



Taxation & Law Codes

Presents

Text book on new

Companies Act

Helpful to CA, CS, CWA Students



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PREFACE TO MY FIRST EDITION

It gives me immense pleasure, in helping the student community in particular by writing some notes in a simple, lucid manner.

Since, the book assumes no previous knowledge of the subject on the part of, the Reader, its aims complete clarity for the beginner and simplicity which makes the text self-explanatory, I express my sincere gratitude to, all those who have stood by me, in this noble task.

I, take this opportunity, in thanking my parents, my friends, readers, my well-wishers, and yes God for their blessings and support,

I feel confident that the notes will meet a real need. If it is widely read and wisely used, I shall feel amply rewarded.

I shall gratefully acknowledge any suggestions to further increase the utility of the book, and readily incorporate them for the betterment of my next edition of notes

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*This Book is dedicated to LORD GANESHA
and SARASWATI MAA*





SEC 3: COMPANY FORMED FOR LAWFUL PURPOSE

<u>NATURE</u>	<u>PUBLIC COMPANY</u>	<u>PRIVATE COMPANY</u>	<u>ONE PERSON COMPANY</u>
<u>NUMBER OF MEMBERS</u>	7 or more persons	2 or more persons	one person

CONDITIONS:-

SUBSCRIBING NAMES TO MEMORANDUM OF ASSOCIATION 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 ASSOCIATION

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) THE 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

INCASE OF THE COMPANY BEING ALREADY REGISTERED

- A) THE REGISTRAR WILL ASK TO CHANGE THE NAME OF THE COMPANY WITHIN 3 MONTHS AFTER 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

The provisions of the act which do not agree with MOA & AOA 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 only
- 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 is 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

SEC 13: 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

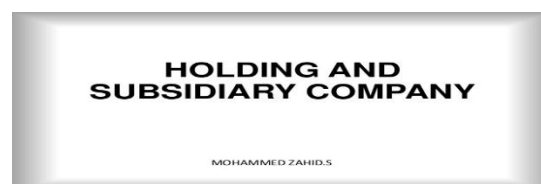
- 1) When a company wants to convert from class to another class it can do by alteration in memorandum and articles
- 2) Where the conversion is required, the registrar shall on application made by the company , when satisfied that it has complied with the rules
close the former company
and grant registration 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 subsidiary 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 serve through a specific medium by payment of fees at the AGM

SEC 21: AUTHENTICATION OF DOCUMENT PROCEEDING

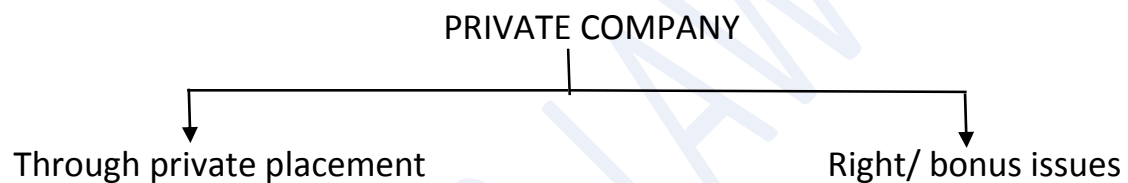
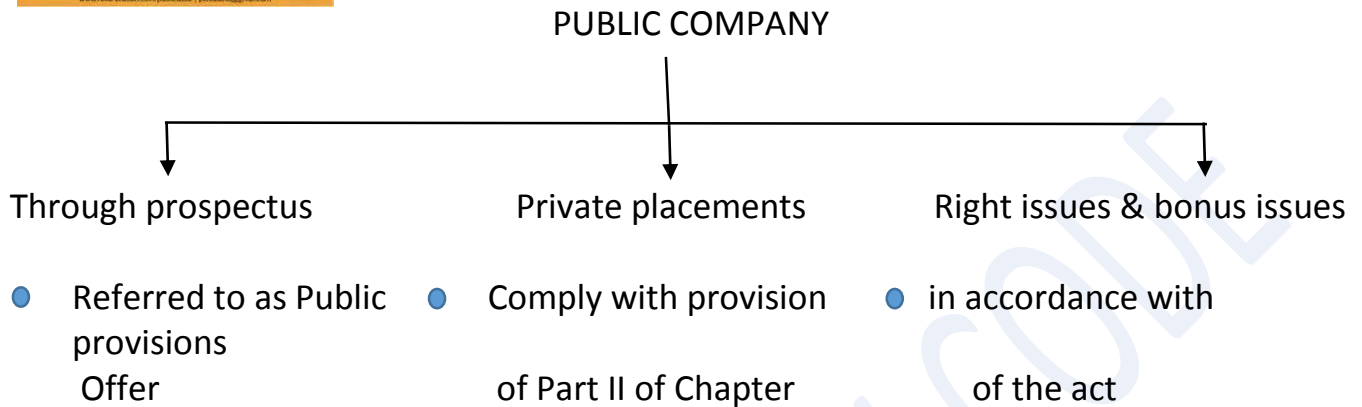
A document or contracts can be authenticated by getting it signed by any key managerial purpose or any officer duly authorised by the board

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



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.

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

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

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) Expertshall 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

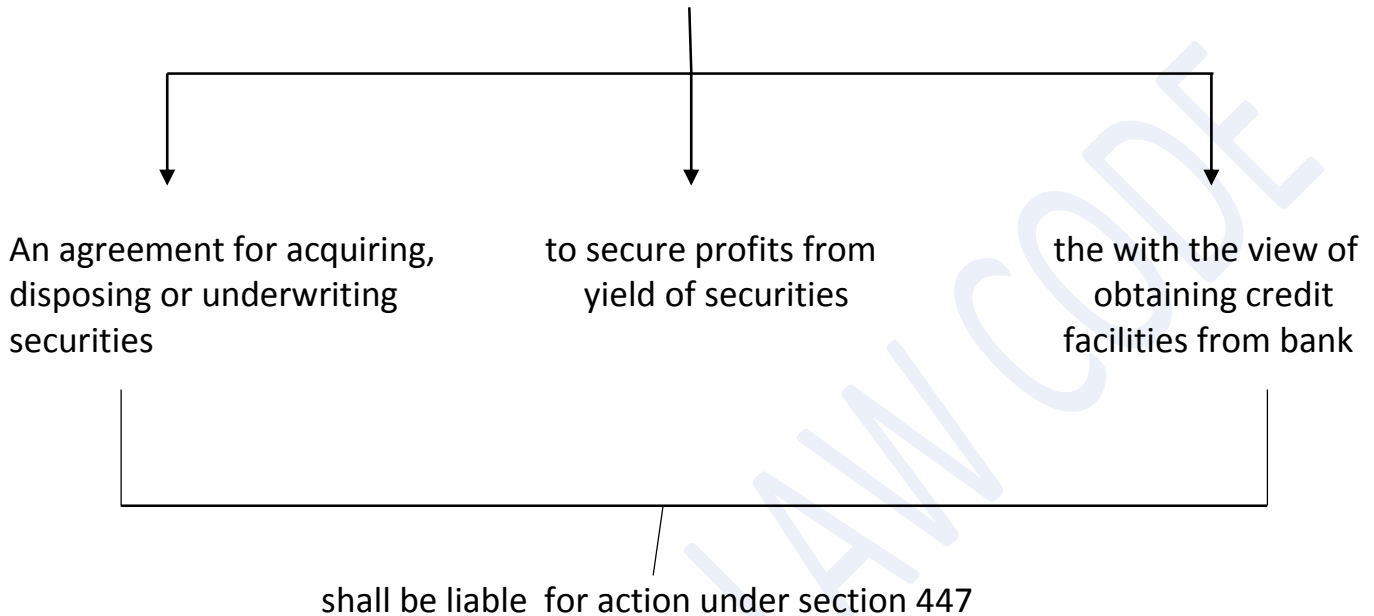
the prospectus was issued without his knowledge and becoming aware of the issue , he gave a public notice that , the prospectus was issued without his knowledge
- 3) When it is proved that prospectus has been issued
with the intent of defrauding the applicant for securities

