

# Supplementary on the Notified Sections of the Companies Act, 2013

## Introduction

The Companies Act, 2013 has been enacted to consolidate and amend the law relating to the companies. The changes in the existing company law (i.e., the Companies Act, 1956) was indispensable due to change in the national and international economic environment and for expansion and growth of our economy, the Parliament decided to replace the Companies Act, 1956 with a new legislation to meet the changed national and international economic environment and to further accelerate the expansion and growth of our economy. The new law (i.e., the Companies Act, 2013) is rule based legislation with 470 sections and seven schedules. The entire Act has been divided into 29 chapters. The Companies Act, 2013 aims to improve corporate governance, simplify regulations, strengthens the interests of minority investors and for the first time legislates the role of whistle-blowers. Thus, the enactment has made our corporate regulations more contemporary.

## Section 1: Short title, extent, commencement and application.

The Companies Act, 2013 extends to the whole of India and came into existence at once from the date of notification in the Official Gazette i.e., from 30th August, 2013, however the provisions of the Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

The provisions of the Act shall apply to-

- Companies incorporated under this Act or under any previous company law
- Insurance companies (except where the provisions of the said Act are inconsistent with the provisions of the Insurance Act, 1938 or the IRDA Act, 1949)
- Banking companies (except where the provisions of the said Act are inconsistent with the provisions of the Banking Regulation Act, 1949)
- Companies engaged in the generation or supply of electricity (except where the provisions of the above Act are inconsistent with the provisions of the Electricity Act, 2003)
- Any other company governed by any special Act for the time being in force.
- Such body corporate/s which is/are incorporated by any Act for time being in force, as the Central Government may by notification specify in this behalf

### **Relevant notifications on the Companies Act, 2013:**

- (ii) The Ministry of Corporate Affairs (MCA) has notified 98 sections of the Companies Act, 2013 on 12<sup>th</sup> September, 2013, which came into force with immediate effect i.e. from the issue date, 12<sup>th</sup> September, 2013.
- (iii) On 13<sup>th</sup> September, 2013, the MCA vide Circular No.15/2013 has issued a clarification with a view to facilitate proper administration of the Companies Act, 2013 with respect to the implementation of the sections 2(68), 102 , 133 and 180 of the Companies Act, 2013.
- (iv) On 18<sup>th</sup> September, 2013, the MCA vide Circular No. 16/2013 has issued another clarification that with effect from 12<sup>th</sup> September, 2013, the relevant provisions of the Companies Act, 1956, which correspond to provisions of 98 sections of the Companies Act, 2013 brought into force on 12<sup>th</sup> September, 2013, cease to have effect from that date.
- (v) On 20<sup>th</sup> September, 2013, the MCA in exercise of the powers conferred by sub-section (1) of section 470 of the Companies Act, 2013 (18 of 2013) vide Order No. S.O. 2821(E), makes the Companies (Removal of Difficulties) Order, 2013 to remove the difficulties in compliances with the sections 24, 58 and 59 of the Companies Act, 2013 in exercising certain powers by the Tribunal.
- (vi) On 19<sup>th</sup> November, 2013, the MCA vide Circular No. 18/2013 has issued another clarification with regard to applicability of the provision of section 372A of the Companies Act, 1956 clarifying that section 372A of the Companies Act, 1956 dealing with the inter-corporate loans continue to remain in force till section 186 of the Companies Act, 2013 is notified.
- (vii) On 10<sup>th</sup> December, 2013, the MCA vide General Circular 19/2013 has issued another clarification on disclosures to be made under section 182 relating to 'Prohibition and restrictions regarding political contributions' of the Companies Act, 2013.
- (viii) On 27<sup>th</sup> December, 2013, the MCA vide General Circular 20/2013 has issued another clarification with regard to holding of shares or exercising power in a fiduciary capacity under Holding and Subsidiary relationship under Section 2(87) of the Companies Act, 2013.

# Chapter 1: Accounts and Audit

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## (1) Central Government to prescribe Accounting Standards (Section 133 of the Companies Act, 2013)

### 1.8 Form and contents of balance sheet and profit and loss account

Section 211 of the Companies Act, 1956 contains provisions relating to form and contents of balance sheet and profit and loss account. According to the section, balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of the financial year and shall be in the form set out in part I of Schedule VI. Profit and loss account of a company shall give a true and fair view of the profit and loss of the company for the financial year and shall comply with the requirements of Part II of schedule VI.

According to Section 211(3B) of the Companies Act, 1956, where the profit and loss account and the balance sheet of the company do not comply with the accounting standards, such companies shall disclose in its profit and loss account and balance sheet, the following, namely:

- (a) the deviation from the accounting standards;
- (b) the reasons for such deviation; and
- (c) the financial effect, if any, arising due to such deviation.

Earlier the meaning of expression "accounting standards" was given under section 211(3C) of the Companies Act, 1956 but this section has been repealed by MCA vide Circular No. 16/2013 dated 18th September, 2013 and a new section 133 of the Companies Act, 2013 came into force on 12th September, 2013 which provides the provisions for Central Government to prescribe accounting standards. According to section 133 of the Companies Act, 2013:

"Accounting Standards" means the standards of accounting or any addendum thereto as recommended by the Institute of Chartered Accountants of India (ICAI) constituted under section 3 of the Chartered Accountants Act, 1949 (38 of 1949), as may be prescribed by the Central Government in consultation with and after examination of the recommendations made by the National Financial Reporting Authority constituted under section 132 of the Companies Act, 2013.

In respect of accounting standards, the role of National Financial Reporting Authority is limited to advise the Central Government on the accounting standards recommended by ICAI for adoption by companies.

**“Prescribed”** means prescribed by rules made under this Act. [Section 2(66)]

*The Ministry of Corporate Affairs (MCA) vide General Circular No. 15/2013 dated 13th September, 2013 has clarified that till the Standards of Accounting or any addendum thereto are prescribed by Central Government in consultation and recommendation of the National Financial Reporting Authority, the existing Accounting Standards notified under the Companies Act, 1956 shall continue to apply.*

**“Notification”** means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly. [Section 2(58)]

**Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 211(3C) of the Companies Act, 1956.
- (ii) The National Advisory Committee on Accounting Standards has been replaced with National Financial Reporting Authority to give consultation to the Central Government on the accounting standards recommended by ICAI.

## Chapter 2: Dividend

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### (2) Punishment for failure to distribute dividends (Section 127 of the Companies Act, 2013)

#### 2.7 Time Limit for payment of dividend

Section 207 of the Companies Act, 1956 provided the provisions for penalty for failure to distribute dividends within thirty days. A new section 127 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for punishment for failure to distribute dividend. According to section 127 of the Companies Act, 2013:

- (i) Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years.
- (ii) He shall also be liable for a fine which shall not be less than one thousand rupees for every day during which such default continues.
- (iii) The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.
- (iv) However, the following are the exceptions under which no offence shall be deemed to have been committed:
  - (a) where the dividend could not be paid by reason of the operation of any law;
  - (b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him;
  - (c) where there is a dispute regarding the right to receive the dividend;
  - (d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or
  - (e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

*“Dividend” includes any interim dividend. [Section 2(35)]*

*“Company” means a company incorporated under this Act or under any previous company law [section 2(20)]*

*“Previous company law” means any of the laws specified below [Section 2(67)]:*

- (A) *Acts relating to companies in force before the Indian Companies Act, 1866;*
- (B) *the Indian Companies Act, 1866;*
- (C) *the Indian Companies Act, 1882;*
- (D) *the Indian Companies Act, 1913;*
- (E) *the Registration of Transferred Companies Ordinance, 1942;*
- (F) *the Companies Act, 1956; and*
- (G) *any law corresponding to any of the aforesaid Acts or the Ordinances and in force—*
  - (i) *in the merged territories or in a Part B State (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereto of the Indian Companies Act, 1913; or*
  - (ii) *in the State of Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956, in so far as banking, insurance and financial corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968, in so far as other corporations are concerned;*
- (H) *the Portuguese Commercial Code, in so far as it relates to sociedades anonimas; and*
- (I) *the Registration of Companies (Sikkim) Act, 1961.*

*“Director” means a director appointed to the Board of a company. [Section 2(34)]*

#### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 207 of the Companies Act, 1956 i.e. penalty for failure to distribute dividends within thirty days.
- (ii) Under the Companies Act, 1956, the director of the company, if he is knowingly a party to the default, shall be liable for the imprisonment which may extend to three years in case of failure to pay dividend within 30 days. The imprisonment for the default has now been reduced to two years under the Companies Act, 2013.
- (iii) Earlier under the Companies Act, 1956, if a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with, then no offence shall be deemed to be committed. But under the Companies Act, 2013, it shall be deemed to be an offence. However, if the same (i.e. directions cannot be complied with) has been communicated to the shareholder, then no offence shall be deemed to be committed.

