SEC 3: COMPANY FORMED FOR LAWFUL PURPOSE

NATURE	***PUBLIC COMPANY***	***PRIVATE COMPANY***	***ONE PERSON COMPANY***
NUMBER OF MEMBERS	**7 or more persons**	**2 or more persons**	**one person**

CONDITIONS:-

SUBSCRIBING NAMES TO MEMORANDUM OF ASSOSCIATION FOR PUBLIC COMPANY

FOR ONE PERSON COMPANY:-

THE MEMORANDUM HAS TO HAVE THE NAME OF OTHER PERSON, WITH HIS CONSENT WHO WILL BECOME THE MEMBER OF ONE PERSON

COMPANY IN THE EVENT OF DEATH OR INCAPACITY OF THE SUBSCRIBER BECOME THE MEMBER OF ONE PERSON COMPANY

THE NOMINEE MAY WITHDRAW THE NOMINATION AS PER THE RULES PRESCRIBED

THE SUBSCRIBER CAN CHANGE THE NAME OF THE NOMINEE AT ANY PART OF THE TIME BY GIVING NOTICE
AND SHALL INTIMATE THE REGISTRAR But MAKING CHANGES IN THEIR MOA.

SEC 4: MEMORANDUM OF ASSOSCIATION

CONTAINS: -

1) NAME OF THE PUBLIC COMPANY SHOULD END WITH THE WORD "LIMITED"
2) NAME OF THE PRIVATE COMPANY SHOULD END WITH THE WORD "PRIVATE LIMITED"
3) THE STATE IN WHICH RO IS SITUATED
4) OBJECTS OF THE COMPANY
5) THE LIABILITY OF THE MEMBER
6) THES SHARE CAPITAL OF THE COMPANY

IMP POINTS:-

A) THE NAME OF THE COMPANY SHALL NOT RESEMBLE ANY EXISTING COMPANY
B) NO RESEMBLANCE TO ANY PATRONAGE OF CENTRAL GOVERNMENT OR STATE GOVERNMENT
C) SUCH WORDS CAN BE USED ONLY WITH THE PERMISSION OF CENTRAL GOVERNMENT

PROCEDURE: -

1) THE PERSON HAS TO MAKE APPLICATION IN THE PRESCRIBED MANNER TO THE REGISTRAR
2) THE REGISTRAR WILL RESERVE THE NAME SELECTED BY THE PROMOTERES FOR A PERIOD OF 60 DAYS

DEFAULT:-
IF THE NAME IS OBTAINED BY SOME WRONGFUL MEANS

A) THE NAME OF THE COMPANY SHALL BE CANCELED
B) PENALTY OF ONE LAKH RUPEES TO THE PROMOTER

INNCASE OF THE COMPANY BEING ALREADY REGISTERED

A) THE REGISTRAR WILL ASK TO CHANGE THE NAME OF THE COMPANY WITHIN 3 MONTHS AFTERE PASSING OR
B) STRIKING THE NAME OF THE COMPANY
C) MAKE A PETITION FOR WINDING UP OF THE COMPANY

COMPANY LIMITED BY GUARANTEE AND NOT HAVING SHARE CAPITAL
CANNOT GIVE ANY A RIGHT TO PARTICIPATE ANY MEMBER TO ITS DIVISIBLE PROFIT

SEC 5: ARTICLES OF THE COMPANY

Contents:-

- ✓ regulation for the management of the company
- ✓ provisions for entrenchment
- ✓ entrenchment provisions can be included in
  - a) On the formation of the company
  - b) Amendment to AOA

  1) All the members of private company
  2) By special resolution in public company
- ✓ entrenchment provisions are helpful to protect the minority rights or make unilateral amendments

Entrenchment is a provision which makes alteration of articles more difficult

Note: - A) when a company is registered after the commencement of this act all the provisions of the duly registered articles shall apply unless they are excluded or modified

B) This section shall apply only after amendment to the companies registered under the old company's law

SEC 6: ACT TO OVERRIDE MEMORANDUM, ARTICLES

All the provisions of this act is applicable unless contrary to the act

- ✓ whether by passing resolution in the general meeting of the company or the board of directors meeting
- ✓ Whether the same is executed, passed, registered

No provisions of the memorandum, articles which agree with the act are void

SEC 7: INCORPORATION OF THE COMPANY

1. Following documents shall be filed with the Registrar of the company
   - MOA and AOA of the company duly subscribed
   - Declaration by CA, CS , advocate that all the requirements which are required for the registration are duly complied
   - Affidavit from the subscriber stating that he is not convicted for any offence relating to formation or breach of duty or previous company law for a period of previous five years and documents that filed in the respect of Registration are duly complete in all respects
   - Address for the purpose of correspondence
   - Name , surname, nationality, residential address of the subscriber along with proof of identity
   - Particulars of the first directors including the names , surnames , DIN, nationality

2. The Registrar shall register all the documents and issue Certificate of Incorporation

3. On and from the date of certificate of incorporation the company shall be issued CIN

4. The company shall maintain all the documents in its registered office till dissolution

5. If any person knowingly furnishes any false information relating to the Registration of the company, he will liable for action under section 447

6. Where after the incorporation of the company it is proved that the company is incorporated by providing false information then the promoters, first directors shall be liable for action under sec 447

7. Incorporation of the company by providing false information's, will also lead to case in front of the tribunal; where the tribunal may

a) Ask the company to makes changes in the management of the company in the public interest.

b) Declare the liability to be unlimited

c) Remove the Name of the Companies from the Registrar of the Companies
d) pass order for the winding up of the company

Provided the company is given the opportunity of being heard

SEC 8: FORMATION OF COMPANIES WITH CHARITABLE OBJECTS

1) Scope of the companies that may be formed with charitable objects (section 25 of the companies Act 1956) --- increased to sports , education , social welfare, research, protection of the environment, in addition to promotion of science, commerce , art, religion and charity
2) Sec 8 companies can be merged with Sec 8 companies
3) The central government by licence issue in such manner , that the association of person without the word "ltd" or Pvt Ltd" register such association
4) The company registered under sec 8 enjoys all the privileges subject to limited companies
5) A company registered under this act shall not alter its MOA, AOA without the permission of Central Government. A company registered under this act can convert itself of any kind after fulfilling the prescribed conditions.
6) Where the central government is satisfied that the objects of the company fall with the objects of sec 8 it can by licence allow the company to be registered under Sec 8
7) Where the Central Government is satisfied that the company has contravened any of the regulations , the Central Government will cancel the licence and ask the company to affix the words "ltd" or " Pvt Ltd"
8) Where the licence is revoked the central government may permit the company to be amalgamated. However only Sec 8 company can be amalgamated with Sec 8 company
9) If the company defaults in complying with the requirement
   a. the company shall be punishable with a fine of Rupees ten lakhs to one crore
   b. the directors shall be punishable with imprisonment of about 3 years or fine of Rs 25000 to Rs 25 lakhs (maximum)

   Or both

SEC 9: EFFECT OF REGISTRATION

1) From the date mentioned in the certificate of incorporation subscribers of the memorandum shall become members shall be a body corporate by the name in articles
2) The company will be able to exercise all its functions
3) The company will have a common seal and perpetual succession
4) The company will have the powers of
    - to acquire property
    - to hold property
    - to dispose property
    - to be sued and sue
    - to contract

SEC 10 EFFECT OF MEMORANDUM AND ARTICLES

1) The memorandum and the articles of the company will bind both the company and its members
2) The member will have to observe the provisions of the memorandum and articles
3) If any member has to pay any amount to the company , he will become debtor to the company

SEC 11: COMMENCEMENT OF THE BUSINESS

1) A company having share capital shall not commence business or borrow unless
   a) Declaration has been filed by the director that he has paid all the value of shares taken by him
   b) The paid up share capital :-

      for public company is 5 lakhs
      for private company is 1 lakhs ; at the time of making declaration

2) Any default in this section will attract a penalty of
   - company- Rs 5000
   - every officer-Rs 1000 for everyday
3) Where no declaration has been filed with 180 days and the company s not able to give a proper cause the name of the company is liable to be removed from the Registrar of companies

SEC 12: REGISTERED OFFICE OF COMPANY

1) A company from its 15th day of its Incorporation, have a registered office capable of receiving and acknowledging all communication & notices as may be addressed to it

2) Verification of the Registered office shall be furnished to the Registrar within 30 days of its incorporation

3) Every company
   a) paint or affix its name and address of the Registered office at every place of business
      in a conspicuous manner
      in legible letters
      in general language
   b) have its engraved in legible character on its seal.
   c) get its name , address of its Registered office and CIN along with telephone number, fax number, email and website address if any printed on its correspondences and office publication
   d) have its name printed on hundies , promissory notes , bills of exchange and such other documents

4) Where company changed its name or names during last 2 years , it shall paint or affix or print with its former names or names so changed during last years

5) The words " ONE PERSON COMPANY" shall be mentioned wherever its name is printed or engraved

6) Notice of every change of situation in the Registered office , after the date of Incorporation shall be given to the Registrar within 15 days of change

7) The Registered office of the Company shall be changed only on special resolution

8) In the case of existing company, outside the local limits of any city town or village where such office is situated at the commencement of the Act by virtue of special resolution passed by the company.
In case of other company outside the local limits of any city town or village, where such office is first situated it may be situated by virtue of special resolution

9) No company shall change the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State unless such change is confirmed by the Regional Director on an application made in this behalf by the company in the prescribed manner

10) The confirmation shall be communicated within a period of 30 days from the date of application by the Regional Director to the company

11) The Company shall file confirmation with the Registrar within 60 days

12) The certificate shall be conclusive evidence that all the requirements have been complied with

13) In case of default company and every person who is in default shall be liable to a penalty of Rs 1000 for every day of default Rs 1lakh

SEC13: ALTERATION OF MEMORANDUM

1) As per the provision of Sec 61, A company by special resolution and by following the procedures given alter the memorandum
2) Any change in the name of the company shall not have an effect unless approved by Central Government
3) Where the change of the name involves addition and deletion of word " Private Ltd", does not require approval of Central Government
4) Where there is a change in the name of the company, the Registrar shall enter the name of new company and issue the certificate of incorporation for the same
5) The alteration of memorandum relating to the place of registered office from one state to another shall not have an effect unless it is approved by Central Government
6) The Central Government shall dispose of the application for the register office within 60 days
7) Before passing the order it must satisfy that the alteration has the consent of creditors , debenture holders and other persons
8) A company , under sec 64 shall in relation to the alteration of memorandum file with the Registrar

   i) special resolution passed by the company

   ii) where there is an change in the name of the company, permission of Central Government
9) A company which has raised money from public through prospectus , and still has unutilised money out of the money so raised shall not change its object unless a special resolution is passed

   The details of such resolution shall be published in 2 languages , one in English and one in the vernacular language which is in the circulation of the Registered office of the company is situated and shall , be placed on the company website

   The dissenting shareholders shall be given an opportunity to exit by the promoters in regulation with the SEBI
10) The Registrar shall register any alteration of Memorandum within 30 days from the date of filing special resolution
11) In the case of Company limited by guarantee and not having share capital , giving any right to participate in the divisible profits of a company shall be void

SEC 14: ALTERATION OF ARTICLES

1) Where the company by special resolution converts public company into private company and vice versa by altering its articles
   and the company has converted into private company without complying of the restrictions, then it ceases to be a private company
2) Conversion of the public company into private company can be done only with the prior approval of the Tribunal
3) Every alteration shall be filled within 15 days

SEC 15: ALTERATION OF MEMORANDUM AND ARTICLES TO BE NOTED IN EVERY COPY

1) Every alteration made in the memorandum and articles shall be noted in every copy of memorandum and articles
2) if a company makes default in complying with the provision of the act then the company and every officer who is in default shall pay a penalty of Rs 1000 for every officer for every copy of memorandum and articles issued without such alteration

SEC 16: RECTIFICATION OF THE NAME OF THE COMPANY

1) According to Central Government When a company on its first registration or new registration is registered with name which is identical to the name of an existing company under this act or the previous act then the Central Government may ask the company to change its name within 3 months after passing ordinary resolution

2) when the name of the company or trademark is similar to an existing business, then on the application of the trademark owner the Central government within 6 months may ask the company to adopt a new name

3) The company within 15 days has to intimate the Registrar of the change in the name of the Company

4) If the company makes a default in any direction, the Company shall be liable to penalty
   a) company--fine of Rs 1000 for every day till the default continues
   b) every officer-- fine of Rs 5000 for every day till the default continues maximum to Rs 1 lakh

SEC 17: COPIES OF THE MEMORANDUM AND ARTICLES TO BE GIVEN TO MEMBERS

1) On the request of the member the company has to provide copy of memorandum , articles or any other agreement on the payment of requisite fees

2) If the company makes a default in any direction, the Company shall be liable to penalty
   - company and every officer--fine of Rs 1000 for every day till the default continues or RS one lakh rupee whichever is less

SEC 18: CONVERSION OF COMPANIES ALREADY REGISTERED

1) When a company wants to convert from class to another class it can do by alteration in memorandum and articles

2) Where the conversion is required, the registrar shall on application made by the company , when satisfied that it has complied with the rules
   close the former company
   and grant registration to new company

3) The debts , liabilities , obligations , contracts shall remain unaffected by conversion

SEC 19: SUBSIDIARY COMPANY NOT TO HOLD SHARES IN ITS HOLDING COMPANY

1) The subsidiary company will not hold shares in the holding company through its nominees and no holding company will transfer its shares to the holding company

Exceptions:-

a) where the subsidiary company holds its as legal representative of deceased member of holding company

b) where the subsidiary company holds it as trustees

c) where the subsidiary company holds it as shareholder

SEC 20: SERVICE OF DOCUMENTS

1) A document may be served on the company or its member by sending it to the registered office
    a. by registered post
    b. by speed post
    c. by courier
    d. by leaving it at the office
    e. or electronic mode

2) When the securities are held in depository the records may be served on the beneficial owner by electronic means

3) A member may request the documents to served through a specific medium by payment of fees at the AGM

SEC 21: AUTHENTICATION OF DOCUMENT PROCEEDING

A document or contracts can be authenticated by getting it signed by any key managerial purpose or any officer duly authorised by the board

SEC 22: EXECUTION OF BILL OF EXCHANGE ETC.