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



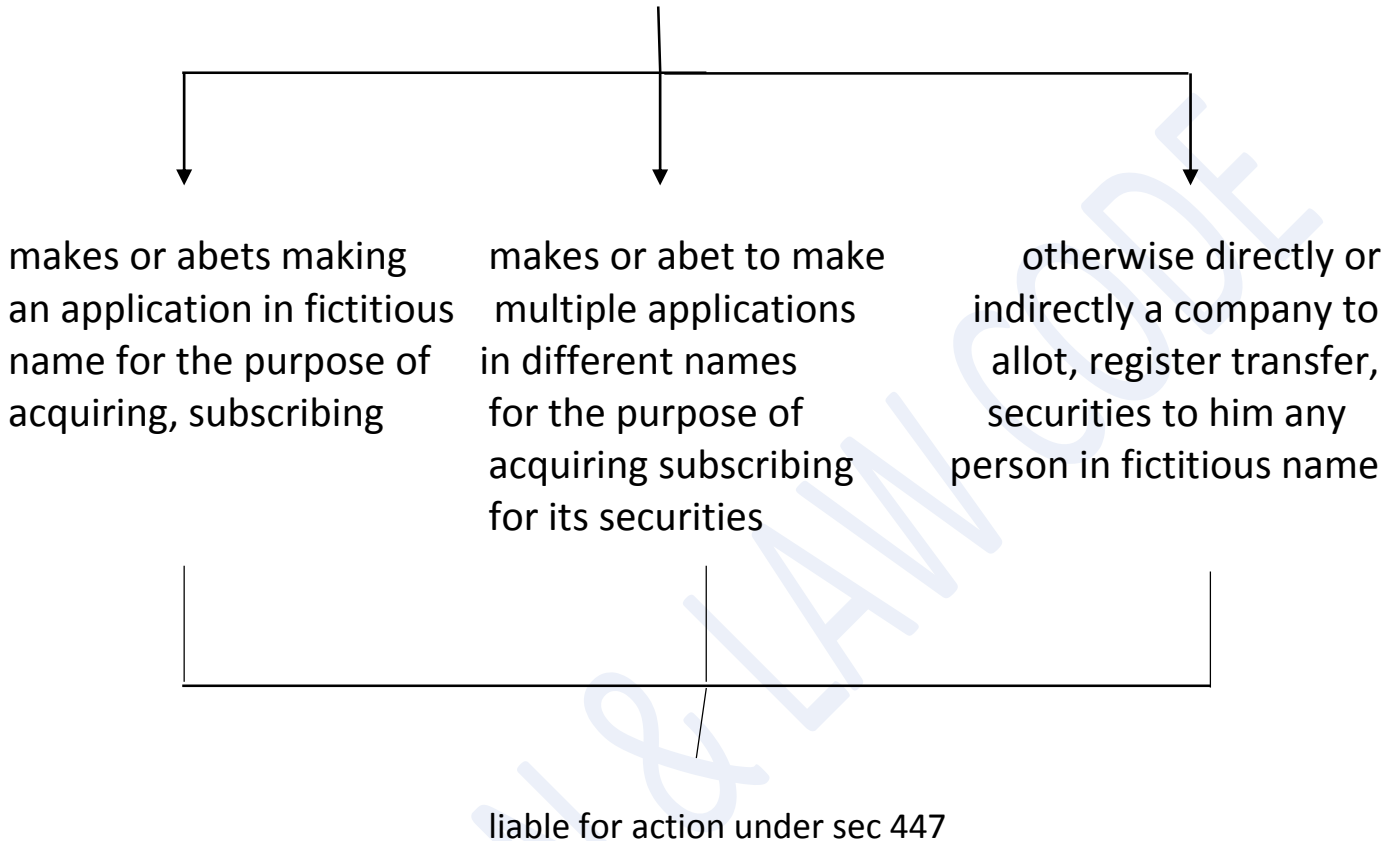
SEC 37: ACTION BY THIRD PARTIES

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 PRECONISATION ETC. OF SECURITIES

1)

Any person



- 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: 1000 for each day till the default continues 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 of 1 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 any purposes other than
 - 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.

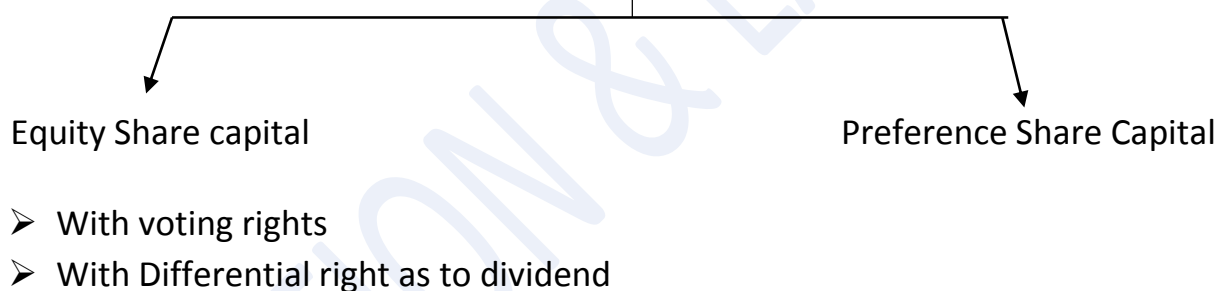
- 9) No company shall release any public advertisements or utilise any media , marketing or distribution channels to inform the public at large
- 10) Where the company makes allotment of securities it shall file with the Registrar a return of allotment, including complete list of security holders with 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



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



SEC 47: VOTING RIGHTS

<u>Voting right of Equity share holders</u>	<u>Voting Rights of Preference shareholders</u>
On every resolution put before the company	only on the resolutions which directly affect the rights 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

Call for further share capital on class of shares shall be made on uniform basis on all shares falling under that class

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 its own shares or other securities under 68

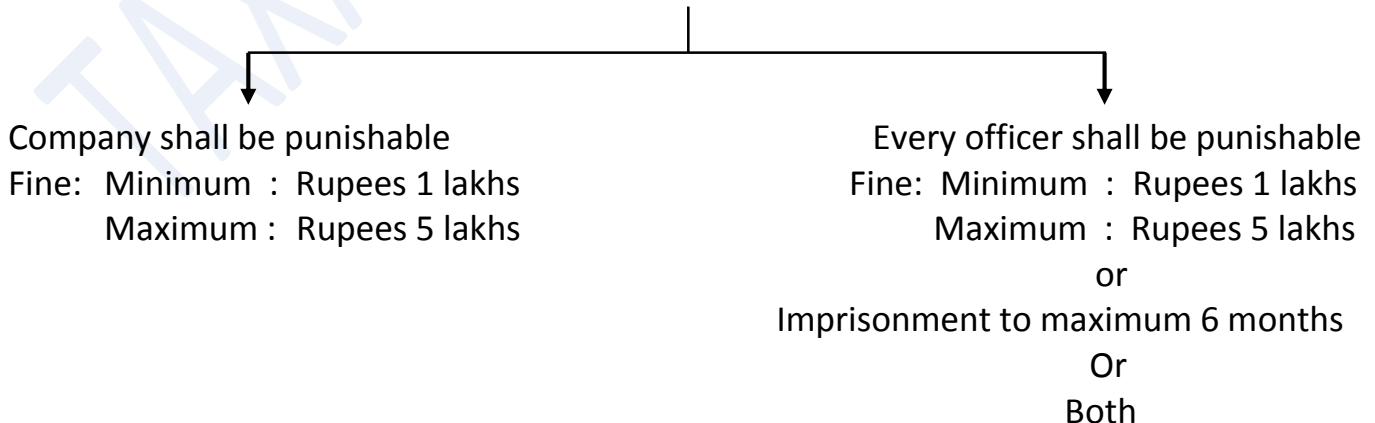
When the financial statement comply with accounting standard for classes of companies under sec 133

- ✓ issuing fully paid bonus shares
- ✓ in writing of expenses or commission paid or discount allowed on equity shares
- ✓ for purchase of its own shares under sec 68



SEC 53: PROHIBITION OF ISSUE ON DISCOUNT

- 1) A company cannot issue share at a discount except for sweat equity shares
- 2) Any shares issued at a discount will be void
- 3) when the company issue shares at discount then





SEC 54: ISSUE OF SWEAT EQUITY 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 than 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

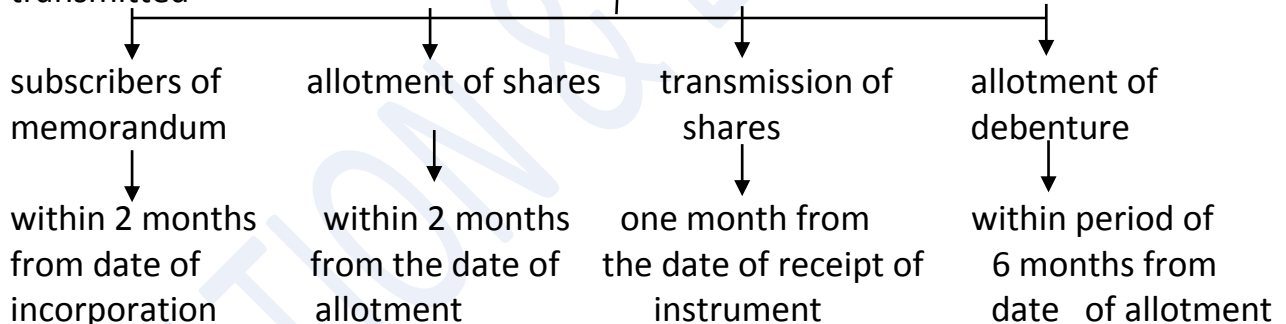
- 10) The Capital Redemption Reserve shall be applied by the company in paying unissued shares to be issued to the members of the company as fully paid bonus shares



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



- 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 defraud 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

