MEETING OF BOARD AND ITS POWER

MEETINGS OF BOARD — SEC-173

Section 173 states:

(1) Frequency of Board meetings {Sec-173(1)}:

(a) **First Board meeting :**
To be held within 30 days of the incorporation.

(b) **Subsequent Board Meeting:**
Every company shall hold minimum of 4 meetings every year and gap between 2 consecutive board meetings shall not exceed 120 days.

However, companies formed under section 8 of the companies' act 2013, only to extent the board of directors, of such companies shall hold atleast 1 meeting within every 6 calendar months.

(2) Participation in Board Meeting:

(a) As per this provision, director can attend the board meeting:
-- In Person.
-- Through Video conferencing.
-- Other audio visual means as prescribed.

(b) Some of the key points that to be considered by company while convening board meeting through audio/video conferencing:
- Necessary adjustments to avoid failure of video/audio connection.
- Chairperson and company secretary must take reasonable care in-
  -- Safeguard integrity of meeting ensuring sufficient security.
  -- Record proceedings and prepare minute of meeting.
  -- To store recordings or other electronic recording mechanism.
  -- To ensure participants attending meeting hears properly.

(3) Notice of the meeting to be sent to all the directors.

(a) Notice of meeting shall inform the option available to them to participate through video conferencing.
(b) Director(s) intending to attend meeting through video conferencing has to intimate about his intention to chairperson/company secretary.
(c) In absence of any information from director, it shall be assumed that he will attend meeting in person.

(4) A director attending the meeting through video conferencing or audio visual means **shall be counted for the purpose of Quorum.**

(5) The draft minutes of the meeting shall be circulated among all **the directors** within 15 days of the meeting **(In writing or through electronic mode).**

(6) However matters given under cannot be concluded by holding meeting in electronic mode:
-- Approval of annual financial statement.
-- Approval of Boards Report.
-- Approval of prospectus and approval of matters related to amalgamation etc.

(7) Notice of Board meeting : Section 173(3):

Now it is imperative that notice of the board meeting should reach to every person concerned. As such section 173(3) provide the provisions related to the notice of the meeting:

Provisions of section 173(3):

Atleast 7 days' notice	Every board meeting shall be called by giving at least 7 days' notice in writing to all the directors at their registered address (In or outside India)
Short Notice (Less than 7 days' notice)	Meeting can be called on a shorter notice **in order to transact some urgent business,** subject to condition that at least **1 independent director** shall be present at the meeting.
Mode of attending the meeting	Notice of meeting should state the option available to directors to attend the meeting via video conferencing or other audio visual mode.
Communication by Director	On receiving the notice, directors who want to participate in meeting through video conferencing or other audio visual means, shall communicate his intention to **chairperson/company secretary.** Of the company.
If no communication by directors	If directors does not intimate about the meeting, it shall be assumed that he will participate in meeting in person.

Penalty: **INR 25,000** on every officer of company who is under duty to give notice but fails to do so.

Section 174 provides:

Quorum:

It means minimum number of qualified person who must attend the meeting in order to transact transaction at duly convened (बुलाई) meeting

Following are the provisions related to section174:

Strength Required	Quorum shall be 1/3 of its total director OR 2 directors, **whichever is higher.**
Video Conferencing mode counted for the quorum?	**Yes.** Directors who are participating in the meeting through video conferencing also be **counted** for the purpose of Quorum.
If the number of interested director increase?	Where at any time, number of interested directors exceed or is equal to 2/3 of total strength, then **quorum** shall be: **Director who are present and not interested directors and are not less than 2.**
What happens if meeting could not be held for the want of Quorum:	Where meeting could not be held due to want of quorum, **then meeting shall automatically adjourned** to the **same day, same time and place** in **next week,** unless **article of association of company** otherwise provide.

