn)	Cash pay of USD 8.5 Mn

Some Interesting Facts

Severance Pay in India: India, like other countries, does not regulate severance payments for executives unless they are executive/ managing directors and their remuneration are determined in accordance with limits specified under the Companies Act.

Other employees are categorised either as 'workmen' or 'non-workmen'. There is no severance payment obligation for non-workmen in India. While some companies do not have any severance payment for such employees, generally, the amount ranges from 1-4 months of gross salary or an amount which is based upon the years of service by the employee in the concerned company.

In case of workmen, the Industrial Disputes Act states that the amount of severance pay to such employees should be equal to 15 days' wages for each completed year of service.

Severance Pay Around the World: A report titled "Severance practices Around the World – Executive Overview" published by Right Management ManpowerGroup states that the quantum of severance pay differs between various industries and also between seniority of designation. While 'mining and oil extraction', 'wholesale trade', 'transportation and warehousing', 'retail', etc. industries offer the highest severance pay in terms of weeks of wages per year of service, industries like 'admin support', 'hotels', 'agriculture', 'construction', 'real estate', etc. offer the lowest severance pay.

Workmen	Non-workmen
<u>Industrial Disputes Act</u> 15 days' wages for each completed year of service	<u>No regulatory obligation</u> Generally, it is 1-4 months of salary or 'x' months of salary plus a compensation based on years of services in the company

Globally, in case of voluntary separation, top management are provided 3.53 weeks of pay per year of service, senior executives 3.46 weeks, department heads, managers, supervisors 3.23 weeks, professionals/ technical employees 3.04 weeks and other employees are provided severance pay of 2.85 weeks of wages per year of service. Severance payments for involuntary separations are similar but slightly lower than the former.

Mean number of Weeks per year of service	Voluntary	Involuntary
Top Executives	3.53	3.48
Senior Executives	3.46	3.42
Dept. Heads/ Managers/ Supervisors	3.23	3.15
Professional/ Technical	3.04	2.99
Other Employees	2.85	2.85

Severance Package of CEOs in the US: As per a paper titled "Golden Handshakes - Separation Pay for Retired and Dismissed CEOs" written in November 2005 by David Yermack of Stern School of Business, New York, out of a sample of 179 exiting Fortune 500 CEOs, more than half received severance pay and the mean separation package was worth USD 5.4 million. The mean separation package for voluntarily exiting CEOs was USD 2.3 million while that of dismissed CEOs was USD 15.1 million. However, it is to be noted that the study was undertaken in 2005 and the figures may not be comparable at all with the current times.

Additional Exemptions Provided to Private Companies

Through its Notification dated 13th June 2017, the Ministry of Corporate Affairs (MCA), Govt. of India has granted additional exemptions of Companies Act, 2013 to private companies. This is in addition to exemptions already granted by MCA to private companies through its earlier notification dated 5th June 2015.

The additional exemptions are listed as following:

Section 2(40): Financial Statements

Before

Financial Statement included: Balance Sheet, P/L Account, Cash Flow Statement, Statement of Change in Equity if applicable and Explanatory Statement annexed to these documents.

After Exemption

Private Company that is recognized as a start-up company by the Department of Industrial Policy and Promotion need **NOT** include **Cash Flow Statement** in their financial statements.

Section 73(3)(I): Prohibition on Acceptance of Deposits

Before

Earlier Private Limited Companies accepted deposits from the members after following the procedure mentioned under Section 73 Clause (a) to (e).

After Exemption

The exemption provided to Private companies for accepting Deposits has been expanded to include:

- a. A start-up, for five years from the date of its incorporation
- b. A Private Company that:
 - Is not an associate or a subsidiary company of any other company.
 - Has borrowings from banks or financial institutions or any body corporate which is less than twice its paid-up share capital or Rs. 50 Crore, whichever is lower.
 - Has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits.

Section 92(1)(G): Annual Return

Before

Earlier this section read as, Remuneration of directors and KMP.

After Exemption

Small Companies need to provide **ONLY** aggregate amount of remuneration drawn by the directors and KMP.

Proviso to Section 92(1): Annual Return

Before

Earlier in case of One Person Company and Small Company, the annual return was to be signed by the company secretary, or where there is no company secretary, by the director of the company

After Exemption

The Annual Return of One Person Company, Small Company and Private Company can be signed by the company secretary, or where there is no company secretary, by the director of the company.

Section 143 (I): Powers and Duties of Auditors and Auditing Standards

Before

Earlier under Section 143(i) it was stated “whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls”.

After Exemption

The Auditor need not comment on the Internal Financial Controls of the Company if:

- It is a one person company or a small company; or
- which has turnover of less than Rs. 50 Crore as per latest audited financial statement
- or which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the financial year less than Rs. 25 Crore.

Section 173(5): Meetings of Board

Before

Earlier One-Person Company, Small Company and Dormant Company shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days.

After Exemption

Private Company is required to conduct a minimum of one Board Meeting in each half of a calendar year and the gap between the two Board Meetings should not be less than 90 days.

Section 174(3): Quorum for Meetings of Board

Before

Earlier, Interested Directors were not counted for the purpose of quorum.

After Exemption

An interested Director can also be counted for Quorum after they disclose their interest.

Note: All exemptions provided to a Private Company stands withdrawn if they fail to file their financial statements or Annual Returns with the Registrar of Companies.

ABOUT INGVERN



InGovern is India's first independent corporate governance research and advisory firm which assists shareholders and lenders that have financial or reputation exposure to companies. InGovern also assists companies in enhancing their corporate governance practices.

InGovern is a SEBI registered Proxy Advisory firm.

OUR SERVICES

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- *Bespoke governance research and analysis of companies*
- *Annual governance evaluations of companies through 'Governance Radar' proprietary framework*
- *Periodic Publication of special reports on corporate governance practices in India*

Corporate Governance Advisory

- *Advisory to companies on enhancing their CG edifice by analyzing their existing corporate governance practices*
- *Benchmarking company practices with best practices*
- *Peer comparison of governance practices*
- *Diagnostic and Action Plan of governance practices*
- *Customized education and sensitization of Board and senior management on governance matters*

Proxy Advisory

- *Voting Recommendations: Helping clients take informed voting decisions for shareholder meetings – AGMs, EGMs, Postal Ballots and CCMs*
- *'Corporate Governance Alert' on interesting company proposals*
- *Publication of Annual Proxy Season Report*

Shareholder Activism

- *Advising clients (investors and companies) on solutions for value enhancement*
- *Helping companies to connect with investors on voting decisions for shareholder meetings*
- *Communicating governance practices through market leading Investor Relations initiatives and white papers*
- *Advising companies on strategies, solutions and tools to enhance investor perception and enhance value for all stakeholders*

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