

Directors

Role & Liabilities under the new regime

3 Day Workshop
on
“Good
Governance - A
Supreme
Mantra
For Multi-Skilled
Professional”



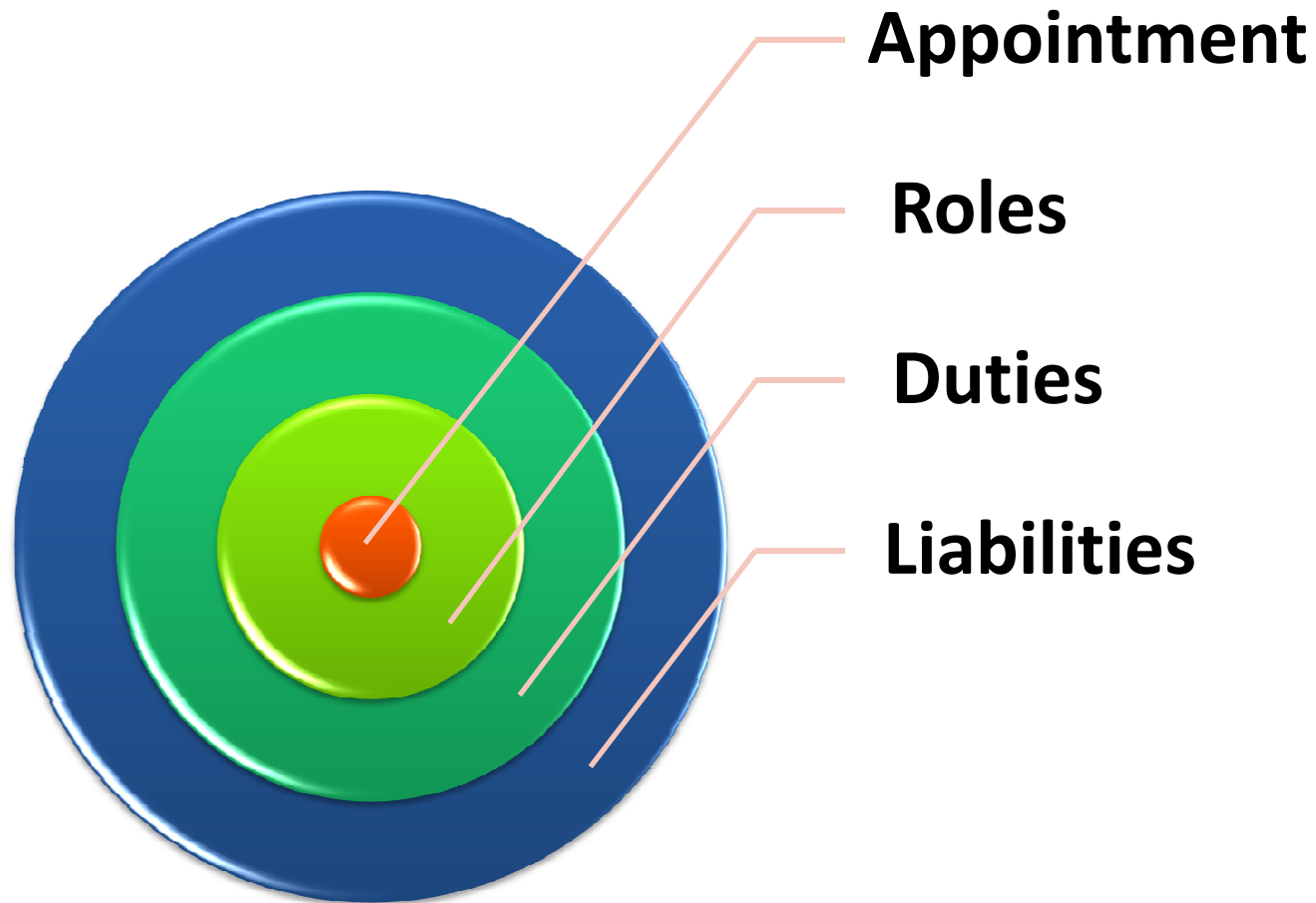
Jointly with



Presented by
S. Dhanapal
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Practising Company Secretaries

Organized by
Mysore Chapter of SIRC of ICSI
Jointly with
Shri Dharmasthala
Manjunatheshwara Institute for
Management Development

Scheme of Presentation



Who is a director

- An appointed or elected member of the board of directors of a company.
- He has the responsibility for determining and implementing the company's policy.
- A company director need not
 - ✓ to be a shareholder or
 - ✓ an employee, andmay hold only the office of director under the provisions of the Act.
- Directors derive their powers emanating from board resolutions
- Unlike shareholders, directors cannot participate through proxy.
- Unlike employees, cannot absolve themselves of their responsibility for the delegated duties.