PASSING OF RESOLUTION BY CIRCULATION SEC-175

Section 175 provides:

(a) Act allows board of directors to pass resolution by circulation also. Unless following conditions are fulfilled, no resolution deemed to have been passed:
-- Resolution circulated in draft with necessary papers to all directors;
-- At their addresses registered with the company.
-- By **hand delivery** or **by post** or **by courier.**

(b) The resolution passed by circulation need to be **put up in next meeting** of board or committee and made **part of the minutes of the meeting.**

DEFECT IN APPOINTMENT OF DIRECTORS SEC-176

This section speaks of the consequences if the appointment of director is not valid as per law:

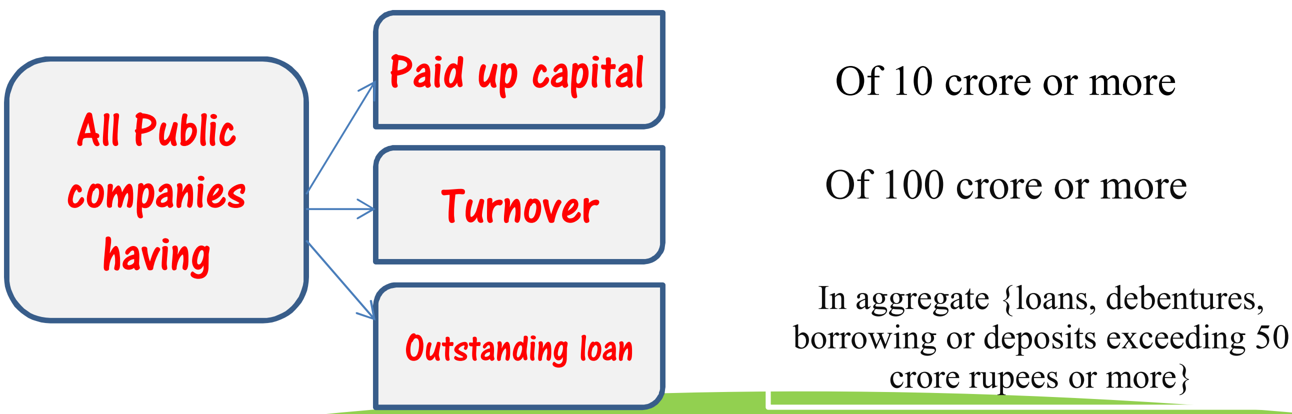
(a) In case after appointment of director it is noticed that his appointment was invalid by reason for any defect or disqualification, no act done by a person shall be deemed to be valid.
(b) Nothing in this section **gives** validity to any act done by the director after his appointment has been noticed by the company.

AUDIT COMMITTEE SEC-177

Section 177 of companies' act 2013 states that:

(a) Formation of audit committee:
An audit committee shall be constituted by the board of directors of:
-- Every Listed company.
-- And every company as may be prescribed.

(b) Class/classes of company shall constitute audit committee:



(c) Composition of audit committee:

Shall consist of at-least **3 directors** with independent forming majority.

(d) Responsibility of audit committee:

As per section 177(4), audit committee shall act in accordance with the terms specified in writing by the board:

To remember the points, following bifurcation done:

Auditor's Point	Entity's Transactions	Assets & Internal control
(a) Recommendation for: **-- Appointment** **-- Remuneration** **-- Appointment terms** (b) Review & monitor of the auditor independence of audit process. (c) **Examination of** financial statement & auditors report.	(a) Approval or modification of transactions of the company with the related party. (b) **Scrutiny** of inter corporate loans and the investments.	(a) Valuation of assets of the company. (b) Evaluation of internal financial controls and risk management system.

(e) Disclosure in Board's meeting:

-- Composition of audit committee shall be disclosed in board report.
-- Any recommendation by audit committee is rejected by board, the reason for the same shall be disclosed in the

(f) Role of auditor in audit committee:

(1) A**udit committee is empowered** to call for comments on auditors about:
-- Internal control systems.
-- The scope of audit, including auditor's observation.
-- Review of financial statement before viewing by the board.

(1) Discuss issues related to statutory & internal auditor.

(2) Auditor of the company & key management personnel shall have right to be heard in audit committee meeting.

