

1.

SECTION 127 OF THE COMPANIES ACT, 2013 : PUNISHMENT FOR FAILURE TO DISTRIBUTE DIVIDENDS CORRESPONDING TO SECTION 207 OF COMPANIES ACT, 1956

There is no major change in the provisions. However, some of the changes are as follows:

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 3 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.

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.

Previously the director means a person occupying the position of director but now the definition has been changed to director means a director appointed to the board of a company. Thereby the new law contained in the 2013 Act restrict the definition of director and does not include any person unlike the 1956 Act.

2.

SECTION 133 OF THE Companies Act, 2013 : CENTRAL GOVERNMENT TO PRESCRIBE ACCOUNTING STANDARDS CORRESPONDING TO SECTION 211(3C) OF COMPANIES ACT, 1956

There is no change in provisions.

3.

SECTION 161 OF THE Companies Act, 2013 : APPOINTMENT OF ADDITIONAL DIRECTOR, ALTERNATE DIRECTOR AND NOMINEE DIRECTOR CORRESPONDING TO SECTIONS 260, 262 AND 313 OF COMPANIES ACT, 1956

Alternate Directors:

Section 313 of the Companies Act, 1956 empowered the Board of Directors to appoint a person, to act as an alternate director for a director ('the original director') during *his absence for a period of not less than three months from the State in which meetings of the Board are ordinarily held*. Section 161 of the Companies Act, 2013 provides that Board of Directors may, appoint a person, to act as an alternate director for a director during *his absence from India for a period of not less than three months*.

Section 313 provided for vacation of office by alternate director if and *when the original director returned to the State* in which board meetings are ordinarily held. Section 161 provides for such vacation of office *when the original director returns to India*.

Section 161 of the Companies Act, 2013 requires that person appointed as alternate director should not be a person holding any alternate directorship for any other director in the company. The Companies Act, 1956 contained no such requirement.

Section 161 of the Companies Act, 2013 further provides that a person who is proposed to be appointed as an alternate director for an independent director should be qualified to be appointed as an independent director under the provisions of this Act. There was no such requirement in the Companies Act, 1956.

Nominee Directors:

Section 161 of the Companies Act, 2013 provides that subject to the articles of the company, 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 State Government by virtue of its shareholding in a Government company. There was no such provision in the Companies Act, 1956.

Additional Directors:

As regards appointment of additional directors, section 161 of the Companies Act, 2013 provides that the Board of Directors shall not appoint a person who fails to get appointed as a director in a general meeting as an additional director. Such a provision was not there in the Companies Act, 1956.

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. Such kind of requirement was not expressly provided in the Companies Act, 1956 and was guided by various judgements of the Courts (see point 1 below).

Casual Vacancy:

Under the Companies Act, 1956, Section 262 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.

SECTION 162 OF THE COMPANIES ACT, 2013 : APPOINTMENT OF DIRECTORS TO BE VOTED INDIVIDUALLY CORRESPONDING TO SECTION 263 OF COMPANIES ACT, 1956

While section 263 of the Companies Act, 1956 applied only to public companies, section 162 of the Companies Act, 2013 applies to all companies.

Section 263 of the Companies Act, 1956 provided that where a resolution so moved (in contravention of the section) is passed, no provision for the automatic re-appointment of the director retiring by rotation in default of another appointment shall apply. The Companies Act, 2013 omits this provision. In other words, 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 the automatic re-appointment of the director retiring by rotation in default of another appointment shall apply. This condition has been dispensed with under the Companies Act, 2013. Under the section of the new Act when the appointment becomes void because of the default, the provision for the automatic reappointment of directors retiring by rotation, however shall apply.

The Companies Act, 1956 exempted companies not carrying on business for profit/ companies prohibiting payment of dividend [see section 263A of the Companies Act, 1956] from the provisions of section 263 of the Companies Act, 2013. There is no exemption for such companies from the provisions of section 162 of the Companies Act, 2013.

5.

SECTION 163 OF THE COMPANIES ACT, 2013 : OPTION TO ADOPT PRINCIPLE OF PROPORTIONAL REPRESENTATION TO APPOINTMENT OF DIRECTORS CORRESPONDING PROVISIONS OF SECTION 265 OF COMPANIES ACT, 1956

While section 265 of the Companies Act, 1956 applied only to public companies, section 163 of Companies Act, 2013 applies to all companies.

6.