Definition of Directors/BODs

- “director” means a director appointed to the Board of a company;
(“director” includes any person occupying the position of director, by whatever name called)
- “Board of Directors” or “Board”, in relation to a company, means the collective body of the directors of the company;
(“Board of Directors” or “Board”, in relation to a company, means the board of the directors of the company)

General Rules about appointment of Directors

- Directors should be individuals, i.e. natural persons
- Minimum and maximum number of directors

Private	Public	OPC
• 2 • 15	• 3 • 15	• 1 • 15

- The maximum limit of 15 directors can be increased by passing a special resolution.

(Earlier the limit was 12 directors and approval of Central Government was required for raising the limit)

General Rules about appointment of Directors contd...

Every director to be appointed in general meeting, unless otherwise provided in Act.

Before appointment, person to hold DIN and furnish the same to company along with a declaration that he is not disqualified to become a director under this Act.

Every director to provide his consent to act as director and the consent should be filed with ROC before the concerned director can act as director.

In case of a public company, at least $\frac{2}{3}$ rd of directors will be “directors to retire by rotation” and out of them at least $\frac{1}{3}$ rd to retire every year.

General Rules about appointment of Directors contd...

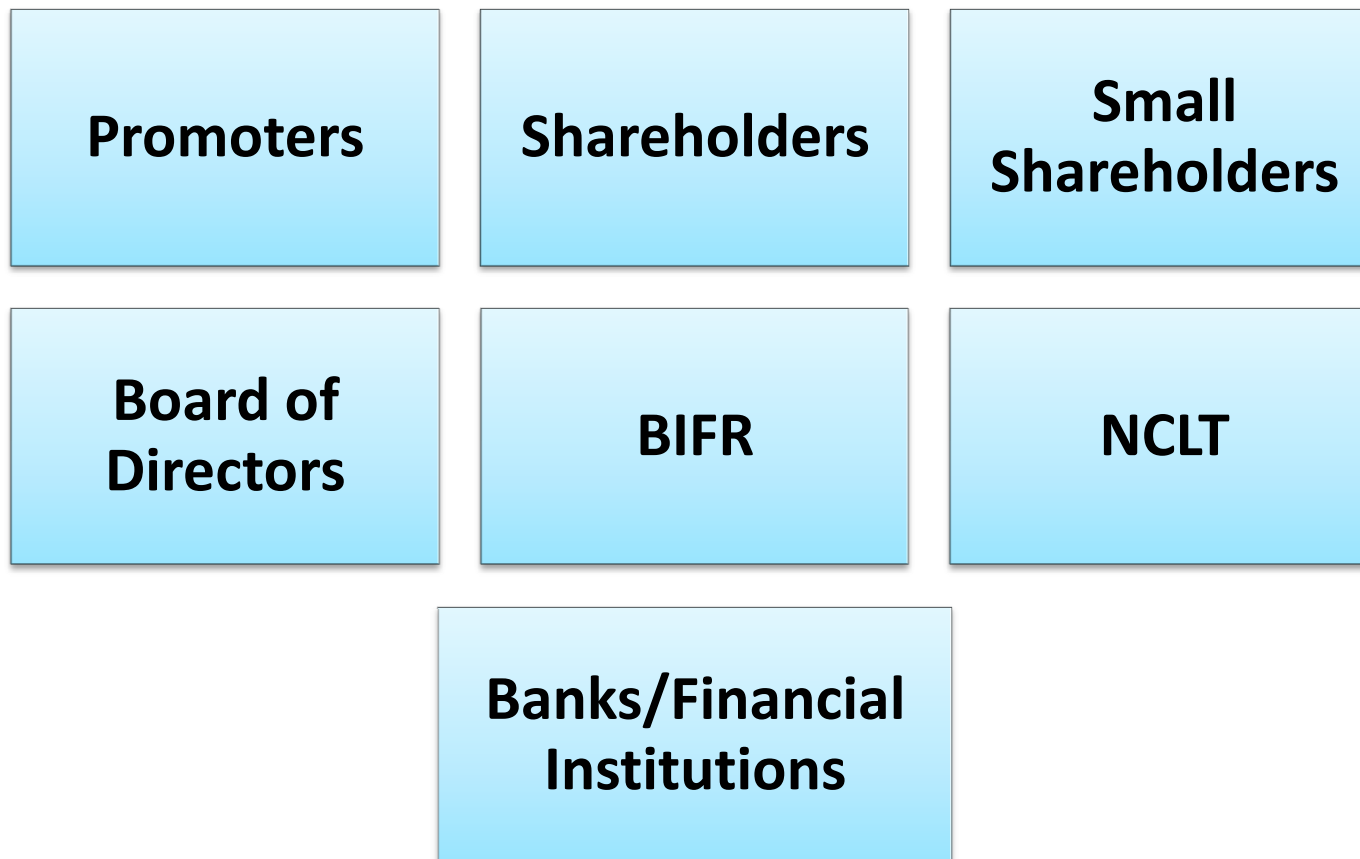
Every company to have atleast one director who has stayed in India for a period of not less than 182 days in the previous calendar year

All listed companies and other public companies having paid up capital of Rs. 100 crore or more of turnover of Rs. 300 crore or more to have atleast one WOMEN DIRECTOR.