(g) Penalty for contravention:

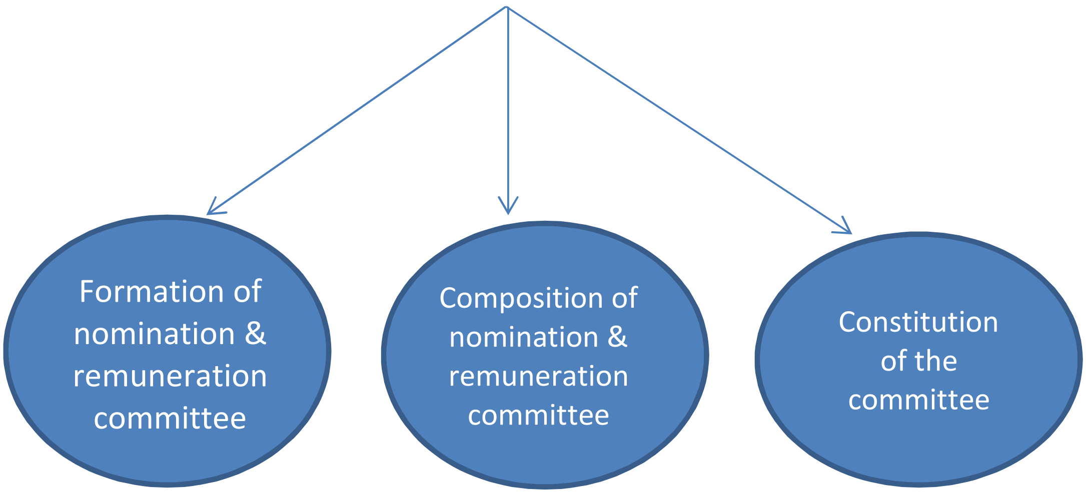
Contravention of the provisions will result in:

Particulars	Imprisonment	Fine
Company	---	1 to 5 Lacs
Every officer of the company	Punishable with imprisonment may extend to 1 year .	Fine may extend up to 1 year

NOMINATION & RUMNERATION COMMITTEE & STAKEHOLDER RELATIONSHIP COMMITTEE SEC-178

Section 178 of companies' act 2013 provides provisions of both the committee. We will study one by one:

NOMINATION & RUMNERATION COMMITTEE



Formation of nomination & remuneration committee:

1. Shall be constituted by the board of director of
   -- Every listed company
   -- Other classes of companies as prescribed. Following classes of companies prescribed That all public companies
   -- **Having paid up capital of 10 crore or more.**
   -- **Having turnover of 100 crore rupee or more.**
   -- **Having aggregate loans, borrowing exceeding 50 crores or more.**

Composition of nomination & remuneration committee:

1. 3 or more non-executive directors out of which not less than ½ shall be independent directors.
2. The chairperson of the company shall not chair the company but may be appointed as member of the company.
3. In the absence of chairperson, **other member of the committee authorised** by him shall attend the general meetings of the company.

Constitution of the committee:

The nomination & remuneration committee shall

1. Identify person who are qualified to be a director and may be appointed in senior management.
2. Recommend to the board their appointment and removal of directors and senior management can carry out each director's performance evaluation.

Formulation of policy by the committee:

Nomination & remuneration committee while formulating policies ensures:

1. Level of remuneration is sufficient to retain directors of the quality required for successfully running of the business.
2. Relationship between remuneration and performance is clear.
3. **Remuneration to directors, key management personnel and senior management** involves a balance between fixed and incentive pay.

STAKEHOLDER'S RELATIONSHIP COMMITTEE

Formation & Constitutio of stakeholder relationship committee

Which company required to have committee:
Board of director shall constitute this committee if at any time during the financial year consist of more than 1000 shareholders, debenture holders, deposit holders and other security holders.

Chairperson of stakeholder's relationship committee

Shall be headed by a chairperson who is no executive director and consist of other members as may be decided by the board

POWER OF BOARD — SEC-179

Section 179 of companies' act 2013 provides power of the board:

(a) Board is to exercise the power by means of resolution passed at a duly convened board meeting:

Code to Remember: C.B.I. - F.A.I.R.

