Law amendment Companies Act, 2013 chapter wise)
Ch 1 Accounts & Audit

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

According to section 133 of the Companies Act, 2013, "Accounting Standards" means the standards of accounting or any addendum thereto as recommended by the Institute of Chartered Accountants of India constituted under section 3 of the Chartered Accountants Act, 1949 (38 of 1949), as may be prescribed by the Central Government in consultation with and after examination of the recommendations made by the National Financial Reporting Authority constituted under section 132 of the Companies Act, 2013.
The Ministry of Corporate Affairs vide General Circular No. 15/2013 dated 13th September, 2013 has clarified that till the Standards of Accounting or any addendum thereto are prescribed by Central Government in consultation and recommendation of the National Financial Reporting Authority, the existing Accounting Standards notified under the Companies Act, 1956 shall continue to apply.

Ch 2 Dividend

2.7 Time Limit for payment of dividend

According to Section 127 of the Companies Act, 2013, dividend has to be paid within 30 days from the date of its declaration. The posting of dividend warrant by the company within 30 days will be deemed to be payment irrespective of the fact whether the shareholder has encashed it or not. Failure to pay or post dividend warrant within 30 days, constitutes an offence under the Act and renders every director of the company, if he is knowingly a party to the default, punishable with simple imprisonment for a term which may extend to two years and also to a fine of one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues. However, no offence shall be deemed to have been committed in the following cases:

(a) Where the dividend could not be paid by reason of the operation of any law; (b) Where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him; (c) Where there is a dispute regarding the right to receive the dividend; (d) Where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or (e) Where, for any other reason, the failure to pay the dividend or to post the warrant within the period aforesaid was not due to any default on the part of the company.

Ch 3 Directors – Powers, Managerial

3.2 Appointment of Directors

RemunerationAdditional Directors: According to section 161(1) of the Companies Act, 2013, the articles of a company may confer on its Board of Directors the power to appoint any person as an additional director at any time. Such person shall not be appointed as an additional director *who fails to get appointed as a director in a general meeting. Additional director shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier. Appointment of Nominee Director: According to section 161(3) of the Companies Act, 2013, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company, subject to the articles of a company. Appointment of Casual Vacancy: According to section 161(4) of the Companies Act, 2013, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board. This provision is applicable only in the case of a public company. Any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.*

Appointment of Alternate Directors: According to section 161(2) of the Companies Act, 2013, the Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company, to act as an alternate director for a director during his absence for a period of not less than three months from India. No person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act. An alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India. If the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director. Appointed directors must be voted individually: According to section 162(1) of the Companies Act, 2013, two or more directors of a company cannot be elected as directors by a single resolution. Thus, each director shall be appointed by a separate resolution unless the meeting first agreed that the appointment shall be made by a single resolution and no vote has been cast against such agreement. A resolution moved in contravention of this provision shall be void, whether or not objection thereto was raised at the time it was so moved. A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as a motion for his appointment. Principle of proportional representation for appointment of directors: According to section 163(1) of the Companies Act, 2013, the articles of a company may adopt the principle of proportional representation for appointing not less than 2/3rd of the total number of directors, whether by a single transferable vote or by a system of cumulative voting or otherwise. In such a case, appointments will be so made once in every three years and interim casual vacancies will be filled in conformity with the provisions of sections 161(4).

Restrictions on the Powers of Board (amendment)

Validity of acts of directors: According to section 176 of the Companies Act, 2013, no act done by a person as a director shall be deemed to be invalid, notwithstanding that it was subsequently noticed that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles of the company. But once, the director's appointment has been noticed by the company to be invalid *or to have terminated, nothing in this section shall be deemed to give validity to any act done by the director afterwards. (c) Since according to Section 185(1) of the Companies Act, 2013 (which we shall discuss later) no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other persons including firms, in which directors or their relatives are partners.*

(d) Under Section 181 of the Companies Act, 2013, the Board of directors of a company may contribute to bona fide charitable and other funds any amount the aggregate of which will not, in any financial year exceed 5% of its average net profits for the three immediately preceding financial years. Prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceed five per cent. of its average net profits for the three immediately preceding financial years.