All listed companies and other public companies having paid up capital of Rs. 100 crore or more of turnover of Rs. 300 crore or more or deposits/loans outstanding of Rs. 300 crore or more to have atleast 1/3 rd directors as INDEPENDENT DIRECTORS.

General Rules about appointment of Directors contd...

Directors of companies can be appointed by the following:



Limit on number of Directorships

- **A director not to hold office in more than 20 companies including alternate directorship.**
- **Out of the 20 companies mentioned above, not more than 10 companies can be public.**
- **Public company includes private companies which are subsidiaries or holding companies of public companies**
- **the members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors.**

Disqualifications for appointment of director

A person shall not be eligible for appointment as a director of a company, if —

he is of unsound mind and stands so declared by a competent court



he is an undischarged insolvent



he has applied to be adjudicated as an insolvent and his application is pending



He has been convicted and sentenced to imprisonment for at least 6 months and five years from expiry of sentence have not got over



He has been convicted and sentenced for a period of seven years or more

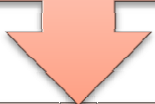
Disqualifications for appointment of director contd...

A person shall not be eligible for appointment as a director of a company, if —

an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force



he has not paid any calls in respect of any shares of the company held by him & 6 months have elapsed from the last day fixed for the payment of the call



he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years

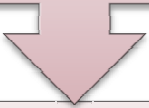


He has not obtained DIN

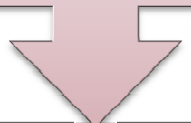
Disqualifications for appointment of director contd...

A person shall not be eligible for appointment as a director of a company, if —

A person who is director of a company which has not filed financial statements or annual returns for 5 continuous yrs, till expiry of 5 yrs from date of default



A person who is director of company which has failed to repay deposits, debentures or distribute dividend for a period of one year, till expiry of 5 years from date of default



Private Companies can provide for additional disqualifications in their Articles

Qualifications for Appointment of MD /WTD /Manager

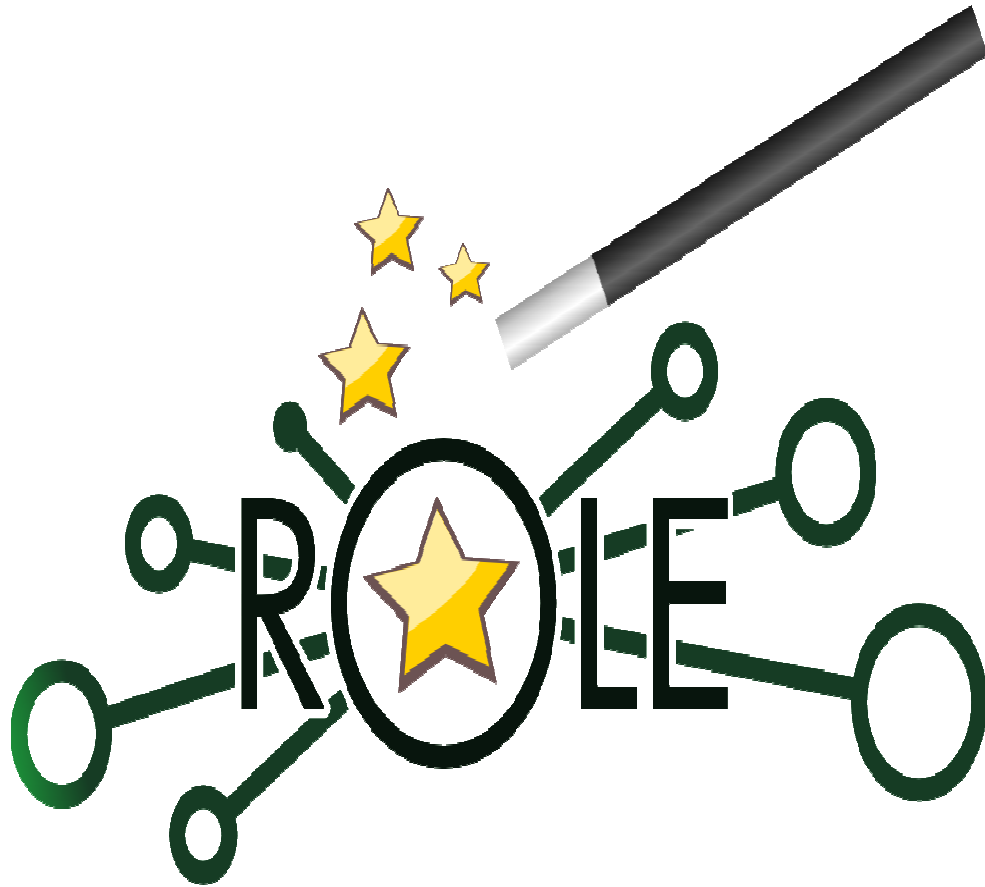
Following conditions to be satisfied:

- he had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the Acts like Stamp Act, Customs Act etc.
- he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
- he has completed the age of 21 years and has not attained the age of 70 years *(with special resolution person above 70 years can be appointed.)*
- where he is a managerial person in more than one company, he draws remuneration from one or more companies subject to the ceiling provided in section V of Part II
- he is resident of India.