(1) To make **C**alls on shareholder in respect of money unpaid on their shares.

(2) To **B**orrow money.

(3) To **I**nvest the fund of the company.

(4) To approve **F**inancial statement and the board's report.

(5) To approve **A**malgamation, merger or reconstruction.

(6) To issue **S**ecurities, including the debentures in or outside India.

(7) To **R**emove or appoint KMP (Key management person).

(b) The board of director shall exercise the power and to do all such things, **as the company is authorised to exercise and do.**

(c) **Power to delegate certain powers of the board:**
The board may by resolution passed at a meeting, delegate the power to:

1. Any committee of director.
2. The managing Director
3. The manager or other principal officer of the company.

The following powers can be delegated:

1. To **B**orrow money.
2. To **I**nvest the fund of the company.
3. To **G**rant loan or give guarantee or provide security in respect of loan.

PROHIBITION & RESTRICTION FOR POLITICAL CONTRIBUTION — SEC-182

Section 182 of companies' act 2013 provides provision in respect of prohibition and restriction regarding political contributions. Section states that:

(a) Notwithstanding anything contained in this act (It means that even if something is written that is opposite in meaning to the provision; the provision will still apply), company may directly or indirectly contribute to any political party.

(b) Following companies are not allowed to make political contribution:

-- A government Company
-- A Company which has been in existence less than 3 financial years.

Some of the important provisions in respect of political contribution:

Aggregate of amount contributed by the company in **any financial year** shall not exceed 7½ of its average net profits during the 3 immediately preceding financial years.

(1) The company should pass a resolution authorising the making of such contribution, in the meeting of board of directors.

(2) Every company shall **disclose in its profit and loss account** any amount(s) contributed by it to the political party during the financial year to which that accounts relate.

(3) Next provision is in respect of the contravention of this section:
Company: Punishable with Fine which may extend to 5 times of amount contributed.
Officer: In default, imprisonment up-**to 6 months** and fine up-to **5 times the amount contributed.**

POWER OF BOARD TO MAKE CONTRIBUTION TO NATIONAL DEFENCE FUND ETC. SEC-183

Section 183 of companies' act 2013 provides:

(i) The board of director, not-withstanding anything contained in section 180, 181 and 182 contribute such amount as it thinks fit to **national defence fund** or any other fund approved by the central government.
(ii) Every company **shall disclose** in its profit and loss account the total amount(s) contributed by the company to the fund mentioned in point (i).

DISCLOSURE OF INTEREST BY DIRECTOR SEC-184

Section 184 of companies' act 2013 provides for the disclosure of interest by the director.

This section is applicable on **all directors** of the company and **all types** of company.

When To Disclose

Every director:
1. At the first meeting of the board in which he participate as director.
2. Then, at first meetings of the board in every financial year.
3. In case of any change in disclosure already made, then **at the first board meeting held after such change.**

Every director:
1. Shall disclose his concern or interest in any company or companies, body corporates, firms or any other association of person.
2. **This shall include the shareholding, in manner prescribed.**

Circumstances in which disclosure is necessary:

Director who is in any way:
1. Whether directly or indirectly
2. Concerned or interested;
3. In an agreement or proposed contract;

Shall disclose the nature of interest or concern at the **meeting of the board in which such contract or agreement is discussed** and shall not participate in the meeting

However in the following circumstances, disclosure is must:

Director who is in any way whether directly or indirectly, concerned or interested in an agreement or proposed contract or arrangement **entered in** to or **to be entered into**-

(a)With a body corporate:
-- In which such director or such director with any other director,
-- holds more than **2% shareholding** of that body corporate, OR
-- is a promoter, manager or chief executive officer of that body corporate.

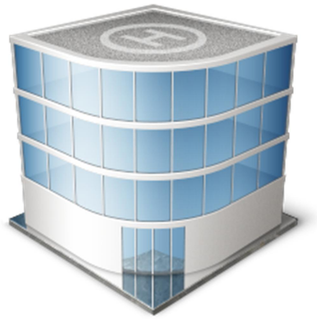
(b)With a firm or other entity in which,
-- Such director is a partner, owner or member, as the case may be.