1) A bill of exchange, promissory note, hundi shall be deemed to be made accepted, endorsed, drawn if it is made , drawn ,accepted by any person acting on behalf of the company

2) A company shall authorise any person as attorney either generally or in specific matters to execute other deeds in or outside India

3) A deed made by the attorney under his signature and sign will have the same effect as made by the company

SEC 23-PUBLIC ISSUE

PUBLIC COMPANY

Through prospectus	Private placements	Right issues & bonus issues
• Referred to as Public Offer	• Comply with provision of Part II of Chapter	• in accordance with provisions of the act

PRIVATE COMPANY

Through private placement	Right/ bonus issues

In case of **LISTED COMPANIES**; with the provision of SEBI

SEC 24: POWER OF SECURITIES EXCHANGE BOARD TO REGULATE ISSUES AND TRANSFER OF SECURITIES ETC.

	Powers of Securities Exchange Board		Power of Central Government
1	Issue and transfer of securit	1	Matters relating to prospectus
2	Nonpayment of Dividend of listed companie	2	Matters relating to allotment
		3	Matters relating to redemption of sha
		4	other matters specified in the Act

The Securities Exchange Board can exercise the powers of sec tions 11 A, 11B, and 11 D

SEC 25: DOCUMENTS CONTAINING OFFER OF SECURITIES FOR SALE OF DEEMED PROSPECTUS

1) What is prospectus???

Ans. Any document by which the offer for sale is made to the public is called prospectus issued by the company.

2) What are the matters that will apply in the respect of prospectus??

Ans. All enactments and rules to law as to the content of prospectus, liability in the respect of mis-statements omission from prospectus, shall apply with respect to modifications.

Note - The person accepting the offer in the respect of securities are subscribers

3) When can it be said the securities were made to the public??

Ans. When the offer of securities was made within six months after the allotment of agreement OR

The whole of consideration was not received by the company in the respect of the securities

4) Who shall sign in the prospectus??

Ans. Company --- 2 directors OR

Firm--- not less than one half of the partner

SEC 26: MATTERS TO BE STATED IN THE PROSPECTUS

1) Name and address of the Registered office, CEO, CFO, auditors, legal advisors, bankers, trustees and underwriters (if any).
2) Dates of the opening and closing of the issues
3) Declaration about the issue of the letter of allotment
4) Statement of the BOD about separate bank account where all monies received are transferred and disclosure of detail monies including utilised and unutilised monies out of the previous issue.
5) Details about the underwriting issue
6) Consent of the directors, auditors and bankers to the issue, experts opinion
7) Authority for the issue
8) Procedure and time schedule of the allotment and issue of securities
9) Capital structure of the company
10) Main objects of the public offer, terms of present issue
11) Main objects and present business of the company and its implementation
12) Particulars relating to
    a) what do management think about the risk in the project
    b) time period of project.
    c) Extent of the project completed
    d) Deadline for completion of the project
    e) Litigation involved , if any during the last 5 years against the promoters
13) Minimum subscription
14) Detail of director including their appointment and remuneration
15) Source of promoters contribution

REPORTS

- ✓ Reports of the auditor in respect of P&L and assets and liabilities of the company
- ✓ Reports relating to P&L of the company for the last 5 years
- ✓ Reports made by the auditors upon the P&L for each of the 5 financial years

Note:: in case of company which a period of 5 years has not elapsed, the reports will be relating each of the preceding financial years from the date of incorporation

- ✓ Reports to which the transaction which the proceed of securities are applied directly or indirectly
- ✓ make a declaration that no provision of SCRA has been violated

Note: -

- However this will to apply to the debenture holders or existing shareholders, they will not be required to issue any prospectus whether the shareholder has the right to renounce the shares
- No prospectus shall be issued unless it is delivered to Registrar for Registration, copy signed by director or proposed director
- A prospectus will not include any statement of expert , unless the expert has given written consent or withdrawn his consent before the delivery of the prospectus to the Registrar for registration
- Every prospectus must state that a copy has been to the Registrar for registration and specifies the document to be so attached
- The Registrar shall not register a prospectus unless the requirement of this section has been complied with by consent in writing
- No prospectus shall be valid for more than 90 days after the day a copy was made to the Registrar

DEFAULT:-

If the provisions are not complied then

- Company ---- Fine not less than 50000 to the maximum of RS 3 lakh
- every person---- imprisonment for 3 years or fine or both

SEC 27: VARIATIONS IN TERM OF CONTRACT OR OBJECTS IN PROSPECTUS

1) The terms of the contract and the object mentioned in the prospectus can be altered with the approval of , or subject to an authority given by company in general meeting by way of special resolution

2) The notice containing the details of special resolution shall be published in 2 newspaper , one in English and one in vernacular language

3) The shareholders who don't agree with the terms of the contract(calls "dissenting shareholders") shall be given exit order by promoters or controlling shareholder at exit price as per conditions mentioned in SEBI

SEC 28: OFFER OF SALE OF SHARE BY CERTAIN MEMBERS OF THE COMPANY

1) Where the certain members of the company propose to give the whole or certain part of shares to the public they can do with the consultation of BOD
2) Any details by which the shares are offered to public are called as prospectus and all the conditions as to omissions, mis statements shall apply
3) The company will offer the shares on behalf of the individuals or body corporate for which the expenses will be reimbursed by individual or the body corporate

SEC 29: PUBLIC OFFER OF THE SECURITIES IN THE DEMATERIALISED FORM

1) Every public companies , and other class or classes of public companies shall issue securities only in dematerialised form

2) Any other company may convert its shares into the dematerialised form and vice versa in accordance with the provision of Depositories Act 1996.

SEC 30: ADVERTISEMENT OF PROSPECTUS

1) Where an advertisement of any prospectus is published.
   The following are to be verified :-
   - Memorandum as to the objects
   - Liability of the member.
   - Amount of the share capital
   - The signatories to the memorandum
   - Number of shares subscribed
   - Capital structure

SEC 31: SHELF PROSPECTUS

1) As the Securities and Exchange Board provide, any company or class of companies at the time of first offer of securities issue shelf prospectus. The period of validity of the prospectus shall be one year.

2) While the second offer of securities, no prospectus shall be issued

3) A company filing Shelf prospectus shall issue Information memorandum

4) Contents of Information memorandum
   a) All material fact relating to new charges created
   b) Changes in the financial position of the company between the first offer of the securities and the succeeding offer of securities

5) The information memorandum shall be filed with Registrar within the prescribed time prior to the issue of second or subsequent offer of securities under shelf prospectus

6) Where a company or other person has received application for allotment of securities along with advance payments the company or other person shall intimate the changes to such applicants and if they express a desire the company to withdraw applications the company shall refund the money

7) When offer of securities is made then Information memorandum + shelf prospectus= prospectus

Sec 32: Red Herring Prospectus

1) Before issue of prospectus a company must issue Red Herring prospectus

Red Herring Prospectus =prospectus which does not complete particulars of quantum or price of securities

2) A company has to file red herring prospectus 3 days before opening of subscription

3) Any variation between the prospectus and red herring prospectus shall be highlighted in the prospectus

4) On the closing of securities , any information which is not mentioned in the red herring prospectus shall be filed with the Registrar and Securities Exchange Board

SEC 33: ISSUE OF APPLICATION FORM FOR SECURITIES

1) Application form for the issue of securities is valid only when accompanied with abridged form of prospectus.

2) This condition will not apply in the following case
   - when invitation is made for underwriting agreement
   - when the shares are not offered to public

3) Before the closing of subscription list, a copy of prospectus will be furnished on the request of person

4) On Default Company -penalty of RS 50,000

SEC 34: CRIMINAL LIABILITY OF MIS-STATEMENT IN PROSPECTUS

1) When the prospectus any misleading statements, the person authorising the issue shall be liable under section 447.
2) This will not apply in the following cases

    a) when the person making the statement has reasonable grounds to believe that the statements were true at the time of making

    b) the omissions were immaterial

SEC 35: CIVIL LIABILITY FOR MIS STATEMENTS IN THE PROSPECTUS

1) Where a person who subscribes the shares on the basis of misleading statement
   Every person: - a) who is director

   b) who is promoter

   c) has authorised the issue of prospectus

   d) Expert

   shall reimburse to the person who has subscribed for the share
2) However this clause will not apply

   When the director before issuing of the prospectus issues his consent of becoming director

   OR

   the prospectus was issued without his permission

   OR

   the prospectus was issued without his knowledge and becoming aware of the issue , he gave a public notice that , the prospectus was issued without his knowledge
3) When it is proved that prospectus has been issued

   with the intent of defrauding the applicant for securities

   OR

   any person for fraudulent purpose then ;

every person shall be personally responsible without any limitation of liability for all losses or damages caused to the public who have subscribed for share on the basis of prospectus.

SEC 36: PUNISHMENT FOR FRAUDULENTLY INDUCING PERSON TO INVEST MONEY

1) Any person who makes a statement, promise, or forecast which is false

or

deliberately conceals material facts to induce any person to enter

- An agreement for acquiring, disposing or underwriting securities
- to secure profits from yield of securities
- the with the view of obtaining credit facilities from bank

shall be liable for action under section 447

SEC 37: ACTION BY THIRD PARTIES

Any persons affected by any misleading misstatements or inclusion or omission of the statement shall file a suit under Sec 34 or Sec 35 or Sec 36

SEC 38: PUNISHMENT FOR PERSONISATION ETC OF SECURITIES

1) Any person

- makes or abets making an application in fictitious name for the purpose of acquiring, subscribing
- makes or abet to make multiple applications in different names for the purpose of acquiring subscribing for its securities
- otherwise directly or indirectly a company to allot, register transfer, securities to him any person in fictitious name

liable for action under sec 447

2) The provisions shall be reproduced in every prospectus in every application of securities
3) Where a person has been convicted by court, the court may ask the person to give back the gain if made and securities in possession of such person
4) The amount so collected shall be deposited in the "Investor and Protection Fund"

SEC 39: ALLOTMENT OF SECURITIES OF COMPANY

1) NO allotment of securities shall be made unless
    a) the minimum amount stated in the prospectus has been received
    b) the sum payable on the application have been paid and received by the company by cheque or other instrument
2) The minimum amount payable on the application of every security should be 5% as specified by SEBI
3) If the minimum amount is not received with 30 days or such period as may be specified by SEBI
4) A company having share capital shall make Return of allotment
5) Default: Rs 1000 or Rs 1. Lakh (Whichever is less)

SEC 40: SECURITIES TO BE DEALT WITH STOCK EXCHANGES

1) Any Company before making public offer has to obtain permission from one or more recognised stock exchanges where the securities are to be dealt
2) The permission has to be obtained by making an application
3) Where the prospectus has been made, the prospectus shall state the name of stock exchanges in which securities are dealt
4) The monies received on application from public subscription are kept in separate bank account in scheduled bank and will be utilised
    a) for adjustment against allotment of securities where securities have been dealt with stock exchange
    c) for repayment of money within time specified by the board, where the company is not able to allot securities
5) Default: company Minimum Rupees 5 lakhs and Maximum 50 lakhs

Every officer: imprisonment for term of1 year OR fine of Rs 50000 maximum to Rs 3 lakhs OR both

SEC 41: ISSUE OF GLOBAL DEPOSITORY RECEIPTS

A company after passing special resolution in general meeting issue depository receipts in any foreign country.

SEC 42: PRIVATE PLACEMENTS

1) A company may make private placement through the issue of private placement offer

2) If a company whether listed or unlisted offers or allots or invites securities to more than prescribed number of person, whether payment of securities have been received or not OR whether the company intends to list its securities or not on recognised stock exchange in or outside India shall be deemed to be an offer to public and shall be governed by the provisions

3) No fresh offer shall be made unless the invitation already made as either been completed or abandoned

4) An offer/ invitation which does not comply the provisions of this section are called as public offer and the provisions of SCRA and SEBI shall apply

5) All monies payable payable on securities shall be paid through cheque and demand draft or any other medium but not cash.

6) If a company does not allot its securities within 60 days from the date of receipt of application money for such securities then such money will be refunded within 15 days from the end of 60 days @12% from the expiry of 60 the day

7) The monies received on application shall be kept in separate account in scheduled bank shall not be utilised for
   a) adjustment against allotment of securities
   b)for repayment of monies where the company is unable to allot securities.

8) All offers covered, whose names are recorded by the company prior to invitation to subscribe such person shall receive by name, Complete records of such offer shall be kept by the company such offer is filed with the Registrar within a period of 30 days of circulation of relevant private placement offer.