3.11 <u>Loans to Directors</u> [Section 185 of the Companies Act, 2013]

We will presently see from our discussion hereunder that a company's power of lending money to its directors is strictly regulated by the Act. According to Section 185(1), no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person. Exceptions: The above restriction do not apply in the following circumstances: (a) 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; or (b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.

Here, the expression "to any other person in whom director is interested" means—
(a) any director of the lending company, or of a company which is its holding company or any partner or relative of any such director;
(b) any firm in which any such director or relative is a partner;
(c) any private company of which any such director is a director or member;
(d) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
(e) any body corporate, the Board of directors, managing director or manager,
whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company. Contravention: If any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of sub-section (1), the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both. Now suppose that the directors of a company have to travel often for company's business. The company makes some advances to them for this purpose, which sometimes exceeds the actual requirements. In such a case can the company be deemed to have, contravened the provision of section 185 of the Companies Act, 2013? It

seems that advances pertaining to travelling expenses are outside the ambit of section 185 of the Companies Act, 2013, because such advances are not in the nature of loans, and are meant to meet expenses on behalf of the company. Therefore, the provisions of section 185(1) of the Companies Act, 2013, are not contravened, but the directors are bound to keep the advances in excess in trust for the company.

Political Contributions

According to section 182(1) of the Companies Act, 2013, notwithstanding anything contained in any other provision of this Act, a company may contribute any amount directly or indirectly to any political party. Here, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951. Prohibition: the following companies are not allowed to contribute to any political party:
(i) a Government company; and
(ii) a company which has been in existence for less than three financial years.

Amount of contribution: The aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half per cent. of its average net profits during the three immediately preceding financial years. Conditions to be fulfilled: No such contribution shall be made by a company unless a resolution authorizing the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorized by it. Without prejudice to the generality of the provisions of sub-section (1),— (a) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to affect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose; (b) the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed,— (i) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and (ii) where such publication is not by or on behalf of, but for the advantage of a political party, to be a contribution for a political purpose. Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party to which such amount has been contributed. Contravention: If a company makes any contribution in contravention of the provisions of this section, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed. Contribution to National Defense Fund: According to section 183 of the Companies Act, 2013, the Board of Directors of any company or any person or authority exercising the powers of the Board of Directors of a company, or of the company in general meeting, may, notwithstanding anything contained in sections 180, 181 and section 182 or any other provision of this Act or in the memorandum, articles or any other instrument relating to the company, contribute such amount as it thinks fit to the National Defense Fund or any other Fund approved by the Central Government for the purpose of national defense. Every company shall disclose in its profits and loss account the total amount or amounts
contributed by it to the Fund referred above during the financial year to which the amount

relates.

Compensation for loss of office: According to section 202 of the Companies Act, 2013, a company may make payment to a managing or whole-time director or manager, but not to any other director, by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement. The compensation payable shall be on the basis of average remuneration actually earned by such persons for three years (or such shorter period as may be the case) immediately proceeding the ceasing of holding of such office, and shall be for the unexpired portion of his term or for three years (whichever is shorter). No such payment however can be made at all if winding up of the company is commenced before or commences within 12 months after he ceases to hold office if the assets on winding up (after deducting expenses on winding up) are not sufficient to repay the shareholders the capital contributed by them (inclusive of premium, if any). No payment of such compensation can also be made in the following cases (a) where the director resigns from his office as a result of the reconstruction of the company, or of its amalgamation with any other body corporate or bodies corporate, and is appointed as the managing or whole-time director, manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation;
(b) where the director resigns from his office otherwise than on the reconstruction of the company or its amalgamation as aforesaid;
(c) where the office of the director is vacated under sub-section (1) of section 167;
(d) where the company is being wound up, whether by an order of the Tribunal or voluntarily, provided the winding up was due to the negligence or default of the director;
(e) where the director has been guilty of fraud or breach of trust in relation to, or of gross negligence in or gross mismanagement of, the conduct of the affairs of the company or any subsidiary company or holding company thereof; and
(f) where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office.
Nothing in this section shall be deemed to prohibit the payment to a managing or whole-time director, or manager, of any remuneration for services rendered by him to the company in any other capacity.