SECTION 176 OF THE COMPANIES ACT, 2013 : DEFECTS IN APPOINTMENT OF DIRECTORS NOT TO INVALIDATE ACTIONS TAKEN CORRESPONDING TO SECTION 290 OF COMPANIES ACT, 1956

There is no change in the provisions.

7.

SECTION 180 OF THE COMPANIES ACT, 2013 : RESTRICTIONS ON POWERS OF BOARD CORRESPONDING TO SECTION 293 OF COMPANIES ACT, 1956

Section 293 of the Companies Act, 1956 applied only to public companies. Section 180 of the Companies Act, 2013, however, applies to all companies.

Section 293 of the Companies Act, 1956 only required ordinary resolution to exercise certain powers. Section 180 of the Companies Act, 2013 requires a special resolution to exercise those powers.

Section 293 of the Companies Act, 1956 did not define the expressions "undertaking" and "substantially the whole of the under-taking" used in section 293(1)(a) of the Companies Act, 1956 [now section 180(1)(a) of the Companies Act, 2013]. Section 180 of the Companies Act, 2013 defines these expressions using 20% criteria (20% of net worth/income/value of undertaking).

Section 293(1)(c) of the Companies Act, 1956 covered the power to invest the amount of compensation received by the company in respect of the compulsory acquisition of any undertaking of the company. Section 180(1)(b) of the Companies Act, 2013 covers the power to invest the amount of compensation received as a result of any merger or amalgamation.

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.

8.

SECTION 181 OF THE COMPANIES ACT, 2013 : COMPANY TO CONTRIBUTE TO *BONA FIDE* AND CHARITABLE FUNDS, ETC. CORRESPONDING TO SECTION 293(1)(e) OF COMPANIES ACT, 1956

Both section 293(1)(e) of the 1956 as well as section 181 of the Companies Act, 2013 deal with restriction on board's powers to contribute to charitable and other funds as donation in any financial year in excess of specified limit.

The Companies Act, 1956 specified the limit of Rs. 50,000 or 5% of its average net profits as determined in accordance with the provisions of sections 349 and 350 of the Companies Act, 1956 during the three financial years immediately preceding, whichever is greater. Section 181 of the Companies Act, 2013 specifies the limit of 5% of its average net profits for the three immediately preceding financial years. Section 181 of the Companies Act, 2013 does not require that net profits should be computed for this purpose in accordance with section 198 of the Companies Act, 2013 [corresponding to sections 349 and 350 of the Companies Act, 1956]

While section 293(1)(e) of the Companies Act, 1956 required approval of the company in general meeting for contributing in excess of the specified limit, it did not require prior approval. Section 181 of the Companies Act, 2013 requires prior permission of the company in general meeting.

Donations to charitable and other funds directly relating to the business of the company or the welfare

of its employees were excluded from the ambit of section 293(1)(e) of the Companies Act, 1956 but are not so excluded from the ambit of section 181 of the Companies Act, 2013.

Companies which have CSR obligations under section 135 of the Companies Act, 2013 may donate any amount of money to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the SC/ST/OBC/Minorities/women. It appears that donations to such funds by such companies will be counted as CSR spends and shall not require compliance with section 181 of the Companies Act, 2013. Donations to such funds were not exempted from the purview of section 293(1)(c) of the Companies Act, 1956.

9.

SECTION 182 OF THE COMPANIES ACT, 2013 : PROHIBITIONS AND RESTRICTIONS REGARDING POLITICAL CONTRIBUTIONS CORRESPONDING TO SECTION 293A OF COMPANIES ACT, 1956

The Companies Act, 1956 provided that a Government company or a company which has been in existence for less than three financial years cannot contribute any amount directly or indirectly to any political party *or for any political purpose to any person*. The Companies Act, 2013 only bars such companies from contributing to any political party. There seems no bar on contribution for any political purpose to any person (not clear whether this is the intent of section 182 of the Companies Act, 2013 or a drafting error). The supplementary (to be followed in examination) issued by Board of Studies of ICAI states that Contribution to any person for political purpose is not allowed under the new Act.

Although section 182(2) of the Companies Act, 2013 defines donation, subscription or payment/contribution for a political purpose, the words 'for any political purpose to any person' are omitted from section 182(1) and 182(3) – might be drafting errors.