9) No company shall release any public advertisements or utilise any media , marketing or distribution channels to inform the public at large

10) Where the company makes allotment of securities it shall file with the Registrar a return of allotment, including complete list of security holders with their full name , address, number of securities allotted.

11) If company makes offer or accepts monies in contravention of this section. The promoters and directors liable to penalty

Fine:- Rs 2 crores and the company shall also refund the money to the subscribers within 30 days of imposing penalty

SEC 43: SHARE CAPITAL

Kinds of Share Capital

Equity Share capital

Preference Share Capital

- With voting rights
- With Differential right as to dividend

Q1) What is Preference Share capital?
Ans. Preference share capital are shares which carries a preferential right to

a) payment of dividend
b) repayment in the case of winding up

Q2 Whether dividends are fixed??
Ans. The dividends can be fixed amount or calculated at a fixed rate either free or subject to income tax

Note: - Repayment of capital paid up or deemed to have paid up whether or not there is a preferential right to pay fixed premium under the memorandum or articles of association

SEC 44: NATURE OF SHARES OR DEBENTURES

The shares or the debentures shall be movable property and shall be transferable as provided by articles of the company.

SEC 45: NUMBERING OF SHARES

Every share in the company shall having a share capital will have a distinct share capital. However this will not apply to beneficial interest in the records of depository

SEC 46: CERTIFICATE OF SHARES

1) What is a share certificate?

Ans. A certificate which is issued under the common seal of the company which is evidence of the title of share and also the number of share held by him

2) When duplicate certificate issued?

Ans. When certificate is lost, destroyed, mutilated or defaced and such mutilated destroyed share certificate to the company

3) The manner of issue of the share certificate or duplicate share certificate ,the form of share certificate the particulars to be entered in register of member shall be as per the articles of association

4) The record of depository is prima evidence of the beneficial owner

5) Default : Company: Fine -minimum 5 times the face value of share certificates
   Maximum 10 times the face value of shares or ten crores whichever is higher

47: VOTING RIGHTS

Voting right of Equity share holders	***Voting Rights of Preference shareholders***
On every resolution put before the company	only on the resolutions which directly affect the rights a attached to its preference shares or Resolution for winding up of the company or Repayment of capital or Reduction of its equity /preference share capital

NOTE: - In case of preference shares when dividend has not been paid for two years such preference shareholders has the right to put all the resolutions

SEC 48: VARIATION OF SHAREHOLDERS RIGHT

1) The rights attached to different classes of shares can be varied
   a. with the consent in writing of holders of at least 3/4th of holders of shares; or
   b. by special resolution passed at special meeting

Provided,

The provisions with the respect to variation is contained with the Memorandum or Articles in the Company **OR**

IF no provision in the Memorandum or Articles, then the provisions are not prohibited by the issue

2) In the respect of special resolution is passed by at least 10% of issued share of class they may apply to Tribunal

and the application has to be passed within 21 days after the consent was governor resolution passed

3) The decision of the Tribunal is binding on the shareholders
4) The company shall file a copy with the Registrar within 30 days
5) Default : Company---- fine minimum Rs 25000 and Maximum to Rs 5 lakhs

Every officer--------Imprisonment - 6 months OR Fine RS 25000 maximum upto Rs 5lakhs or both

SEC 49: CALL ON THE SHARES OF THE SAME CLASS TO BE MADE IN UNIFORM BASIS

Calls for further shares capital on any class of shares on uniform basis

SEC 50: COMPANY TO ACCEPT UNPAID SHARE CAPITAL ALTHOUGH NOT CALLED UP

1) When a company is authorised by articles it may accept from its member any unpaid amount by the shareholder even if no part has been called up

2) Where a company limited by shares when the amount has been fully paid up then only member is entitled to voting rights

SEC 51: PAYMENT OF DIVIDEND IN PROPORTION TO AMOUNT PAID UP

A company if authorised by articles pay dividend in proportion to the amount paid up share

SEC 52: APPLICATION OF PREMIUM RECEIVED ON SHARES

When company issues shares at a premium , then aggregate sum of premium will be deposited in account called as " securities premium account" which shall be used for

- ✓ for the purpose of issuing fully paid bonus share
- ✓ in writing preliminary expenses
- ✓ in writing off expenses or commission paid or discount allowed on issue of share or debenture
- ✓ premium payable for redemption of preference shares
- ✓ for the purchase of it own shares or other securities under 68

When the financial statement comply with accounting standard for classes of companies under sec 133

- ✓ issuing fully paid bonus shares
- ✓ I writing of expenses or commission paid or discount allowed o equity shares
- ✓ for purchase of its own shares udder sec 68

SEC 53: PROHIBITION OF ISSUE ON DISCOUNT

1) A company cannot issue share at a discount except for sweet equity shares

2) Any shares issued at a discount will be void

3) when the company issue shares at discount then

Company shall be punishable
Fine: Minimum : Rupees 1 lakhs
Maximum : Rupees 5 lakhs

Every officer shall be punishable
Fine: Minimum : Rupees 1 lakhs
Maximum : Rupees 5 lakhs
or
Imprisonment to maximum 6 months
or
both

SEC 54: ISSUE OF SWEAT EQUIT SHARE

For the issue of equity shares following conditions need to be satisfied

- ✓ Special resolution needs to be passed
- ✓ the resolution, specifies the number of share, current market price, consideration, classes of employees/ directors
- ✓ not less tha one year should have elapsed since the date of company had commenced business.
- ✓ where the equity shares are listed on recognised stock exchange , they must follow the regulations by SEBI

The Rights, Limitations restrictions and provisions are applicable to equity shares are applicable to sweat equity shares

SEC 55: ISSUE AND REDEMPTION OF PREFERENCE SHARES

1) After the commencement of this Act , the issues of irredeemable preference share is not allowed
2) A company which is limited but shares can issue redeemable preference shares for a period of twenty year only if the articles authorised
3) A company may issue preference shares exceeding twenty years for infrastructure subjects on the condition that such percentage of shares prescribed on annual basis at the option of preferential shareholder
4) Shares shall be redeemed only out of the profits of the company.
5) Shares shall be redeemed only if fully paid
6) Where shares are redeemed out of profits of company, such profits shall be transferred to a separate account called as “Capital Redemption Reserve" equal to the nominal value of shares to be redeemed
7) In classes of companies whose financial statement comply with accounting standard, the premium o redemption shall be payable out of the profits of the company
8) When a company is not able to redeem preference share or declared dividend then the company with the permission of 3/4th of preference shares and with the approval of Tribunal issue further share equal to amount due
9) When such shares are issued then the unredeemed preference shares shall be deemed to have been redeemed
1) The Capital Redemption Reserve shall be applied by the company in paying unissued shares to be issued to the members of the company as fully paid bonus shares

SEC 56: TRANSFER AND TRANSMISSION OF SHARES

1) In case of no share capital, A company will not registered transfer of securities unless the transfer is in the nature of beneficial interest and it is in the prescribed form and delivered within a period of 60 days from the date of execution along with the certificate relating to securities/ letter of allotment of securities

2) Where the transfer is related to partly paid shares, the transfer shall not be registered unless the company gives full notice to the transferee and transferee gives no objection within 2 week from receipt from the date of notice

3) Every company shall deliver the certificates of securities allotted / transferred/ transmitted

subscribers of memorandum	allotment of shares	transmission of shares	allotment of debenture
within 2 months from date of incorporation	within 2 months from the date of allotment	one month from the date of receipt of instrument	within period of 6 months from date of allotment

4) In case of execution of instrument by a legal representative in the case of deceased member transfer of interest /security shall be valid

5) Under the Depositories Act 1996, any transfer done with the intention to defraus any depository participant will be liable under sec 447

6) In the case of default

Fine

	Company	Every officer
Minimum	:-Rs 25000	Rs 10000
Maximum	:-RS 5 lakhs	Rs 1 lakh

SEC 57: PUNISHMENT FOR THE PERSONATION OF SHAREHOLDER

1) If a person deceitfully poses to be the owner of any security/ coupon/warrant or interest in a company and there by obtains any such security or receives any money due to any such owner he shall be punishable

Imprisonment		Fine	
Minimum	1 year	Minimum	Rupees 1 lakh
Maximum	3 year	Maximum	Rupees 5 lakh

SEC 58: REFUSAL OF REGISTRATION AND APPEAL AGAINST REFUSAL

1) When the private limited company refuses to register the transfer of shares, then within a time limit of 30 days from the date on which the instrument or the intimation of such transmission send notice of refusal to the transferor and transferee
2) The securities or other interest of any member in public company shall be freely transferable
3) The transferee may appeal within a period of sixty days from the date on which the instrument of transfer or intimation of transmission was delivered to company
4) Where no intimation has been received the transferee may within 90 days appeal to the Tribunal
5) The Tribunal while dealing with the appeal after hearing the parties dismiss the appeal or by order direct the transfer or transmission shall be registers by company within 10 days of receipt of order or
the company may be asked to pay damages , if any , and the right to inspect the register is given to the party aggrieved
6) Default:

Imprisonment		Fine	
Minimum	1 year	Minimum	1 lakh
Maximum	3 year	Maximum	5 lakh

SEC 59: RECTIFICATION OF REGISTER OF MEMBER

1) If the name of person is not entered in the Register of member by any reason. The company may appeal in such form to the Tribunal and in the respect of foreign member or debenture holder residing outside India to competent court outside India specified by Central Govt by notification
2) The Tribunal while dealing with the appeal after hearing the parties dismiss the appeal or by order direct the transfer or transmission shall be registers by company within 10 days of receipt of order OR the company may be asked to pay damages , if any , and the right to inspect the register is given to the party aggrieved
3) Where the transfer of securities is in contravention of any provisions of SCRA. SEBI the Tribunal may on the application made by depository direct the company or depository to set right the contravention and rectify its register of records
4) Default:

Company	Every officer fine	imprisonment
Minimum 1 lakh	Minimum 1 lakh	1 year
Maximum 5 lakh	Maximum 5 lakh	

SEC 60: POWERS OF AUTHORISED AND SUBSCRIBED AND PAID UP CAPITAL

1) The notice, advertisement or other official publication contains a statement of authorised capital, it shall also contain in distinct letters the amount of subscribed and the amount paid up.
2) Default :- Company : Penalty - RS 10000
   Every officer : Penalty RS 5000 for each default

SEC 61: POWER OF THE COMPANY TO ALTER ITS SHARE CAPITAL

1 A limited company authorised by its articles

- increase the authorised share capital
- consolidate and divide existing shares
- convert all fully paid shares into stock
- sub divide the shares into smaller amount
- cancel the share

SEC 62: FURTHER ISSUE OF CAPITAL

1) Where any company proposes to increase its subscribed share capital by issue of further shares then shares shall be offered to
    a. the person who are holding equity shares of the company on the date of offer in proportion to paid up share capital by sending a letter of offer

2) Conditions:-

a) the offer shall be made by notice specifying number of shares within minimum 15 days and maximum 30 days from the date of offer. The offer is not accepted shall be deemed to have been declined

3) Unless the articles of company the offer shall be deemed to include right exercisable to renounce the shares in favour of other person and the notice shall contain a statement in this right

4) On the expiry of the time and on the receipt of intimation declining the offer whichever is earlier. The Board of Director may dispose of them in such manner which may be advantageous to shareholder .

5) The shares may be offered to the employees under ESOP subject to special resolution

6) To any person authorised by special resolution either for cash / consideration other than cash if the prices is determined by the valuation report of registered valuer

7) The notice shall be despatched through registered post/ speed post / electronic media to all the existing shareholder at least 3 days before opening of issue

8) This section is not applicable where the increase in the capital is by the conversion of debenture / loan into shares of the company

9) Where debentures /loans are taken by the company from the Government , and if the Government directs the conversion of such debentures / loans into shares of the company in the public interest then the Government may do so. Where the term of conversion are not acceptable to the company , it may within 60 days of the communication of the order

10) In determining the condition of conversion the government shall within due regards of financial position of the company, terms of issue of shares or debentures , the rates of interest payable on such debentures and such other matters

11) Where the Government by order direct that any debenture or loan into shares of the company where no appeal has preferred to the Tribunal or where the appeal has been dismissed the memorandum of the company has the effect of increasing the authorised share capital to the extent to an amount equal to amount of value of shares / debentures or loans converted

SEC 63: ISSUE OF BONUS SHARES

1) A company may issue bonus shares out of
   a) free reserves
   b) securities premium
   c) Capital redemption reserve

2) No bonus shares shall be issued out of capitalising reserves crested by revaluation of fixed assets

3) Bonus shares can be issued only when the articles authorises

4) It has not defaulted the payment of interest or principal in respect of fixed securities issued by it

5) The company has not defaulted payment of statutory dues of employees such as contribution to provident fund, gratuity, bonus

6) The bonus shares not issued in lieu of dividend

SEC 64: NOTICE TO BE GIVEN TO THE REGISTRAR FOR ALTERATION OF SHARE CAPITAL

1) Where company
   a) alter its share capital
   b) order of Government increasing the authorised share capital of the company
   c) company redeems any redeemable preference share

the company shall file with a notice within 30 days either the registrar along with the memorandum

2) Default : Fine: Rs 1000 for each day of default or RS 5 lakhs
   whichever is less

SEC 65: UNLIMITED COMPANIES TO PROVIDE FOR RESERVE SHARE CAPITAL ON CONVERSION INTO LIMITED COMPANY

1) An unlimited company by resolution for registration as a limited company do

either both or any of the following

- increase the nominal amount of the share capital by increasing the nominal values
- specified portion of its uncalled capital being called only in the event of winding up the company