# Chapter 3: Directors, Powers, Managerial Remuneration

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## (3) Appointment of additional director, alternate director and nominee director (Section 161 of the Companies Act, 2013)

### 3.2 Appointment of Directors

#### (A) Additional Director [Section 161(1)]

Section 260 of the Companies Act, 1956 provided the provisions for appointment of additional director. A new section 161(1) of the Companies Act, 2013 came into force on 12<sup>th</sup> September, 2013 which provides for appointment of additional director. According to section 161(1) of the Companies Act, 2013:

- (i) The articles of a company may confer on its Board of Directors the power to appoint any person as an additional director at any time.
- (ii) A person, who fails to get appointed as a director in a general meeting, cannot be appointed as an additional director.
- (iii) Additional director shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

*"Board of Directors" or "Board" in relation to a company means the collective body of the directors of the company. [Section 2(10)]*

#### Point of Comparison in respect to old law i.e. the Companies Act, 1956

- (i) This section corresponds to section 260 of the Companies Act, 1956 i.e. Additional Director.
- (ii) As per the Companies Act, 2013, a person who fails to get appointed as a Director in a general meeting cannot be appointed as an Additional Director. Such a provision was not there in the Companies Act, 1956.
- (iii) Under the Companies Act, 1956, additional directors shall hold office only up to the date of the next annual general meeting of the Company but under the Companies Act, 2013, they shall hold office till next Annual General Meeting or the last date on which such meeting should have been held in accordance with law.

## **(B) Alternate Director [Section 161(2)]**

Section 313 of the Companies Act, 1956 provided the provisions for appointment and term of office of alternate directors. A new section 161(2) of the Companies Act, 2013 came into force on 12th September, 2013 which provides for appointment of Alternate director. According to section 161(2) of the Companies Act, 2013:

- (i) The Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person to act as an alternate director for a director (original director) during his absence for a period of not less than three months from India.
- (ii) A person appointed as Alternate Director shall not be a person who is holding any alternate directorship for any other director in the company.
- (iii) No person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act.
- (iv) An alternate director shall not hold office for a period longer than that permissible to the original director and shall vacate the office if and when the original director returns to India.
- (v) If the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

*“Articles” means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act. [Section 2(5)]*

### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to the section 313 of the Companies Act, 1956 i.e. appointment and term of office of alternate directors.
- (ii) Under the Companies Act, 1956, it was provided that Alternate director can be appointed in place of director who is absent from the state in which meetings of the Board are ordinarily held for not less than three months but under the Companies Act, 2013, Alternate director can only be appointed in case a director leaves India for not less than three months.
- (iii) The person to be appointed as the Alternate director shall be the person who is not holding any alternate directorship for any other director in the company. This provision was not present under the Companies Act, 1956.
- (iv) The Companies Act, 2013 has specifically provided that in case of appointment of an alternate director for Independent Director, that person shall be qualified to be appointed as an independent director under the provisions of this Act.



**(C) Nominee Director [Section 161(3)]:**

There was no provision for the appointment of nominee director in the Companies Act, 1956 but a new section 161(3) of the Companies Act, 2013 came into force on 12th September, 2013 which provides for appointment of Nominee director. According to section 161(3) of the Companies Act, 2013:

The Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company, subject to the articles of a company.

*“Government Company” means any company in which not less than fifty one per cent. of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company. [Section 2(45)]*

**Point of Comparison in respect to old law i.e. the Companies Act, 1956**

This section now provides for Nominee Director. It provides that subject to Articles, Board can appoint director nominated by any institution in pursuance of any law or agreement as a Nominee director. There was no such provision in the Companies Act, 1956.

**(D) Casual Vacancy [Section 161(4)]**

Section 262 of the Companies Act, 1956 provided the provisions for filling of casual vacancies among directors. A new section 161(4) of the Companies Act, 2013 came into force on 12<sup>th</sup> September, 2013 which provides for appointment of director in casual vacancy. According to section 161(4) of the Companies Act, 2013:

- (i) In the case of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board.
- (ii) Any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

*“Public company” means a company which-*

- (a) *is not a private company;*
- (b) *has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed:*

*Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even*

where such subsidiary company continues to be a private company in its articles. [Section 2(71)]

**“Paid-up share capital” or “share capital paid-up”** means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called. [Section 2(64)]

**“Private company”** means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles,—

- (i) restricts the right to transfer its shares;
- (ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

- (A) persons who are in the employment of the company; and
- (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

shall not be included in the number of members; and

- (iii) prohibits any invitation to the public to subscribe for any securities of the company. [Section 2(68)]

**“Member”**, in relation to a company, means -

(i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;

(ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;

(iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;

**“Depository”** means a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996. [Section 2(32)]

#### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to the section 262 of the Companies Act, 1956 i.e. Filling of casual vacancies among directors.

- (ii) Under the Companies Act, 1956, this provision was applicable to Public company or a private company which is a subsidiary of a public company but under the Companies Act, 2013, it is provided that the provision related to the Casual Vacancy is applicable to only public company. Section 2(71) of the Companies Act, 2013, clarifies that a subsidiary of a public company shall be deemed to be a public company even if such subsidiary continues to be a private company in its articles. This clarificatory provision was not there in the Companies Act, 1956.

#### **(4) Appointment of directors to be voted individually (Section 162 of the Companies Act, 2013)**

##### **3.2 Appointment of Directors**

Section 263 of the Companies Act, 1956 provided the provisions for appointment of directors to be voted on individually. A new section 162 of the Companies Act, 2013 came into force on 12<sup>th</sup> September, 2013 which provides for appointment of directors to be voted individually. According to section 162 of the Companies Act, 2013:

- (i) Two or more directors of a company cannot be elected as directors by a single resolution.
- (ii) Thus, each director shall be appointed by a separate resolution unless the meeting first agreed that the appointment shall be made by a single resolution and no vote has been cast against such agreement.
- (ii) A resolution moved in contravention of this provision shall be void, whether or not objection thereto was raised at the time it was so moved.
- (iv) A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as a motion for his appointment.

##### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to the section 263 of the Companies Act, 1956 i.e. Appointment of directors to be voted on individually.
- (ii) Under the Companies Act, 2013, the provision for appointment of directors to be voted individually shall be applicable to all the Companies including the private companies. Earlier, under the Companies Act, 1956, this provision was applicable to only public company or a private company which is a subsidiary of a public company.
- (iii) According to the provision of section 263 of the Companies Act, 1956, two or more directors of a company cannot be elected as directors by single resolution. Where resolution in contravention is passed, no provision for automatic re-appointment of the director retiring by rotation in default of another appointment shall apply. The proviso to section 263(2) of the Companies Act, 1956, has not been included under section 162 of the Companies Act, 2013. According to section 152(7)(b)(v) of the Companies Act, 2013, the provisions for automatic re-appointment shall not apply to cases where section 162 is applicable. Hence, section 162 of the Companies Act, 2013 needs to be harmoniously interpreted with the provisions of section 152(7)(b)(v) of the Companies Act, 2013.

**(5) Option to adopt principle of proportional representation for appointment of directors (Section 163 of the Companies Act, 2013)**

**3.2 Appointment of Directors**

Section 265 of the Companies Act, 1956 provided the option to company to adopt proportional representation for the appointment of director. A new section 163 of the Companies Act, 2013 came into force on 12th September, 2013 which provides the option to adopt principle of proportional representation for appointment of directors. According to section 163 of the Companies Act, 2013:

- (i) Notwithstanding anything contained in the Companies Act, 2013, 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.
- (ii) Such appointments may be made once in every three years whether by the single transferable vote or by a system of cumulative voting or otherwise.

Single transferable vote means, a candidate gets elected if he gets the required number of votes fixed as quota. These systems of voting ensure that the Board will have fair representation of the minority interest.

- (iii) Casual vacancies of such directors shall be filled as provided in sub-section (4) of section 161.

**Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to the section 265 of the Companies Act, 1956 i.e. option to company to adopt proportional representation for the appointment of directors.
- (ii) Under the Companies Act, 1956, the articles of a public company or a private company which is a subsidiary of a public company may provide for appointment of directors by way of proportional representation but under the Companies Act, 2013, even the articles of the private companies may provide for it.

**(6) Defects in appointment of directors not to invalidate actions taken (Section 176 of the Companies Act, 2013)**

**3.7 Powers of Directors and Restrictions thereon**

Section 290 of the Companies Act, 1956 provided the provisions for validity of acts of directors. A new section 176 of the Companies Act, 2013 came into force on 12th September, 2013 which provides the provisions in case of defects in appointment of directors not to invalidate actions taken. According to section 176 of the Companies Act, 2013:

- (i) No act done by a person as a director shall be deemed to be invalid, notwithstanding that it was subsequently noticed that his appointment was invalid by reason of any defect or

disqualification or had terminated by virtue of any provision contained in this Act or in the articles of the company.

- (ii) Nothing in this section shall be deemed to give validity to any act done by the director after his appointment has been noticed by the company to be invalid or to have terminated.

**Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to the section 290 of the Companies Act, 1956 i.e. Validity of acts of directors.
- (ii) The provisions of both the sections i.e. section 290 of the Companies Act, 1956 and section 176 of the Companies Act, 2013 are same.

**(7) Company to contribute to bona fide and charitable funds, etc. (Section 181 of the Companies Act, 2013)**

**3.7 Powers of Directors and Restrictions thereon**

Section 293(1)(e) of the Companies Act, 1956 provided the provisions for powers of the company to contribute to bonafide charitable and other funds. Now, a separate section 181 of the Companies Act, 2013 came into force on 12th September, 2013 which provides the provisions related to the contribution to bona fide and charitable funds, etc. by company. According to section 181 of the Companies Act, 2013:

- (i) The Board of Directors of a company may contribute to bona fide charitable and other funds.
- (ii) Prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceeds five per cent of its average net profits for the three immediately preceding financial years.

**Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 293(1) (e) of the Companies Act, 1956 i.e. Restrictions on powers of Board.
- (ii) A separate clause has been provided under the Companies Act, 2013, to deal with the powers of the company to contribute to bonafide charitable and other funds.
- (iii) Under the Companies Act, 2013, this section is applicable to all the companies instead of only public company and private company which is a subsidiary of a public company as it was under the Companies Act, 1956.
- (iv) Consent of the company in general meeting shall be required for contribution to charitable and other funds not directly relating to the business of the company or the welfare of its employees in excess of the amount given under section 293(1)(e) of the Companies Act, 1956. Under the Companies Act, 2013, prior permission of the company in the general meeting shall be required for such contribution in excess of amount given under section 181. Though, under both the Acts, the Consent/permission of the general

meeting is necessary before contributing in excess of the amount specified under the Law, the word "Prior" has been used specifically under the Companies Act, 2013.

- (v) Under the Companies Act, 1956, permission shall only be required where contribution to charitable and other funds exceeds the limit of 5% of the average net profits for the three immediately preceding financial years or Rs. 50, 000, whichever is greater. But under the Companies Act, 2013, the permission shall only be required where contribution to political party exceeds the limit of 5% of the average net profits for the three immediately preceding financial years and the limits of Rs. 50,000 as covered under the Companies Act, 1956 has been dispensed with.

## **(8) Loan to directors, etc. (Section 185 of the Companies Act, 2013)**

### **3.11 Loans to Directors**

Under the Companies Act, 1956, power of the company to lend money to its directors was strictly regulated by section 295. A new section 185 of the Companies Act, 2013 came into force on 12th September, 2013 which provides the provisions for loan to directors, etc. According to section 185 of the Companies Act, 2013:

- (i) No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.
- (ii) Exceptions: The above restriction does not apply in the following circumstances:
  - (a) the giving of any loan to a managing or whole-time director—
    - (1) as a part of the conditions of service extended by the company to all its employees; or
    - (2) pursuant to any scheme approved by the members by a special resolution; or
  - (b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.
- (iii) The expression "to any other person in whom director is interested" means—
  - (a) any director of the lending company, or of a company which is its holding company or any partner or relative of any such director;
  - (b) any firm in which any such director or relative is a partner;
  - (c) any private company of which any such director is a director or member;
  - (d) any body corporate at a general meeting of which not less than twenty- five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or

- (e) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.
- (iv) Contravention: If any loan is advanced or a guarantee or security is given or provided in contravention of the above provisions, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.

*“Managing Director” means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called. [Section 2(54)]*

*“Manager” means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not. [Section 2(53)]*

*“Relative”, with reference to any person, means any one who is related to another, if—*

- (i) they are members of a Hindu Undivided Family;
- (ii) they are husband and wife; or
- (iii) one person is related to the other in such manner as may be prescribed. [Section 2(77)]

*“Control” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner. [Section 2(27)]*

*The MCA vide General Circular No. 18/2013 dated 19th November, 2013 has clarified that Section 372A of the Companies Act, 1956 dealing with inter-corporate loans continue to remain in force till section 186 of the Companies Act, 2013 is notified.*

*This clarification was issued keeping in view the number of representations received by the MCA consequent upon notifying Section 185 of the Companies Act, 2013 dealing with loans to directors which is corresponding to Section 295 of the Companies Act, 1956. Section 186 of the Companies Act, 2013 is yet to be notified.*

#### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 295 of the Companies Act, 1956 i.e. Loans to directors, etc.

- (ii) The given restrictions under the Companies Act, 2013 is applicable to both Public and Private companies unlike the existing Companies Act, 1956 where it was applicable only to Public Companies [Section 295 (2)].
- (iii) The requirement of permission of Central Government for giving loan to director as required under the Companies Act, 1956 has been dispensed with.
- (iv) Company can give loan to MD or WTD without approval of shareholders when the loan is given as a part of the conditions of service extended by the company to all its employees.
- (v) The exemption given to loan granted, guarantee or security provided by any Holding company to its subsidiary or the exemptions granted to private company and a banking company has been dispensed with.
- (vi) Any company which in the ordinary course of its business can provide loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.
- (vii) The punishment for contravention has been increased. Now the company will also be punishable in case of contravention of these provisions. The director or any other person in default shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both as compared to simple imprisonment for a term which may extend to six months or punishment which may extend to fifty thousand rupees as provided under the Companies Act, 1956.

### **(9) Prohibitions and restrictions regarding political contributions (Section 182 of the Companies Act, 2013)**

#### **3.13 Political contributions**

Under the Companies Act, 1956, prohibitions and restrictions regarding political contributions was regulated by section 293A. A new section 182 of the Companies Act, 2013 came into force on 12th September, 2013 which provides the prohibitions and restrictions regarding political contributions. According to section 182 of the Companies Act, 2013:

- (i) Notwithstanding anything contained in any other provision of this Act, a company may contribute any amount directly or indirectly to any political party. Here, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951.
- (ii) The following companies are not allowed to contribute to any political party:
  - (a) a Government company; and
  - (b) a company which has been in existence for less than three financial years.



- (iii) The aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half per cent. of its average net profits during the three immediately preceding financial years.
- (iv) No such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.
- (v) Without prejudice to the generality of the provisions of sub-section (1),
  - (a) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to affect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;
  - (b) the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed,—
    - (1) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and
    - (2) where such publication is not by or on behalf of, but for the advantage of a political party, to be a contribution for a political purpose.
- (vi) Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party to which such amount has been contributed. [Section 182(3)]
- (vii) If a company makes any contribution in contravention of the provisions of this section, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.

*“Officer who is in default”, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—*

- (i) *whole-time director;*
- (ii) *key managerial personnel;*

- (iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
- (iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
- (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
- (vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
- (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer. [Section 2(60)]

**“Whole-time director”** includes a director in the whole-time employment of the company [Section 2(94)]

**“Key managerial personnel”**, in relation to a company, means—

- (i) the Chief Executive Officer or the managing director or the manager;
- (ii) the Company Secretary;
- (iii) the whole-time director;
- (vi) the Chief Financial officer;
- (v) such other officer as may be prescribed. [Section 2(51)]

**“Chief Executive Officer”** means an officer of a company, who has been designated as such by it. [Section 2(18)]

**“Company secretary”** or **“secretary”** means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act. [Section 2(24)]

**“Chief Financial Officer”** means a person appointed as the Chief Financial Officer of a company. [Section 2(19)]

**“Registrar”** means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering companies and discharging various functions under this Act. [Section 2(75)]

*The MCA vide General Circular 19/ 2013 dated 10<sup>th</sup> December 2013, issued a clarification on disclosures to be made under section 182 relating to 'Prohibition and restrictions regarding political contributions' of the Companies Act, 2013.*

*The circular says that, with the coming into force of the scheme relating to 'Electoral Trust Companies' under the Income Tax Act, 1961 read with Ministry of Finance Notification No. S.O. 309(E) dated 31st January, 2013, it will be expedient to explain the requirements of disclosure on part of a company of any amount or amounts contributed by it to any political parties under section 182(3) of the Companies Act, 2013.*

*The Ministry hereby clarifies that:*

- (i) Companies contributing any amount or amounts to an 'Electoral Trust Company' for contributing to a political party or parties are not required to make disclosures required under section 182(3) of Companies Act 2013. It will be sufficient, if the Accounts of the company disclose the amount released to an Electoral Trust Company.*
- (ii) Companies contributing any amount or amounts directly to a political party or parties will be required to make the disclosures laid down in section 182(3) of the Companies Act, 2013.*
- (iii) Electoral trust companies will be required to disclose all amounts received by them from other companies/sources in their Books of Accounts and also disclose the amount or amounts contributed by them to a political party or parties as required by section 182(3) of Companies Act, 2013.*

#### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 293A of the Companies Act, 1956 i.e. Prohibitions and restrictions regarding political contributions.
- (ii) Under the Companies Act, 1956, a company may contribute any amount directly or indirectly to any political party or for any political purpose to any person. Now under the Companies Act, 2013, a company may contribute any amount directly or indirectly to any political party. Contribution to any person for political purpose is not allowed under the new Act.
- (iii) The limits for political contribution by company have been changed. Now instead of 5% as provided under the Companies Act, 1956, contribution shall not exceed 7.5% of the average net profits of the company during the three immediately preceding financial years.
- (iv) The punishment for contravention of provision related to political contribution has been increased, wherein in case of default, the company shall be punishable with fine which may extend to 5 times the amount so contributed and every officer who is in default shall be punishable with imprisonment for a term which may extend to 6 months and with fine which may extend to 5 times the amount so contributed.