For the purpose of this Schedule, resident in India includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person and who has come to stay in India,—

(i) for taking up employment in India; or (ii) for carrying on a business or vacation in India.

ROLE OF DIRECTORS IN COMPANY



A Director is part of a collective body of Directors called the Board, responsible for the superintendence, control and direction of the affairs of the Company.

Legal position of directors



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graph TD; A[Legal position of directors] --> B[a) Directors as Agents :]; A --> C[b) Directors as employees]; A --> D[c) Directors as officers];
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a) Directors as Agents :

A company as an artificial person, acts through directors who are elected representatives of the shareholders and who execute decision making for the benefit of shareholders

b) Directors as employees

When the director is appointed as whole time employee of the company then that particular directors shall be considered as employee director or whole time director

c) Directors as officers

➤ Director treated as officers of an company.

➤ They are liable to certain penalties if the provisions of the companies act are not strictly complied with.

Director as trustees:

➤ Director are treated as trustees of the company, money and property: and of the powers entrusted to and vested in them only as trustee.

Director as “Officer”

- “**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

Director as KMP

“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;
- (iv) the Chief Financial Officer; and
- (v) such other officer as may be prescribed;

Director as “Officer in default”

“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;

Director as “Officer in default” contd...

(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

Role and Functions of Independent Directors

(as per schedule IV)

- (1) help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;**
- (2) bring an objective view in the evaluation of the performance of board and management;**
- (3) scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;**
- (4) satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible;**
- (5) safeguard the interests of all stakeholders, particularly the minority shareholders;**
- (6) balance the conflicting interest of the stakeholders;**
- (7) determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management;**
- (8) moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest.**

Duties of Directors

- Director to act in accordance with AOA.
- A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

Duties of Directors contd...

- A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates
- A director of a company shall not assign his office and any assignment so made shall be void.

Duties of Directors contd...

During Inspection, enquiry and investigation

- Where a Registrar or inspector calls for the books of account and other books and papers under section 206, it shall be the duty of every director, officer or other employee of the company to produce all such documents to the Registrar or inspector and furnish him with such statements, information or explanations in such form as the Registrar or inspector may require and shall render all assistance to the Registrar or inspector in connection with such inspection.

Investigation by SFIO

- The company and its officers and employees, who are or have been in employment of the company shall be responsible to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation.

Duties of Directors contd...

During Inspection, enquiry and investigation/investigation by SFIO

- It shall be the duty of all officers and other employees and agents including the former officers, employees and agents of a company which is under investigation in accordance with the provisions contained in this Chapter, and where the affairs of any other body corporate or a person are investigated under section 219, of all officers and other employees and agents including former officers, employees and agents of such body corporate or a person—
 - (a) to preserve and to produce to an inspector or any person authorised by him in this behalf all books and papers of, or relating to, the company or, as the case may be, relating to the other body corporate or the person, which are in their custody or power; and
 - (b) otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

Duties of Directors contd...

During windup by Tribunal (Section 274)

- **(3) The directors and other officers of the company, in respect of which an order for winding up is passed by the Tribunal under clause (d) of sub-section (1) of section 273, shall, within a period of thirty days of such order, submit, at the cost of the company, the books of account of the company completed and audited up to the date of the order, to such liquidator and in the manner specified by the Tribunal.**

Duties of Independent Directors

(as per schedule IV)

- (1) undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;**
- (2) seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;**
- (3) strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;**
- (4) participate constructively and actively in the committees of the Board in which they are chairpersons or members;**
- (5) strive to attend the general meetings of the company;**
- (6) where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting;**

Duties of Independent Directors contd...

- (7) keep themselves well informed about the company and the external environment in which it operates;**
- (8) not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;**
- (9) pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company;**
- (10) ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;**
- (11) report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy;**
- (12) acting within his authority, assist in protecting the legitimate interests of the company, shareholders and its employees;**
- (13) not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.**

Prohibition on Forward Dealing (Section 194)

- **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.**

Prohibition on Insider Trading (Section 195)

- **No person including any director or key managerial personnel of a company shall enter into insider trading.**

“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;

Vacation of office of Director

- **He incurs any of the disqualifications specified before**
- **He absents himself from all the meetings of the Board of Directors held during a period of 12 months with or without seeking leave of absence of the Board**
- **He acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested**
- **He fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184**