Condition:-

the increased part of the capital shall be called only at the time of winding up

SEC 66: REDUCTION OF SHARE CAPITAL

1) After the application is made by the company and on its confirmation by Tribunal, A company limited by shares a company limited by shares/ company limited by guarantee
   having share capital
   by special resolution
   reduce the share capital

Extinguish / reduce the liability of its share

Cancel any paid up share capital

or

pay -off any paid up share capital
which is excess of the company

alter its memorandum by reducing the amount of its share capital and its share

Conditions:-

Either before or after the commencement of the Act, there is arrear in the repayment of deposit then no reduction can be made

2) The tribunal shall make an application to the Central Government, Registrar and Securities Exchange Board and the creditors and if there are any representations from either of the parties it will be taken into account within a period of 3 months of the notice where no representations are made , then it is assumed that there is no objection to the reduction

3) When the tribunal is satisfied that the claim of the creditor is satisfied/ secured make an order confirming the reduction of share capital

4) The reduction of share capital will be sanctioned only when the accounting standards under sec 133 or any other provision by the company auditor

5) The Company shall deliver a certified copy of the order of the tribunal and the minute approved by the Tribunal showing the amount of share capital, the number of shares , the amount of each share

6) When there is difference between the amount paid on the share or reduced amount and the amount of share fixed by order no member shall be liable to pay the difference

7) Where the name of creditor object to reduction of share capital and after such reduction the company is not able to pay amount of his debt / claim, every person who was member of the company shall contribute to payment of debt/ claim to the extent of his contributions at the time of winding up

8) If the company is wound of , the Tribunal may on application settle a list of person to contribute as if there were contributories in the event of winding up

9) If the officer of the company knowingly conceals the name of creditor knowingly misrepresent the name he shall be liable to punishment under sec 447

10) Fine for failure :-

Minimum	RS 5 lakhs
Maximum	Rs 25 lakhs

SEC 67: RESTRICTIONS ON PURCHASE BY COMPANY OR GIVING OF LOANS BY ITS FOR PURCHASE OF SHARES

1) A company limited by shares or by guarantee can buy back its own shares only when the reduction of share capital is given effect to

2) No public company by whatever means shall give loans to its holding company. However this will not apply
a) To the banking company give loans in the ordinary course of business
b) giving of any loans to director or key managerial personnel in the course of employment equal to the salary / wages for the purpose of enabling them to subscribe/ hold shares for fully paid shares or its holding company by way of beneficial ownership

3) The right of a company to redeem its preference shares shall remain unaffected
4) Penalty for contravention

Fine:-

	Company		Every officer
Minimum	Rupees 1 lakhs	Minimum	Rupees 1 lakh
Maximum	Rupees 5 lakhs	Maximum	Rupees 25 lakhs

Imprisonment

3years

SEC 68: BUYBACK OF SHARES

1) A company may purchase its own shares or other specified securities out of
   a) free reserves
   b) securities premium
   c) the proceeds of issue of any share or other specified securities

2) No buyback of shares or other specified securities shall be made out of proceeds of issue of same kind of securities

3) No company shall purchase its own shares unless the buyback is authorised by the articles. A special resolution has been passed at the general meeting of the company

Condition for buyback

a) the buyback is 10% or less of (equity paid up capital + free reserves)
b) such buyback has been authorised by the Board by means of resolution
c) the buyback is 25% or less (paid up capital+ free reserves)
d) the ratio of secured and unsecured debt is in ratio of 2:1
e) all the shares or other specified securities for buyback are fully paid up
f) the buy back of securities listed on recognised stock exchange with the regulation of SEBI

4) No buyback shall be made within one year from the date of closure of buyback

5) The notice of the meeting at which special resolution is proposed along with explanatory statement

a) a full and complete disclosure of all material facts;

b) the necessity for the buy-back;

c) the class of shares or securities intended to be purchased under the buy-back;

d) the amount to be invested under the buy-back; and

e) the time-limit for completion of buy-back.

6) Every buyback shall be completed within one year from the date of passing special resolution

7) The buyback may be

(a) from the existing shareholders or security holders on a proportionate basis;

(b) from the open market;

(c) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.

8) After the buyback, the company has to destroy the certificates within 7 days

9) Where a company makes buy back it shall not make further issue of shares within the next 6 months except by way of bonus shares , ESOP, or conversion of preference shares / debentures into equity shares

10) When a company buyback or other specified securities , it shall maintain a register of securities , the consideration paid , the date of cancellation , the date of physically extinguishing the shares /securities

11) A company shall file with the Registrar and SEBI , a return containing particulars relating to buyback within 30 days

12) If a company makes a default in the provisions of SEBI

Fine:-

Minimum	:-Rs 1 lakh	Maximum	:-Rs 3 lakh

Every officer

Fine			Imprisonment	
Minimum	:-Rs 1 lakh	or		or both
Maximum	:-Rs 3 lakh		3 years	

SEC 69: TRANSFER OF SUMS TO CRR

1) When a company purchases its own shares out of free reserves the amount equal to the nominal value should be transferred to CRR

2) The CRR in paying unissued share of the company as fully paid bonus shares

SEC 70: PROHIBITION FOR BUYBACK IN CERTAIN CIRCUMSTANCE

1) A company cannot buyback securities from the following through subsidiary company including into own subsidiary through investment companies or group of investment companies

2) Default made

    In repayment of deposits
    OR Redemption of Debentures or Preference shares
    OR payment of dividend
    OR repayment of any term loan
    OR interest payable thereon to any financial institution

IF the default has been rectified and 3 years have elapsed after such default ceased to subsist then buyback is not prohibited

3) No company shall make buyback directly or indirectly unless it has complied with the provisions of sec 92, 123, 127, 129.

SEC 71: DEBENTURES

1) A company may issue debentures with the option of converting them into shares either wholly or partly at the time of redemption. The conversion has to be approved by special resolution in general meeting

2) NO company shall issue any debenture carrying voting rights

3) Secured debentures may issue to the terms and condition as may be prescribed

4) Where debentures are issued , debenture redemption reserve is created out of the profits of the company available for payment of dividend and such amount will be used only for redemption of debentures

5) the company shall not issue prospectus to its member more than 500 unless the company has appointed a debenture trustee

6) A debenture trustee shall take steps to protect the interest of debenture holder and handle their grievances

7) Trust deed shall be void if contains any clause exempting or indemnifying a trustee against his breach of trust

8) A company shall pay interest and redeem in accordance with the term and conditions of their issue

9) Where the debenture trustee believe that the assets of the company are insufficient to discharge the principal amount, the debenture trustee may file a petition before the Tribunal and the Tribunal after hearing the company impose such restriction on incurring further liabilities.

10) Where the Company fails to redeem the debenture on the date of maturity, the Tribunal may on application of all the debenture holder, trustee and after hearing the parties concerned the company may redeem debentures on payment of principal and interest.

11) A contract with the company may be enforced by a decree for specific performance.

12) The Central Government may prescribe the procedure for securing the issue of debenture form of debenture trust deed procedure for the debenture holder to inspect the trust deed and copies quantum of debenture redemption reserve.

13) In case of default with the order of default

Every officer

Fine: Minimum: - Rs 1 lakh

Maximum: - Rs 5 lakh; Imprisonment:-3 years

SEC 72: POWER TO NOMINATE

1) Every holder of securities shall nominate any person to whom such securities vest in the event of his death.
2) Where the securities of company are held by the more than one person jointly , then joint holders may together nominate , any person to whom all the rights in securities shall vest in the death of joint holders
3) Where nominee is minor it shall be lawful for holder of security making the nomination to appoint any person to become entitled to securities of the company in the event of death of minority
4) Where nomination made in the prescribed manner any person the rights to vest in securities the nominee , on the death of securities or as the case on the death of securities on the death of joint holders become entitled to all the right of securities to the exclusion of all the persons unless the nomination is varied or cancelled

SEC 73: ACCEPTANCE OF DEPOSITS BY COMPANIES

1) On and after commencement of the Act, Every company shall invite , accept, renew deposit in the manner provided in this Act

2) This shall not apply to Baking companies and NBFC under the RBI Act 1934 and other companies which the central government notifies in consultation with RBI

3) A company can accept deposits only after passing resolution in general meeting in consultation with the Reserve Bank of India

4) Conditions for the issue of Deposits

   a) Issuance of circular to its member containing
   - financial position of the company
   - Credit rating obtained
   - Total number of depositors
   - amount due towards deposit
   - and such other particulars

   b) Filing a copy of circular along with the statement to the Registrar within 30 days before the issue of circular

   c) Deposit a sum =15% of the amount of deposit maturing during the year AND next financial years and kept in scheduled bank

   d) Certifying that company has not defaulted in repayment of deposits

   e) Providing security for any amount of deposit or interest thereon

5) Every deposit shall be repaid with the interest in accordance with the terms of agreement

6) Where company fails to pay deposit or interest the depositor concerned may apply to the Tribunal directing the company to pay such sum due for any loss or damage incurred on the non-payment

SEC 74: REPAYMENT OF DEPOSIT ACCEPTED BEFORE THE COMMENCEMENT OF THIS ACT

1) Wherein the respect of deposit accepted before the commencement of the Act the amount of such deposit or interest due which remains unpaid before the commencement or after the company shall file
   - within period of three month from such commencement or date thereof
   - with the Registrar
   - A statement showing the all deposits accepted + sums remaining unpaid + interest
   - and arrangement for such repayment
   - repay within one year from such commencement OR from the date on which such repayments are due

2) The Tribunal after taking into the financial position , amount of deposit and other matters allow further time

3) **Default :-** when the company fails to repay the deposit within the time prescribed including the extended time limit
   the company in addition to the deposits or interest be punishable

   Company with a fine ----- Minimum 1 crore ; Maximum 10 crore
   Every officer-------- imprisonment of 7 years
   OR
   Fine:- Minimum of Rs 25 lakhs
   Maximum to 2 crore
   OR both

SEC 75: DAMAGES FOR FRAUD

1) When the company fails to repay the deposits within the time limit prescribed with the intent to defraud the depositors or any fraudulent purposes

EVERY OFFICER OF THE COMPANY WHOIS RESPONSIBLE SHALL BE LIABLE UNDER SEC 447 for all or any of those damages that may have been incurred by the depositors

2) when the company fails to repay the deposit or part thereof or interest and any loss is incurred by person , association of person then suit or proceeding can be initiated by such person against the company

SEC 76: ACCEPTANCE OF DEPOSITS FROM PUBLIC BY CERTAIN COMPANIES

1) A public company may accept the deposits from person other than its member subject to the compliance with the requirement of sec 73(2) and subject to such rules as the Central Government in consultation with the RBI

2) Conditions : company shall obtain the credit rating from recognised credit agency at the time of invitation from deposit which ensures adequate safety and rating shall be obtained every year

3) Every company accepting secured deposit from public shall within 30 days of such acceptance create such a charge on its asset which will not be less than the amount of deposits accepted in favour of deposit holder

SEC 77: REGISTRATION OF CHARGES

1) When a charge is created by the company within India or outside India on its property or assets or any of its undertaking it is duty of the company to register such charge on payment of such fees within 30 days of creation.

2) On the application by the company the Registrar allow such registration to be made within 300 days of such creation on payment of additional fees

3) If Registration is not made within 300 days , the company shall create extension of time under sec 87
4) After registration of charge, he shall issue certificate of registration in prescribed form to the person in whose favour charge are created

5) NO charge created by the company shall be taken into account liquidator or any creditor unless it is registered

SEC 78: APPLICATION FOR REGISTRATION OF CHARGE

1) Where a company fails to register the charge within period specified within 300 days the person in whose favour the charge is created may apply to the Registrar for Registration of the charge along with the instrument created for charge with the prescribed time limits
2) The Registrar may on such application within period of 14 days after giving notice to the company allow the person in whose favour the charge is created to register the charge
3) This is possible only if the company fails to register the charge within the prescribed limit
4) When the person registers the charge, he is entitled to recover from the company all the fees and additional fees paid by him to the Registrar.

SEC 79: SEC 77 APPLIES IN CERTAIN MATTERS

1) The provisions of sec77 applies apply the company acquiring property subject to charge any modifications in terms of conditions or the extent of operation

SEC 80: DATE OF NOTICE OF CHARGE

Where any charge is registered under sec 77 any person acquiring such property or assets or undertaking or share or interest shall be deemed to have notice of the charge from the date of registration

SEC 81: REGISTER OF CHARGES TO BE KEPT BY REGISTRAR

1) The Registrar shall keep register containing particular of charge in prescribed manner
2) The Register shall be kept open for inspection by any person on payment of fees

SEC 82: COMPANY TO REPORT SATISFACTION OF CHARGE

1) On the satisfaction of charge , the company shall give intimation to the Registrar within 30 days

2) On the receipt of the intimation

Show cause notice issued asking why the payment or satisfaction should not be recorded satisfaction shall as intimated by the Registrar

↓

within 14 days

↓

Registrar shall note in the Register of charges and inform the Company

no show cause notice

↓

Memorandum of satisfaction shall be entered in the Register of charges

↓

under sec 81

↓

and inform the company

SEC 83: POWER OF REGISTRAR TO MAKE ENTRIES OF SATISFACTION AND RELEASE IN THE ABSENCE OF INTIMATION FROM COMPANY

1) On evidence being given that satisfaction with the respect to registered charge the debt for which charge has been given is satisfied OR
   the part of property or undertaking charged has been released / ceases to form part of company property

   Enter in the register of charges , a memorandum of satisfaction in whole or part of assets released from company property or undertaking/ ceased to be part of company property

2) The Registrar shall inform within 30 days of making the register of charges

SEC 84: INTIMATION OF APPOINTMENT OF RECEIVER OR MANAGER

1) If any person obtain for the appointment of receiver
   shall within a period of 30 days from the date of passing of order **OR** making the appointment
2) Give notice of such appointment to the company and on the payment of prescribed fees
3) The Registrar register particular of receiver , person or instrument in charge
4) When any person ceases to be receiver , he shall give notice to the company , Registrar and Registrar shall register such notice

SEC 85: COMPANY REGISTER OF CHARGES

1) The Company at its Registered office shall maintain the Register of Charges. The Register of charges shall contain all charges and floating charges affecting an property or assets of the company
2) The Register of charges shall be kept at the registered office of the company
3) The register shall be open for inspection during business hours
4) Any creditor/ member shall without payment of fees may inspect the Register
5) Any other member can inspect the Register on payment of fees.

