

# CHAPTER – 18 (MANUAL – 17)

## Other Useful Information

### A. CORPORATE SECRETARIAT

#### THE INCONSISTENCY OF RTI ACT WITH THAT OF OTHER ACTS, RULES, & REGULATIONS

There are certain provisions of the Companies Act, 2013. This is one of the important statute applicable to the Company;

On examination of the provisions of the Right to Information Act, 2005 vis-à-vis the provisions contained in the Companies Act, 2013 the following inconsistencies were found;

Sl. No.	Provisions of the Companies Act, 1956	The inconsistency
1	128(5)	<p><b><u>Preservation of Books of accounts:</u></b> The books of Accounts need to be preserved for a period of <u>eight years</u> as per Section 128(5)) of the Companies Act, 2013( the Act). In the case of a Section 8 Company, Central Government has granted exemption in this regard and that such a Company ( Section 8 Company) is required to preserve Books of Accounts for a period <u>four years instead of eight years</u>(S.O. no. 1578).</p> <p>As per the requirements Section 8(3) of RTI Act, documents pertaining to a period of 20 years back, may be asked for inspection. Companies that have already destroyed the books of accounts in terms of present provisions of the Companies Act,2013 would not be in a position to avail those records for inspection in terms of RTI Act.</p>
2	Companies (Preservation and Disposal of Records) Rules,1966	<p>The Rule allows for destroying records of the Company at an earlier date than twenty years. Companies that have already destroyed the records in terms of this Rule; may not be in a position to show the old records pursuant to provisions of RTI Act.</p> <p>Some of the instances are as under; <b><u>Register / document Time Period</u></b></p> <ol style="list-style-type: none"> <li>1. Register of Debenture Holders- 15 years after redemption of Debentures</li> <li>2. Index of Debenture Holders- 15 years after redemption of Debentures</li> <li>3. Copies of Annual Return filed – Eight Years fromwith Registrar of Companies the date of filing with the Registrar .</li> </ol>
3	®Section 128(3)A) of the Act.® Part IX of Memorandum of Association ® Article 72 of Articles of Association	<p><b><u>Inspection of Books of Accounts</u></b></p> <p>Companies Act, 2013 does not envisage inspection of books of accounts of the Company by general public, though provisions are there for inspection by Directors, Registrar of Companies and officers authorised in this respect by the Central Government.</p> <p>Part IX of the Memorandum of Association also allows inspection of books of accounts by the Directors of the Company. Hence, these provisions of the Companies Act and that of Memorandum</p>

		& Articles of Association of the Company are inconsistent with the provisions of the Right to Information Act, 2005.
4	Section 119 of the Act and views of Department of Company Affairs.	<p>Inspection of Minutes of General Meetings and that of Board Meetings: In respect of Minutes of General Meetings; the Companies Act, 2013 <u>allows the same to be inspected by members of the Company</u> and that extracts of such minutes may be provided. The fee provided for providing extracts of such minutes is Re 1/- for every one hundred word. However, this is subject to changes and modifications from time to time.</p> <p>In respect of minutes of Board Meetings, Department of Company Affairs is of the following view-</p> <p>“The Companies Act, 2013, contains no provision either specifically permitting or prohibiting inspection by/or supply of copies to the shareholders of a Company of the minutes of the meetings of the Board. This Department is of the view that unless the Articles of Association provide to the contrary, a shareholder has no right of inspection or obtaining copies of minutes of its Board meetings. [Letter no. 8/15(169)/63-P.R., dated 11-12-1963].”</p> <p><u>It may be noted that in view of the above; the general public don't have a right to inspect the minutes of General Meetings or Board Meetings of the Company.</u> However, this would be inconsistent with the provisions contained in the Right to Information Act, 2005.</p>
5	Statutory Registers	There are various registers maintained with the Company pursuant to the requirements of Statutes and so, referred to as Statutory Registers. Provisions have been made regarding the inspection and obtaining extracts of such registers by such persons as authorised in that regard by provisions of the Companies Act, 2013.

**Some of these registers are as under;**

Section 94 of the Act	Annual Returns filed with Registrar of Companies along with certificates enclosed thereto	No fee is charged from members of the Company for inspection of these documents. Others are charged fee as per Rule 14 of The Companies (Management and Administrative) Rules, 2014
Section 88 of the Act	Register of Members, Index of Members, Register of Debenture Holders	No fee is charged from members of the Company / Debenture holders for inspection of these documents. Others are charged fee as per Rule 14 of The Companies (Management and Administrative) Rules, 2014
Section 189, Section 170, and Section 171 of the Act	Register of Contracts in which Directors are interested, Inspection of Register of Directors, Managing Directors, Manager and Secretary, Register of Directors' Shareholding	<p>® same as the register u/s 94</p> <p>® may be inspected without fee by members. Re 1/- for each inspection by others.</p> <p>® Inspection by members and Debenture holders Only.</p>

**LIST OF INFORMATION WHICH ARE PROPOSED TO BE WITHHELD FROM THE PUBLIC**

1. Minutes of Board Meeting of the company.
2. Part of a document where law or regulation prohibits the company from providing the part or portion of a document.
3. Books of Account and vouchers
4. Noting side of the file
5. Personnel/medical details and officers or employees submitted as part of documents for medical reimbursement.
6. Annual Confidential Report (ACRs) of officers and employees.
7. Records, Correspondence, Proceeding etc during the decision making process (disclosing such information may influence or affect the decision).
8. All information related to recruitment and appointment of personnel during the process of selection and finalization of appointment.
9. Minutes of selection committee/interview committee.
10. Disciplinary proceeding and vigilance cases initiated against an officer or employee during the process of investigation and decision.
11. Personal files of officers and employees.
12. The credential verification report received from the inspecting officers in respect of Non Government Organisations during the process of finalizing the decision for sanction/release of loan.
13. Confidential reports received from other Government/Non Government Departments for processing sanction of loan of NGOs (disclosing such report to public may constitute breach of trust).