## **(10) Power of Board and other persons to make contributions to national defence fund, etc. (Section 183 of the Companies Act, 2013)**

### **3.13 Political contributions**

Under the Companies Act, 1956, power of Board and other persons to make contributions to the National Defence Fund, etc. was regulated by section 293B. A new section 183 of the Companies Act, 2013 came into force on 12th September, 2013 which provides the power to Board and other persons to make contributions to national defence fund, etc. According to section 183 of the Companies Act, 2013:

- (i) The Board of Directors of any company or any person or authority exercising the powers of the Board of Directors of a company, or of the company in general meeting, may, notwithstanding anything contained in sections 180, 181 and section 182 or any other provision of this Act or in the memorandum, articles or any other instrument relating to the company, contribute such amount as it thinks fit to the National Defence Fund or any other Fund approved by the Central Government for the purpose of national defence.
- (ii) Every company shall disclose in its profits and loss account the total amount or amounts contributed by it to the Fund referred to in point (i) as specified above, during the financial year to which the amount relates.

*“Memorandum” means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act. [Section 2(56)]*

### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 293B of the Companies Act, 1956 i.e. Power of Board and other persons to make contributions to the National Defence Fund, etc.
- (ii) The provisions of both the sections i.e. section 293B of the Companies Act, 1956 and section 183 of the Companies Act, 2013 are same.

## **(11) Compensation for loss of office of managing or whole-time director or manager (Section 202 of the Companies Act, 2013)**

### **3.14 Managerial Remuneration**

Section 318 of the Companies Act, 1956, provided the provisions for compensation for loss of office permissible only to managing or whole-time directors or to directors who are managers. A new section 202 of the Companies Act, 2013 came into force on 12th September, 2013 which provides the provisions for compensation for loss of office of managing or whole-time director or manager. According to section 202 of the Companies Act, 2013:

- (i) A company may make payment to a managing or whole-time director or manager, but not to any other director, by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement.
- (ii) No payment of such compensation shall be made in the following cases:
  - (a) where the director resigns from his office as a result of the reconstruction of the company, or of its amalgamation with any other body corporate or bodies corporate, and is appointed as the managing or whole-time director, manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation;
  - (b) where the director resigns from his office otherwise than on the reconstruction of the company or its amalgamation as aforesaid;
  - (c) where the office of the director is vacated under sub-section (1) of section 167;
  - (d) where the company is being wound up, whether by an order of the Tribunal or voluntarily, provided the winding up was due to the negligence or default of the director;
  - (e) where the director has been guilty of fraud or breach of trust in relation to, or of gross negligence in or gross mismanagement of, the conduct of the affairs of the company or any subsidiary company or holding company thereof; and
  - (f) where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office.
- (iii) The compensation payable shall be on the basis of average remuneration actually earned by such persons for three years (or such shorter period as may be the case) immediately preceding the ceasing of holding of such office, and shall be for the unexpired portion of his term or for three years (whichever is shorter).
- (iv) No such payment however can be made at all if winding up of the company is commenced before or commences within 12 months after he ceases to hold office if the assets on winding up (after deducting expenses on winding up) are not sufficient to repay the shareholders the capital contributed by them (inclusive of premium, if any).
- (v) Nothing in this section shall be deemed to prohibit the payment to a managing or whole-time director, or manager, of any remuneration for services rendered by him to the company in any other capacity.

*“Tribunal” means the National Company Law Tribunal constituted under section 408. [Section 2(90)]*

*“Holding company”, in relation to one or more other companies, means a company of which such companies are subsidiary companies. [Section 2(46)]*

*“Subsidiary company” or “subsidiary”, in relation to any other company (that is to say the holding company), means a company in which the holding company—*

- (i) Controls the composition of the Board of Directors; or
- (ii) Exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

*Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.*

*Explanation.— For the purposes of this clause,—*

- (a) *a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;*
- (b) *the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;*
- (c) *the expression "company" includes any body corporate;*
- (d) *"layer" in relation to a holding company means its subsidiary or subsidiaries. [Section 2(87)]*

*"Body corporate" or "corporation" includes a company incorporated outside India, but does not include—*

- (i) *a co-operative society registered under any law relating to co-operative societies; and*
- (ii) *any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf. [Section 2(11)]*

*"Officer" includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act. [Section 2(59)]*

*"Remuneration" means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-tax Act, 1961. [Section 2(78)]*

#### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 318 of the Companies Act, 1956 i.e. Compensation for loss of office not permissible except to managing or whole-time directors or to directors who are managers.
- (ii) The provisions of both the sections i.e. section 318 of the Companies Act, 1956 and section 202 of the Companies Act, 2013 are same.

# Chapter 4: Meetings, Powers of the Board and Related party

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## (12) Restrictions on powers of Board (Section 180 of the Companies Act, 2013)

### 4.1 Meetings of Directors

Two main organs, the shareholders in general meeting and the directors acting as a Board conduct the affairs of a company. Therefore, directors frequently meet up to discuss various matters relating to the management and administration of the affairs of the company in the interest of the public and the shareholders. The modern practice is to confer on the directors the right to exercise all company's powers except for those matters, which are by law required to be exercised by the company in general meeting. Section 293 of the Companies Act, 1956 provided the restrictions on powers of Board. A new section 180 of the Companies Act, 2013 came into force on 12th September, 2013 which provides restrictions on powers of Board. According to section 180 of the Companies Act, 2013:

- (i) The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely:—
  - (a) To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.

“Undertaking” shall mean an undertaking in which the investment of the company exceeds twenty per cent. of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates twenty per cent. of the total income of the company during the previous financial year;

The expression “substantially the whole of the undertaking” in any financial year shall mean twenty per cent. or more of the value of the undertaking as per the audited balance sheet of the preceding financial year;
  - (b) To invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;
  - (c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business.

The acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by

cheque, draft, order or otherwise, shall not be deemed to be a borrowing of monies by the banking company within the meaning of this clause.

**“Temporary loans”** means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature;

- (d) To remit, or give time for the repayment of, any debt due from a director.
- (ii) Every special resolution passed by the company in general meeting in relation to the exercise of the powers referred to in point (c) above shall specify the total amount up to which monies may be borrowed by the Board of Directors.
- (iii) Nothing contained in above point (a) shall affect—
  - (A) the title of a buyer or other person who buys or takes on lease any property, investment or undertaking as is referred to in that clause, in good faith; or
  - (B) The sale or lease of any property of the company where the ordinary business of the company consists of, or comprises, such selling or leasing.
- (iv) Any special resolution passed by the company consenting to the transaction as is referred to in above point (a) may stipulate such conditions as may be specified in such resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transactions.

However, this shall not be deemed to authorise the company to effect any reduction in its capital except in accordance with the provisions contained in this Act.

- (vi) No debt incurred by the company in excess of the limit imposed by above point (c) shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause had been exceeded.

*“Net worth” means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation. [Section 2(57)]*

*“Paid-up share capital” or “share capital paid-up” means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called. [Section 2(64)]*

*“Free reserves” means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend:*



*Provided that—*

- (i) *any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or*
- (ii) *any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value,*

*shall not be treated as free reserves. [Section 2(43)]*

**“Banking Company”** means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949

*The MCA vide General Circular No. 15/2013 dated 13th September, 2013 has clarified that in respect of requirements of special resolution under Section 180 of the said Act, as against ordinary resolution required by the Companies Act 1956, if notice for any such general meeting was issued prior to 12<sup>th</sup> September, 2013, then such resolution may be passed in accordance with the requirement of the Companies Act 1956.*

#### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 293 of the Companies Act, 1956 i.e. Restrictions on powers of Board.
- (ii) This section is now applicable to all the companies instead of only public company and private company which is a subsidiary of a public company as provided under the Companies Act, 1956.
- (iii) The board of directors of company shall exercise the specified powers only with the consent of the company by a special resolution as compared to ordinary resolution provided in the Companies Act, 1956.
- (iv) “Undertaking” and “substantially the whole of the undertaking” has been specifically defined under the Companies Act, 2013.
- (v) Now the approval of general meeting is only required when the Board wants to invest otherwise in trust securities, the compensation received by it as a result of Merger or amalgamations only and not on compulsory acquisition of any undertaking as provided under the Companies Act, 1956.
- (vi) The power to contribute to charitable and other funds directly relating to the business of the company or the welfare of its employees in excess of fifty thousand rupees or five per cent of its average net profits whichever is higher (which was in Companies Act, 1956) is not included in the Companies Act, 2013. What is included in Section 181 of Companies Act, 2013 is company to contribute bona fide to charitable funds. Prior permission of company in general meeting shall be required if amount of contribution in any financial year exceeds 5 per cent of average net profit for three immediately preceding financial years.

## **(13) Restriction on non-cash transactions involving directors (Section 192 of the Companies Act, 2013)**

### **4.1 Meetings of Directors**

There was no provision under the Companies Act, 1956 for restrictions on non-cash transactions involving directors. A new section 192 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for restrictions on non-cash transactions involving directors. According to section 192 of the Companies Act, 2013:

- (i) No company shall enter into an arrangement by which—
  - (a) a director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or
  - (b) the company acquires or is to acquire assets for consideration other than cash, from such director or person so connected, unless prior approval for such arrangement is accorded by a resolution of the company in general meeting and if the director or connected person is a director of its holding company, approval shall also be required to be obtained by passing a resolution in general meeting of the holding company.
- (ii) The notice for approval of the resolution by the company or holding company in general meeting shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.
- (iii) Any arrangement entered into by a company or its holding company in contravention of the provisions of this section shall be voidable at the instance of the company unless—
  - (a) the restitution of any money or other consideration which is the subject-matter of the arrangement is no longer possible and the company has been indemnified by any other person for any loss or damage caused to it; or
  - (b) any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.