As per the Companies Act, 1956, a non-government company which has been in existence for three or more financial years can contribute during a financial year total amount/s not exceeding 5% of average net profit for three preceding financial years on the authority of a Board resolution. This limit of 5% of average net profits has been enhanced by the Companies Act, 2013 to 7.5% of average net profits for three preceding financial years. Net profits for the purposes of section 293A of the Companies Act, 1956 were required to be determined in accordance with sections 349 and 350 of the Companies Act, 1956. There is no stipulation in section 182 of the Companies Act, 2013 to determine net profits in accordance with section 198 of the Companies Act, 2013.

Section 293A(4) of the Companies Act, 1956 required disclosures of amounts contributed to any political party or for any political purpose to any person during the financial year. Section 182(3) of the Companies Act, 2013 does not require disclosure of amounts contributed for any political purpose. It only requires disclosure of amount or amounts contributed to any political party.

Monetary penalties for contributions in contravention of provisions enhanced by the Companies Act, 2013 from maximum 3 times the amount contributed to maximum of 5 times the amounts contributed. Imprisonment (max) for the officer in default reduced from 3 years to 6 months by the Companies Act, 2013.

10.

SECTION 183 OF THE COMPANIES ACT, 2013 : POWER OF BOARD AND OTHER PERSONS TO MAKE CONTRIBUTIONS TO NATIONAL DEFENCE FUND, ETC. CORRESPONDING TO SECTION 293B OF COMPANIES ACT, 1956

There is no change in the provisions.

11.

SECTION 185 OF THE COMPANIES ACT, 2013 : LOAN TO DIRECTORS, ETC. CORRESPONDING TO SECTIONS 295 AND 296 OF COMPANIES ACT, 1956

Section 295 of the Companies Act, 1956 did not apply to loans made or guarantee given or security provided by private companies. Section 185 of the Companies Act, 2013 allows no such exemption to loans, etc., by private companies.

Banking companies were exempt from the ambit of section 295 of the Companies Act, 1956. Exemption is now available from section 185 of the Companies Act, 2013 to company which in ordinary course of business providing loans etc. and interest is charged at a rate not less than RBI's bank rate.

Loans by holding company to its subsidiary and guarantee or security provided by holding company in respect of loan to its subsidiary were outside the ambit of section 295 of the Companies Act, 2013. These loans/guarantees/securities will be outside the ambit of section 185 of the Companies Act, 2013 provided these comply with the requirements of section 186 of the Companies Act, 2013 dealing with inter-corporate loans and investments. This is what appears from the phrase "save as otherwise provided in this Act" used in section 186 (1) of the Companies Act, 2013.

In terms of section 295 of the Companies Act, 1956, loans made to or security provided or guarantee given in connection with loan taken by director of the lending company and certain specified parties required previous approval of the Central Government in that behalf. Under section 185 of the Companies Act, 2013, there is total prohibition on such transactions with—

- (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 25% 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.

The prohibition shall not apply to the giving of any loan to a managing or whole-time director—

- (i) as a part of the conditions of service extended by the company *to all its employees*; or
- (ii) pursuant to any scheme approved by the members by a special resolution;

Under section 295 of the Companies Act, 1956 imprisonment could be avoided by fully repaying the loan. Section 185 of Companies Act, 2013 does not contain such a provision.

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.

12.

SECTION 192 OF THE COMPANIES ACT, 2013 : RESTRICTION ON NON-CASH TRANSACTIONS INVOLVING DIRECTORS

Section 192 of the Companies Act, 2013 is a new section. It regulates arrangements in respect of acquisition of assets for consideration other than cash between a company and a director of the company or its holding company or its subsidiary or its associate or person connected with such director. This section provides that such arrangements shall require prior approval by a resolution in general meeting. If the director or connected person is a director of its holding company, approval is also required to be obtained by passing a resolution in general meeting of the holding company. An arrangement entered into by a company or its holding company in contravention of the provisions is voidable at the instance of the company. There were no provisions in the Companies Act, 1956 along the lines of section 192 of the Companies Act, 2013.

13.

SECTION 194 OF THE COMPANIES ACT, 2013 : PROHIBITION ON FORWARD DEALINGS IN SECURITIES OF COMPANY BY DIRECTOR OR KEY MANAGERIAL PERSONNEL

This new section prohibits whole-time director or any key managerial personnel from buying certain kinds of future contracts in securities of the company, its holding, subsidiary or associate company. There were no provisions along the lines of this section in the Companies Act, 1956.

14.