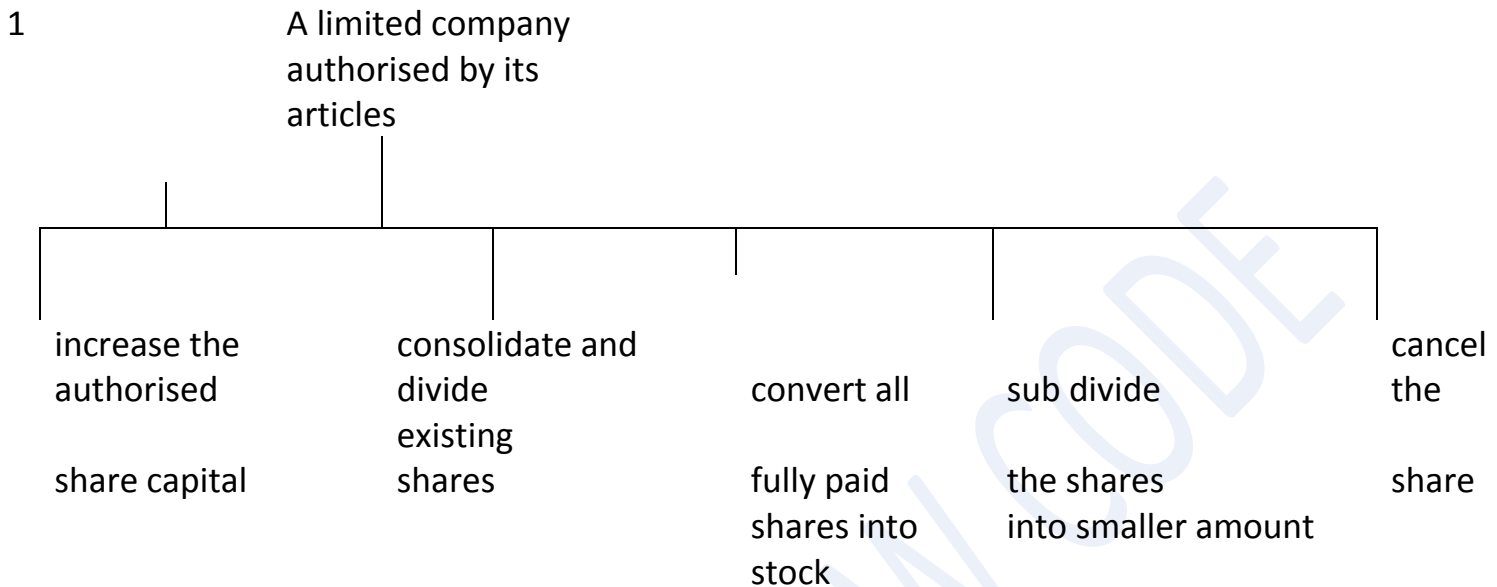
- 1) If the name of person is not entered in the Register of member by any reason. The company may appeal in such form to the Tribunal and in the respect of foreign member or debenture holder residing outside India to competent court outside India specified by Central Govt by notification
- 2) The Tribunal 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



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 created 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

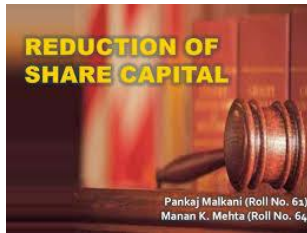
increase the nominal amount
of the share capital
by increasing the
nominal values

specified
portion
of its uncalled capital
being called only in the
event of winding up the
company

Condition:-

specified portion of
uncalled share capital
shall be called only
at the time of winding up

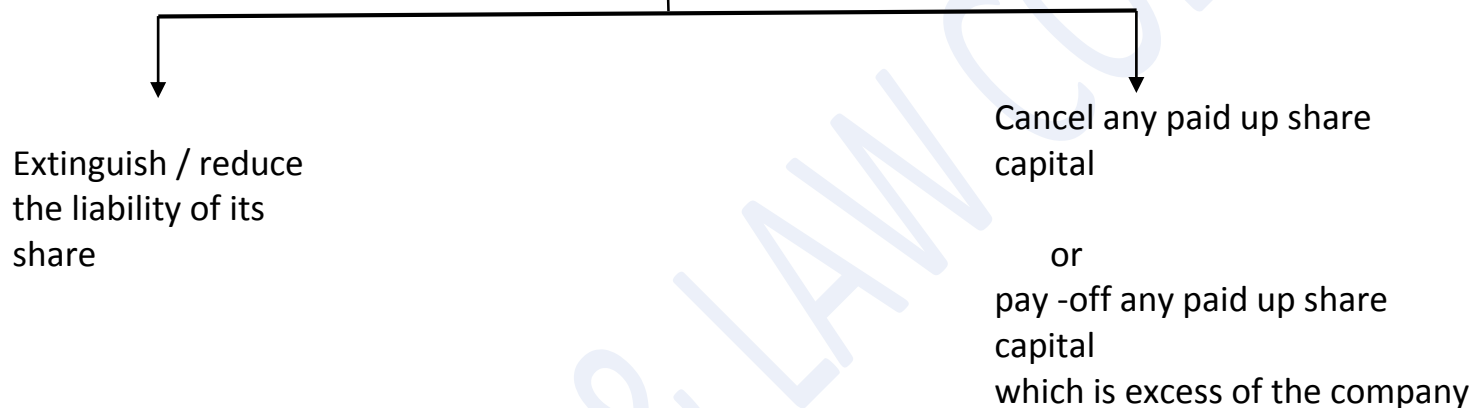




SEC 66: REDUCTION OF SHARE CAPITAL

- 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



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

Company

Every officer

Fine:-

Minimum Rupees 1 lakhs
Maximum Rupees 5 lakhs

Minimum Rupees 1 lakh
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 buyback 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

<u>Fine:-</u>	
Minimum	: -Rs 1 lakh
Maximum	: -Rs 3 lakh
Every officer	
<u>Fine:-</u>	
Minimum	: -Rs 1 lakh
Maximum	: -Rs 3 lakh
<u>Imprisonment</u>	
	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 may be used by the company in paying fully paid



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, and 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 Banking 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 WHO IS 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 to 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 particulars 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

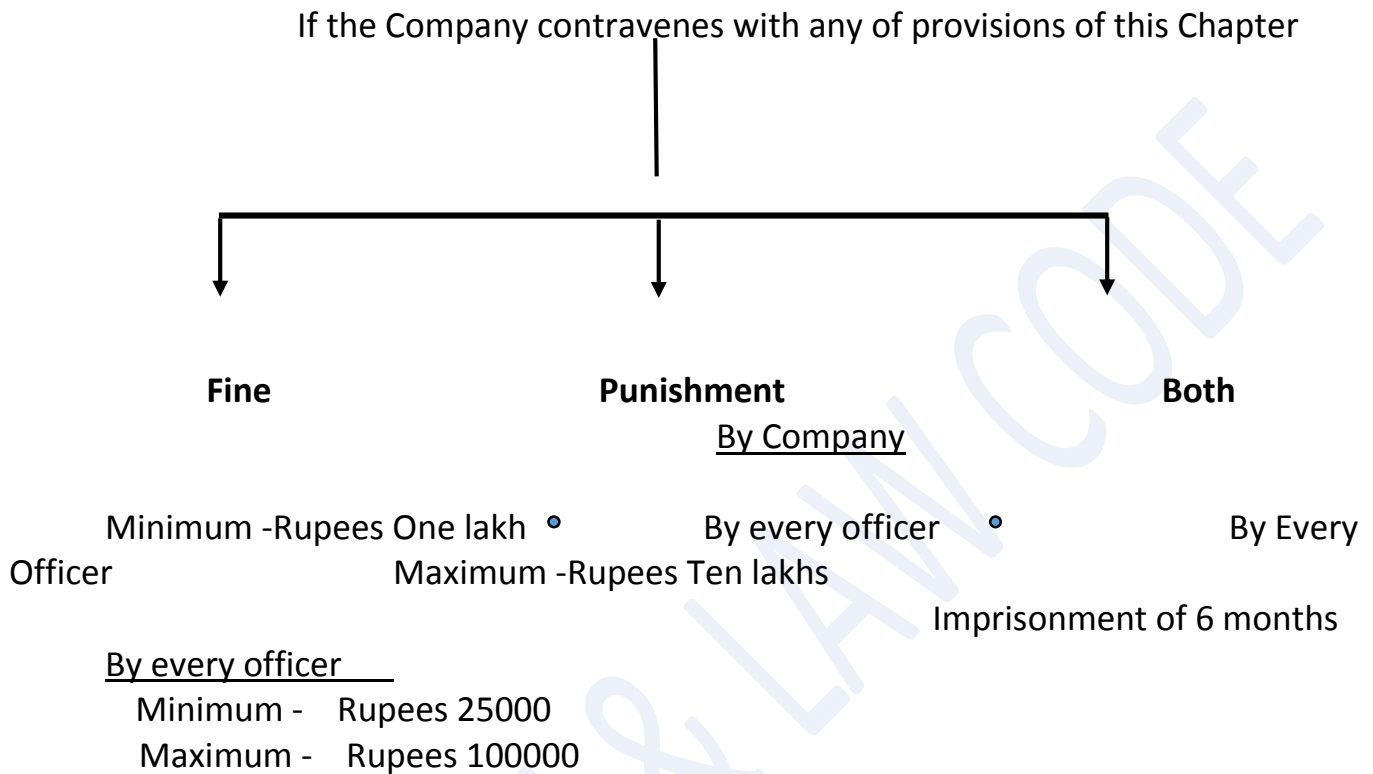
SEC 84: INTIMATION OF APPOINTMENT OF RECEIVER OR MANAGER

- 1) If any person obtain order of the appointment of receiver/a person to manage the property 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