Consequences of Non-disclosure

(a) **Voidable at the option of the company:**
A contract entered into by company without disclosing the interest of the director who is in any way concerned or interested, shall be **voidable** at the option of the company.

(b) **Penalty:**
Director in default, shall be punishable **with imprisonment** for a term may extend up-to 1 year and fine **shall not be less than 50,000** but may extend up-to 1,00,000 or BOTH.

Section 185 of companies' act 2013 provides:



(i) No company shall, **directly or indirectly**,
- -- Advance any loan including loan represented by a book debt,
- -- To any of its director or to **any other person in whom the director is interested*** or gives any guarantee or provide any security in connection with any loan taken by him or such other person.

(ii) **Exceptions:** The above restriction shall not apply in following circumstances:

(a) Giving loan to managing or whole time director:
- -- As a part of condition of services
- -- Pursuant to scheme approved by members by **special resolution.**

(b) A company:
- -- Which in ordinary course of business provides loans or guarantee;
- -- For repayment of any loan and;
- -- Interest charged on such loan is not less than rate declared by RBI.

(c) Loan made by:
- -- Holding to its wholly owned subsidiary company OR
- -- Any guarantee given or security provided by holding company;
- -- In respect of loan made to its wholly owned subsidiary company.

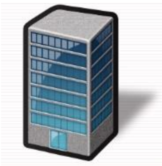
(d) Guarantee given or security provided by:
- -- Holding company in respect of any loan made by any **bank** OR
- -- **Financial** institution to its subsidiary company.

"**Any other person in whom the director is interested**":

- -- Any firm in which director or relative is partner
- -- Any private company of which such director is director.
- -- Any body corporate at general meeting where not less than 25% of total voting power controlled/exercised by such director or by two or more directors together.
- -- Any body corporate, board of director, MD or manager, is accustomed to act as per directions of such director or instructions of the board, or any of directors , of **lending Co.**

(iii) **Penalty for the contravention:**

In case loan or advance has been provided in contravention to the provision of section 185, following penalties are leviable:



On company
Minimum fine of – 5 Lakhs
Maximum fine of – 25 Lakhs

On Defaulting director and other person to whom loan is advanced or guarantee or security is given in connection with any loan taken by him or other person: **(Either of 2 or both)**
Imprisonment: Maximum 6 months or Fine > 5 Lakhs up-to 25 Lakh

LOAN AND INVESTMENT BY COMPANY — SEC-186

Section 186 of companies' act 2013 provides for loan and investment by the company. This section applies to both **public and private company.**

(i) According to 186(1), company make investment through not more than 2 layers of investment companies.

(ii) As per section 186(2), no company can directly or indirectly-
- (a) Give loan to any person or body corporate
- (b) Give any guarantee or provide security in connection with loan to any other body corporate or person
- (c) Acquire by way of subscription, purchase or otherwise securities of any other body corporate, exceeding:

60% of its paid up share capital, free reserves and securities premium
OR
100% of its free reserves and securities premium (Whichever is more)

What if the aforesaid limit is to be exceeded??

-- Prior approval by means of;
-- Special resolution passed at general meeting
-- shall be necessary where loan/guarantee amount exceed the limit.

(iii) **Disclosure to members:**

It is necessary for the company to disclose to the members in the financial statement the **full** particulars of:

-- Loan given,

-- Investment made **or** guarantee given **or** security provided.

-- The purpose for which loan is proposed to be utilised by the recipient of loan.

(iv) **Rate of interest on loan:**

Interest on this loan > prevailing Interest rate (3 or 5 or 10 years)

(v) **No loan till default is subsisting:**

No company which is in default in the repayment of any deposits accepted before or after the commencement of this Act or in payment of interest thereon shall give any security.

(vi) **Maintenance of Register:**

Company giving loan or providing security or giving a guarantee under this section shall **keep a register which** shall contain such particulars.

Following are the provisions:

(a) Company shall maintain a register in form MBP2 providing particulars of loans and guarantee given.

(b) Entries to be in **chronological** order within 7 days of making such loan, guarantee, security etc.