Ch 4 Meetings, Powers of the Board and Related

Party Transactions

Resolutions requiring consent of all directors

Powers to be exercised by the Board of Directors of a company in general meeting: According to section 180(1) of the Companies Act, 2013, the Board of directors of a company shall exercise the following powers only with the consent of the company by the special resolution -
(a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings. Here, (i) “undertaking” shall mean an undertaking in which the investment of the company exceeds twenty per cent. of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates twenty per cent. of the total income of the company during the previous financial year . (ii) the expression “substantially the whole of the undertaking” in any financial year shall mean twenty per cent. or more of the value of the undertaking as per the audited balance sheet of the preceding financial year.

(b) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;
(c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business. The acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of monies by the banking company within the meaning of this clause. The expression "temporary loans" means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature;
(d) to remit, or give time for the repayment of, any debt due from a director. Every special resolution passed by the company in general meeting in relation to the exercise of the powers referred to in clause (c) of sub-section (1) shall specify the total amount up to which monies may be borrowed by the Board of Directors. Nothing contained in clause (a) of sub-section (1) shall affect—
(a) the title of a buyer or other person who buys or takes on lease any property, investment or undertaking as is referred to in that clause, in good faith; or
(b) the sale or lease of any property of the company where the ordinary business of the company consists of, or comprises, such selling or leasing. Any special resolution passed by the company consenting to the transaction as is referred to in clause (a) of sub-section (1) may stipulate such conditions as may be specified in such resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transactions. But it shall not be deemed to authorise the company to effect any reduction in its capital except in accordance with the provisions contained in this Act. No debt incurred by the company in excess of the limit imposed by clause (c) of sub-section (1) shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause had been exceeded.

Restriction on non-cash transactions involving directors According to section 192 (1) of the Companies Act, 2013, 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. 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. [sub-section (2)] 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. [Sub-section (3)] Prohibition on forward dealings in securities of company by director or key managerial personnel

According to section 194(1) of the Companies Act, 2013, 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. 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.[sub-section (2)]

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 dematerialized 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. [sub-section (3)] Here, ''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. Prohibition on insider trading of securities According to section 195 of the Companies Act, 2013, no person including any director or key managerial personnel of a company shall enter into insider trading. But if any communication is required in the ordinary course of business or profession or employment or under any law, then the above prohibition does not apply. Here, (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 counseling 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. 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.

Powers of the Board of directors Powers exercisable by the Board with consent of the company by special resolution in general meeting [section 180 of the Companies Act, 2013]

<u>Committees of Directors and their meetings</u>

Subject to the provisions of the Act, the Board may delegate any of its power to the committees consisting of such members of its body as its things fit. A committee so formed shall, in exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board (Article 77 of Table A).