*“Associate company”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.*

*Explanation.— For the purposes of this clause, “significant influence” means control of at least twenty per cent. of total share capital, or of business decisions under an agreement. [Section 2(6)]*

### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

(i) The Companies Act, 1956 did not contain any provision relating to restrictions on non-cash transactions involving directors. The Companies Act, 2013 has provided a new section for it.

## **(14) Prohibition on forward dealings in securities of company by director or key managerial personnel (Section 194 of the Companies Act, 2013)**

### **4.1 Meetings of Directors**

There was no provision under the Companies Act, 1956 for prohibition on forward dealings in securities of company by director or key managerial personnel. A new section 194 of the Companies Act, 2013 which came into force on 12th September, 2013 provides for prohibition on forward dealings in securities of company by director or key managerial personnel. According to section 194 of the Companies Act, 2013:

- (i) No director of a company or any of its key managerial personnel shall buy in the company, or in its holding, subsidiary or associate company—
  - (a) a right to call for delivery or a right to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures; or
  - (b) a right, as he may elect, to call for delivery or to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures.
- (ii) If a director or any key managerial personnel of the company contravenes the above provisions, such director or key managerial personnel shall be punishable with imprisonment for a term which may extend to two years or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.
- (iii) Where a director or other key managerial personnel acquires any securities in contravention, he shall along with fine and imprisonment mentioned above, also be liable to surrender the same to the company and the company shall not register the securities so acquired in his name in the register, and if they are in dematerialised form, it shall inform the depository not to record such acquisition and such securities, in both the cases, shall continue to remain in the names of the transferors.
- (iv) "relevant shares" and "relevant debentures" mean shares and debentures of the company in which the concerned person is a whole-time director or other key managerial personnel or shares and debentures of its holding and subsidiary companies.

*"Share" means a share in the share capital of a company and includes stock. [Section 2(84)]*

*"Debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not. [Section 2(30)]*

*"Charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage. [Section 2(16)]*

*"Securities" means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956. [Section 2(81)]*

### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

The Companies Act, 1956 did not contain any provision relating to prohibition on forward dealings in securities of company by director or key managerial personnel. The Companies Act, 2013 has provided a new section for it.

### **(15) Prohibition on insider trading of securities (Section 195 of the Companies Act, 2013)**

#### **4.1 Meetings of Directors**

There was no provision under the Companies Act, 1956 for prohibition on insider trading of securities. A new section 195 of the Companies Act, 2013 which came into force on 12th September, 2013 provides for prohibition on insider trading of securities. According to section 195 of the Companies Act, 2013:

- (i) No person including any director or key managerial personnel of a company shall enter into insider trading. But if any communication is required in the ordinary course of business or profession or employment or under any law, then the above prohibition does not apply.
- (ii) "Insider trading" means—
  - (a) an act of subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities by any director or key managerial personnel or any other officer of a company either as principal or agent if such director or key managerial personnel or any other officer of the company is reasonably expected to have access to any non-public price sensitive information in respect of securities of company; or
  - (b) An act of counselling about procuring or communicating directly or indirectly any non-public price-sensitive information to any person;
- (iii) "price-sensitive information" means any information which relates, directly or indirectly, to a company and which if published is likely to materially affect the price of securities of the company.
- (iv) If any person contravenes the provisions of this section, he shall be punishable with imprisonment for a term which may extend to five years or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher, or with both.

*"Officer" includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act. [Section 2(59)]*

### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

The Companies Act, 1956 did not contain any provision relating to prohibition on insider trading of securities. The Companies Act, 2013 has provided a new section for it.

# Chapter 11: Companies incorporated outside India

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## **(16) Application of Act to foreign companies (Section 379 of the Companies Act, 2013)**

### **11.0 Foreign Companies**

Section 591 of the Companies Act, 1956 provided for application of sections 592 to 602 to foreign companies. A new section 379 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for application of Act to foreign companies. According to section 379 of the Companies Act, 2013:

Where not less than fifty per cent. of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by

- (i) one or more citizens of India; or
- (ii) by one or more companies or bodies corporate incorporated in India; or
- (iii) by one or more citizens of India and one or more companies or bodies corporate incorporated in India,

whether singly or in the aggregate, such company shall comply with the provisions of Chapter XXII and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 591 of the Companies Act, 1956 i.e. Application of sections 592 to 602 to foreign companies.
- (ii) First clause of section 591 of Companies Act, 1956 has been dispensed with because there is no relevance of dividing companies under two classes i.e. between companies incorporated outside India after the commencement of 1956 Act and companies incorporated outside India which have before the commencement of 1956 Act established a Place of business (POB) within India and continue to have an established POB within India.

## **(17) Interpretation [Section 386 [except clause (a)]]**

### **11.1 & 11.2 Documents, etc., to be Delivered to the Registrar by Foreign Companies and Return to be delivered to Registrar where Documents are altered**

Section 602 of the Companies Act, 1956 provided the interpretation of foregoing sections of Part i.e. Part XI i.e. Companies incorporated outside India. A new section 386 of the Companies Act, 2013 partially came into force on 12th September, 2013 which provides the

Interpretation of “certified”, “director” and “place of business”. Out of these three terms, clause (a) i.e. “certified” has not been notified. According to section 386 (b) and (c) of the Companies Act, 2013:

For the purposes of the foregoing provisions of this Chapter,—

- (b) the expression “director”, in relation to a foreign company, includes any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act; and
- (c) the expression “place of business” includes a share transfer or registration office.

#### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 602 of the Companies Act, 1956 i.e. Interpretation of foregoing sections of Part.
- (ii) Earlier under the Companies Act, 1956, the interpretation of “prospectus” and “secretary” was also there. These are not present under the Companies Act, 2013.

### **(18) Display of name, etc., of foreign company (Section 382 of the Companies Act, 2013)**

#### **11.4 Display of name, etc., of foreign company**

Section 595 of the Companies Act, 1956 provided for obligation to state name of foreign company, whether limited, and country where incorporated. A new section 382 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for display of name, etc., of foreign company. According to section 382 of the Companies Act, 2013:

Every foreign company shall—

- (a) conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate;
- (b) cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, bill- heads and letter paper, and in all notices, and other official publications of the company; and
- (c) if the liability of the members of the company is limited, cause notice of that fact—
  - (i) to be stated in every such prospectus issued and in all business letters, bill-heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and
  - (ii) to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of

the language or one of the languages in general use in the locality in which the office or place is situated.

*“Prospectus” means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate. [Section 2(70)]*

*“Document” includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form. [Section 2(36)]*

#### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 595 of the Companies Act, 1956 i.e. Obligation to state name of foreign company, whether limited, and country where incorporated.
- (ii) Under the Companies Act, 1956, every foreign company shall in every prospectus inviting subscriptions in India for its shares or debentures, state the country in which the company is incorporated. This obligation has been dispensed with under the Companies Act, 2013.

### **(19) Service on foreign company (Section 383 of the Companies Act, 2013)**

#### **11.5 Service on foreign company**

Section 596 of the Companies Act, 1956 provided for service on foreign company. A new section 383 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for Service on foreign company. According to section 383 of the Companies Act, 2013:

Any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person whose name and address have been delivered to the Registrar under section 380 and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode.

#### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 596 of the Companies Act, 1956 i.e. Service on foreign company.
- (ii) Under the Companies Act, 2013, service of document on foreign company can now also be served through any electronic mode. This provision was not present under the Companies Act, 1956.
- (iii) Under the Companies Act, 1956, where any such company failed to deliver to the Registrar, the name and address of the person responsible for accepting documents on behalf of the company or in case the said person is dead or refused to accept or ceases to be so authorised, a document may be served on the company by leaving it at, or sending it by post to, any place of business established by the company in India. This provision is not present under the Companies Act, 2013.

# Chapter 12: Offences and Penalties

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## (20) Offences to be non-cognizable (Section 439 of the Companies Act, 2013)

### 12.2 Offences to be non-cognizable

Section 621 of the Companies Act, 1956 provided that the offences against Act to be cognizable only on complaint by Registrar, shareholder or Government and section 624 of the Companies Act, 1956 provided that notwithstanding anything in the Code of Criminal Procedure, 1898, every offence against Act shall be deemed to be non-cognizable within the meaning of the said Code. A new section 439 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for offences to be non-cognizable. According to section 439 of the Companies Act, 2013:

- (i) Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in sub-section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.
- (ii) No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder of the company, or of a person authorised by the Central Government in that behalf.
- (iii) The court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorised by the Securities and Exchange Board of India.
- (iv) Nothing in this sub-section shall apply to a prosecution by a company of any of its officers.
- (v) Where the complainant is the Registrar or a person authorised by the Central Government, the presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial.
- (vi) The above provisions shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters in Chapter XX or in any other provision of this Act relating to winding up of companies.
- (vii) The liquidator of a company shall not be deemed to be an officer of the company.