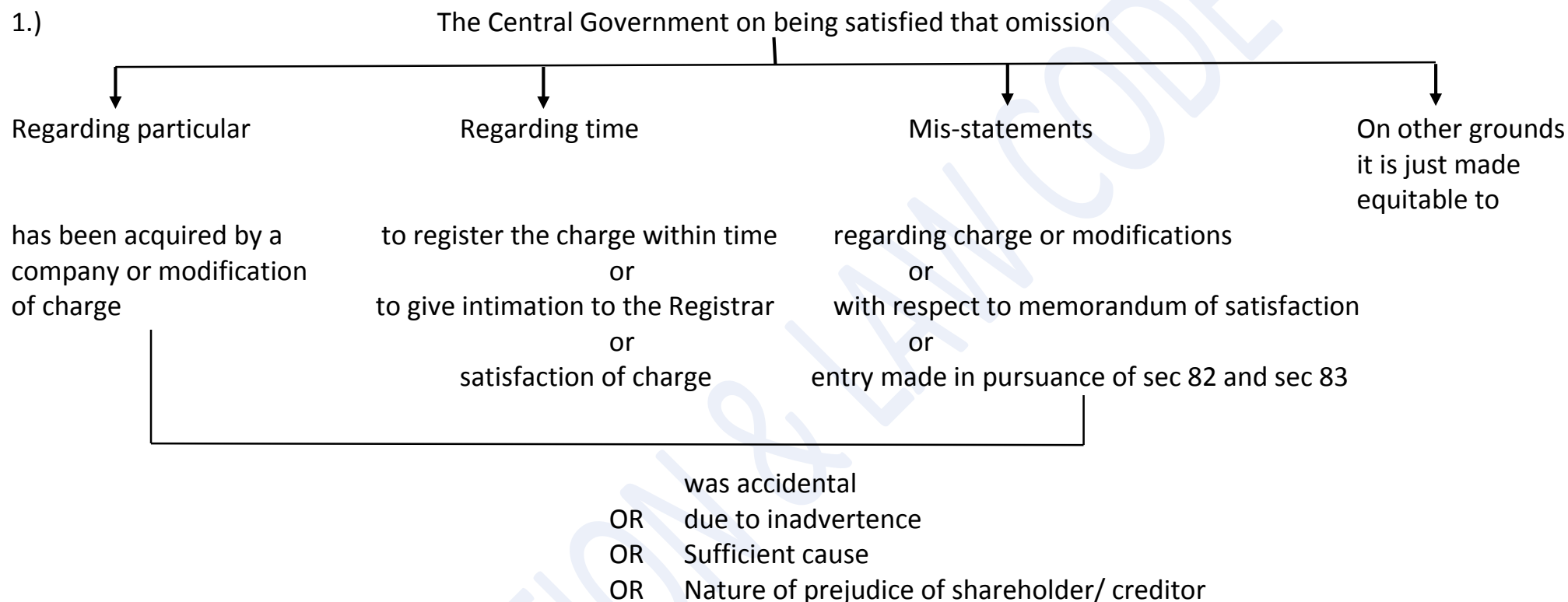
SEC 85: COMPANY REGISTER OF CHARGES

- 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



SEC 87: RECTIFICATION BY CENTRAL GOVERNMENT IN REGISTER OF CHARGES



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 year 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 up to 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

Fine

Minimum :-Rs 50000

Maximum :-Rs 5 lakhs

Every officer

Fine

Minimum :-Rs 50000

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

- 1) 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 1 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 by the maximum period of 3 months in special cases
- 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
- 5) The Central government shall exempt the company in case of special circumstance "National Holiday" means holiday declared by Central Government

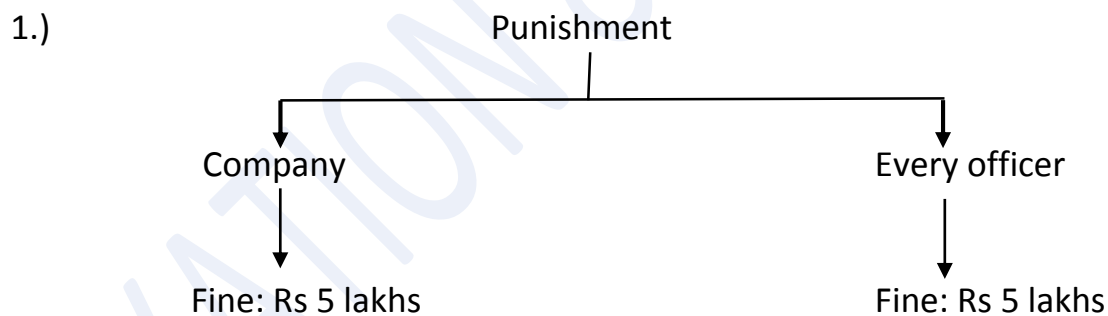
SEC 97: POWER OF THE TRIBUNAL TO CALL GENERAL MEETING

- 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 PROVISIONS OF 96 TO 98



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



**MEETING
NOTICE!**

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) A statement containing the following will be annexed with the notice . The nature of the concern /interest whether financial or otherwise. In respect directors/manager/key managerial personnel/relatives of personnel any other information and facts which will enable the members to understand the scope and implications of the business and will help to take a decision
- 2) In the case of general meeting all the business transacted shall be treated as special except the following:-
 - a) consideration of financial statement and report of BOD & auditors
 - b) Declaration of dividend
 - c) appointment of director in the place of retiring directors
 - d) appointment and fixing of remuneration of auditors
- 3) In case of any other meeting , all the business shall be treated as special

Note: In case of the special business to be transacted at the meeting which affects the interest of the other company, the extent of shareholding in that other company of every director/ promoter and manager and every key managerial personnel of the original company shall be mentioned if the extent of shareholding is greater than 2% of paid up share capital

- 4) where any document is to be discussed in the meeting , then the time and place where such document can be inspected should be mentioned in the statement
- 5) In case of any indirect /direct benefit to any promoter/director/manager/key managerial personnel, then such person will be liable to compensate the company to the extent of the benefit received by him

6) DEFAULT

Every promoter, director, manager or other managerial personnel

Fine:-Rs 50,000 or 5 times amount benefit accruing the promoter, 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 requisitionist 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 requisitionists 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 PRESIDENT AND 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 to be given to the company by such members 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 be 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 every 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

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 chargeIt 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
<u>Fine:-</u>		
	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 purpose of Sec 114 , any business which is required to be transacted at AGM or other general meeting by means of special and ordinary resolution it is sufficient that the resolution is communicated by the member and entered in the minutes book and shall be required to be signed and dated by such director for the purpose of the 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:-
Minimum: - RS 5 lakhs
Maximum: - Rs 25 lakhs | Fine:-
Minimum: - Rs 1 lakhs
Maximum: - Rs 5 lakhs |
|--|---|



DividendNotReceived



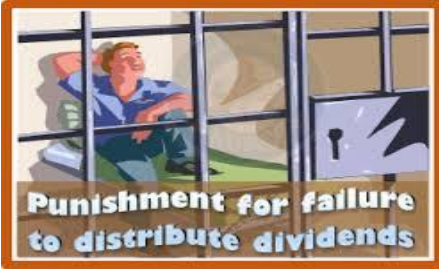
SEC 125: INVESTOR PROTECTION FUND

- 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
Fine

1 year
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 amendment	Adopted	Publication in G.O. (Official Gazette)	First time applicable to the FY
Application to financial year 2014			
SEC 12 Consolidated financial statements	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 13 Asset Management	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 14 Disclosure of interest in shareholding	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 15 Consolidated and separate financial statements	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 16 Associates and joint ventures	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 17 Financial statements: Presentation	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 18 Impairment of Assets	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 19 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 20 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 21 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 22 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 23 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 24 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 25 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 26 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 27 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 28 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 29 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 30 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 31 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 32 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 33 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 34 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 35 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 36 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
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SEC 38 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 39 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 40 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 41 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 42 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 43 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 44 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 45 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 46 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 47 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 48 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 49 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 50 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 51 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 52 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
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SEC 67 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 68 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
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SEC 74 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 75 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 76 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
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SEC 80 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 81 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 82 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 83 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 84 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 85 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 86 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 87 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 88 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
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SEC 92 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 93 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 94 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 95 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 96 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 97 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 98 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 99 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014
SEC 100 Financial statements: Recognition and Measurement	12 May 2013	11 Dec 2013	1 Jan 2014

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 suo moto 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 books 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 shall be prescribed

12) The Head Office 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

Fine: Minimum :-Rs 50000
Maximum RS 25 lakhs

be every officer

Rs 50000
RS 5 lakhs
or
3 years
or
both

Imprisonment



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

Fine

One thousand rupees for every day
maximum upto Rs ten lakh rupees

Managing director/CFO/ other officers of the Board

Fine

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

*Appointment
of
Auditor*

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

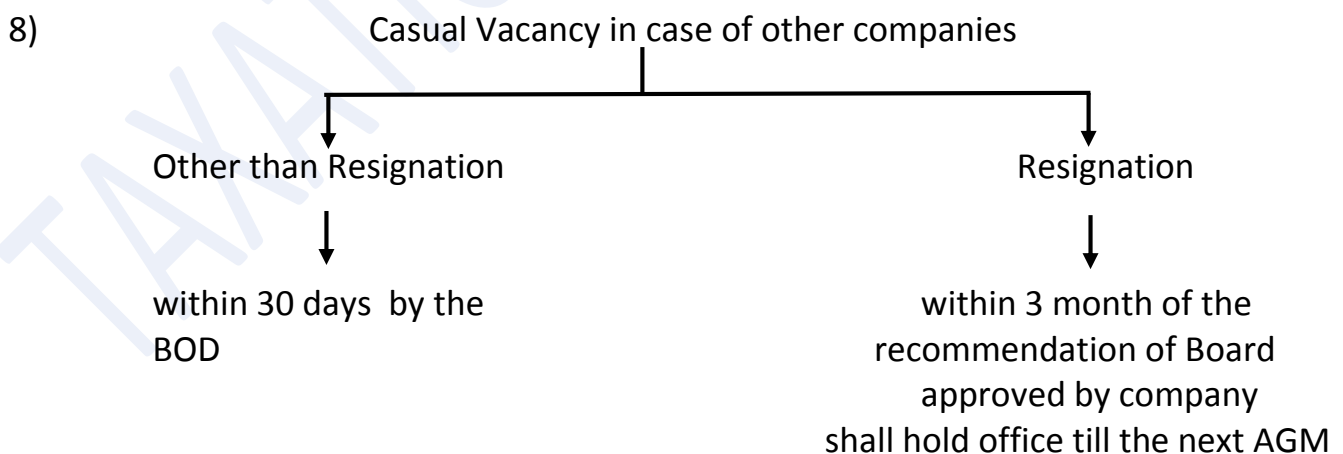
Conditions

- 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



- 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 form with company and the Registrar indicating the facts and other matters relating to resignation

Default

Fine :- Minimum:- Rs 50, 000
 Maximum:- 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 received 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 required 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 shown 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 show 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 suffer 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 contain 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 in 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

Terms of Services

Did you ever read them?