SECTION 195 OF THE COMPANIES ACT, 2013 : PROHIBITION ON INSIDER TRADING OF SECURITIES

Insider trading until now has been dealt with by SEBI under the SEBI Act, 1992. There were no provisions in the Companies Act, 1956 dealing with insider trading. Section 195 of the Companies Act, 2013 is a *new section which prohibits directors or key managerial person of the company from dealing in securities of a company, or counselling, procuring or communicating, directly or indirectly, about any non-public price-sensitive information to any person.*

15.

SECTION 202 OF THE COMPANIES ACT, 2013 : COMPENSATION FOR LOSS OF OFFICE OF MANAGING OR WHOLE-TIME DIRECTOR OR MANAGER CORRESPONDING TO SECTION 318 OF Companies Act, 1956

There is no change in the provisions.

16.

SECTION 379 OF THE COMPANIES ACT, 2013 : APPLICATION OF ACT TO FOREIGN COMPANIES CORRESPONDING TO SECTION 591 OF COMPANIES ACT, 1956

Section 591 of the Companies Act, 1956 provided that a foreign company shall comply with such 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 if:

(a) not less than 50% of its paid-up share capital is held as above; and

(b) it has an established place of business in India.

Section 366 of the Companies Act, 2013 omits condition (b) (*i.e.*, it has an established place of business in India).

Thus, under the Companies Act, 2013, as long as condition (a) is satisfied, a foreign company shall comply with such 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 irrespective of whether it has a place of business in India.

17.

SECTION 382 OF THE COMPANIES ACT, 2013 : DISPLAY OF NAME, ETC., OF FOREIGN COMPANY CORRESPONDING TO SECTION 595 OF COMPANIES ACT, 1956

There is no major change in the provisions. However, 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.

18.

SECTION 383 OF THE COMPANIES ACT, 2013 : SERVICE ON FOREIGN COMPANY CORRESPONDING TO SECTION 596 OF COMPANIES ACT, 1956

Section 383 of the Companies Act, 2013 recognizes sending of documents to foreign company by electronic mode which was not the case in the Companies Act, 1956.

Proviso to section 596 of the Companies Act, 1956 provides that a document may be served on the

foreign company by leaving it at, or sending it by post to, any place of business established by the company in India in certain circumstances. Section 383 of the Companies Act, 2013 omits this provision.

19.

SECTION 386 OF THE COMPANIES ACT, 2013 : INTERPRETATION CORRESPONDING TO SECTION 602 OF COMPANIES ACT, 1956

Section 602 of the Companies Act, 1956 also defined "prospectus" and "secretary". These definitions have been omitted in section 386 of the Companies Act, 2013.

20.

SECTION 394 OF THE COMPANIES ACT, 2013 : ANNUAL REPORTS ON GOVERNMENT COMPANIES CORRESPONDING TO SECTION 619A OF COMPANIES ACT, 1956

There is no major change in the provisions. However, 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. 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.

21.

SECTION 405 OF THE COMPANIES ACT, 2013 : POWER OF CENTRAL GOVERNMENT TO DIRECT COMPANIES TO FURNISH INFORMATION OR STATISTICS CORRESPONDING TO SECTION 615 OF COMPANIES ACT, 1956

The penalties for officer-in-default for non-compliance with provisions of section 615 of the Companies Act, 1956 was imprisonment which may extend to three months, or with fine which may extend to Rs. 10,000 or with both. Section 405 of the Companies Act, 2013 provides for enhanced penalty/imprisonment for a term which may extend to 6 months or with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 3,00,000 or with both.

Section 615 of the Companies Act, 1956 provided that an order requiring any information or statistics to be furnished by a company may also be addressed to any person who is, or has at any time been, an officer or employee of the company. All the above provisions, so far as may be, shall apply in relation to such person as they apply in relation to the company. No such person shall be punishable unless the Court is satisfied that he was in a position to comply with the order and made wilful default in doing so. Section 405 of the Companies Act, 2013 omits this provision.

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.

22.

SECTION 439 OF THE COMPANIES ACT, 2013 : OFFENCES TO BE NON-COGNIZABLE CORRESPONDING TO SECTIONS 621 AND 624 OF COMPANIES ACT, 1956

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 of the new Act, 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.

23.

SECTION 443 OF THE COMPANIES ACT, 2013 : POWER OF CENTRAL GOVERNMENT TO APPOINT COMPANY PROSECUTORS CORRESPONDING TO SECTION 624A OF COMPANIES ACT, 1956

There is no change in the provisions.