SEC 86: PUNISHMENT FOR CONTRAVENTION

If the Company contravenes with any of provisions of this Chapter

Fine **Punishment** **Both**

By Company

- Minimum -Rupees One lakh
- Maximum -Rupees Ten lakhs

By every officer

- Imprisonment of 6 months

By Every Officer

By every officer

Minimum - Rupees 25000

Maximum - Rupees 100000

SEC 87: RECTIFICATION BY CENTRAL GOVERNMENT IN REGISTER OF CHARGES

1.) The Central Government on being satisfied that omission

- **Regarding particular** — has been acquired by a company or modification of charge
- **Regarding time** — to register the charge within time or to give intimation to the Registrar or satisfaction of charge
- **Mis-statements** — regarding charge or modifications or with respect to memorandum of satisfaction or entry made in pursuance of sec 82 and sec 83
- **On other grounds it is just made equitable to**

was accidental
OR due to inadvertence
OR Sufficient cause
OR Nature of prejudice of shareholder/ creditor

may on application of the company or any person
and on such terms and conditions
and it may seem expedient for the Central Government

direct
time for filing of particulars
or registration of charge
or giving of intimation of payment
or the misstatement shall be rectified

Note: When the Central Government extends the time of registration the order shall not conflict any rights acquired in respect of property before the charge is actually registered

SEC 88: REGISTER OF MEMBER

1) Every company is required to maintain the following registers
   a) Register of members separately for equity shareholder and preference shareholder
   b) Register of debenture holders
   c) register of security holders

2) Every Register shall include an index of the names

3) The register and index of beneficial owners maintained by the depository shall be deemed to be the register for the purpose of the Act

4) A company if authorised by Articles , keep in any country outside India called Foreign Register containing the names and particulars of member/ debenture holders/ beneficial owner/ other holders residing outside India

5) In case of default
   Company and Every officer
   Fine
   Minimum :-RS 50, 000
   Maximum :-RS 3 lakhs

In case of continuing default, a fine of Rs 1000 every day during the failure continues

SEC 89: DECLARATION IN RESPECT OF BENEFICIAL INTEREST IN ANY SHARE

1) Where the name of person is entered in the Register of Members but who does not hold the beneficial interest such person shall make declaration within prescribed time specifying the name and other particulars of who hold the beneficial interest

2) Every person who hold / acquires a beneficial interest make a declaration of the company specifying the nature of his interest and particulars of the person

3) Where there is a change occurs in the beneficial interest of the company the person and the beneficial owner have to make declaration within 30 days

4) The Central Government may make rules for manner of holding and disclosing beneficial interest and beneficial ownership under this section

5) If a person fails to make a declaration without any reasonable cause he shall be punishable

   Fine Rs 50000

   where the failure is continuing, Rs 1000 for every day after the first failure till the default continues

6) Where declaration is made to company the company shall make a note of such declaration with such fees / additional fees

7) If a company fails to do so before the expiry of time specified the company and every officer of the company

   Fine:- Minimum:- Rs 500

   Maximum:-Rs 1000

   Where failure is continuing one , further fine which extends to Rs 1000 every day after the first failure during which failure continues

8) When a declaration is made by any person other than beneficial owner, Right shall be enforceable against such person

SEC 90: INVESTIGATION OF BENEFICIAL OWNERSHIP OF SHARES IN CERTAIN CASES

1) Where it appears to Central Government there are reasons to do it may appoint one / more competent persons to investigate and report with regards to beneficial ownership shall apply , to the investigation

SEC 91: POWER TO CLOSE REGISTER OF MEMBERS OR DEBENTURE HOLDERS / SECURITY HOLDERS

1) A company can close the register of member/ debenture holders/ security holders/ for an aggregate period of 45 days in each yet but , it should not exceed 30 days at one time

The notice for closing should be given at least 7 days or lesser period as SEBI prescribe the listed companies /companies to get listed

In the case of violation of time limits, the company and every officer shall be liable to following penalty RS 5000 for every day maximum upto Rs 5 lakhs

SEC 92: ANNUAL RETURN

1) Every company preparing Annual return containing the particulars

(a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;

(b) its shares, debentures and other securities and shareholding pattern;

(c) its indebtedness;

(d) its members and debenture-holders along with changes therein since the close of the previous financial year;

(e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;

(f) meetings of members or a class thereof, Board and its various committees along with attendance details;

(g) remuneration of directors and key managerial personnel;

(h) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;

(i) matters relating to certification of compliances, disclosures as may be prescribed;

(j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and

(k) such other matters as may be prescribed, which shall be signed by the director and company secretary in case of no company secretary, company secretary in practice

2) In case of OPC and small companies, the annual return shall be signed by Company Secretary and in the case of no company secretary, the director of the company

3) The Annual return of the company having such a paid up capital and turnover shall be certified by company secretary stating the annual return discloses the facts correctly and adequately the company has complied with the provisions of the Act

4) An extract of the annual return in such prescribed form , shall form part of Board Report

5) Every company shall file with Registrar within 60 days from the date of Annual General meeting OR
where there is no AGM within 60 days from the days on which AGM should be held with the explanatory statements and such fees/ additional fees

6) If a company fails to file the return with additional fees

the company shall be punishable		Every officer	
Fine		**Fine**	
Minimum	:-Rs 50000	Minimum	:-Rs 50000
Maximum	:-Rs 5 lakhs	Maximum	:-Rs 5 lakhs
		Imprisonment	6 month

7) If a company secretary in practice certifies annual return with the requirement of section / rules he shall be punishable

Fine Minimum :-Rs 50000

Maximum :-Rs 5 lakhs

SEC 93: RETURN TO BE FILED WITH REGISTRAR IN CASE OF PROMOTERS STAKE CHANGES

8) Every listed company shall file within 15 days with the Registrar in respect of the change of shareholding of promoters and top 10 shareholders

SEC 94: PLACE OF KEEPING AND INSPECTION OF REGISTER/ RETURNS

1) The register and the annual report required to be maintained by the company shall be maintained at the registered office of the company

2) It can be kept at other place when the following conditions are fulfilled
   a) In case of other place more than 1/10 th of member entered in the Register of member should reside
   b) it should be by special resolution
   c) A copy of the resolution shall be given in advance to the Registrar

3) The Register and indices , except when closed are open for inspection by any member/ debenture holder/ security holder during business hours without payment of fees

4) Any member/ debenture holder/ security holder/ other security holder shall take extracts from any register without payment of fees require copy of register on payment of fees

5) In the event of refusal of inspection or granting copies of register the company and every officer who is in default shall be liable to pay penalty

   Minimum :-Rs 1000 Maximum :-Rs l lakh

6) The Central Government , may also direct the inspection or direct the extract be allowed to the person requiring it

SEC 95: REGISTER TO BE EVIDENCE

The register, copies of annual returns maintained under sec 88 and sec 94 shall be primary evidence of any matter authorised to be inserted in the Act

SEC 96: ANNUAL GENERAL MEETING

1) Every Company shall in each year in addition to all the meeting , general meeting and specify notice calling it

   Period of General meeting

   a. Not more than 15 months between 2 general meeting
   b. In the case of first annual general meeting 9 month from the closing of first financial year company
   c. In other case - 6 months from the date of closing of financial year

2) If the company holds its first annual general meeting it shall not be necessary to hold any general meeting in the year of incorporation

3) The Registrar may extend for the maximum period of 3 months

4) Every AGM shall be held at the business hours. Every AGM shall held on any day other than National Holiday. Every AGM shall be held at the registered office of the company

SEC 97: POWER OF THE TRIBUNAL TO CALL GENERAL MEETING

1) If any default is made in holding Annual General Meeting. The tribunal may on the application of members call or direct the holding of AGM and give ancillary or consequential directions as required

2) A general meeting called by the Tribunal shall be deemed as a general meeting called by the company

SEC 98: POWER OF THE TRIBUNAL TO CALL MEETING OF MEMBERS

1) If for any reason it is not possible to call AGM. The tribunal may suo moto or on application of any director or member would be entitled to vote at the meeting

2) The meeting will be held and conducted in such manner as Tribunal think fit

3) Give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company;

4) A general meeting called by the Tribunal shall be deemed as a general meeting called by the company

SEC 99: PUNISHMENT FOR NOT COMPLYING WITH THE PROVISONS OF 96 TO 98

1.) Punishment

- Company → Fine: Rs 5 lakhs
- Every officer → Fine: Rs 5 lakhs

In the case of continuing default the fine may extend to Rs 5000 for every day during the default continues

SEC 100: CALL AN EXTRA ORDINARY GENERAL MEETING

1) Board shall proceed to call EGM at the requisition made by members holding on the date of receipt of requisition

2) At least 1/10 of share capital carrying voting right (in case of company having share capital or capital) as on the date of receipt of requisition

   1/10 of total voting power (in case of company not having share CAPITAL) as on date of requisition

3) The meeting can be called by the requisitions in case of no meeting is held within 45 days from the date of receipt of requisition

4) Such meeting held by the requisitions within 3 months from the date of such requisition

5) All the reasonable expenses shall be reimbursed to the requisitions by the company and sums so paid shall be deducted from any fee or other remuneration under sec 197 payable to such directors who were in default

SEC 101: NOTICE OF MEETING

1) 21 days clear notice either in writing should be given through electronic mode in such manner as per rules

2) Notice must specify the date , place , hour of the meeting , and contains agenda

3) The notice of every meeting of the company shall be given to—
   (a) every member of the company, legal representative of any deceased member or the assignee of an insolvent member;
   (b) the auditor or auditors of the company; and
   (c) every director of the company.

4) Accidental omission or non-receipt of notice does not invalidate the meeting

SEC 102: STATEMENT TO BE ANNEXED TO NOTICE

1) In case of any business other than Ordinary Business a statement setting out general meeting shall be annexed to the notice convening such meeting, namely:

   (i) Nature of concern or interest, financial or otherwise, if any, relatives of the Director, manager or KMP in respect of each items of every director and the manager, if any and every other KMP and

   (ii) Any other information and facts that may enable members to understand thereon the meaning, scope and implications of the items of business and to take decision

(iii) Where any special business in the meeting of Company affects or shall be stated in the said statement, if that shareholding is 2% or more relates any other company then shareholding of promoter, directors, manager and KMP

(iv) Where any item of business refers to any documents, which is to shall also be specified in the statement be considered at the meeting, the time and placedwhere the documents can be inspected

Special Business in AGM means all businesses other than Auditors.

Appointment of Directors in place of retiring and appointment of and fixation of remuneration of auditors

In case of any other General Meeting all business shall be special.

In case of benefit arises due to non-disclosure of aforesaid material trust for the benefit of the Company facts in the statement by promoters/directors/ manager/ KMP than the same shall be held in

DEFAULT

Every promoter, director, manager or other managerial personnel

Fine:-Rs 50,000 or 5 times amount benefit accruing the promoters, director, manager

SEC 103: QUORUM FOR MEETINGS

1) In case of public company

Members more than 1000	5 members
Members >1000 but<5000	15 members
Members >5000	30 members

2) In case of private company 2 members shall constitute quorum

3) If the quorum is not present within half an hour of the time appointed for holding the meeting

a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or

(b) the meeting, if called by requisitionists under section 100, shall stand cancelled:

If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

SEC 104: CHAIRMAN OF THE MEETING

1) Members personally present at the meeting shall elect one of themselves to be chairman thereof in show of hands

2) If poll is demanded on the elections of the Chairman, Chairman elected on show of hands shall continue to be Chairman of the meeting until some other person is appointed as Chairman

SEC 105: PROXIES

1) Any member entitled to attend and vote in the meeting of company shall appoint a proxy to attend and vote as proxy to attend on his behalf

2) a) Proxy shall not have right to speak
   b) Proxy shall not be entitled to vote
   c) Central Government may prescribe class or classes of companies whose member shall not be entitled to appoint proxy
   d) Every company having share capital , or where the articles provide the notice shall contain a statement of member entitled to attend and vote is entitled to appoint proxy and proxy need not be a member

3) In case of default every officer of the company who is in default shall be punishable with fine of RS 5000

4) The proxy form should be deposited within 48 hours before the meeting , by depositing the proxy form

5) The instrument of proxy shall be in writing and signed by the appointer or his attorney duly authorised in meeting under the seal or signed by an officer / attorney duly authorised in meeting

6) Every member entitled to vote shall inspect the proxies lodged within the business hours of the company provided a notice is given at least 3 days before.