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 1st financial 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

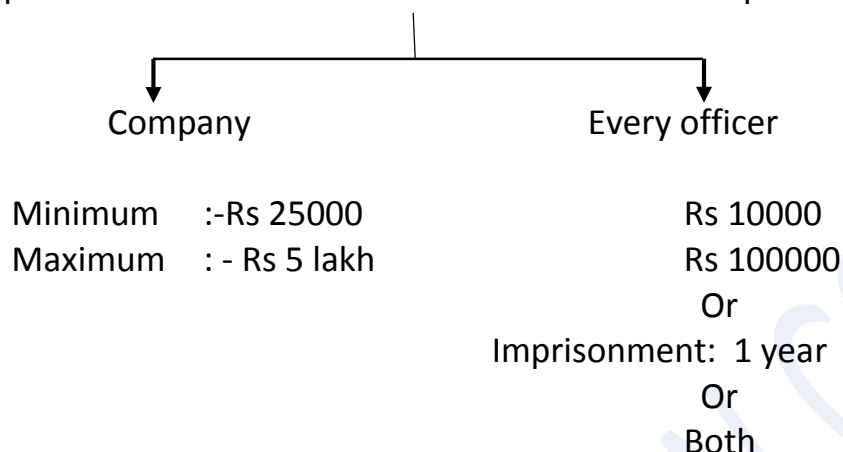


SEC 146: AUDITORS TO ATTEND GENERAL MEETING

- 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



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 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



SEC 149: COMPANY TO HAVE BOARD OF DIRECTORS

- 1) Every public company shall have minimum of 3 directors
Every private company shall have minimum of 2 directors
The maximum number of directors are 15
- 2) Every company shall have at least 1 director who has stayed in India for more than 182 days
- 3) Every listed company shall have at least 1/3rd of total directors as independent director
- 4) Every company before the commencement of the act / date of notification comply with the provisions
- 5) An independent director in a company, a director other than managing director, whole time director
 - a) who in the opinion of Board is a person of integrity and possess relevant expertise.
 - b) who is not the promoter of the company , its holding and subsidiary company.
 - c) who has no pecuniary relationship with the company or its promoters during during 2 immediately preceding financial year or preceding year
 - d) none of whose relative has pecuniary relationship with the company/ holding/promoters amounting to 2% or more of its gross turnover/ total income
OR 50 lakhs rupees; whichever is lower
 - e) who neither nor his relative
 - i) hold key managerial position / employee of company whether its holding or subsidiary for 3 financial year immediately before the year in which he is appointed as director
 - ii) is or has been employee / proprietor /partner for 3 financial year in which he is appointed
 - a) in firm of auditors/ cost accountants / company secretaries or its holding/ subsidiary/ associate
 - b) any legal firm which has any transaction with the company amounting to 10%or more of the gross turnover of the firm
 - iii) hold together with relatives 2%or more total voting power
 - iv) who is CFO or by any name whatever called of a non-profit organisation and the non-profit organisation receives 25% or more of its receipt from the company/ promoter/ director/ holding/ subsidiary/associate that hold 2% or more voting power of the company
 - v) who possess such qualification

- 6) Every director has to give declaration of his independence in the first meeting of the Board in which he participates as director and every first meeting of Board in financial year and whenever the circumstance demand
- 7) The independent director shall not be entitled to any stock option. He shall get his remuneration by way of fee. He shall get reimbursement of expenses for participation in the Board and other meeting. He shall get profit related commission may be approved by member
- 8) An independent director shall hold office for consecutive 5 years on the Board of company but he shall be eligible for reappointment on passing special resolution and disclosure in Board Report
- 9) No independent director shall hold office for more than two consecutive terms but he shall be eligible for appointment after the expiration of 3 years on he retires from the position of independent director

SEC 150: MANNER OF SELECTION OF INDEPENDENT DIRECTOR AND MAINTENANCE OF DATABANK OF INDEPENDENT DIRECTOR

- 1) An independent directors may be selected
 - a) from data bank containing names, addresses, qualification
 - b) maintained by anybody , institute or association
 - c) as may be notified by Central Government
 - d) having expertise in creation and maintenance of such data bank
 - e) and put on the website for the purpose of selection of the company
- 2) The appointment of independent directors shall be approved by the company in general meeting and explanatory statement along with the notice of the company justifying the appointment of independent director
- 3) The data bank shall create and maintain data of person willing to act as independent director in accordance with such rules
- 4) The Central Government may prescribe the manner and procedure of selection of independent director who fulfil the qualification, and requirement specified under Sec 149



SEC 151: APPOINTMENT OF DIRECTOR ELECTED BY SMALL SHAREHOLDER

- 1) A listed company may one director elected by small shareholder manner as may be prescribed

Note: Small Shareholder means a shareholder having nominal value less than RS 20000/-



SEC 152: APPOINTMENT OF DIRECTORS

- 1) Where no provision is made in the articles of company for the appointment of first director

First directors = the subscribers of the memorandum who are individuals shall be deemed to be the first directors of the company until duly appointed

AND

in case of OPC, an individual member shall be the first director , until the directors are duly appointed by the member

- 2) Every director shall be appointed by the company in general meeting.
- 3) No person shall be appointed as director, unless he has DIN.
- 4) Every person to be appointed as director in general meeting, shall furnish DIN and declaration that he is not disqualified to become the director of the company.
- 5) A person appointed as a director shall not act as director unless he gives his consent to Registrar within 30 days of appointment.

Retirement of director

- a) 2/3 rd of total director of public company shall retire every AGM this directors are those who hold the longest time in the office

THE DIRECTOR WHO RETIRE BY ROTATION CAN BE APPOINTED BY THE COMPANY AT THE AGM

b) the remaining directors shall in default of and subject to any regulation shall be appointed by the company in general meeting

c) At the first general meeting and every subsequent AGM , 1/3rd of (2/3rd) directors shall retire by rotation

→Directors who are the longest in the office shall retire if 2 directors are appointed on the same day then they shall retire

a) by agreement between them

b) by lots

→IF the place of retiring director is not filled up and the meeting has not resolved to fill the vacancy at AGM then meeting shall be adjourned to the next week at the same day , same place and if that day is a public holiday , then to the next succeeding day

→If at the adjourned meeting also , the place of retiring director is not filled up and the meeting also has not been expressly resolved then , the retiring director shall be reappointed unless

(i) at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost;

(ii) the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed;

(iii) he is not qualified or is disqualified for appointment;

(iv) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or

(v) section 162 is applicable to the case.



How to Apply
for DIN

SEC 153: APPLICATION FOR ALLOTMENT OF DIN

Every individual who wants to be director of company shall have to make an application to the Central Government, in such manner along with the fees

SEC 154: ALLOTMENT OF DIN

Steps for application of
Director Identification
Number
(DIN)

The Central Government within 1 month allot Director Identification number to applicant as may be prescribed

SEC 155: PROHIBITION TO OBTAIN MORE THAN DIN

No individual who has obtained DIN shall apply for obtain or possess another DIN

SEC 156: DIRECTOR TO INTIMATE DIN

Every existing director shall intimate within 1 month of DIN from the Central Government intimate his DIN to company/ companies where he is director

SEC 157: COMPANY TO INFORM DIN TO REGISTRAR

- 1) Every company shall within 15 days of intimation furnish the DIN of all its director to the Registrar as may be specified by the Central Government with such fees / additional fees within time specified
- 2) In case of default

	Company	Every officer
Fine	Minimum :-RS 25000	Minimum :-RS 25000
	Maximum :-RS 1 lakh	Maximum :-RS 1 lakh

SEC 158: OBLIGATION TO INDICATE DIN

Every person shall furnish DIN in every returns, information relating to directors or any reference to director

SEC 159: PUNISHMENT FOR CONTRAVENTION

If an individual /directors contravenes any provision shall be punishable with

Imprisonment
6 months

Fine
Minimum :-RS 50000
and continuing one a further fine of Rs 500



SEC 160: RIGHT OF PERSON OTHER THAN RETIRING DIRECTOR FOR DIRECTORSHIP

- 1) A person who is a retiring director shall be eligible as director at a general meeting by giving at least 14 days' notice along with deposit of Rs 1 lakh/ higher amount.
- 2) The amount of deposit shall be refunded in case the person proposed gets elected as director or get 25% of total valid votes either by show of hands / poll



SEC 161: ALTERNATE DIRECTOR/ ADDITIONAL DIRECTOR/ NOMINEE DIRECTOR

- 1) The Articles of the Board of Directors to appoint a person who fails to be appointed as director in the general meeting as Additional Director who shall hold the office up to the date of last AGM or the date on which AGM should be held whichever is earlier
- 2) IF the articles of the company is authorised by articles /resolution passed by company in general meeting appoint a person as alternate director for a period of absence of not less than 3 months
- 3) The Board may appoint a person as director nominated by financial institution/ central government/ state government in pursuance of agreement between them and the company
- 4) In the case of casual vacancy , the director shall be appointed by a meeting at the Board

Note: Casual vacancy means any vacancy created by resignation before the original term



SEC 162:-APPOINTMENT OF DIRECTORS TO BE VOTED INDIVIDUALLY

- 1) Two directors cannot be appointed by passing single resolutions
- 2) In case 2 directors are appointed by passing single resolutions , unless a proposal to pass such resolution is agreed in a meeting without any votes against it
- 3) Any resolutions passed in contravention of this rule is void