Vacation of office of Director

he becomes disqualified by an order of a court or the Tribunal

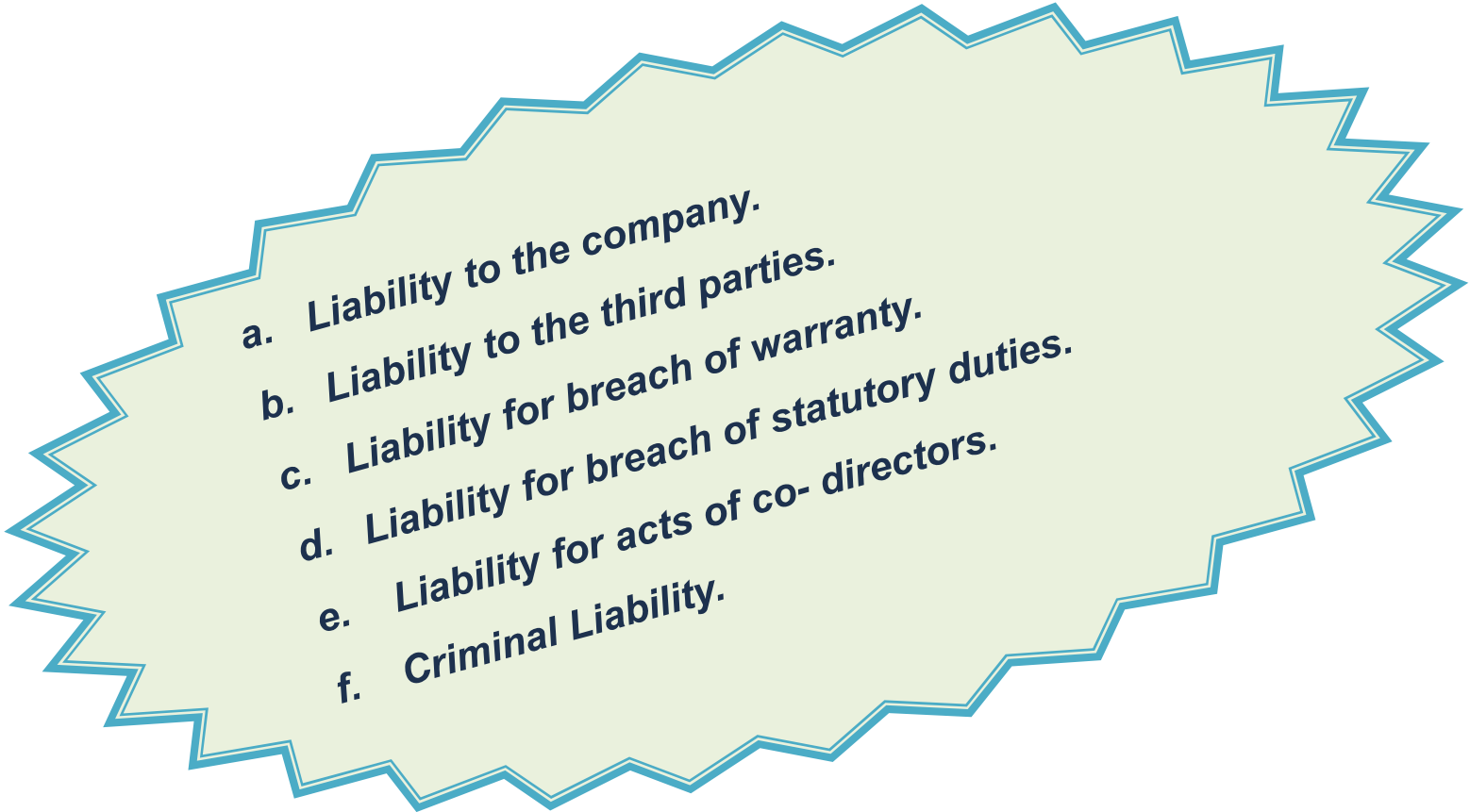
he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months

he is removed in pursuance of the provisions of this Act

he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company

A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified

LIABILITIES OF DIRECTORS

- 
- a. Liability to the company.
 - b. Liability to the third parties.
 - c. Liability for breach of warranty.
 - d. Liability for breach of statutory duties.
 - e. Liability for acts of co- directors.
 - f. Criminal Liability.

A. Liability to the company

Breach of fiduciary duty

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graph TD; A[Breach of fiduciary duty] --> B[Ultra vires acts]; B --> C[Negligence]; C --> D[Mala fide acts];
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Ultra vires acts

Negligence

Mala fide acts

Breach of fiduciary duty:

- ✓ where a director acts dishonestly to the interest of the company.
- ✓ His power exercised in the interest of director or any member.

Ultra vires acts:

- Memorandum and Articles of Association, restrict the power and activities of director.
- If the director acts beyond restrictions he shall be held personally liable for acts beyond the aforesaid limits, being ultra vires the company or the directors.