A committee may elect a chairman of its meeting. If no chairman is elected, or if at any meeting the chairman does not turn up within five minutes from the time scheduled for the meeting, the members present may choose one from amongst themselves to be the chairman of the meeting (Article 78). A committee may meet and adjourn as it thinks proper, Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present. And in case of equality of votes, the chairman shall have a second or casting vote (Article 79). All Acts done by the Board meeting or by its committee meeting or by any person acting as a director shall be as valid as if every such director or such person had been duly appointed and was qualified to be a director. The validity of all such acts done is not affected even if it is discovered later on that there was some defect in the appointment of any one or more of such directors or of any person acting as a director. The said acts will also remain unaffected even when the directors are later on discovered to be disqualified (Article 80). This provision has been intended to prevent the validity of transactions from being questioned where there has been a slip in the appointment of a director. But the provision cannot be utilized to ignore or override the substantive provisions pertaining to such appointment. It is applicable only to acts of directors whose appointment or qualification is later on discovered to be faulty. Where, however, their appointments have not taken place at all but they merely choose to act on the company's behalf, the protection prescribed by either Article 80 or Section 176 of the Companies Act, 2013, cannot be invoked [Morris vs. Danssen (1964) I, A.E.R. 586 (H, L.)] This is because the said subsequent discovery must be a discovery of the defect; it must not be discovery of facts which go to constitute the defect [British Asbestos Co. vs. Body (1903) 2 Ch. 439]. Suppose a regulation like Articles 80 is included in the Article of Association of a company. What would be the possible impact of this? The impact has been summed up in Halsbury's Laws of England (vide p. 277, 3rd Edition, Vol. VI) thus: "An Article validating the acts of persons acting as directors, though it is a afterwards discovered that there was a defect in their appointment or qualification, operates not only between the company and outsiders but also as between the company and its members; as where de facto directors make a call, summon meetings of the company, elect other directors or allot shares, A de facto director may be ordered to furnish a statement of affairs in winding up. Directors can not take advantage of any infirmity in their proceedings in which they have themselves participated; they are stopped as between themselves and the company; they are also stopped from saying they have been improperly appointed if, they have acted after appointment, persons dealing with them who know of the invalidity are likewise stopped." It should also be noted that Section 176 of the Companies Act, 2013, applies to act of an individual director, whereas Article 80 covers act of the Board and of its committee.

Ch 11 Companies Incorporated Outside India

According to section 379 of the Companies Act, 2013, where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

11.1 Documents, etc., to be Delivered to the Registrar by Foreign Companies (Section 592)

Here, the expression "place of business" includes a share transfer or registration office. [Section 386(c) of the Companies Act, 2013]

11.2 Return to be Delivered to Registrar Where Documents are Altered (Section 593)
Here, the expression "Director", in relation to a foreign company, includes any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act. [Section 386(b) of the Companies Act, 2013]

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

According to section 382 of the Companies Act, 2013, every foreign company shall—
(a) conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate;
(b) cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, billheads and letter paper, and in all notices, and other official publications of the company; and
(c) if the liability of the members of the company is limited, cause notice of that fact—
(i) to be stated in every such prospectus issued and in all business letters, billheads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and
(ii) to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situate.

11.5 Service on foreign company

According to section 383 of the Companies Act, 2013, any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person whose name and address have been delivered to the Registrar under section 380 of the Companies Act, 2013, and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode.

Ch 12 Offences and Penalties

12.2 Offences to be non-cognizable According to section 439 of the Companies Act, 2013, notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in section 212(6) of the Companies Act, 2013, shall be deemed to be non-cognizable within the meaning of the said Code. No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder of the company, or of a person authorised by the Central Government in that behalf. [Sub-section (2)] Further, the court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorised by the Securities and Exchange Board of India. It is further provided that nothing in this sub-section shall apply to a prosecution by a company of any of its officers. Notwithstanding anything *contained in the Code of Criminal Procedure, 1973, where the complainant under sub-section (2) is the Registrar or a person authorized by the Central Government, the presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial. The provisions of sub-section (2) shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters in Chapter XX or in any other provision of this Act relating to winding up of companies. Here, the liquidator of a company shall not be deemed to be an officer of the company within the meaning of sub-section (2).*

Offences Compoundable – Section Wise List Part-A [Vide sub-section (1) of section 621A]

452(1) of the Companies Act, 2013

Wrongfully withholding or wrongfully taking possession of property, including cash of the company by an officer or employee.

Fine : not less than ` 1 lakh which may extend to ` 5 lakh

List of Non-Compoundable Offences punishable with imprisonment only

452(2) of the Companies Act, 2013

Default in delivering or refunding within a time fixed by Court, any property or cash wrongfully withheld or knowingly misapplied by an officer or employee upon trial under this section

Imprisonment upto 2 Years

APPENDIX-IV List of Non-Compoundable Offences, i.e. offences punishable with imprisonment and fine
under section 621A(7)(b) of the Act

448 of the Companies Act, 2013

False statements as mentioned in section 448 of the Companies Act, 2013

Person shall be liable under section 447 of the Companies Act, 2013

449 of the Companies Act, 2013

False evidence given as stated in section 449 of the Companies Act, 2013

Imprisonment shall not be less than 3 years but may extend to 7 years and fine which may extend to 10 lakh rupees.