SEC 163: PROPORTIONAL REPRESENTATION

- 1) The articles of the company may provide for appointment of 2/3rd of directors by proportional representation
- 2) The method used can be by the way of cumulative voting, single transferable vote,
- 3) Such appointment shall be made once in 3 years



SEC 164: DISQUALIFICATION OF DIRECTORS

- 1) A person shall not be eligible for appointment of director
 - (a) he is of unsound mind and stands so declared by a competent court;
 - (b) he is an undischarged insolvent;
 - (c) he has applied to be adjudicated as an insolvent and his application is pending;
 - (d) he has convicted of offence involving moral turpitude by court for a period of 6 months and 5 years have not passed from the date of expiry of sentence
 - (e) an order has been passed by the court disqualifying him (f)
 - he has not paid calls for a period of 6 months
 - (g) he has been punished in relation to related party transaction during the last 5 years
 - (h) he does not possess DIN

2) No person who is director of the company

has not filed financial statements /
annual returns for continuous period
of 3 years

has failed to repay deposits / pay interest/
redeem debenture on due date
or pay interest / pay any dividend declared
and
such default continues for a period of 1 year

- 3) In case of private company, in addition to the above disqualification as provided in its articles
- 4) the disqualification referred to in section 1 (d) (e) (g) shall not take effect
- a) for 30 days from the date of disqualification
 - b) where appeal / petition is preferred within 30 days against conviction/ disqualification
 - c) where further appeal is preferred against order/sentence within 7 days , until such appeal is disposed off

SEC 165: NUMBER OF DIRECTORSHIP

Our Directorship

- 1) No person shall including alternate directorship be director for more than 20 companies
- 2) The maximum number of public companies a person can be directors shall not be more than 10
- 3) The members of the company , by special resolution specify lesser number of companies in which a person can act as director
- 4) A person holding office as directors in companies before the commencement of the Act , shall within a period of 1 year from the date of commencement
 - a) choose not more than specified limits of those companies as he wishes to continue to hold as office of director
 - b) resign his office as director in other remaining companies
 - c) intimate his choice to each companies where he is holding position of director before such commencement and also intimate the registrar

- 5) Any resignation from director in other companies will be effective from the date of despatch of letter
- 6) No such person shall act as director in more than specified companies
 - a) after despatching his letter of resignation
 - b) after expiry of 1 year from the date of commencement of act
- 7) If a person accepts appointment as director in contravention he shall be punishable
Fine : Minimum:-Rs 5000
Maximum:-Rs 25000 for every day for the first during contravention continues

SEC 166: DUTIES OF DIRECTOR



- 1) A director of the company shall act in good faith, in order to promote the objects of the company for the benefit of member, shareholders, employees, community and environment.
- 2) A director of the company shall exercise his duty with great skill and diligence and shall exercise proper judgement
- 3) A director of the company shall not be involved in any situation where he has direct/ indirect interest, conflicts with the interest of company
- 4) A director shall not assign his office as assignment of office is not allowed/ void
- 5) A director of the company shall not achieve any undue gain/ advantage for himself/ relatives / partners/ associates and if such director is found guilty he shall be pay back the gain so achieved to the company



Out Of
Office

SEC 167: VACATION OF OFFICE OF DIRECTOR

- 1) The office of the director shall become vacant
 - (a) He incurs any disqualification specified in section 164
 - (b) He absent himself from the meeting of BOD held during 12 months with/without seeking leave of absence
 - (c) He acts in contravention of the provisions of section 184 relating to entering into contracts / agreements in which directly/indirectly interested
 - (d) he fails to disclose his contract/agreement in which contravention of the provisions of section 184
 - (e) He is convicted of the offence , whether involving moral turpitude, and sentenced to imprisonment for minimum 6 months
 - (f) He becomes disqualified by order of court of the Tribunal
 - (g) He is removed in the pursuance of provision of this Act
 - (h) He is being appointed director by virtue of holding any office or other employment in the holding/subsidiary/associate ceases to hold such office /employment in the company
- 2) Even after the director knows , that the office of director has become vacant and still he continues to be director held him become vacant on account of disqualification he shall be punishable

Imprisonment	OR	Fine	OR	both
1year		Minimum 1 lakh		
		Maximum 5 lakh		
- 3) On the vacation of office by the director, the promoter in his central government shall appoint required number of directors who shall hold office till directors appointed in general meeting.
- 4) A private company may by its articles , provide any other ground for vacation of office of director in addition to that of mentioned for public company



SEC 168: RESIGNATION OF DIRECTOR

- 1) A director may resign from his office by giving his notice in writing and the company shall intimate the Registrar within such time and such form as prescribed and shall place the resignation in report of directors laid in general meeting
- 2) The resignation of director from the date is effective from the date when the notice is received or date specified by the director
- 3) Where all the directors of company resign from office under Sec 167 promoter, in his absence. The Central Government shall appoint the required number of directors appointed in general meeting



SEC 169: REMOVAL OF DIRECTORS

- 1) A company may before the expiry of period of office of director by ordinary resolution remove a director, who is not director appointed by the Tribunal after giving an opportunity of being heard
- 2) A special notice shall be required of any resolution, to remove director or appoint somebody special in the place of director so removed
- 3) On the receipt of notice of resolution to remove the director the company shall send a copy to director concerned and the director whether he is interested or not he is member of the company shall be entitled to be heard on the resolution
- 4) Where notice has been given of a resolution to remove a director and director concerned a representation in writing the company shall
 - a) in any notice of the resolution given to the members of the company, state the fact of representation having been made
 - b) send a copy of the representation to every member of the company and to whom notice of the meeting is sent, and if a copy of the representation is not sent due to insufficient time for company default the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting.

- 5) A vacancy created by the removal of director if he had been appointed by the company, in the general meeting or Board be filled by the appointment of another director in his place
- 6) A director so appointed shall hold office till the date up to his predecessor should have held office if he had not been removed
- 7) If the vacancy is not filled by way for meeting, it may be filled by way of casual vacancy
- 8) This section cannot be taken to
 - a) To deprive a person so removed under this section of any compensation **OR** damages payable to him of his termination of his appointment as director as per terms of contract or terms of his appointment as director
 - b) as derogating from power to remove a director under the provisions of this Act.



SEC 170: REGISTER OF DIRECTORS AND KEY MANAGERIAL PERSONNEL AND SHAREHOLDING

- 1) Every company at its registered office shall maintain at its office register containing particular of
 - a) director /managerial personnel
 - b) detail of securities held by company in its holding / subsidiary/ associate enterprise
- 2) Such return shall be filed within 30 days from the appointment of director/key managerial personnel

SEC 171: MEMBERS RIGHT TO INSPECT

- 1) The register shall be open for inspection during business hours and the member shall have right to take extracts and copies thereof on request by the members free of cost within 30 days
- 2) Shall be kept open for inspection at every AGM
Shall be made accessible to any person attending the meeting
- 3) If any copy required is not sent within 30 days from the date of receipt the Registrar shall on application made to him order immediate inspection and supply of copies

SEC 172: PUNISHMENT

If company contravenes any provision of the Act the company and every officer shall be punishable with

Fine	Minimum	: -Rs 50, 000
	Maximum	: -Rs 5 lakhs



SEC 173: MEETING OF BOARD OF DIRECTORS

- 1) Every company shall within 30 days of its incorporation hold its first Board meeting. In a year 4 Board meetings are to be held there should not be a gap of more than 120 days between 2 board meeting

Note: Central Government can by way of notification such classes of companies subject to exception/modification

- 2) Any person can participate in the meeting either through video conferencing or other audio visual methods as prescribed

Note: there are certain matters which may not be permitted by the Central Government for the purpose of video conferencing

- 3) At least 7 day notice should be given in writing to every director at his address registered with the company notice shall be by means of hand delivery /post/electronic means
- 4) In the case of failure, every officer shall be liable to pay a fine of Rs 25000
- 5) A one person company/ small company/dormant company shall be deemed to have complied with the provisions
 - a) if at least 1 Board meeting has been conducted in the first half of calendar year, i.e. June and gap of 2 meeting is not less than 90 days .