**“Court” means—**

- (i) *the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any district court or district courts subordinate to that High Court under sub-clause (ii);*



- (ii) *the district court, in cases where the Central Government has, by notification, empowered any district court to exercise all or any of the jurisdictions conferred upon the High Court, within the scope of its jurisdiction in respect of a company whose registered office is situate in the district;*
- (iii) *The Court of Session having jurisdiction to try any offence under this Act or under any previous company law;*
- (iv) *The Special Court established under section 435;*
- (v) *Any Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law. [Section 2(29)]*

**“Securities and Exchange Board”** means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992. [Section 2(82)]

#### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) As per section 624 of Companies Act, 1956, all offences are non-cognizable. Section 621 of the Companies Act, 1956, provides that the court shall not take cognizance except on a complaint by Registrar, Shareholder or Government.
- (ii) An exception has been provided that the offences related to investigation into the affairs of a company by Serious Fraud Investigation Office under section 212, shall be deemed to be cognizable offence and besides this every offence shall be deemed to be non cognizable within the meaning of the said Code, notwithstanding anything in the Code of Criminal Procedure, 1973.

#### **(21) Application of fines (Section 446 of the Companies Act, 2013)**

##### **12.4 Application of fines**

Section 626 of the Companies Act, 1956 provided for Application of fines. A new section 446 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for Application of fines. According to section 446 of the Companies Act, 2013:

The court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the payment of a reward to the person on whose information the proceedings were instituted.

#### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 626 of the Companies Act, 1956 i.e. Application of fines.
- (ii) The provisions of both the sections i.e. section 626 of the Companies Act, 1956 and section 446 of the Companies Act, 2013 are same.

# Chapter 14: Other Relevant Miscellaneous Provisions of the Companies Act, 1956

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(22) Annual reports on Government companies (Section 394 of the Companies Act, 2013)

## 14.3 Government Companies

As we have already noted earlier in this material that according to section 2(45) of the Companies Act, 2013, "Government Company" means any company in which not less than fifty one per cent. of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

Section 619A of the Companies Act, 1956 provided for Annual reports on Government companies. A new section 394 of the Companies Act, 2013 came into force on 12<sup>th</sup> September, 2013 which provides for Annual reports on Government companies. According to section 394 of the Companies Act, 2013:

- (i) Where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that company to be—
  - (a) prepared within three months of its annual general meeting before which the comments given by the Comptroller and Auditor-General of India and the audit report are placed under the proviso to sub-section (6) of section 143; and
  - (b) as soon as may be after such preparation, laid before both Houses of Parliament together with a copy of the audit report and comments upon or supplement to the audit report, made by the Comptroller and Auditor-General of India.
- (ii) Where in addition to the Central Government, any State Government is also a member of a Government company, that State Government shall cause a copy of the annual report prepared under sub-section (1) to be laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments upon or supplement to the audit report above.

#### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 619A of the Companies Act, 1956 i.e. Annual reports on Government companies.
- (ii) Under the Companies Act, 1956, provision for annual report by a company in which only the state government is a member and the Central Government is not a member was provided. This provision has been dispensed with under the Companies Act, 2013.
- (iii) The provisions of section 619A of the Companies Act, 1956 as they were applied to any other Government Company was also applicable to a Government company in liquidation. This provision has been dispensed with under the Companies Act, 2013.

#### **(23) Protection of action taken in good faith (Section 456 of the Companies Act, 2013)**

##### **14.4 Provisions for Removal of Administrative Difficulties**

Section 635A of the Companies Act, 1956 provided for protection of acts done in good faith. A new section 456 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for protection of action taken in good faith. According to section 456 of the Companies Act, 2013:

No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder, or in respect of the publication by or under the authority of the Government or such officer, of any report, paper or proceedings.

#### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 635A of the Companies Act, 1956 i.e. Protection of acts done in good faith.
- (ii) The provisions of both the sections i.e. section 635A of the Companies Act, 1956 and section 456 of the Companies Act, 2013 are same.

#### **(24) Non-disclosure of information in certain cases (Section 457 of the Companies Act, 2013)**

##### **14.4 Provisions for Removal of Administrative Difficulties**

Section 635AA of the Companies Act, 1956 provided for Non-disclosure of information in certain cases. A new section 457 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for Non-disclosure of information in certain cases. According to section 457 of the Companies Act, 2013:

Notwithstanding anything contained in any other law for the time being in force, the Registrar, any officer of the Government or any other person shall not be compelled to disclose to any court, Tribunal or other authority, the source from where he got any information which—

- (a) has led the Central Government to order an investigation under section 210; or
- (b) is or has been material or relevant in connection with such investigation.

#### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 635AA of the Companies Act, 1956 i.e. Non-disclosure of information in certain cases.
- (ii) Under the Companies Act, 1956, non-disclosure of information in certain cases also include Special audit under section 233A of the Companies Act, 1956. This has been dispensed with under the Companies Act, 2013.

#### **(25) Powers of Central Government or Tribunal to accord approval, etc., subject to conditions and to prescribe fees on applications (Section 459 of the Companies Act, 2013)**

##### **14.4 Provisions for Removal of Administrative Difficulties**

Section 637A of the Companies Act, 1956 provided for power of Central Government or Company Law Board to accord approval, etc., subject to conditions and to prescribe fees on applications. A new section 459 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for powers of Central Government or Tribunal to accord approval, etc., subject to conditions and to prescribe fees on applications. According to section 459 of the Companies Act, 2013:

- (i) Where the Central Government or the Tribunal is required or authorised by any provision of this Act—
  - (a) to accord approval, sanction, consent, confirmation or recognition to, or in relation to, any matter; or
  - (b) to give any direction in relation to any matter; or
  - (c) to grant any exemption in relation to any matter,

then, the Central Government or the Tribunal may in the absence of anything to the contrary contained in that provision or any other provision of this Act, accord, give or grant such approval, sanction, consent, confirmation, recognition, direction or exemption, subject to such conditions, limitations or restrictions as it may think fit to impose and may, in the case of a contravention of any such condition, limitation or restriction, rescind or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption.

- (ii) Every application which may be, or is required to be, made to the Central Government or the Tribunal under any provision of this Act—
  - (a) in respect of any approval, sanction, consent, confirmation or recognition to be accorded by that Government or the Tribunal to, or in relation to, any matter; or
  - (b) in respect of any direction or exemption to be given or granted by that Government or the Tribunal in relation to any matter; or
  - (c) in respect of any other matter,shall be accompanied by prescribed fees.
- (iii) Different fees may be prescribed for applications in respect of different matters or in case of applications by different classes of companies.

**Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 637A of the Companies Act, 1956 i.e. Power of Central Government or Company Law Board to accord approval, etc., subject to conditions and to prescribe fees on applications.
- (ii) The power of the Company Law Board has been shifted to the Tribunal under the Companies Act, 2013.

**(26) Condonation of delays in certain cases (Section 460 of the Companies Act, 2013)**

**14.4 Provisions for Removal of Administrative Difficulties**

Section 637B of the Companies Act, 1956 provided for Condonation of delays in certain cases. A new section 460 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for Condonation of delays in certain cases. According to section 460 of the Companies Act, 2013:

Notwithstanding anything contained in this Act,—

- (a) where any application required to be made to the Central Government under any provision of this Act in respect of any matter is not made within the time specified therein, that Government may, for reasons to be recorded in writing, condone the delay; and
- (b) where any document required to be filed with the Registrar under any provision of this Act is not filed within the time specified therein, the Central Government may, for reasons to be recorded in writing, condone the delay.

**Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 637B of the Companies Act, 1956 i.e. Condonation of delays in certain cases.

- (ii) The provisions of both the sections i.e. section 637B of the Companies Act, 1956 and section 460 of the Companies Act, 2013 are same.

## **(27) Annual report by Central Government (Section 461 of the Companies Act, 2013)**

### **14.4 Provisions for Removal of Administrative Difficulties**

Section 638 of the Companies Act, 1956 provided for Annual report by Central Government. A new section 461 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for Annual report by Central Government. According to section 461 of the Companies Act, 2013:

The Central Government shall cause a general annual report on the working and administration of this Act to be prepared and laid before each House of Parliament within one year of the close of the year to which the report relates.

### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 638 of the Companies Act, 1956 i.e. Annual report by Central Government.
- (ii) The provisions of both the sections i.e. section 638 of the Companies Act, 1956 and section 461 of the Companies Act, 2013 are same.

## **(28) Power to exempt class or classes of companies from provisions of this Act (Section 462 of the Companies Act, 2013)**

### **14.4 Provisions for Removal of Administrative Difficulties**

Section 620 of the Companies Act, 1956 provided for power to modify Act in relation to Government companies. A new section 462 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for Power to exempt class or classes of companies from provisions of this Act. According to section 462 of the Companies Act, 2013:

- (i) The Central Government may in the public interest, by notification direct that any of the provisions of this Act,—
  - (a) shall not apply to such class or classes of companies; or
  - (b) shall apply to the class or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification.
- (ii) A copy of every notification proposed to be issued as above shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or,

as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

#### **Point of Comparison in respect of old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 620 of the Companies Act, 1956 i.e. power to modify Act in relation to Government companies.
- (ii) Instead of specific exemptions in the Companies Act, 2013 itself, the Central Government may, in the public interest by notification, direct that any of the provisions of this Act shall not apply to such class or classes of companies, or shall apply to the class or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification. Under the Companies Act, 1956, such power can only be exercised in relation to Government companies.