24.

SECTION 444 OF THE COMPANIES ACT, 2013 : APPEAL AGAINST ACQUITTAL CORRESPONDING TO SECTION 624B OF COMPANIES ACT, 1956

There is no change in the provisions.

25.

SECTION 445 OF THE COMPANIES ACT, 2013 : COMPENSATION FOR ACCUSATION WITHOUT REASONABLE CAUSE

These are newly introduced provisions. 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.

26.

SECTION 446 OF THE COMPANIES ACT, 2013 : APPLICATION OF FINES CORRESPONDING TO SECTION 626 OF COMPANIES ACT, 1956

There is no change in the provisions.

27.

SECTION 447 OF THE COMPANIES ACT, 2013 : PUNISHMENT FOR FRAUD

It's a new provisions introduced by the Companies Act, 2013 defining the term "fraud" and providing punishment for "fraud" in relation to a company or body corporate. There was no definition of 'fraud' in the Companies Act, 1956 nor was there any punishment for fraud in the Companies Act, 1956.

28.

SECTION 448 OF THE COMPANIES ACT, 2013 : PUNISHMENT FOR FALSE STATEMENT CORRESPONDING TO SECTION 628 OF COMPANIES ACT, 1956

The imprisonment under section 628 of the Companies Act, 1956 was maximum 2 years. It has been enhanced to maximum 10 years under section 448 of the Companies Act, 2013.

29.

SECTION 449 OF THE COMPANIES ACT, 2013 : PUNISHMENT FOR FALSE EVIDENCE CORRESPONDING TO SECTION 629 OF COMPANIES ACT, 1956

The minimum term of imprisonment has been fixed at 3 years under section 449 of the Companies Act, 2013. There was no minimum term of imprisonment under section 629 of the Companies Act, 1956. 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.

30.

SECTION 450 OF THE COMPANIES ACT, 2013 : PUNISHMENT WHERE NO SPECIFIC PENALTY OR PUNISHMENT IS PROVIDED CORRESPONDING TO SECTION 629A OF COMPANIES ACT, 1956

There is no major change in the provisions except the following:

- (i) 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.
- (ii) 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.

31.

SECTION 451 OF THE COMPANIES ACT, 2013 : PUNISHMENT IN CASE OF REPEATED DEFAULT

These are newly introduced provisions.

32.

SECTION 452 OF THE COMPANIES ACT, 2013 : PUNISHMENT FOR WRONGFUL WITHHOLDING OF PROPERTY CORRESPONDING TO SECTION 630 OF COMPANIES ACT, 1956

The amount of fine under section 630 of the Companies Act, 1956 was upto Rs. 10,000. The minimum fine under section 452 of the Companies Act, 2013 is Rs. 1,00,000 and maximum fine is Rs. 5,00,000. Further, section 630 of the Companies Act, 1956 applied to "any property of the company" while section 452 of the Companies Act, 2013 applies to "any property, including cash of the company".

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.

33.

SECTION 453 OF THE COMPANIES ACT, 2013 : PUNISHMENT FOR IMPROPER USE OF "LIMITED" OR "PRIVATE LIMITED" CORRESPONDING TO SECTION 631 OF COMPANIES ACT, 1956

The amount of fine under section 631 of the Companies Act, 1956 was upto Rs. 500 for every day that name or title has been used. The same has been enhanced to upto Rs. 2,000 per day under the Companies Act, 2013.

34.

SECTION 456 OF THE COMPANIES ACT, 2013 : PROTECTION OF ACTION TAKEN IN GOOD FAITH CORRESPONDING TO SECTION 635A OF COMPANIES ACT, 1956

There is no change in the provisions.

35.

SECTION 457 OF THE COMPANIES ACT, 2013 : NON-DISCLOSURE OF INFORMATION IN CERTAIN CASES CORRESPONDING TO SECTION 635AA OF COMPANIES ACT, 1956

There is no major change in the provisions. However, 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.

36.

SECTION 458 OF THE COMPANIES ACT, 2013 : DELEGATION BY CENTRAL GOVERNMENT OF ITS POWERS AND FUNCTIONS CORRESPONDING TO SECTION 637 OF COMPANIES ACT, 1956

Section 637 of the Companies Act, 1956 specified those provisions of the Companies Act, 1956 under which the Central Government cannot delegate its powers and functions. Section 458 of the Companies Act, 2013 does not specify any such provisions of the Companies Act, 2013. 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.