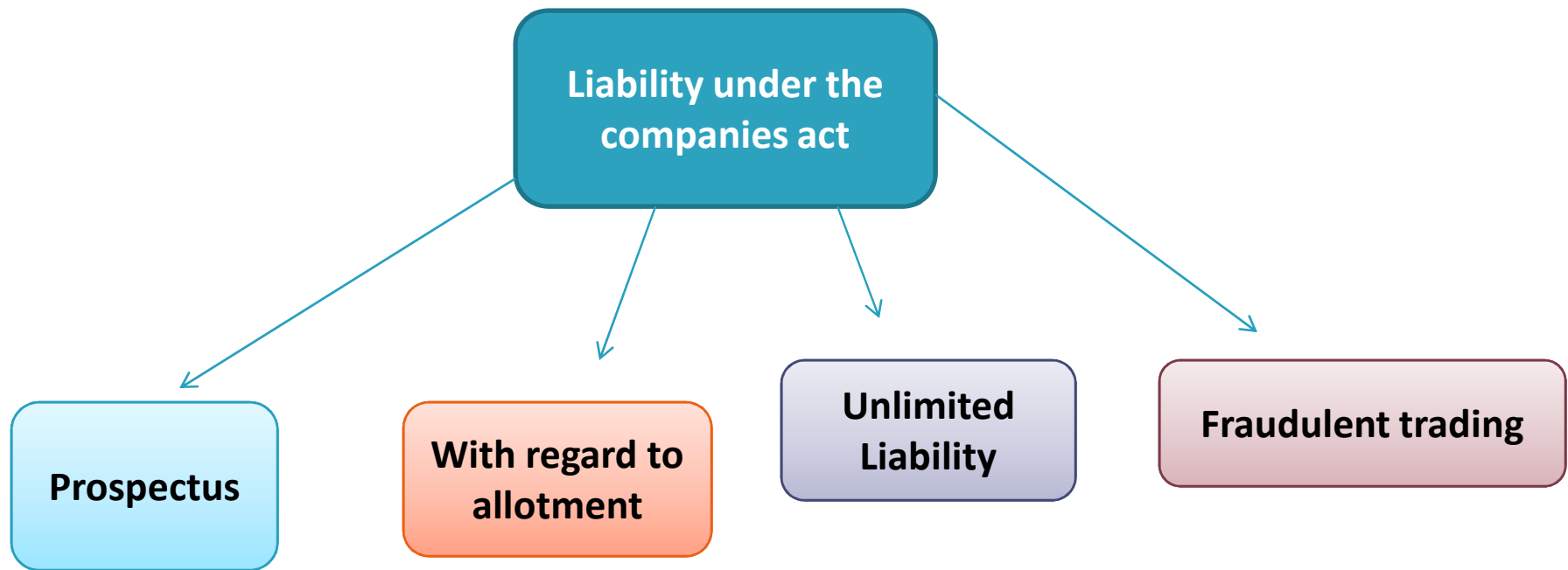
Negligence:

- The duties of director is to safeguard and accountable the property of company.
- If they fail to act diligently they shall be deemed to have acted negligently and they shall be held liable for any loss or damage.

Mala fide acts:

- Directors are the trustee for the moneys and property of the company.
- If they dishonestly or in a mala fide manner, exercise their powers and perform their duties, they will be liable for breach of trust and may be required to make good the loss or damage suffered by the company by reason of such mala fide acts.
- Directors can also be held liable for their acts of 'misfeasance' i.e., misconduct or willful misuse of powers.

B. LIABILITY TO THE THIRD PARTIES



C. LIABILITY FOR BREACH OF WARRANTY:

- Directors are supposed to function within the scope of their authority. Thus, where they transact any business in respects of matters, ultra vires the company or ultra vires the articles, they may be proceeded against personally for any loss sustained by any third party.

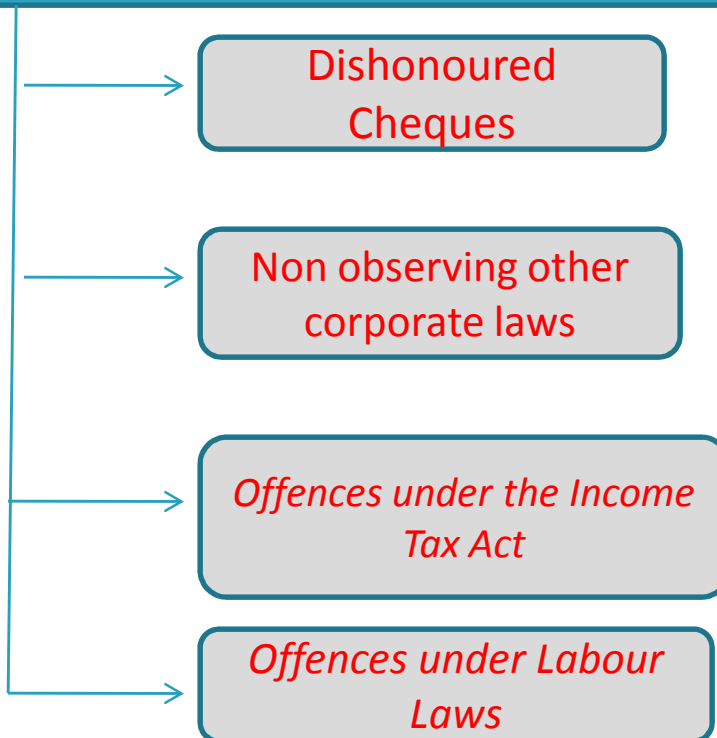
D. LIABILITY FOR BREACH OF STATUTORY DUTIES:

- Companies Act imposes numerous statutory duties on the directors under various sections of the Act. Default in compliance of these duties attract penal consequences. The various statutory penalties which directors may incur by reason of non-compliance with the requirements of Companies Act are referred to in their appropriate places.