12.4 Application of fines

According to section 446 of the Companies Act, 2013, the court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the payment of a reward to the person on whose information the proceedings were instituted.

Ch 14 Other Relevant Miscellaneous Provisions of The Companies Act, 1956

Annual reports on Government companies: According to section 394 of the Companies Act, 2013, where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that company to be—
(a) prepared within three months of its annual general meeting before which the comments given by the Comptroller and Auditor-General of India and the audit report is placed under the proviso to sub-section (6) of section 143; and
(b) as soon as may be after such preparation, laid before both Houses of Parliament together with a copy of the audit report and comments upon or supplement to the audit report, made by the Comptroller and Auditor-General of India. Where in addition to the Central Government, any State Government is also a member of a Government company, that State Government shall cause a copy of the annual report prepared above to be laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments upon or supplement to the audit report referred above.

14.4 Provisions for Removal of Administrative Difficulties

1. Protection of acts taken in good faith: According to section 456 of the Companies Act, 2013, no suit, prosecution or other legal proceedings shall lie against the Government or any officer thereof or any other person in respect of anything which is done in good faith or is intended to be done in pursuance of the Act or any rules or orders made thereunder, or in respect of the publication by or under the authority of the Government or such officer of any report, paper or proceedings. The objective of such a protection is to indemnify persons acting in good faith, pursuant to the Act, who may not be Government officers and in respect of publication made by or under the authority of Government or such officers of such report, paper or proceeding.
2. Non-disclosure of information in certain cases: According to section 457 of the Companies Act, 2013, the Registrar, any officer of the Government or any other person shall not be compelled to disclose to any Court, Tribunal or other authority, the source from where he got any information which has led the Central Government to order an investigation under section 210 of the Companies Act, 2013 or which is or has been material or relevant in connection with such investigation. It is a provision intended to ensure that the flow of information is not obstructed by the identify of the sources being revealed.
3. Powers of the Central Government or Tribunal to accord approval, etc., subject to conditions and to prescribe fees on applications: According to section 459 of the Companies Act, 2013 where the Central Government or Tribunal is required or authorised by any provision of the Act
(i) to accord approval, sanction, confirmation or recognition to any matter, or in relation to, any matter; or (ii) to give any direction in relation to any matter; or (iii) to grant exemption in relation to any matter,

then the Central Government or the Tribunal may in the absence of anything to the contrary contained in that provision or any other provision of this Act, accord, give or grant such approval, sanction, consent, confirmation, recognition, direction or exemption, subject to such conditions,limitations or restrictions as it may think fit to impose. If however, such conditions, restrictions and limitations are contravened, the Central Government or the Tribunal may rescind or withdraw them. Every application made for any of the aforesaid purposes must be accompanied by such fees as may be prescribed. The Central Government and the Tribunal are authorised to prescribe fees for application in respect of different matters or in the