7) For the purpose of any meeting of the company any person to be appointed as proxy out of the person specified in the company invitation at the expense of the company. Every officer of the company who knowingly issues invitation shall be punishable with fine which may extend to Rs 1 lakh

SEC 106: RESTRICTION ON VOTING RIGHTS

1) The Articles that no member shall exercise voting profit in respect of any shares registered on which calls have not been paid in regards to which the company has exercised any right of lien

2) On a poll taken meeting a company , member entitled to vote or his proxy as the case may be , need not if he votes , use all his votes or cast in the same way he uses

SEC 107: VOTING BY SHOW OF HANDS

1) At the general meeting , unless decided that the vote will on poll , or electronically voting will be show by hands

2) A declaration by the Chairman of meeting of passing resolution , and entry to the effect in the books containing minutes of the meeting shall be conclusive evidence of the fact of passing resolution or otherwise

SEC 108: VOTING THROUGH ELECTRONIC MEANS

The Central Government may prescribe the class or classes of companies and the manner in which member may exercise vote by electronic means

SEC 109: DEMAND ON POLL

1) Before the declaration of results, a poll may be ordered by taken Chairman of the meeting on his own motion

2) In case a company having share capital and having not less than 1/10th of total voting power or holding share on which aggregate sum of not less than 5 lakh rupees or such higher amount as prescribed paid up

3) In case of other company , by members present in proxy and having not less than 1/10th of total voting power

4) The demand for a poll may be withdrawn at any time by the persons who made the demand.

5) Poll demanded for the adjournment of the meeting or appointment of Chairman shall be taken

6) A poll demanded on question other than adjournment of meeting shall be taken within 48 hours from the time as the Chairman may direct

7) Where poll is taken , the Chairman may appoint a scrutinizer/s to scrutinise the poll process and votes given on poll and report in the prescribed manner

8) The Chairman of the meeting shall have the power to regulate the manner in which poll

9) The result of the poll shall be deemed to be the decision of the meeting

SEC 110: POSTAL BALLOT

1) A company shall in respect of items of business as the Central government by notification declare to be transacted by postal ballot
2) In the respect of any item of business , other than ordinary business and any business in respect of which directors and auditors have a right to be heard of meeting will be by means of postal ballot
3) If resolution is assented by requisite majority of the shareholders by means of postal ballot it shall be deemed to have passed in general meeting

SEC 111: CIRCULATION OF MEMBERS RESOLUTION

1) A company on the requisition of members

a) give notice to members which may be properly moved and intended to be moved at meeting

b) Circulate to members any statement with respect to matters in proposed resolution / business to be dealt at meeting

2) A company shall not be bound to give notice of any resolution / circulate any statement unless

a) a copy of requisition signed by requisionist is deposited at the Registered office of the company where the requisition requiring notice of resolution- at least 6 weeks before the meeting in case of other requisitions - at least 2 weeks before the meeting

3) The company shall not be bound to circulate any statement if on the application either by the company who claims to be aggrieved the Central government, declares the right conferred are being misused to claim publicity in relation to any defamatory matter

4) In case of an order made by the Central Government the cost incurred by the company shall be paid to the company by the requisitionits even if they were not parties to the application

5) In case of default

the company and every officer
shall be liable to pay penalty of Rs 25000

SEC 112: REPRESENTATION OF PRESIDENTAND GOVERNOR IN MEETING

1) The president of India or Governor of the State if he is a member of the company may appoint a representative at any meeting of the company

2) A person appointed to act shall for the purpose of the Act be deemed to be a member of company and exercise the same rights and powers including a right of proxy and postal ballot as the President / Governor exercise as a member of company

SEC 113: REPRESENTATION OF CORPORATION AT MEETING OF COMPANIES AND OF CREDITORS

1) A body corporate if
   a. A member of company , may by resolution of its BOD authorise person as it thinks to be representative at any meeting of any class of members of company
   b. Creditor/ debenture holder authorise such person as a representative held in pursuance of Act/ debenture deed

2) A person authorised shall exercise the same rights and powers including the right to vote by proxy/ postal ballot

SEC 114: ORDINARY AND SPECIAL RESOLUTIONS

1) What is ordinary resolution??

Ans When notice required under this Act and is required to be passed by votes cast either by show of hands. Poll, electronically and includes casting vote of Chairman also votes by proxy/ proxies

2) What is special resolution???

Ans (i) When the intention to propose the resolution as special resolution has been duly specified in general meeting

(ii) The notice required under this Act has been given

(iii) The votes cast in favour of resolution , by whatever method are required to be at least 3/4 the number of votes against the resolution by members so entitled and voting

SEC 115: RESOLUTIONS REQUIRING SPECIAL NOTICE

Where according to the Act or articles in the Company special notice is required notice of such resolution to move such resolution holding not less than 1 percent of total voting power on which aggregate sum holding does not exceed Rs 5 lakhs

SEC 116: RESOLUTION PASSED AT ADJOURNED MEETING

Where a resolution is passed at an adjourned meeting of—

(a) a company; or

(b) the holders of any class of shares in a company; or

(c) the Board of Directors of a company,

The resolution shall, for the purposes shall be treated as passed on the date on which it is passed

SEC 117: RESOLUTIONS AND AGREEMENTS TO BE FILED

1) A copy of every resolution / agreement/along with explanatory statements shall be filed with the Registrar within 30 days with such fees as may be prescribed

2) If a company fail to file the resolution or agreement before expiry of the period under Sec 403 with additional fee

The company shall be punishable with		Every officer including liquidator	
Fine:-			
Minimum	:-Rs 5 lakhs	Minimum	Rs 1 lakhs
Maximum	:-Rs 25 lakhs	Maximum	Rs 5 lakhs

3) The provisions of section shall
   a) special resolution
   b) resolution which have been agreed by all the members of the company if resolutions not agreed, not have been effective unless passed by special resolution
   c) resolution by BOD , agreement executed by company, relating to appointment reappointment or variation of the term of appointment of a managing director
   d) resolution / agreement which have been agreed by class of members and if not agreed would not effective unless they are passed by specified majority and all resolutions are binding
   e) resolutions passed by company according to consent to the exercise by its BOD
   f) resolutions requiring company to be wound up voluntarily
   g) resolution passed in pursuance of sec 179(3)
   h) any other resolutions

SEC 118: MINUTES OF THE PROCEEDING OF AGM/ BOARD

1) The minutes of every meeting and very resolution passed by postal ballot prepared and signed and kept within 30 days of conclusion of meeting

2) The minutes of each meeting must contain a fair and correct

3) All the appointments made shall be included in the minutes of the meetings

4) In case of the meeting of BOD the minutes shall also contain
   (a) the names of the directors present at the meeting; and
   (b) in the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution.

5) There following should not be included in minutes
   1) any matter which in the opinion of the Chairman of the meeting
      (a) is or could reasonably be regarded as defamatory of any person; or
      (b) is irrelevant or immaterial to the proceedings; or
      (c) is detrimental to the interests of the company.

6) The minutes shall be evidence of the proceeding recorded

7) Where the minutes have been kept in accordance with the act, the meeting shall be deemed to have been duly called and held all proceeding have taken place and the resolutions passed by the postal ballot have passed all appointments of directors/auditors/ company secretary/ managerial personnel shall be valid

8) No report of the proceedings of any general meeting shall be circulated / advertised at the expense of the company if it does not any matter required by section to be contained in the minutes of meetings

9) Every company shall observe the secretarial standards with respect to Board/ General meetings specified by ICSI and approved by Central Government

10) If default is made in complying
a company shall be liable to penalty -RS 25000
every officer of the company penalty -RS 5000

11) If a person is found guilty of tampering with the minutes of meeting he shall be punishable Imprisonment :- 2 years
Fine : Minimum :-Rs 25000
Maximum :- Rs 100000

SEC 119: INSPECTION OF MINUTE BOOKS OF GENERAL MEETING

1) The books containing the minutes of the meeting
   a) shall be kept at the Registered office of the company
   b) be open during the business hours without any charge

   It shall be kept open for minimum of 2 hours a day for inspection

2) Any member shall be entitled a copy of minutes within 7 days of he making request to the company

3) If inspection is refused/ member is not entitled copy is not furnished

	Company	Every officer
Fine	:- Rs 25000	Rs 5000

4) In case of any refusal/ default , the Tribunal by order direct an immediate inspection of minute book or direct to give the copies of the minutes to the person requiring it

SEC 120: MAINTENANCE AND INSPECTION OF DOCUMENTS IN ELECTRONIC FORM

Any document/ record/ register/ minutes required to be kept at the company allowed to be inspected / copies to be given to any person shall be kept in electronic form

SEC 121: REPORT ON AGM

1) Every listed public company shall prepare a report on each AGM confirming that the meeting was convened , held conducted as per the provisions of this Act

2) The Company shall file with the Registrar a copy of such report within 30 days of completion of AGM with normal fees or additional fees as the case may be

3) If the company fails to file the annual report within the time in sec 403 with additional fee

		Company	Every officer of the company
Fine:-			
	Minimum	:-Rs 1 lakh	RS 25000
	Maximum	:-Rs 5 lakh	Rs 1 lakh

SEC 122: APPLICABILITY TO ONE PERSON COMPANY

1) The provision of sec 98 and sec 100 to sec 111 (both inclusive) not applicable to OPC

2) For the person of section 114,in case of One Person company the resolution is communicated by the member and entered the minutes book and shall be required to be signed & dated by such director for the purposes of Act

3) Where , there is only one director and in case of any business is transacted at the meeting of BOD then in case of such OPC the resolution of such meeting shall be signed and dated by such director and such date shall be deemed to be date of meeting of BOD

SEC 123: DECLARATION OF DIVIDEND

1) Dividend for the company can be paid in financial years
   a) out of the profits of the current year after providing for depreciation
   b) out of profit for last year after providing for depreciation
   c) out of money provided by Central Government or State Government in pursuance of guarantee given by the government

2) The company before the declaration of dividend transfer a percentage of profit in its Financial year to Reserve

3) In the case of absence of profit the company decides to declare dividend out of accumulated profits the company should transfer such percentage to Reserves as prescribed by the rules

4) No Dividend shall be declared out of its reserves other than free reserves

5) The depreciation shall be provided in accordance with provisions of Section II

6) In case of excess profits, the Board of Directors can declare interim dividend

7) In the case of loss during the current financial year, such interim dividend shall not be declared at a rate higher than average dividends declared by company during 3 preceding financial years

8) The amount of dividend including the interim dividend shall be deposited within 5 days in scheduled bank

9) No dividend shall be paid except to the registered shareholder

10) However this section does not prohibit capitalisation for the purpose of issuing fully paid bonus shares

11) The shareholders can be paid dividend through warrant or cheque or in electronic mode where the dividend is payable in cash

SEC 124: UNPAID DIVIDEND

1) Where dividend has been declared by the company but has not been paid within 30 days to any shareholder then, within 7 days from the expiry of 30 days the amount shall be deposited in separate account maintained with the Scheduled bank called as "Unpaid Account"

2) The company within 90 days of transferring the amount to unpaid dividend account make a statement containing the names , last known addresses and unpaid dividend and put on its website of the company , and any other website approved by Central Government

3) If any default has been done of not transferring unpaid dividend to " Unpaid Dividend" then the company shall pay interest @12% and the interest accruing shall be made to the members

4) If the amount remaining unpaid in " unpaid account " is for more than 7 years then such amount will be transferred to " Investor Education Protection Fund"

5) In the case of default

by the company		by every officer	
Fine:-		**Fine:-**	
Minimum: -	RS 5 lakhs	Minimum: -	Rs 1 lakhs
Maximum: -	Rs 25 lakhs	Maximum: -	Rs 5 lakhs

SEC 125: INVESTOR PROTECTION FUND

1) The Central Government shall establish a fund called " Investor Protection fund"

2) Following amount shall be credited to the Fund
   a) Amount given by the Central Government by way of grants
   b) Donation given by the Central government, State Government, Companies and other institutions.
   c) Amount of unpaid amount transferred by the companies
   d) amount in the "General Revenue" of the Central Government transferred under sec 205 under Companies Act 1956
   e) Amount lying in the Investor Protection fund as per companies Act 1956
   f) the interest or other income received out of investments made from the Fund;
   (g) the amount received under sub-section (4) of section 38;
   (h) the application money received by companies for allotment of any securities and due for refund;
   (i) matured deposits with companies other than banking companies;
   (j) matured debentures with companies;
   (k) interest accrued on the amounts referred to in clauses (h) to (j);
   (l) sale proceeds of fractional shares arising out of issuance of bonus shares,merger and amalgamation for seven or more years;
   (m) redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and
   (n) such other amount as may be prescribed:

3) The fund shall be utilised
   a) refund in respect unclaimed dividends, matured deposit , matured debentures , application money due for refund
   b) promotion of investor education awareness and protection
   c) reimbursement of legal expenses incurred in pursuing class action under sec 37 and sec 245
   d) to give out any profits to eligible and identifiable applicants for shares , debentures, shareholder, debenture holder who have suffered losses due to wrong action by any person
   e) any other purposes incidental

4) After the expiry of 7 years as per the provision of Companies Act 1956, any amount in relation sec (a) to(d) of 2

5) The Central Government an authority for administration of Fund , consisting of a Chairperson and such other members that the maximum number of member will be 7

6) The manner of administration of the Fund, appointment of chairperson, members and chief executive officer, holding of meetings of the authority shall be in accordance with such rules as may be prescribed.