E. LIABILITY FOR ACTS OF CO-DIRECTORS:

- A director is the agent of the company except for matters to be dealt with by the company in general meeting and not of the other members of the Board.
- Accordingly, nothing done by the Board can impose liability on a director who did not participate in the Board's action or did not know about it.
- To incur liability he must either be a party to the wrongful act or later consent to it. Thus, the absence of a director from meeting of the Board does not make him liable for the fraudulent act of a co-director on the ground that he ought to have discovered the fraud.

F. CRIMINAL LIABILITY



- Apart from the civil liability under that Act or under the common law, directors of a company may also incur criminal liability.



Liability of non-executive / Independent Directors

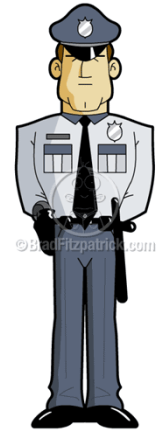
Notwithstanding anything contained in this Act,—

(i) an independent director;

(ii) a non-executive director not being promoter or key managerial personnel,

shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

LIABILITY AS “OFFICER”



Section 66 (Reduction of Capital)

(10) If any officer of the company—

- (a) knowingly conceals the name of any creditor entitled to object to the reduction;*
- (b) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or*
- (c) abets or is privy to any such concealment or misrepresentation as aforesaid, he shall be liable under section 447.*

LIABILITY AS “OFFICER”

Section 105 (Proxies)

- If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to one lakh rupees.
- Provided that an officer shall not be punishable under this subsection by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

LIABILITY AS “OFFICER”

Section 173 (Meetings of Board)

- (4) Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of twenty-five thousand rupees.

Section 204 (Secretarial Audit)

- (4) If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, every officer of the company or the company secretary in practice, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

LIABILITY AS “OFFICER”

Section 207 (Conduct of Inspection and Enquiry)

- (4) (i) If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
- (ii) If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.

LIABILITY AS “OFFICER”

Section 212 (Inspection by SFIO)

- On receipt of the investigation report, the Central Government may, after examination of the report (and after taking such legal advice, as it may think fit), direct the Serious Fraud Investigation Office to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs.
- Notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973 of the company.

LIABILITY AS “OFFICER”

Section 274 (Directions for filing statement of Affairs – Winding Up by Tribunal)

- (4) If any director or officer of the company contravenes the provisions of this section, the director or the 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 five lakh rupees, or with both.

OBLIGATIONS OF DIRECTORS AND MANAGERS – WINDING UP BY TRIBUNAL (Sec-286)

- In the case of a limited company, any person who is or has been a director or manager, whose liability is unlimited under the provisions of this Act, shall, in addition to his liability, if any, to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of winding up, a member of an unlimited company:

Provided that —

- (a) a person who has been a director or manager shall not be liable to make such further contribution, if he has ceased to hold office for a year or upwards before the commencement of the winding up;
- (b) a person who has been a director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;
- (c) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the Tribunal deems it necessary to require the contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

- **Liability as Officer in Default**

- Directors are liable as officers in default under all sections where specific penalty is provided for each officer in default.
- Where no specific penalty is provided under the Act, they are liable under Section 450.

LIABILITY FOR FRAUD



Definition of Fraud as per Clause 447

“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;

“wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled;

“wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.

Clause 447 – Punishment for Fraud

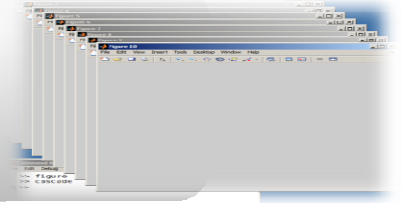
Any person who is found to be guilty of fraud, shall be punishable with **imprisonment** for a term which shall not be less than six months but which **may extend to ten years** and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud

Effect of Clause 447 via Section 468 of CRPC

468 - Bar to taking cognizance after lapse of the period of limitation

- (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.**
- (2) The period of limitation shall be-**
 - (a) six months, if the offence is punishable with fine only**
 - (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;**
 - (c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.**

CASCADING EFFECT OF CLAUSE 447



Incorporation of a company –

- Furnishing any false or incorrect particulars or suppressing any material information in relation to the registration of a company. **[CLAUSE 7(5)]**
- If after incorporation it is found that company was formed by furnishing false or incorrect information or by suppressing any material fact, then promoters and first directors will be liable. **[CLAUSE 7(6)]**