case of applications made by companies for applications by different classes of companies.
4. Power of Central Government to fix a limit with regard to remuneration:
5. Power to condone delays: According to section 460 of the Companies Act, 2013, the Central Government may condone the delay, in filing an application or document to be made to the Central Government or the Registrar, for reasons to be recorded in writing.
6. Annual reports by Central Government: According to section 461 of the Companies Act, 2013, the Central Government shall cause a general annual report on the working and administration of this Act to be prepared and laid before each House of Parliament within one year of the close of the year to which the report relates.
7. Power to exempt a class or classes of companies from provisions of this Act: According to section 462 of the Companies Act, 2013, 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. A copy of every such notification proposed to be issued, shall be laid in draft before each House of Parliament, while it is in session, for a total period of 30 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. 8. Power of court to grant relief in certain cases: According to section 463(1) of the Companies Act, 2013, If in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, it appears to the court hearing the case that he is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the court may relieve him, either wholly or partly, from his liability on such term, as it may think fit. Provided that in a criminal proceeding under this sub-section, the court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust. Where any such officer has reason to apprehend that any proceeding will or might be brought against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the High Court for relief and the High Court on such application shall have the same power to relieve him as it would have had if it had been a court before which a proceedings against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought under sub-section (1). [Sub-section (2)] No court shall grant any relief to any officer under sub-section (1) or sub-section (2) unless it has, by notice served in the manner specified by it, required the Registrar and such other person, if any, as it thinks necessary, to show cause why such relief should not be granted. 12. Companies not entitled to fundamental rights under the Constitution

13. Power of the Central Government to appoint Company Prosecutors and to appeal against orders of acquittal: According to section 443 of the Companies Act, 2013, the Central Government may appoint generally, or for any case, or in any case, or for any specified class of cases in any local area, one or more persons, as company prosecutors for the conduct of prosecutions arising out of this Act and the persons so appointed as company prosecutors shall have all the powers and privileges conferred by the Code of Criminal Procedure, 1973 on Public Prosecutors appointed under section 24 of the Code. According to section 444 of the Companies Act, 2013, Central Government may, in any case arising under this Act, direct any *company prosecutor or authorize any other person either by name or by virtue of his office, to present an appeal from an order of acquittal passed by any court, other than a High Court, and an appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court. 14. Compensation of accusation without reasonable cause: According to section 445 of the Companies Act, 2013, the provisions of section 250 of the Code of Criminal Procedure, 1973 shall apply mutatis mutandis to compensation for accusation without reasonable cause before the Special Court or the Court of Session. 14.5 Powers of the Central Government*

1. *Power of the Central Government to amend Schedules: According to section 467 of the Companies Act, 2013, the Central Government may, by notification, alter any of he regulations, rules, Tables, forms and other provisions contained in any of the Schedules of the Companies Act, 2013. The power of the Central Government in this regard is limited only by the provision that the alterations made must be first published in the official Gazette. Only after notification, the alterations become effective. They will be effective from the date of notification, unless otherwise specified. It may be further noted that no such alteration in Table F of Schedule I shall apply to any company registered before the date of such alteration. Moreover, every such alteration must be laid before each House of Parliament while it is in session for a total period of 30 days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the alteration, or both Houses agree that the alteration should not be made, the alteration shall thereafter have*
2. *effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done in pursuance of that alteration.*

2. Powers of Central Government to make rules relating to winding up: According to section 468 of the Companies Act, 2013, the Central Government shall, make rules consistent with the Code of Civil Procedure, 1908 providing for all matters relating to the winding up of companies, which by this Act, are to be prescribed, and may make rules providing for all such matters, as may be prescribed. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(i) as to the mode of proceedings to be held for winding up of a company by the Tribunal;

(ii) for the voluntary winding up of companies, whether by members or by creditors;

(iii) for the holding of meetings of creditors and members in connection with proceedings under section 230;

(iv) for giving effect to the provisions of this Act as to the reduction of the capital; (v) generally for all applications to be made to the Tribunal under the provisions of this Act;

(vi) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

(vii) the settling of lists of contributories and the rectifying of the register of members where required, and collecting and applying the assets;

(viii) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;

(ix) the making of calls; and

(x) the fixing of a time within which debts and claims shall be proved.

All rules made by the Supreme Court on the matters referred to in this section as it stood immediately before the commencement of this Act and in force at such commencement, shall continue to be in force, till such time the rules are made by the Central Government and any reference to the High Court in relation to winding up of a company in such rules shall be construed as a reference to the Tribunal.