SECTION 459 OF THE COMPANIES ACT, 2013 : POWERS OF CENTRAL GOVERNMENT OR TRIBUNAL TO ACCORD APPROVAL, ETC., SUBJECT TO CONDITIONS AND TO PRESCRIBE FEES ON APPLICATIONS CORRESPONDING TO SECTION 637A OF COMPANIES ACT, 1956

There is no change in the provisions.

38.

SECTION 460 OF THE COMPANIES ACT, 2013 : CONDONATION OF DELAY IN CERTAIN CASES CORRESPONDING TO SECTION 637B OF COMPANIES ACT, 1956

There is no change in the provisions.

39.

SECTION 461 OF THE COMPANIES ACT, 2013 : ANNUAL REPORT BY CENTRAL GOVERNMENT CORRESPONDING TO SECTION 638 OF COMPANIES ACT, 1956

There is no change in the provisions.

40.

SECTION 462 OF THE COMPANIES ACT, 2013 : POWER TO EXEMPT CLASS OR CLASSES OF COMPANIES FROM PROVISIONS OF THIS ACT

These are newly introduced provisions. 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.

41.

SECTION 463 OF THE COMPANIES ACT, 2013 : POWER OF COURT TO GRANT RELIEF IN CERTAIN CASES CORRESPONDING TO SECTION 633 OF COMPANIES ACT, 1956

There is no change in the provisions.

42.

SECTION 467 OF THE COMPANIES ACT, 2013 : POWER OF CENTRAL GOVERNMENT TO AMEND SCHEDULES CORRESPONDING TO SECTION 641 OF COMPANIES ACT, 1956

There is no change in the provisions.

43.

SECTION 468 OF THE COMPANIES ACT, 2013 : POWERS OF CENTRAL GOVERNMENT TO MAKE RULES RELATING TO WINDING UP CORRESPONDING TO SECTION 643 OF COMPANIES ACT, 1956

There is no major change in the provisions. 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.

44.

SECTION 469 OF THE COMPANIES ACT, 2013 : POWER OF CENTRAL GOVERNMENT TO MAKE RULES CORRESPONDING TO SECTION 642 OF COMPANIES ACT, 1956

There is no change in the provisions.

45.

SECTION 470 OF THE COMPANIES ACT, 2013 : POWER TO REMOVE DIFFICULTIES

These are newly introduced provisions. 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.

Totally New Provisions Inserted In Detail

12. Restriction on non-cash transactions involving directors [Section 192]:

(1) 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 under this sub-section shall also be required to be obtained by passing a resolution in general meeting of the holding company.

(2) The notice for approval of the resolution by the company or holding company in general meeting under sub-section (1) shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.

(3) 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 20% of total share capital, or of business decisions under an agreement. [Section 2(6)]

13. Prohibition on forward dealings in securities of company by director or key managerial personnel [Section 194]:

(1) 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.

(2) If a director or any key managerial personnel of the company contravenes the provisions of sub-section (1), 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.

(3) Where a director or other key managerial personnel acquires any securities in contravention of sub-section (1), he shall, subject to the provisions contained in sub-section (2), 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.

Explanation.—For the purposes of this section, "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)]

14. Prohibition on insider trading of securities [Section 195]:

(1) No person including any director or key managerial personnel of a company shall enter into insider trading:

Provided that nothing contained in this sub-section shall apply to any communication required in the ordinary course of business or profession or employment or under any law.

Explanation.—For the purposes of this section,—

- (a) "insider trading" means—
 - (i) 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
 - (ii) an act of counselling about procuring or communicating directly or indirectly any non-public price-sensitive information to any person;
- (b) "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.

(2) 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)]

25. Compensation for accusation without reasonable cause [Section 445]:

The provisions of section 250⁸³ of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply *mutatis mutandis* to compensation for accusation without reasonable cause before the Special Court or the Court of Session.

27. Punishment for fraud [Section 447]:

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:

Provided that 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—

- (i) "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;
- (ii) "wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;
- (iii) "wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled.

31. Punishment in case of repeated default [Section 451]:

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.

40. Power to exempt class or classes of companies from provisions of this Act [Section 462]:

(1) 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.

(2) A copy of every notification proposed to be issued under sub-section (1), 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.

45. Power to remove difficulties [Section 470]:

(1) 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:

Provided that 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.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.