SEC 174: QUORUM

- 1) Quorum means the minimum number of member that must be present in meeting
- 2) In case of Board Meeting

1/3 rd of total strength or 2 directors
(Whichever is higher)

Notes: 1) participation of directors' by video conferencing /audio visual shall be counted for purpose of quorum

2) Total strength shall include not include the place of vacant directors

- 3) Suppose the

Number of Interested directors
>
2/3 rd of total strength

Then quorum will be
Number of disinterested directors
or 2
(whichever is higher)

- 4) In the absence of quorum , the directors may wait for the quorum , or for holding general meeting bur no other matter can be discussed

SEC 175: PASSING OF RESOLUTION BY CIRCULATION

Resolution by circulation
and
Resolution requiring special notice

- 1) Resolution shall be deemed to be passed by circulation only if the resolution along with the necessary papers has been passed by the Board/Committee by circulating at their registered address with the company in India either by post/courier/ electronic means and has been approved by majority of directors/members who are entitled to vote by resolution

Note: Where 1/3rd of total number of directors require any resolution be decided at meeting the chairperson shall put resolution to be decided at meeting

- 2) The resolution by circulation shall be noted at the subsequent meeting and minutes will be recorded

SEC 176: DEFECTS IN APPOINTMENT OF DIRECTORS NOT TO INVALIDATE ACTION

The acts done by director shall not deemed to be invalid after it was subsequently noticed that appointment of director was invalid by reason of any defect/ disqualification or terminated because of ay provision of Articles of company



SEC 177: AUDIT COMMITTEE

- 1) The BOD of every listed company shall constitute Audit committee
- 2) The Audit Committee consist of minimum 3 director and the majority of directors will be independent director
- 3) The majority of Audit Committee including Chairperson shall be person who can read and understand financial statement.
- 4) Every audit committee of a company has to be reconstituted in term of this section
- 5) Every Audit Committee shall in accordance with terms and conditions in writing by the Board
 - (i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;
 - (ii) review and monitor the auditor's independence and performance, and effectiveness of audit process;
 - (iii) examination of the financial statement and the auditors' report thereon;
 - (iv) approval or any subsequent modification of transactions of the company with related parties;
 - (v) scrutiny of inter-corporate loans and investments;
 - (vi) valuation of undertakings or assets of the company, wherever it is necessary;
 - (vii) evaluation of internal financial controls and risk management systems;
 - (viii) monitoring the end use of funds raised through public offers and related matters.
- 6) The Audit committee may get the comments of auditors about the internal control system, scope of audit, including observation and review financial statement before

submission to Board and also discuss the related issues with internal and statutory auditors

- 7) The Audit Committee shall have the power to investigate , in relation to the matter connected in point 5 above and for that purpose he may obtain professional advice from external sources and have full access to company's record
- 8) In the meeting of Audit committee, the auditors and key managerial personnel shall have the right to speak , but they can't vote
- 9) The Board shall disclose the composition of Audit committee, and if the Board has not accepted any recommendation of Audit Committee it shall be disclosed in report along with the reasons
- 10) Every listed company shall establish a vigil mechanism for director and employee to report genuine concerns
- 11) The vigil mechanism should provide enough safeguards against person who use the mechanism and fall victims to such mechanism and it should also make provisions for direct access by chairperson of Audit Committee in appropriate cases

SEC 178: NOMINATION AND REMUNERATION COMMITTEE & STAKEHOLDER RELATIONSHIP COMMITTEE

1. Nomination & Remuneration Committee
 - a) The Committee shall consist of 3 or more non -executive director out of which 1/2 shall be independent directors
 - b) The chairperson of the committee shall be a member of the committee , but he shall not chair such committee
 - c) The Committee shall identify the person who shall be qualified to become directors and who may be appointed as senior management in accordance and also recommend the Board about their appointment and removal and also carry evaluation of directors performance



- d) The Committee shall, while formulating policy ensure that
- i) the remuneration payable to the directors is reasonable and sufficient and enough to motivate the directors
 - ii) relationship of remuneration to performance its clear and meet appropriate performance benchmarks
 - iii) remuneration to directors and key managerial personnel , involves a balance between short and long term objectives appropriate to the working of the company and its goal.

2. Stakeholder Relationship Committee

- a) The Committee consist of more than 1000 shareholder , debenture holder, deposit holder consisting of a Chairperson who shall be non-executive director and such other members
- b) the stake holder committee shall consider and resolve the grievances of security holder of the company
- c) The chairperson of the committee , in his absence shall attend the general meeting of the company
- d) in case of contravention of any provision the

company shall be punishable with		Every officer
Fine: Minimum	:-RS 1 lakh	Minimum :-RS 25000
Maximum	:-RS 5 lakh	Maximum :-RS 1 lakh
		or
		Imprisonment of 1 year
		or
		Both



SEC 179:- POWER OF BOARD

- 1) The BOD shall do such things and act, as the company is authorised to do. However the Board will not contradict the provisions contained with the Act or in memorandum/ articles or regulations made by company in general meeting
- 2) The BOD shall exercise the following powers on behalf of company by way of resolution
 - (a) to make calls on shareholders in respect of money unpaid on their shares;
 - (b) to authorise buy-back of securities under section 68;
 - (c) to issue securities, including debentures, whether in or outside India;
 - (d) to borrow monies;
 - (e) to invest the funds of the company;
 - (f) to grant loans or give guarantee or provide security in respect of loans;
 - (g) to approve financial statement and the Board's report;

- (h) to diversify the business of the company;
 - (i) to approve amalgamation, merger or reconstruction;
 - (j) to take over a company or acquire a controlling or substantial stake in another company;
 - (k) any other matter which may be prescribed:
- 3) In case of banking company, the acceptance of deposits of money from public repayable on demand or placing monies on deposit by banking company with another banking company shall not be deemed to be a borrowing of monies/ making of loans by banking company

SEC 180: RESTRICTIONS ON THE POWER OF BOARD

- 1) The Board of Directors shall exercise the powers with the consent of the company by special resolution:-
- a) to sell, lease or otherwise dispose of the whole or substantially the whole of undertaking of the company/where the company owns more than one undertaking of whole/substantially the whole of undertaking,
 - b) to invest in trust securities the amount of compensation received due to amalgamation/merger.
 - c) to borrow money, where the money borrowed money to be borrowed > (paid up capital+ free reserves) part from temporary loans from the company's banker in the ordinary course of business.
- NOTE:** Temporary loans are loans repayable within 6 months from the date of loans, however such loans raised for the purpose of financial expenditure of capital nature
- d) to remit or give time for repayment of any debt due to the director.
- 2) Every special resolution passed in the general meeting shall specify the total amount borrowed.
- 3) This section will not be applicable
- a) The title of the buyer/other person who buys /takes lease any property, investment/undertaking in good faith.
 - b) The sale or lease of any property of the company, where the ordinary business of the company consist such as selling or leasing.
- 4) Any special resolution passed by the company consenting the transaction may stipulate the condition regarding the use, disposal or investment of the sale proceeds.
- 5) No debt incurred by the company in excess shall be valid or effectual unless the lender proves that he has advanced the loan in good faith and without knowledge the limit has been exceeded.

SEC 181: CONTRIBUTION TO VARIOUS FUNDS

- 1) The Board of Directors may contribute to the bonafide charitable and other funds
- 2) Prior permission of the company is required in case the amount exceeds 5% of its average net profits for 3 immediately preceding financial years



SEC 182: PROHIBITIONS REGARDING POLITICAL CONTRIBUTIONS

- 1) A company other than Government company, and a company has been in existence for less than 3 financial years may contribute directly or indirectly to any political party
- 2) The amount to be contributed shall not be more than 7.5% of its average profits during preceding 3 financial year.
- 3) No such contribution shall be made unless a resolution has been passed at the Board meeting, and authorised by it
- 4) Any donations made by the company to a person can reasonably be regarded to affect public support for political party, shall be deemed to be the contribution of such donation for political purpose.
- 5) Every company shall disclose in its profit and loss contributed to any political party gives particular of the total amount contributed and the nature of the party to which amount has been contributed.
- 6) If company makes any contribution in contravention with the provisions the company shall be punishable with

Fine: Minimum: - 5 times the amount so contributed

Every officer

Fine: Minimum: - 5 times the amount so contributed

Imprisonment: 6 months

SEC 183: POWER OF THE BOARD TO MAKE CONTRIBUTION TO NATIONAL FUND

- 1) The Board of Directors of a company, in General meeting contribute such amount to National Defence Fund or any other fund as approve by Central Government for the purposes of national defence.
- 2) Every company shall disclose in its profit & loss account the total amount during financial year to which it relates.

SEC 184: DISCLOSURE OF INTEREST OF COMPANY

- 1) Every director shall at the first meeting of the Board as director and after that at every meeting of the Board in subsequent financial year disclose his interest in any company / firms / AOP
- 2) Every director of the company who whether directly or indirectly interested in any contract or arrangement entered into with a body corporate in which such director hold 2% shareholding of that body / or is promoter/ manager/ CEO
OR
with a firm or other entity in which such director is a partner/owner/member
- 3) A contract or agreement without disclosing the interest of the director shall be voidable at the option of the company

- 4) If director contravenes any provision of the act , he shall be punishable with
Imprisonment:-1 year

or

Fine :- Minimum Rs 50, 000

Maximum Rs 100000

or

Both

Exceptions to this section

- a) where any contract or agreement is entered between 2 companies where director of one company or 2 or more companies holds together not more than 2% of paid up share capital of the company



SEC 185: LOANS TO DIRECTORS

- 1) No Company shall directly/ indirectly advance any loan including debtors to any of its directors, or any person in which director is interested or give guarantee or provide any security in connection with loan taken
- 2) This section shall not apply to
 - a) giving of any loan to the managing director as a part of condition of services extended by the company
 - b) in agreement with any scheme approved by member by passing special resolution
 - c) The company in the ordinary course of business provides loans or gives guarantees or securities for due payment of any loan at a interest charged not less than bank rate of RBI
- 3) In the case of contravention of this section

Company

Fine: - Minimum : Rs 5 lakhs
Maximum : Rs 25 lakhs

Every officer

Minimum: Rs 5 lakhs
Maximum: Rs 25 lakhs
Or
Imprisonment of 6 months
Or
Both

SEC 186: LOANS AND INVESTMENTS BY COMPANY

- 1) The company shall make investment through not more than 2 layers of investment companies.
- 2) The provision of subsection shall not be applicable in the following cases
 - a) Indian Company from Foreign company , if such other company has investment subsidiaries beyond 2 layers as per the law of that country
 - b) A subsidiary company from having any investment subsidiary for the purposes of meeting the requirement under any law or under rule or regulation framed under any law in force

- 3) No company shall directly or indirectly
 - a) give any loan to any person or other body corporate;
 - b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and
 - c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,
and such loan shall not exceed 60% of paid up (share capital + free reserves + securities premium)
or
100% (free reserves + securities premium) ; whichever is more.
- 4) Where the company exceeds the above mentioned limits, prior approval by way of special resolution passed at the general meeting.
- 5) The company shall disclose to the members in the financial statement
 - i) statement of particulars of loan
 - ii) investment made or guarantee given
 - iii) security provided
 - iv) the purpose of loan or guarantee or security
- 6) No investment shall be made or loan or guarantee or security given by the company, unless the resolution is passed at the meeting of the Board with the consent of all director present and the prior approval of public financial institution
However the public financial institution shall not be required
 - a) where the aggregate of loans and investment made + loans and investment to be made < the limits specified in the section
 - b) No default in the repayment of such loans or payment of interest as per terms of Public Financial Institution.
- 7) No company which is registered under 12 of SEBI , shall take interoperate loan or deposits > the prescribed limits and such company shall furnish in its financial statement the details of loan/deposit
- 8) NO loan shall be given at a rate of interest lower than the prevailing 1 year, 3 year, 5 year or 10 year Government security,
- 9) No company which is in default in the repayment of deposit before or after commencement of this Act, in payment of interest thereon, shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting.