Loan Register From 01-04-2010 To 12-05-2010

#	Date	Employee	Loan Amt	Inst Amt
1	11/05/2010	SALONI CHOURASIA	10000.00	0
2	11/05/2010	JOSEPH	5000.00	0
3	11/05/2010	POWLIN	20000.00	0
4	11/05/2010	PUSHPA PANT	6000.00	0
5	11/05/2010	LAKSHMI GAUTAM	6000.00	0
6	11/05/2010	ANJANA AWASTHI	10000.00	0
7	11/05/2010	ANITA DAYA	10000.00	0
8	11/05/2010	SAMTA SETHI	15000.00	0

(c) Register shall be kept **at the registered office** of the company and shall be preserved **permanently.**

(d) Entries in the register shall be **authenticated** by **company secretary** or any other person authorised by the company.

(e) Register to be maintained – **Manually or electronic.**

(vii) **Penalty:**

If company contravenes,

Company shall be punishable with fine not less than INR 25,000 to 5,00,000.

Officer in default shall be punishable with imprisonment for a term extend to 2 years and with fine >25,000 but may extend to INR 1,00,000.

Section 188 companies act 2013 provides:

(a) Contracts with related parties:

No company shall enter into contract or agreement with a related party in respect of:

a. Sales, purchase of any goods/material.
b. Selling or buying property of any kind.
c. Leasing of property of any kind.
d. Availing or rendering of any services.
e. Appointment of agent for → purchase/sale of goods, material, services.
f. Related party's appointment to any office or place of profits.
g. Underwriting the subscription of any securities of the company.

Exception: Company can enter into contracts for the following transaction(s) with the consent of the board of directors given by resolution at a meeting of the board.

(I) Contract or agreement with respect to point (a) to (e), with the criteria:

Sales, purchase of any goods/material Directly or indirectly (through agent)	exceed 10% of turnover of the company or 100 Crore **(Whichever is lower)**
Selling or buying property of any kind Directly or indirectly (through agent)	exceed 10% of net worth of the company or 100 Crore **(Whichever is lower)**
Leasing of property of any kind Directly or indirectly (through agent)	exceed 10% of net worth of the company or 100 Crore **(Whichever is lower)**
Availing, rendering of any services Directly or through appointment of agent	exceed 10% of turnover of the company or 50 Crore **(Whichever is lower)**

(II) Is for appointment of Office/place of profit in the company, its subsidiary company or associate company at monthly remuneration of **INR 2.5 Lacs** as mentioned in point (f) of this page.

(III) Is for remuneration for underwriting the subscription of **any securities** , the company exceeding 1% of net worth as mentioned in point(g) of this page.

(IV) **Explanatory statement** to be annexed to notice of a general meeting shall contain the following particulars:

-- Name of related party.
-- Name of director/KMP who is related.
-- Nature of relationship.
-- Nature, material item, monetary value and contract's particular.
-- Any other relevant information.

(b) Transaction to be at arm's length price:

Nothing provided will apply, if such transaction entered into by company in its ordinary course of business at arm's length price.

Some explanation:

"Office or place of profit":

Where such office is held by the director, if the director receives anything by way of remuneration **over and above** as a director.

"Arm's Length Price":

Means a transaction between 2 related parties that id conducted between unrelated parties along with the justification for entering into contract.

(c) Related Party transactions to be mentioned in board report:

The information about the related party transaction to be mentioned in the board report with the justification for entering into contract or agreement.

(d) Related party transaction voidable at the option at the board:

A contract/agreement **shall be** voidable at the option of the board if:

-- Where director enter into contract without the consent of board of director.

-- If it is not ratified (पुष्टि की) by the board, OR by the shareholder at meeting within **3 months** from the date on which such contract/agreement was entered.

(e) Penalty for contravention:

Following are the provision in respect of contravention to the above stated provisions:

LISTED COMPANY → **FINE** : Not less than 25000 but extend to 5,00,000
IMPRISONMENT: Term may extend to 1 year.