#### **(29) Power of court to grant relief in certain cases (Section 463 of the Companies Act, 2013)**

##### **14.4 Provisions for Removal of Administrative Difficulties**

Section 633 of the Companies Act, 1956 provided for Power of court to grant relief in certain cases. A new section 463 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for Power of court to grant relief in certain cases. According to section 463 of the Companies Act, 2013:

- (i) If it appears to the court hearing the case that an officer of a company is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust but he has acted honestly and reasonably, he ought fairly to be excused having regard to all the circumstances of the case, including those connected with his appointment, the court may relieve him, either wholly or partly, from his liability on such term, as it may think fit.
- (ii) In a criminal proceeding, the court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.
- (iii) Where any such officer has reason to apprehend that any proceeding will or might be brought against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the High Court for relief and the High Court on such application shall have the same power to relieve him as it would have had if it had been a court before which a proceedings against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought.
- (iv) No court shall grant any relief to any officer unless it has, by notice served in the manner specified by it, required the Registrar and such other person, if any, as it thinks necessary, to show cause why such relief should not be granted.

#### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 633 of the Companies Act, 1956 i.e. Power of court to grant relief in certain cases.
- (ii) The provisions of both the sections i.e. section 633 of the Companies Act, 1956 and section 463 of the Companies Act, 2013 are same.

#### **(30) Power of Central Government to appoint company prosecutors (Section 443 of the Companies Act, 2013)**

##### **14.4 Provisions for Removal of Administrative Difficulties**

Section 624A of the Companies Act, 1956 provided for Power of Central Government to appoint company prosecutors. A new section 443 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for Power of Central Government to appoint company prosecutors. According to section 443 of the Companies Act, 2013:

- (i) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Central Government may appoint generally, or for any case, or in any case, or for any specified class of cases in any local area, one or more persons, as company prosecutors for the conduct of prosecutions arising out of this Act.
- (ii) The persons so appointed as company prosecutors shall have all the powers and privileges conferred by the Code on Public Prosecutors appointed under section 24 of the Code.

#### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to the section 624A of the Companies Act, 1956 i.e. Power of Central Government to appoint company prosecutors.

#### **(31) Appeal against acquittal (Section 444 of the Companies Act, 2013)**

##### **14.4 Provisions for Removal of Administrative Difficulties**

Section 624B of the Companies Act, 1956 provided for appeal against acquittal. A new section 444 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for appeal against acquittal. According to section 444 of the Companies Act, 2013:

- (i) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Central Government may, in any case arising under this Act, direct any company prosecutor or authorise any other person either by name or by virtue of his office, to present an appeal from an order of acquittal passed by any court, other than a High Court.
- (ii) An appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.



#### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to the section 624B of the Companies Act, 1956 i.e. Appeal against acquittal.
- (ii) The provisions of both the sections i.e. section 624B of the Companies Act, 1956 and section 444 of the Companies Act, 2013 are same.

#### **(32) Compensation for accusation without reasonable cause (Section 445 of the Companies Act, 2013)**

##### **14.4 Provisions for Removal of Administrative Difficulties**

There was no provision under the Companies Act, 1956 for compensation for accusation without reasonable cause. A new section 445 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for it. According to section 445 of the Companies Act, 2013:

The provisions of section 250 of the Code of Criminal Procedure, 1973 shall apply mutatis mutandis to compensation for accusation without reasonable cause before the Special Court or the Court of Session.

#### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

The Companies Act, 1956 did not contain any provision relating to compensation for accusation without reasonable cause. The Companies Act, 2013 has provided a new section for it.

#### **(33) Power of Central Government to amend Schedules (Section 467 of the Companies Act, 2013)**

##### **14.5 Powers of the Central Government**

Section 641 of the Companies Act, 2013 provided for power to alter Schedules. A new section 467 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for Power of Central Government to amend Schedules. According to section 467 of the Companies Act, 2013:

- (i) The Central Government may, by notification, alter any of the regulations, rules, Tables, forms and other provisions contained in any of the Schedules to this Act.
- (ii) Any alteration notified as above shall have effect as if enacted in this Act and shall come into force on the date of the notification, unless the notification otherwise directs.
- (iii) No such alteration in Table F of Schedule I shall apply to any company registered before the date of such alteration.
- (iv) Every alteration made by the Central Government shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty

days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the alteration, or both Houses agree that the alteration should not be made, the alteration shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done in pursuance of that alteration.

*“Schedule” means a Schedule annexed to this Act. [Section 2(79)]*

*“Alter” or “Alteration” includes the making of additions, omissions and substitutions. [Section 2(3)]*

#### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 641 of the Companies Act, 2013 i.e. Power to alter Schedules.
- (ii) The provisions of both the sections i.e. section 641 of the Companies Act, 1956 and section 467 of the Companies Act, 2013 are same.

#### **(34) Power of Central Government to make rules relating to winding up (Section 468 of the Companies Act, 2013)**

##### **14.5 Powers of the Central Government**

Section 643 of the Companies Act, 1956 provided for power of Supreme Court to make rules. A new section 468 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for Power of Central Government to make rules relating to winding up. According to section 468 of the Companies Act, 2013:

- (i) The Central Government shall, make rules consistent with the Code of Civil Procedure, 1908 providing for all matters relating to the winding up of companies, which by this Act, are to be prescribed, and may make rules providing for all such matters, as may be prescribed.
- (ii) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
  - (a) as to the mode of proceedings to be held for winding up of a company by the Tribunal;
  - (b) for the voluntary winding up of companies, whether by members or by creditors;
  - (c) for the holding of meetings of creditors and members in connection with proceedings under section 230;
  - (d) for giving effect to the provisions of this Act as to the reduction of the capital;

- (e) generally for all applications to be made to the Tribunal under the provisions of this Act;
  - (f) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
  - (g) the settling of lists of contributories and the rectifying of the register of members where required, and collecting and applying the assets;
  - (h) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
  - (i) the making of calls; and
  - (j) the fixing of a time within which debts and claims shall be proved.
- (iii) All rules made by the Supreme Court on the matters referred to in this section as it stood immediately before the commencement of this Act and in force at such commencement, shall continue to be in force, till such time the rules are made by the Central Government and any reference to the High Court in relation to winding up of a company in such rules shall be construed as a reference to the Tribunal.

*“Contributory” means a person liable to contribute towards the assets of the company in the event of its being wound up. [Section 2(26)]*

*Explanation.—For the purposes of this clause, it is hereby clarified that a person holding fully paid-up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory under the Act whilst retaining rights of such a contributory.*

*“Book and paper” and “book or paper” include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form. [Section 2(12)]*

#### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 643 of the Companies Act, 1956 i.e. Power of Supreme Court to make rules.
- (ii) The power of Supreme Court to make rules relating to winding up under the Companies Act, 1956 has been shifted to Central Government under the Companies Act, 2013.

#### **(35) Power of Central Government to make rules (Section 469 of the Companies Act, 2013)**

##### **14.5 Powers of the Central Government**

Section 642 of the Companies Act, 1956 provided for power of Central Government to make rules. A new section 469 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for Power of Central Government to make rules. According to section 469 of the Companies Act, 2013:

- (i) The Central Government may, by notification, make rules for carrying out the provisions of this Act.
- (ii) The Central Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provision is to be or may be made by rules.
- (iii) Any rule made as above may provide that a contravention thereof shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues.
- (iv) Every rule made under this section and every regulation made by Securities and Exchange Board under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

**Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 642 of the Companies Act, 1956 i.e. Power of Central Government to make rules.
- (ii) The provisions of both the sections i.e. section 642 of the Companies Act, 1956 and section 469 of the Companies Act, 2013 are same.

**(36) Delegation by Central Government of its powers and functions (Section 458 of the Companies Act, 2013)**

**14.5 Powers of the Central Government**

Section 637 of the Companies Act, 1956 provided for delegation by Central Government of its powers and functions under Act. A new section 458 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for delegation by Central Government of its powers and functions. According to section 458 of the Companies Act, 2013:

- (i) The Central Government may, by notification, and subject to such conditions, limitations and restrictions as may be specified therein, delegate any of its powers or functions under this Act other than the power to make rules to such authority or officer as may be specified in the notification.

However, the powers to enforce the provisions contained in section 194 and section 195 relating to forward dealing and insider trading shall be delegated to SEBI for listed companies or the companies which intend to get their securities listed.

In such case, any officer authorised by the SEBI shall have the power to file a complaint in the court of competent jurisdiction.

- (ii) A copy of every notification issued under point (i) shall, as soon as may be after it is issued, be laid before each House of Parliament.

*“Listed company” means a company which has any of its securities listed on any recognised stock exchange. [Section 2(52)]*

*“Recognised stock exchange” means a recognised stock exchange as defined in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956. [Section 2(73)]*

#### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 637 of the Companies Act, 1956 i.e. Delegation by Central Government of its powers and functions under Act.
- (ii) Now the Central Government can delegate its powers and functions under all the provisions of the Companies Act, 2013, whereas under the Companies Act, 1956, some sections have been specified, where no delegation is allowed.

#### **(37) Power to remove difficulties (Section 470 of the Companies Act, 2013)**

##### **14.5 Powers of the Central Government**

There was no provision under the Companies Act, 1956 for power to remove difficulties if arises in giving effect to the provisions of this Act. A new section 470 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for it. According to section 470 of the Companies Act, 2013:

- (i) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty.
- (ii) No such order shall be made after the expiry of a period of five years from the date of commencement of section 1 of this Act.
- (iii) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

#### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

The Companies Act, 1956 did not contain any provision relating to power to remove difficulties if arises in giving effect to the provisions of this Act. The Companies Act, 2013 has provided a new section for it.