3. Power of Central Government to make rules: According to section 469 of the Companies Act, 2013, the Central Government may by notification, make rules for carrying out the provisions of the Companies Act, 2013. Without prejudice to the generality of the above provisions, the Central Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provision is to be or may be made by rules. Any such rule may provide that a contravention thereof, shall be liable to be punished with a fine extending up to ` 5000 and if the contravention continues, a further penalty up to ` 500 per day shall be imposed. Every rule made under section 469 of the Companies Act, 2013, and every regulation made by Securities and Exchange Board under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of 30 days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation. 4. Delegation by Central Government of its powers and functions: According to section 458 of the Companies Act, 2013, the Central Government may, by notification, and subject to such conditions, limitations and restrictions as may be specified therein, delegate any of its powers or functions under this Act other than the power to make rules to such authority or officer as may be specified in the notification.

Provided that the powers to enforce the provisions contained in section 194 of the Companies Act, 2013 and section 195 of the Companies Act, 2013, relating to forward dealing and insider trading shall be delegated to Securities and Exchange Board for listed companies or the companies which intend to get their securities listed and in such case, any officer authorized by the Securities and Exchange Board shall have the power to file a complaint in the court of competent jurisdiction. A copy of the notification shall, as soon as possible after it has been issued, be placed before both Houses of Parliament. 5. Power to remove difficulties: According to section 470 of the Companies Act, 2013,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. 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. Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

7. Fixation of remuneration

8. Power of Central Government to direct companies to furnish information or statistics: Section 405 of the Companies Act, 2013 enumerates the power of the Central Government to direct companies to furnish information or statistics. The Central Government may, by order, require companies generally, or any class of companies, or any company, to furnish such information or statistics with regard to their or its constitution or working, and within such time, as may be specified in the order. Every order as specified above shall be published in the Official Gazette and may be addressed to companies generally or to any class of companies, in such manner, as the Central Government may think fit and the date of such publication shall be deemed to be the date on which requirement for information or statistics is made on such companies or class of companies, as the case may be. For the purpose of satisfying itself that any information or statistics furnished by *a company or companies in pursuance of any order specified above is correct and complete, the Central Government may by order require such company or companies to produce such records or documents in its possession or allow inspection thereof by such officer or furnish such further information as that Government may consider necessary.*

If any company fails to comply with an order as specified above or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect, the company shall be punishable with fine which may extend to twenty-five thousand rupees and every officer of the company who is in default, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to three lakh rupees, or with both. Where a foreign company carries on business in India, all references to a company in this section shall be deemed to include references to the foreign company in relation, and only in relation, to such business.

14.7 Various Punishments under the Act

1. Punishment for fraud: According to section 447 of the Companies Act, 2013, 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. If the fraud in question involves public interest, the term of imprisonment shall not be less than three years. Here, "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.

2. Punishment for false statements: According to section 448 of the Companies Act, 2013, save as otherwise provided in this Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement which is false in any material particulars, knowing it to be false or which omits any material fact, knowing it to be material, he shall be liable under section 447. 3. Punishment for false evidence: According to Section 449 of the Companies Act, 2013, save as otherwise provided in this Act, if any person intentionally gives false evidence upon any examination on oath or solemn affirmation, authorized under this Act or 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. 4. Punishment where no specific penalty or punishment is provided: According to section 450 of the Companies Act, 2013, if a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues. 5. Punishment in case of repeated default: According to section 451 of the Companies Act, 2013, if a company or an officer of a company commits an *offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence. 6. Punishment for wrongful withholding of property: According to section 452 of the Companies Act, 2013, if any officer or employee of a company—*

(a) wrongfully obtains possession of any property, including cash of the company; or

(b) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act, he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees. The Court trying an offence under sub-section (1) may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from such property or cash or in default, to undergo imprisonment for a term which may extend to two years. 7. Punishment for improper use of "Limited", "Private Limited": According to section 453 of the Companies Act, 2013, if any person or persons trade or carry on business under any name or title, of which the word "Limited" or the words "Private Limited" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with limited liability, or unless duly incorporated as a private company with limited liability, as the case may be, punishable with fine which shall not be less than five hundred rupees but may extend to two thousand rupees for every day for which that name or title has been used.