7) The Central Government will provide the Authority officers , resources as per the need of the Authority and as per the prescribed rules

8) The Authority shall maintain the fund and maintain separate accounts and other relevant records in consultation with the Comptroller and Auditor General of India

9) The accounts shall be audited by the Comptroller at intervals and such audited accounts as well as report shall be forwarded annually to the Central Government

10) The Central Government shall lay down the audit report and accounts before each House of Parliament

SEC 126: RIGHT TO DIVIDEND, BONUS SHARES TO BE HELD IN ABEYANCE PENDING REGISTRATION OF TRANSFER OF SHARES

1) Where any instrument of transfer has delivered to company for registration , and such transfer has not been registered then
   a) transfer the dividend payable to the transferor to unpaid dividend account, unless the company is authorised by the Registered holder of shares to transfer the dividend in the name of transferee
   b) keep pending in relation to such shares any offer of right shares and any issue of bonus shares

SEC 127: PUNISHMENT FOR FAILURE TO DISTRIBUTE DIVIDENDS

1) Where the dividend has declared by company or warrant has not been posted within 30 days from the date of declaration to any shareholders
   Every director of the company
   Imprisonment 2 years
   Fine Rs 1000 for every day during default
   and
   Company Simple interest rates @18 p.a

Provided that no offence under this section shall be deemed to have been committed:—

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

SEC 128: BOOKS OF ACCOUNT ETC BY THE COMPANY

1) Every Company at its Registered office keep books of account and other relevant paper for every financial year giving true and fair view of the state of affairs of the company

Note- The books of account shall be both of the Registered office as well as of the branch office the books will be in the accrual system the accounting system followed will be of double entry system

2) When the books are kept in other place, then the books of account will be kept at the place decided by the BOD the company will in 7 days file with the Registrar a notice stating the full address of the other place

3) The books of account kept at the branch office in India or outside if proper books of accounting are kept both branch office and summarised returns periodically are sent to the Registered office

4) The books of account and other relevant paper maintained in India shall be open at the Registered office by directors during business hour

5) In the case of financial information maintained outside India copies of such financial information shall be maintained and produced for inspection by any director

Note-The inspection done at the subsidiary will be done by the person authorised by a resolutions by BOD

6) When an inspection is being conducted the officers and the employees of the company will cooperate with the person conducting the inspection

7) The books of accounts shall be maintained for previous eight years and if there are less than 8 years , all the years

Note-In the case of inspection by the Central Government, the books may be maintained for longer time

8) In the case of default - Managing director/whole time director in charge of finance/ chief financial officer contravenes the provision the

Imprisonment: 1year

Fine:	Minimum	Rs 50, 000
	Maximum	Rs 5 lakhs

SEC 129: FINANCIAL STATEMENTS

1) The financial statement shall give true and fair view of the state of affairs of the company or companies comply with the accounting standards under sec 133

2) The financial statements will be in form of forms provided for different class or classes of companies in schedule III

3) This rule will not be applicable to insurance company/banking company/company engaged in electricity or on any another class for which financial statement has been mentioned under that respective Acts

4) Financial statements will be presented in Annual general meeting by Board of Directors

5) When company has one or more subsidiaries , it shall in addition to financial statements of the company and of subsidiaries which shall be laid in the annual general meeting

6) The provisions of this Act applicable to the preparation , adoption and audit of the financial statement of holding company and it shall also apply for consolidated financial statements

7) Where in the financial statement does not comply with accounting standards, the company shall disclose its financial statement , deviation from accounting standard , reasons and effect on financial statement

8) The Central government may on application , or suomotu exempt any class or classes of companies from complying in this requirement if it is in the public interest

9) If Company contravenes the provision of the section; Managing Director/Chief Financial officer/ other persons by the Board
All the directors shall be punishable with

Imprisonment	1 year
Fine	Rs 50,000

SEC 130: REOPENING OF ACCOUNTS ON COURTS OR TRIBUNALS ORDER

1) A company shall not reopen its book of account and not recast any financial statement unless an application has been made to the Central Government, Income tax, SEBI or Court / Tribunal, or any person concerned

2) Conditions for reopening
   a) the earlier accounts were made in the fraudulent manner
   b) the affairs of the company were managed in the manner casting a doubt on the reliability of the financial statement

3) The books can be reopened or statement's can be recasted only when the Court or the Tribunal gives permission to the concerned authority by way of notice

4) The accounts so revised or recasted shall be final

SEC 131: VOLUNTARY REVISION OF FINANCIAL STATEMENT OR BOARD REPORT

1) When in the opinion of the directors the financial statement/ Board's report do not comply with sec 129 or sec 134 they may prepare revised financial statement or revised report for the 3 preceding financial years after obtaining the approval of the tribunal.

2) The approval of Tribunal can be obtained only after the Company makes an application in the prescribed form and copy of tribunal shall be filed with the Registrar

3) Tribunal shall give notice to the Central Government and the Income tax authorities and shall take into the consideration the representation made by the authorities before passing an order

4) The revised financial statement shall both be prepared/ filed for more than one year

5) The detailed reason for revision of such financial statement / report shall be disclosed in the Board's Report in the financial year in which revision is made

6) Where the copies of previous financial statement / report have been given to member/ delivered/ laid in the Annual General meeting the revision should be confined to the provision of section 129/134 and can be made by making subsequent alterations

7) The Central Government may make rules regarding the application relating to financial statements and such rules
a) making of provisions according to which the previous financial statement was replaced or is supplemented by a document containing the corrections to be made
b) making provision with the respect to the functions of company auditor in relation to the company financial statement

SEC 132: CONSTITUTION OF THE NATIONAL FINANCING REPORTING AUTHORITY

1) The Central government has to constitute a National Financing Reporting authority to provide for matters relating to accounting and auditing standards

2) The National Financing Authority shall
a) make recommendation to Central Government on formulation and laying down of accounting policies and standard for adoption by companies
b) monitor and improve the accounting and auditing standards
c) see the quality of professionals with ensuring compliance with such standards and just measures for improvement

3) Composition of National Financing Authority
a) chairperson -who shall be a person of eminence and having expertise in accountancy, law, finance appointed by Central government
b) and maximum 15 members either full time or part time

4) **Conditions for appointment**

a) The chairperson shall make a declaration to the Central Government stating there is no conflict of the interest or lack of independence in respect of his appointment

b) The chairperson and other members associated with the authority shall not be associated with any audit firm during the course of appointment and after 2 years the cease to be a member

Powers of National Financing Authority

a) the power to investigate either suomoto or reference made by the central government in the matters of professional misconduct committed by any member of firm of CA.

Note: When any proceedings has been initiated but National Financing Authority, no other authority can initiate proceedings

b) The Authority has the powers of the Civil courts as in the Code of Civil Procedure

1) Discovery and production of boos of accountant other document at such place as may be specified by the Authority

2) Summoning & enforcing the attendance of persons and examining their oath

3) Inspection of any books, registers and other documents

4) issuing commission for examination of witnesses or documents

Where professional conduct has been proved, have power order for

i) imposing penalty Rs 1 lakh but maximum 5 times in the case of individuals
Rs 10 lakhs but maximum 10 times in case of firms

ii) debarring a person from ICAI for a minimum of 6 months and maximum period decided by National financing authority

5) Any person aggrieved may appeal before the Appellate Authority

6) The Central Government may constitute the an Appellate Authority constituting of chairperson and not more than 2 members to be appointed by the Central Government for hearing appeals arising out of orders of the National Financing Authority

7) The qualifications for appointment of chairperson and members of appellate authority , manner of selection , terms and conditions of their service and the requirements of supporting staff to be followed by Appellate Authority as prescribed

8) The fees for filing the appeal may be prescribed

9) The officer authorised by Appellate Authority its annual report giving account of activities and forward a copy to the Central Government and the Central Government shall cause the annual report to be laid before each House of Parliament.

10) The national financing authority shall meet at such times and such manner and rules in regards to transaction

11) The Central Government may appoint secretary and such other employees as may consider necessary for the efficient performance and the terms and conditions of service of secretary and employees hall be prescribed

12) the Ho shall be at New Delhi and the authority may meet at such places in India as it deems fit

13) The books of account will be maintained by the authority in such manner and such form as the Central govt. with comptroller of audit general decide

14) The accounts may be audited by the Comptroller at intervals and the audit report may be forwarded by the Authority to the Central Government

15)The annual report giving full account of its activities during the financial year shall be forwarded by the Authority and it shall forward the copy to the Central government who will forward the report along with the audit report which will be laid before House of Parliaments

SEC 133: CENTRAL GOVERNMENTS TO PRESCRIBE ACCOUNTING STANDARDS

The Central Government may prescribe standards of accounting or any addendum by ICAI in consultation with and after examination of the recommendation of the authority

SEC 134: FINANCIAL STATEMENT. BOARD REPORT

1) The CFS and the financial statement shall be approved by the board before they are signed by the Board by chairperson where he is authorised by the Board or by 2 directors, out of which one shall be MD and CFO and the company secretary
   Note: The CFO can sign only if he is the director of the company

2) The auditor's report are attached to the financial statement

3) The following shall be attached to the financial statement

   A) in case of general meeting , a board of Directors report which shall include the following :
      (a) the extract of the annual return as provided under sub-section (3) of section 92;
      (b) number of meetings of the Board;
      (c) Directors' Responsibility Statement;
      (d) a statement on declaration given by independent directors under sub-section (6) of section 149

   B) In case of company covered under sec 178(1)
      a) company policy of directors
      b) appointment and remuneration
      c) qualification
      d) positive attributes
      e) independence of directors

   C) Explanation made by Board on every qualifications / reservations / disclaimer made by auditors & by company secretary in practice in his report

D) Particulars of loans / guarantees or investment under section 186

E) state of company affair

F) the amount of dividend to be paid

G) the amount of reserves to be carried forward

H) Material change and commitment affecting any financial position of company between the end of the year of financial statement and date of financial report

I) Conservation of energy/ technological absorption / foreign exchange earnings and outflow

J) statement indicating development and implementation of risk management policy including identification of element of risk

K) Details of corporate social responsibility policy of the company

L) Annual evaluation made by the Board of its own performance of its committee and individual directors in case of public companies

4) The report of Board of Directors to be attached to the financial statement means a report containing explanation of Board on every adverse remarks / disclaimer by the auditor

5) The Directors Responsibility statement shall state that

a) in preparation of annual accounts, applicable accounting standards have been used

b) The directors have used proper accounting policies so has to give true and fair view of state of affairs of company

c) proper accounting records have been maintained in the case of safeguarding of fixed assets

d) the accounts are ongoing concern basis

e) the internal controls laid by the company are adequate and operating efficiently

6) The Board Report shall be signed by the Chairperson(if he is authorised) if the chairperson is not authorised

7) A signed copy of every financial statement shall be issued and circulated along with

a) any notes annexed to or forming part of such financial statement;

(b) the auditor's report; and

(c) the Board's report

8) In case of contravention,

	the company shall	be every officer
Fine: Minimum	:-Rs 50000	Rs 50000
Maximum	RS 25 lakhs	RS 5 lakhs
		or
	Imprisonment	3 years
		or
		both

SEC 135: CORPORATE SOCIAL RESPONSIBILITY

1) Every company having Net Worth of Rupees Five Hundred Crore or more
or
Having turnover of Rupees One thousand crore
or
Having Net profit of Rupees Five Crore or more

Shall constitute a CSR committee of the Board consisting of 3 or more directors, of which 1 director shall be independent director

2) The Boards Report shall disclose the composition of CSR committee

3) The CSR shall,
    a. formulate and recommend to a Board , a CSR policy which will indicate the activities to be undertaken by the company
    b. recommend the amount of expenditure to be incurred on the activities undertaken by the company
    c. monitor the CSR policy from time to time

4) The Board of every company shall
    a) after taking into account the recommendation of CSR committee, approve the CSR policy for the company and disclose content of such policy in its report and place it on the company website
    b) ensure the activities as included in CSR policy of the company are undertaken by company

5) The Board shall ensure that the company spends in every financial year at least 2% of average profits of the company during 3 immediately preceding financial year for CSR

6) The company shall give preference to the local area for the amount to be spent to CSR activities

7) If the company fails to spend such amount in its report , specify the reason for not spending the amount

Note Average profit shall be calculated in accordance with the provision so Sec 198

SEC 136: RIGHT OF MEMBER TO COPIES OF AUDITED FINANCIAL STATEMENT

1) A copy of financial statement including Consolidated Financial statement & Auditors report and every other documents required by law to be annexed or attached to financial statements which are laid before a company its general meeting shall be sent for every member of the company to every trustee of debenture holder of debentures and all persons other than such member or trustee not less than 21 days before the date of meeting

2) In case of a limited company if the copies of the document are available for inspection at its registered office, during working hours for a period of 21 days before the date of meeting and a statement containing salient features is sent to every member of the company, every trustee for the holders of any debenture issued not less than 21 days before meeting unless the shareholder ask for full financial information

3) The manner of circulation of such documents is prescribed by the Central Government

4) A listed company shall its financial statement CFS , and all other documents required to be attached which is maintained on behalf of the company

5) Every company having a subsidiary/ subsidiaries shall place separate audited reports provide a copy of separate audited financial statements in respect of each of its subsidiary

6) A company shall allow every member or trustee of holder of debentures at its registered office during business hour.