OTHER COMPANY → **FINE** : Not less than 25000 but extend to 5,00,000

(f) "Related Party" means:

Family Side:

(a)A director or his relative.
(b)A firm, in which his director, manager of relative is director.
(c)A private company in which a director or manager is a member or director.
(d)A key management personnel or his relative.

Professional Side:

(a)A public company, in which such director or manager holds along with his relative **more than 2% of its paid up capital.**

(b) Any company which is:
-- A holding or subsidiary or an associate company of such company.
-- A subsidiary of a holding company to which it is also a subsidiary

REGISTER OF CONTRACTS/ARRNAGEMENTS SEC-189

Section 189 provides **register of contracts/arrangements** in which director is interested.

(1) Maintenance of register of contracts or arrangements:
It is **mandatory** for all the companies to keep one or more registers **giving separately** the **particulars of** all contracts or arrangements as required under **section 184(2) and 188.**

(2) Register to be signed:
The following provisions to be kept in mind, while maintaining the register of contracts or arrangements:
(a) Register must prepare in such a manner and contains the particulars as prescribed.
(b) Update the register and to be placed before the next meeting of the board and signed by all directors present in the meeting.

(3) Disclosure to be made by director or KMP:

Every director or Key management Personnel ❯ Within **30 days** of appointment or relinquishment of office, **disclose the** the particulars relating to his concern or interest, **which are required to be recorded in the register.**

(4) Register to be kept at registered Office:

The **register** to be kept at **registered office** of the company and shall be open **for inspection** during **business hours.**

(5) Extract from the register:

By whom: Extracts may be taken as required by any member of the company.
Provision: shall be furnished by company and on payment of fees as prescribed.

(6) Register to be produced at AGM:

Register shall also be produced at **every annual general meeting of the company** and shall remain **open & accessible** during the continuance of meeting to the person having right to attend the meeting.

What it means→ **Even a proxy has rights to inspect the register**

(7) Exception:

Nothing contained in section shall apply:

(a) For sale, purchase goods or services if the value doesn't Exceed 5,00,000 rupee in aggregate in a year.

(b) By a banking company for collection of bills in ordinary course of business.

(8) Penalty:

Every director who fails to comply with provisions of this section and rules made.

RESTRICTION ON NON-CASH TRABSACTIONS INVOLVING DIRCTOR SEC-192

Section 192 of the companies act 2013, provide restriction on non-cash transactions involving directors. No company shall enter into contract by which:

(a) **A director acquires or is to acquire assets for consideration other than cash from the company;**

(b) **The company acquires or is to acquire assets for consideration other than cash, from the director or person so connected,** unless prior approval for such arrangement is accorded (प्रदान की) by resolution of the company in general meeting.

(c) The notice of approval of resolution by the company shall include **particulars of the** contract or arrangement along with the value of assets involved.

CONTRACTS BY ONE PERSON COMPANY SEC-193

Section 193 of the companies act 2013, provides for contacts by one Person Company;

(a) Where **OPC** enter into contract with the sole member of the company (who is director also), the company shall ensure that **terms of contract are** contained in the
-- Memorandum or
-- Are recorded in minutes of first meeting of board of director held **after entering into contract.**

PROHIBITION ON INSIDER TRADING OF SECURITIES SEC-195

Section 195 of the companies act 2013, provides for prohibition on insider trading:

(a) **No** person including any director or KMP shall enter into **insider trading.**
(b) **"Insider Trading":**
-- An act of buying, selling, dealing etc. by any director or KMP is reasonably expected to have **price sensitive information** in respect of company's securities.
-- An act of counselling about communicating **directly or indirectly** any non-public price sensitive information to any person.

(c) **"Price Sensitive Information":**
Means any information which relates, **directly or indirectly** to a company and which if **published,** may materially affect the security prices of company.

(d) **"Consequences of contravention ":**
Individual to be punishable with:
Imprisonment: May extend up-to 5 years
Fine: Shall not be less than 5,00,000 and which may extend to

INR 25, 00, 00,000 (25 crores)
Or
3 times the amount of profits made out of insider trading
(Whichever is HIGHER)