### **(38) Power of Central Government to direct companies to furnish information or statistics (Section 405 of the Companies Act, 2013)**

#### **14.5 Powers of the Central Government**

Section 615 of the Companies Act, 1956 provided for power of Central Government to direct companies to furnish information or statistics. A new section 405 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for power of Central Government to direct companies to furnish information or statistics. According to section 405 of the Companies Act, 2013:

- (i) The Central Government may, by order, require companies generally, or any class of companies, or any company, to furnish such information or statistics with regard to their or its constitution or working, and within such time, as may be specified in the order.
- (ii) Every above order shall be published in the Official Gazette and may be addressed to companies generally or to any class of companies, in such manner, as the Central Government may think fit.
- (iii) The date of such publication shall be deemed to be the date on which requirement for information or statistics is made on such companies or class of companies, as the case may be.
- (iv) For the purpose of satisfying itself that any information or statistics furnished by a company or companies in pursuance of any above order is correct and complete, the Central Government may by order require such company or companies to produce such records or documents in its possession or allow inspection thereof by such officer or furnish such further information as that Government may consider necessary.
- (v) If any company fails to comply with an order made above or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect, the company shall be punishable with fine which may extend to twenty-five thousand rupees and every officer of the company who is in default, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to three lakh rupees, or with both.
- (vi) Where a foreign company carries on business in India, all references to a company in this section shall be deemed to include references to the foreign company in relation, and only in relation, to such business.

#### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 615 of the Companies Act, 2013 i.e. Power of Central Government to direct companies to furnish information or statistics.
- (ii) The amount of punishment in case a company fails to comply with any order under this section or furnishes incorrect or incomplete information or statistics has been increased

to Rs. 25,000. Earlier under the Companies Act, 1956, it was Rs. 10, 000. Punishment in case of default by the officer has been increased from Rs. 10, 000 to Rs. 25,000 and which may extend to Rs. 3 Lacs.

- (iii) The period of imprisonment has also been increased to maximum of six months from the maximum of three months.
- (iv) Under the Companies Act, 1956, if a company has failed to furnish any information or statistics as required by the order or for satisfying that any information or statistics furnished by a company in pursuance of order is correct and complete, the Central Government may direct an inquiry. This provision has been dispensed with under the Companies Act, 2013.

### **(39) Punishment for fraud (Section 447 of the Companies Act, 2013)**

#### **14.7 Various Punishments under the Act**

There was no provision under the Companies Act, 1956 for punishment for fraud. A new section 447 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for it. According to section 447 of the Companies Act, 2013:

- (i) Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud
- (ii) Where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Explanation.—For the purposes of this section—

- (a) “fraud” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;
- (b) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled;
- (c) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.

### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

The Companies Act, 1956 did not contain any provision relating to punishment for fraud. The Companies Act, 2013 has provided a new section for it.

### **(40) Penalty for false statements (Section 448 of the Companies Act, 2013)**

#### **14.7 Various Punishments under the Act**

Section 628 of the Companies Act, 1956 provided for penalty for false statements. A new section 448 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for penalty for false statements. According to section 448 of the Companies Act, 2013:

Save as otherwise provided in this Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement,—

- (a) which is false in any material particulars, knowing it to be false; or
- (b) which omits any material fact, knowing it to be material,

he shall be liable under section 447.

*“Financial statement” in relation to a company, includes—*

- (i) a balance sheet as at the end of the financial year;*
- (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;*
- (iii) cash flow statement for the financial year;*
- (iv) a statement of changes in equity, if applicable; and*
- (v) any explanatory note annexed to, or forming part of, any document referred to in sub clause (i) to sub-clause (iv):*

*Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement. [Section 2(40)]*

### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 628 of the Companies Act, 1956 i.e. Penalty for false statements.
- (ii) In case of making any false statement or omitting any material fact in any return, report, certificate, financial statement, prospectus, statement or other document required by or for the purposes of any of the provisions of the Act, the person in default shall be liable under section 447 of the Companies Act, 2013.



#### **(41) Penalty for false evidence (Section 449 of the Companies Act, 2013)**

##### **14.7 Various Punishments under the Act**

Section 629 of the Companies Act, 1956 provided for penalty for false evidence. A new section 449 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for penalty for evidence. According to section 449 of the Companies Act, 2013:

Save as otherwise provided in this Act, if any person intentionally gives false evidence—

- (a) upon any examination on oath or solemn affirmation, authorised under this Act; or
- (b) in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act,

he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten lakh rupees.

##### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 629 of the Companies Act, 1956 i.e. Penalty for false evidence.
- (ii) Under the Companies Act, 2013, punishment and amount of fine in case of false evidence has been increased. Under the Companies Act, 1956, the defaulter shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine. Whereas under the Companies Act, 2013, the defaulter shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten lakh rupees.

#### **(42) Punishment where no specific penalty or punishment is provided (Section 450 of the Companies Act, 2013)**

##### **14.7 Various Punishments under the Act**

Section 629A of the Companies Act, 1956 provided for penalty where no specific penalty is provided elsewhere in the Act. A new section 450 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for punishment where no specific penalty or punishment is provided. According to section 450 of the Companies Act, 2013:

If a company or any officer of a company or any other person contravenes:

- (i) any of the provisions of this Act; or
- (ii) the rules made thereunder; or
- (iii) any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted,

and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person:

- (i) shall be punishable with fine which may extend to ten thousand rupees, and
- (ii) Where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

**Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 629A of the Companies Act, 1956 i.e. Penalty where no specific penalty is provided elsewhere in the Act.
- (ii) Under section 629A of the Companies Act, 1956, contravention by any company or any other person was only included. Whereas under section 450 of the Companies Act, 2013, contravention by any officer of a company is also included.
- (iii) Under the Companies Act, 2013, punishment where no specific penalty or punishment is provided has been increased to ten thousand rupees as compared to five thousand rupees as provided under the Companies Act, 1956 and in case of continuation of the contravention, with a further fine of Rs. 1,000 for every day after the first during which the contravention continues as compared to Rs. 500 as provided under the Companies Act, 1956.

**(43) Punishment in case of repeated default (Section 451 of the Companies Act, 2013)**

**14.7 Various Punishments under the Act**

There was no provision under the Companies Act, 1956 for punishment in case of repeated default. A new section 451 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for it. According to section 451 of the Companies Act, 2013:

If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.

**Point of Comparison in respect to old law i.e. the Companies Act, 1956**

The Companies Act, 1956 did not contain any provision relating to punishment in case of repeated default. The Companies Act, 2013 has provided a new section for it.

#### **(44) Penalty for wrongful withholding of property (Section 452 of the Companies Act, 2013)**

##### **14.7 Various Punishments under the Act**

Section 630 of the Companies Act, 1956 provided for penalty for wrongful withholding of property. A new section 452 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for penalty for wrongful withholding of property. According to section 452 of the Companies Act, 2013:

- (i) If any officer or employee of a company—
  - (a) wrongfully obtains possession of any property, including cash of the company; or
  - (b) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act,  
  
he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.
- (ii) The Court trying an offence may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from such property or cash or in default, to undergo imprisonment for a term which may extend to two years.

##### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 630 of the Companies Act, 1956 i.e. Penalty for wrongful withholding of property.
- (ii) Section 452 of the Companies Act, 2013, specifically provides that property also includes cash. It was not present under the Companies Act, 1956.
- (iii) Under the Companies Act, 2013, members can also make a complaint against any officer or employee of the company for wrongful withholding of property. This was not allowed under the Companies Act, 1956.
- (iv) Under the Companies Act, 2013, penalty for wrongful withholding of property has been increased from ten thousand rupees as provided under the Companies Act, 1956, to one lakh rupees which may further extend to five lakh rupees.

#### **(45) Punishment for improper use of "Limited" or "Private Limited" (Section 453 of the Companies Act, 2013)**

##### **14.7 Various Punishments under the Act**

Section 631 of the Companies Act, 1956 provided for penalty for improper use of words "Limited" and "Private Limited". A new section 453 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for punishment for improper use of "Limited" or "Private Limited". According to section 453 of the Companies Act, 2013:

If any person or persons trade or carry on business under any name or title, of which the word "Limited" or the words "Private Limited" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with limited liability, or unless duly incorporated as a private company with limited liability, as the case may be, punishable with fine which shall not be less than five hundred rupees but may extend to two thousand rupees for every day for which that name or title has been used.

##### **Point of Comparison in respect to old law i.e. the Companies Act, 1956**

- (i) This section corresponds to section 631 of the Companies Act, 1956 i.e. Penalty for improper use of words "Limited" and "Private Limited".
- (ii) Penalty for improper use of "limited" or "private Limited" has been increased under the Companies Act, 2013. Earlier a fine which may extend to five hundred rupees for every day upon which that name or title has been used was provided under the Companies Act, 1956. Whereas under the Companies Act, 2013, a fine has been provided which shall not be less than five hundred rupees but may extend to two thousand rupees for every day for which that name or title has been used.