CASCADING EFFECT OF CLAUSE 447

Social/Charitable companies –

- When it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447. **(Clause 8)**

Criminal liability for misstatement in prospectus–

- Where a prospectus includes any statement which is untrue or misleading every person who authorises the issue of such prospectus shall be liable under section 447. **(Clause 34)**

CASCADING EFFECT OF CLAUSE 447

Punishment for fraudulently inducing persons to invest money

- (a) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or
- (b) any agreement, the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or
- (c) any agreement for, or with a view to obtaining credit facilities from any bank or financial institution;

[CLAUSE 36]

CASCADING EFFECT OF CLAUSE 447

Punishment for personation for acquisition etc. of shares –

- Any person who—
 - (a) *makes or abets making of an application in a fictitious name to a company for acquiring, or subscribing for, its securities; or*
 - (b) *makes or abets making of multiple applications to a company in different names or in different combinations of his name or surname for acquiring or subscribing for its securities; or*
 - (c) *otherwise induces directly or indirectly a company to allot, or register any transfer of, securities to him, or to any other person in a fictitious name,*
- shall be liable for action under section 447. **[CLAUSE 38(1)]**

CASCADING EFFECT OF CLAUSE 447

Certificate of Shares –

- If a company with intent to defraud issues a **duplicate certificate of shares**, the company shall be punishable with fine and every officer of the company who is in default shall be liable for action under section 447. [CLAUSE 46(5)]

Transfer and transmission of securities –

- Without prejudice to any liability under the Depositories Act, 1996, where any depository or depository participant, with an intention to defraud a person, has transferred shares, it shall be liable under section 447. [CLAUSE 56(7)]

CASCADING EFFECT OF CLAUSE 447

Damages for Fraud (Deposit) –

- Where a company fails to repay the deposit or part thereof or any interest thereon and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to the provisions contained in *subsection (3) of that section and liability under section 447, be personally responsible, without any limitation of liability*, for all or any of the losses or damages that may have been incurred by the depositors. **[CLAUSE 75(1)]**

CASCADING EFFECT OF CLAUSE 447

- **Removal, resignation of auditor and giving of special notice (Clause 140)**
- **Where business of a company has been or is being carried on for a fraudulent or unlawful purpose (Clause 206(4) proviso)**
- **Investigation into company's affairs in other cases (Clause 213)**

CASCADING EFFECT OF CLAUSE 447

- **Penalty for furnishing false statement, mutilation, destruction of documents during the course of inspection, inquiry or investigation (Clause 229)**
- **Fraudulent application for removal of name [Clause 251 (1)]**

CASCADING EFFECT OF CLAUSE 447

- **Penalty for frauds by officers (Clause 337)**
- **Liability for fraudulent conduct of business [Clause 339 (3)]**

Clause 448 – Punishment for False Statement

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 there under, 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

Section 628 which contains same provision provides for imprisonment up to 2 years and fine (amt not specified).

Clause 449 – Punishment for False Evidence

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**.

Section 629 which contains same provision provides for imprisonment up to 7 years and fine (amt not specified).

Directors can be personally liable:

- **When the directors enter into contract in their own name.**
- **When they enter into contracts on behalf of company but fails to use “LTD. Or PVT LTD.”**
- **When directors exceeds their powers**
- **The BOD should act an agent of company, not of a single director. Therefore a single director cannot enter into a contract on behalf of company unless the BOD authorises.**

Personal Liability

Section 35 – Civil Liability for mis-statement in prospectus

- (1) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who—
 - (a) is a director of the company at the time of the issue of the prospectus;
 - (b) has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time;
 - (c) is a promoter of the company;
 - (d) has authorised the issue of the prospectus; and
 - (e) is an expert referred to in sub-section (5) of section 26,shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage.
- (3) Notwithstanding anything contained in this section, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in subsection (1) shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

Personal Liability

Section 75 – Damages for Fraud

- Where a company fails to repay the deposit or part thereof or any interest thereon referred to in section 74 within the time specified in sub-section (1) *of that section* or such further time as may be allowed by the Tribunal under sub-section (2) *of that section*, and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to the provisions contained in subsection (3) *of that section and liability under section 447, be personally responsible*, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors.

Personal Liability

Section 224 – Actions to be taken in pursuance of Inspector's report

- (5) Where the report made by an inspector states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property, or cash, as the case may be, and also for holding such director, key managerial personnel, officer or other person **liable personally without any limitation of liability.**

Personal Liability

Section 248 – Power of Registrar to remove name of Company from register of companies

- (7) The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved.

Personal Liability

Section 339 – Liability for fraudulent conduct of business

- (1) If in the course of the winding up of a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company or any other persons or for any fraudulent purpose, the Tribunal, on the application of the Official Liquidator, or the Company Liquidator or any creditor or contributory of the company, may, if it thinks it proper so to do, declare that any person, who is or has been a director, manager, or officer of the company or any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Tribunal may direct:



Post your reflections to

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