7) Default: Company Penalty:-Rs 25000
   Every officer- Penalty- Rs 5000

SEC 137: COPY OF THE FINANCIAL STATEMENT TO BE FILED WITH THE REGISTRAR

1) A copy of financial statement shall be filed within 30 days from the date of AGM with such fees or additional fees as may be prescribed

2) In case of adjourned AGM , such financial statements shall be adopted within 30 days of adjourned AGM

3) In case of subsidiaries , the financial statements shall include the accounts of such subsidiaries

4) In case of not holding AGM, the financial statements shall be filed along with the reason for not holding the AGM within 30 days from the date in which the AGM was required to be held along with the appropriate fees/ late fees.

5) In case of default

Company	Managing director/CFO/ other officers of the Board
Fine	Fine
One thousand rupees for every day maximum upto Rs ten lakh rupees	Minimum :-RS 1lakh Maximum :-Rs 5 lakh or Imprisonment: 6 months or Both

SEC 138: INTERNAL AUDIT

1) The Board decides the class of companies where internal auditors are appointed, who shall be either a CA or CS or professional to conduct the internal audit of companies

2) The Central Government may by rules prescribe the manner and the interval in which internal audit shall be conducted and reported by the Board

SEC 139: APPOINTMENT OF AUDITORS

1) Every Company shall at the first annual general meeting , appoint any individual or firm as an auditor who shall hold the office from the end of meeting to its sixth general meeting and from thereafter till the end of the sixth meeting(i.e 12th) meeting and procedure of selection by the auditor

Conditions

i) The company shall at every general meeting relating to such appointment and ratification

ii) Before such appointment, written consent of auditor and a certificate from him if made in accordance shall be obtained the auditor

iii) The certificate shall also indicate whether the auditor satisfies the criteria provided in sec 141

iv) The company shall inform the auditors concerned of his appointment with the Registrar within 15 days of the meeting in which auditor is appointed

2) No listed company or company belonging to such class or classes of companies shall appoint or reappoint

a) an individual as auditor for the term of 5 consecutive year

b) A firm as auditor for term of 5 consecutive years

Conditions

a) On the date of appointment no audit firm having a common partner or partners to other audit firm whose tenure expired in company for 5 years from completion

b) Every company existing on or before the commencement of Act is required to comply with the provisions of this section shall comply with the part of this section within 3 years from the date of commencement of this Act

c) The Company can remove auditor or the Auditor can resign from the office of the company and this section has nothing to do with the removal

3) A member of the company can resolve to provide
(a) in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or
(b) the audit shall be conducted by more than one auditor.

4) The Central Government may by rules prescribe the manner in which companies shall rotate the auditors

5) In the case of Government companies, The Comptroller and audit General of India, in respect of financial year , appoint an auditor qualified to be appointed for such companies within 180 days of the commencement of the financial year who shall hold office till the conclusion of General meeting

6) The first auditor of the Companies, other than Government company shall be appointed by BOD within 30 days of registration of the company, and in case of failure the members may appoint within 90 days in EGM

7) The first auditor of the Government companies shall be appointed by CAG within 60 days from the date of registration and in case of failure the BOD of directors within next 30 days and in case of failure by the members of the company within 60 days in EGM who shall hold office till conclusion in the next AGM

8) Casual Vacancy in case of other companies

Other than Resignation	Resignation
within 30 days by the BOD	within 3 month of the recommendation of Board approved by company shall hold office till the next AGM

9) In case of Government companies casual vacancy should be filled within 30 days

10) A retiring auditor may be reappointed
(a) he is not disqualified for re-appointment;
(b) he has not given the company a notice in writing of his unwillingness to be re-appointed; and
(c) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.

11) Where at the annual general meeting , no auditor is appointed, the existing auditor will continue

12) Where the company is required to constitute audit committee under sec 177 all matters relating to appointment , including filing of casual vacancy shall be done by the committee

SEC 140: REMOVAL OF RESIGNATION OF AUDITOR AND GIVING OF SPECIAL NOTICE

1) The auditors appointed by the company before the office shall be removed only by special resolution after obtaining the previous approval of Central Government

2) Before removing the auditor , the auditor should be given an opportunity of being heard

3) The auditor who has resigned from company including Government companies within 30 days from the date of resignation , a statement in prescribed for with company and the Registrar indicating the facts and other matters relating to resignation
Default
Fine :- Minimum:- Rs 50, 000
Maximum:-5 lakh Rs 5 lakhs

4) For person appointing other than auditor , special notice is required at the Annual General Meeting special resolution is not required where the retiring auditor has completed a consecutive tenure of 5 years or 10 years

5) On the receipt of such notice the company shall forward to the retiring auditor

6) Where the notice is receive by the auditor and the retiring auditor make objection and request its notification to company and unless the notifications are received too late the
a) in notice of resolution , state the fact of representation
b) send copy of the representation to every member of the company to whom notice is sent

7) If the representations are received 2 late , then it will be read in the general meeting

8) Under the provisions of the Act, The tribunal in force whether suo motu or application made to it by the Central Government if it is satisfied whether directly or indirectly acted in fraudulent manner, direct the change its auditor

9) If the application is made of Central Government and Tribunal is satisfied that any change in the auditor, it shall be 15 days of receipt make an order , that he shall not function as an auditor in his place

SEC 141: ELIGIBILITY OF QUALIFICATIONS AND DISQUALIFICATION OF AUDITOR

1) Qualification : i) He is a Chartered Accountant
ii) In case of firm including LLP, only chartered accountants shall be authorised to act in the firm

Disqualification

(a) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;
(b) an officer or employee of the company;
(c) a person who is a partner, or who is in the employment, of an officer or employee of the company;
d) A person who is a relative or partner
i) is holding any security or interest in the company or its subsidiary or is holding or associate company or subsidiary of such company
ii) is indebted to company in excess of amount as may be prescribed
iii) has given any guarantee or provided any security in connection with the indebtedness of any third person for such amount as may be prescribed
e) A person or firm , whether directly or indirectly has business relationship with the company or its subsidiary, or its holding or associate, company or subsidiary of such holding company
f) A person who is a relative of director or is in the employment of the company as director or key managerial personnel
g) A person who is in full employment elsewhere or a person or partner of a firm holding its appointment as its auditor if such person is holding more than 20 companies on the date of appointment/ reappointment
h) A person who has been convicted by the court for fraud, and 10 years have not elapsed
i) A person whose subsidiary or associate company or other form is engaged in any form of service as mentioned in sec 144

SEC 142: REMUNERATION OF AUDITORS

1) The remuneration of the auditors will be fixed in the general meeting

2) The remuneration in addition shall be payable to an auditor include expenses , incurred by auditor in connection with the audit of company but does not include any remuneration paid to him for any other services rendered by him at the request of company

SEC 143: RIGHT, DUTIES OF AUDITOR AND ACCOUNTING STANDARD

1) Every auditor has the right to access, financial statements and voucher of the company and shall be entitled to get such information from the officers has is necessary for his performance

2) The auditor is require to inquire on the following matters
 a) whether loans and advances are secured??
 b) whether the loans are made on any terms which are prejudicial to the interest of company???
 c) whether transactions are mere book entries??

 d) where loans and advances are showed as deposits??
 e) where personal expenses are charged to revenue??
 f) where the securities are sold for a price less than price purchased to be company??
 g) in case of shares, whether shares are allotted for cash , and in case of non-cash , position shown in financial statement is not misleading

3) In the report made by the auditor to the Board the auditor shall state the following
 a) the accounting and auditing standard followed
 b) the information to the best of his knowledge are true
 c) the financial statements shows true and fair view

4) The auditor's report shall also state
 a) whether the information sought by the auditor are to the best of his

knowledge true

b) whether proper books of account have been maintained by the company

c) in case of branch audit , by any other person , such audit report is received

d) whether the company balance sheet and profit and loss agree with the books

e) whether financial statement agree with accounting standard

f) whether directors suffers from any disqualification

g) any qualification , adverse mark relating to the maintenance of accounts

h) whether the company has adequate internal control systems and whether it is operating effectively

i) any other matters

5) whether matters to be included in the auditor report is answered in negative or with qualifications along with remarks

6) In case of Government company, the auditor will be appointed by the Comptroller and audit general of India the audit report has to be submitted to the comptroller and audit general the audit report shall also contains any directions given by the comptroller , the actions taken and the effects on the financial statement

7) The Comptroller and audit general of India within 60 days from the date of audit report

a) Conduct supplementary audit of financial statement and for such purposes require information /information be furnished by person and is such form as comptroller may direct

b) Comment upon and supplement on such audit report

8) In case of company covered under section 139(5) , the comptroller shall conduct test audit and the provisions of section 19A shall apply

9) where the company has a branch office , the audit can be conducted by any person appointed by company or other person qualified for appointment as an auditor.

10) where the branch office is situated outside the country , by company auditor or any person qualified to act as auditor in accordance with the laws of the country, and

the duties and power of company auditor with the reference to the audit of branch and branch auditor

11) Every auditor shall comply with the auditing standards

12) The Central Government may prescribe any standards as recommended by ICAI in consultation with examination and recommendation of National Financing Reporting authority

13) In the course of audit, if the auditor has reason to believe that a offence is being committed involving fraud by officer /s against company , then it is the duty of the auditor to report such offence

14) The provisions of this section shall apply to cost accountant, company secretary in practice

15) if any auditor, cost accountant or company secretary is in in fault he shall be punishable

Fine

Minimum :-Rs 1 lakh

Maximum :-Rs 25 lakh

SEC 144: AUDITOR NOT TO RENDER CERTAIN SERVICES

1) An auditor shall provide such services as prescribed by BOD/ Audit Committee which may include following services directly or indirectly

(a) accounting and book keeping services;
(b) internal audit;
(c) design and implementation of any financial information system;
(d) actuarial services;
(e) investment advisory services;
(f) investment banking services;
(g) rendering of outsourced financial services;
(h) management services; and
(i) any other kind of services as may be prescribed:

In case of any performance of non-audit services on or before the commencement of the Act shall comply with the provisions of section before the closure of 1stfinancial year after the date of commencement

Note: The word directly or indirectly refers to the work carried by the auditor himself or through his relatives / partners or any individual/ firm who has significant control or whose trademark is used by the firm/ individual

SEC 145: AUDITOR TO SIGN AUDITOR'S REPORT

1) The person appointed as auditor of company shall sign auditor report or sign or certify any other document in accordance with the provisions of Sec 141

2) The qualifications , observation or comment on functioning of company in the auditor's report shall be read before general meeting

The auditor report shall be available for inspection by any member of the company

SEC 146: AUDITORS TO ATTEND GENERAL MEETING

1) All the notices relating to general meeting shall be forwarded to the auditor by the company

2) The auditor shall either in person or through authorised representative attend the general meeting

3) The auditor has the right to be heard for such business concerned to him

SEC 147: PUNISHMENT FOR CONTRAVENTION

1) If the provisions of sec 139-146 are contravened then punishment

	Company	Every officer
Minimum	:-Rs 25000	Rs 10000
Maximum	: - Rs 5 lakh	Rs 100000
		Or
		Imprisonment: 1 year
		Or
		Both

2) If the auditor contravenes any of the provisions of the Act the auditor shall pay fine
   Minimum :-Rs 25000
   Maximum :-Rs5 lakhs

3) If the auditor has contravened the provisions with the intention of mens -rea then he will be punished to the same extent a as of the other officer

4) Where the auditor has been convicted
   a) he shall be liable to refund the remuneration received by him to the company
   b) pay for the damages arising out of his misleading statements in the audit report to the company statutory bodies

5) The Central Government by notification specify an statutory body or authority or officer for ensuring prompt payment of damages to the company and such person file a report with Central Government in respect of damages

6) In case of fraudulent manner in case of audit firm by company, its director, or officers , liability whether civil or criminal in any law for the time being force jointly or severally

SEC 148: CENTRAL GOVERNMENT TO SPECIFY AUDIT OF TERMS OF COST IN RESPECT OF COMPANIES

1) The Central Government in respect of companies engaged in production of such goods direct that particulars relating to utilisation of material or labour as may be prescribed included in the books of account

2) The central government may if necessary direct the cost audit of the company if the net worth/ turnover prescribed and will be conducted in the manner

3) The audit shall be conducted by cost accountant in practice who shall be appointed by such Board on remuneration determined by members

Note NO auditor under sec 139 as an auditor for conducting audit of cost records

4) An audit conducted in this section shall be in addition to the audit under sec 139

5) The qualification ,disqualifications , rights , duties applicable to cost auditor , and the company shall give its full facilities to cost auditor appointed under section

6) After getting the audit report from the cost auditor, the company within 30 days furnish the audit report to central government with such full information and explanation on every reservation or qualification contained

7) If after going through the cost audit , the Central Government is of the opinion , it shall ask for further details from the company

8) In case of default the company and every officers shall be punishable under section 147

For Further Section Like the Page & Stay Tuned to Official Page …. TAXATION & LAW CODE :

https://www.facebook.com/pages/Taxation-Law-CODES/185533964799625?ref=br_tf

Contact: - https://www.facebook.com/pages/Taxation-Law-CODES/185533964799625
https://www.facebook.com/groups/caketansardana/
https://www.facebook.com/ketan.sardana2
www.csnoteshome.com