- 10) The register kept in the registered office of the company
- shall be open for the inspection at the office
 - extracts may be taken by the member or copies may be furnished to any member of the company on payment of such fees as may be prescribed
- 11) The section of intercorporate investment will not apply to the following:
- Banking company/Insurance company
 - Housing finance company
 - company in its ordinary course of the business
 - company engaged in business of financing companies or providing
 - infrastructural facilities
 - to any acquisition,
- made by non-banking company registered under Chapter III B of the RBI, and whose principal is acquisition of shares.
- 12) The Central Government, make rules for the purpose of this section.
- 13) If company contravenes the provision of section

	Fine		Imprisonment		
Minimum	Rs 25000	OR	2 years	OR	Both
Maximum	Rs 5 lakh				



SEC 187: INVESTMENT OF THE COMPANY TO BE HELD IN COMPANY NAME

- All investment made / held by the company shall be made / held in company's name
- This section shall not be applicable in the following cases
 - Where any company has to deposit share or securities for collection of any dividend / interest payable
 - where a company wants to deposit shares / securities in the name of SBI or scheduled bank being bankers of the company
 - where the company wants to deposit / transfer to any person any shares / securities by way of repayment of loan advanced to company / performance of any obligation.
 - when a company wants to hold investment in the name of depository when such investment is held by the company as beneficial owner.

Note : When the shares / securities are held by the company not in its own name , the company shall maintain register which shall contain all the particulars prescribed and such register shall be open for inspection by any member/debenture holder without any charge during business hours subject to any reasonable restrictions

3) In the case of contravention

Company
Fine Minimum:- Rs 25000
Maximum:- RS 25 lakhs

Every officer
Minimum:- Rs 25000
Maximum:- RS 1 lakh
Or
Imprisonment 6 months
Or
BOTH



SEC 188: RELATED PARTY TRANSACTIONS

- 1) Except with the consent of the Board by way of resolution no company shall enter into any contract/agreement with a related party in respect of following:-
- (a) sale, purchase or supply of any goods or materials;
 - (b) selling or otherwise disposing of, or buying, property of any kind;
 - (c) leasing of property of any kind;
 - (d) availing or rendering of any services;
 - (e) appointment of any agent for purchase or sale of goods, materials, services or property;
 - (f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
 - (g) underwriting the subscription of any securities or derivatives thereof, of the company

Exceptions:

- a) where any contract/ agreement has been entered in case of company having paid up capital/ transactions not exceeding the limit prescribed shall be entered with prior approval of the company by means of special resolution
- b) No member of company shall vote on special resolution to approve any contract /arrangement which may be entered with the company if such member is a related party

- 2) Every contract or arrangement shall be referred in the Board report to the shareholder along with the justification for entering such contract/arrangements
- 3) If any contract is entered by a director /employee without any permission of the Board and is not subsequently approved by the shareholder in the general meeting within 3 months then the contract is voidable with the option of the Board and if such party is a related party , the director shall indemnify the company against any loss suffered
- 4) It shall be open to the company to proceed with the director who has contravened the provisions of section for recovery of any loss sustained as a result of such contract /management
- 5) Any director /employee of the company who had entered into / authorised the contract / arrangement in violation of the provision

Listed companies:-

Fine: Minimum: Rs 25,000 OR Imprisonment:- 1 year OR Both
Maximum: RS 5 lakhs

Other companies:-

Fine: Minimum: Rs 25,000
Maximum: RS 5 lakhs

Register of contracts



**SEC 189: REGISTER OF CONTRACTS
IN WHICH DIRECTORS ARE
INTERESTED**

- 1) Every company shall maintain separate register for contracts with related party and contracts where directors are interested, and such register shall be placed before the Board and signed by all the directors present at the meeting.
- 2) Every director/ key managerial personnel shall within 30 days disclose the nature of his interest in contract/ arrangement.
- 3) Such register shall be kept at the registered office and shall be available for inspection during business hours and may extract copies as required by the member on the payment of fees prescribed

- 4) The register shall be produced at the beginning of every annual general meeting and shall be available for inspection for every person who attends the meeting
- 5) This section will not apply
 - a) for sale /purchase /supply of goods /material / services where cost of services does not exceed Rs 5 lakh
 - b) By banking company in the ordinary course of business



SEC 190: CONTRACT OF EMPLOYMENT WITH MANAGING OR WHOLE TIME DIRECTORS

- 1) Where contract of services with managing/ whole time director in writing copy of the contract.
- 2) Where such a contract is not in writing , a written memorandum giving all the terms
- 3) The copies of the contract /memorandum shall be open to inspection by any member without any payment of fee
- 4) If any default is made/ in case of contravention

Company

Every officer

FINE Rs 25, 000

Rs 5, 000

- 5) This section is not applicable for private company

SEC 191: PAYMENT OF DIRECTOR FOR LOSS IN OFFICE IN CONNECTION WITH TRANSFER OF UNDERTAKING PROPERTY/ SHARES

- 1) No director of company in connection
 - a) transfer of whole /part of any undertaking /property of the company
or
 - b) the transfer to any person of all shares in company being transfer resulting from
 - i) offer made to general body of shareholders
 - ii) an offer made on or behalf of some other body corporate, which becomes the subsidiary of the holding company
 - iii) an offer made by an individual , so that he can obtain the right to exercise or control the exercise of at least 1/3rd of total voting power at any general meeting of the company.
 - iv) an offer which is conditional on acceptance / receive any payment by way of compensation for loss of office /consideration for retirement from office /in connection with loss or retirement from such company /transferee of such undertaking /other person unless particular of such payment to be made to the transferee/person, including amount have been disclosed to the members of the company and proposal has been approved by a company in general meeting.
- 2) However this will not affect any payment made by a company to a managing director by way of compensation for loss of office /consideration for retirement from office in connection with such loss /retirement subject to limits as prescribed.
- 3) If the payment is not approved for want of quorum either in meeting/adjourned meeting the proposal shall not be deemed to have been approved.
- 4) If any amount is received in contravention by the director
OR
the proposed payment is made before it is approved in the meeting
the amount so received by the director shall be deemed to be received by the director for the trust in the company
- 5) If the director of company contravenes any provision of the company
Director punishable
Fine Minimum:- Rs 25000 & Maximum:- Rs 1lakh



SEC 192: RESTRICTION ON NON-CASH TRANSACTION INVOLVING DIRECTOR

- 1) No company shall enter into arrangement
 - a) director of the company /holding /subsidiary/associate /person connected with him acquires for consideration other than cash from the company

OR

 - b) The company acquires assets for consideration other than cash from such directors or persons who are connected
- 2) The notice for the approval of the resolution by the company in general meeting shall include particulars of the arrangement along with the value of the asset involved in arrangement calculated by registered valuer
- 3) An arrangement entered into by the company in contravention of the rules shall be voidable by the company

Exceptions:-

- a) The company has been indemnified by the other person for the loss or damage caused to the company AND the payment of money/other consideration which form the part of arrangement is not possible
- b) Any right acquired bonaafide for value and without notice of contravention of the provisions of this section by any other person.



SEC 193: CONTRACT BY ONE PERSON COMPANY

- 1) Where one person company which is limited by shares/guarantee enters into a contract with only the sole member of the company who is the director of the company the company shall ensure that terms of the contract are recorded in the minutes of the meeting of the BOD which is held first after entering into the contract. However this will not be required if the contract is in writing.
- 2) This section shall not apply in the case of contract entered into in the ordinary course of business.
- 3) The company shall inform the Registrar about every contract entered into by the company and recorded in the meeting of BOD within 15 days of the date of approval by the BOD.

SEC 194: PROHIBITION ON FORWARD DEALING IN SECURITIES OF THE COMPANY BY DIRECTOR OR KEY MANAGERIAL PERSONNEL

- 1) No director of the company or any of its key managerial personnel shall acquire in the company or its holding, subsidiary/associate company the right to make delivery of shares at a specified price with specified time of specified number of shares/ specified number of debentures
- 2) If director or key managerial personnel of the company contravene the provision such director/key managerial personnel punishable

Imprisonment	OR	Fine	OR	Fine & Imprisonment
2 years		Minimum:- 1 lakh Maximum:- 5 lakh		

SEC 195: PROHIBITION ON INSIDER TRADING SECURITIES

- 1) No person either the director or the key managerial personnel will enter into insider trading
- 2) Where communication is required in the ordinary course of business, this section will not come into picture
- 3) Explanation of terms
 - a) Insider trading

When the director or the key managerial personnel who has an access to the price sensitive information which is not known to the public and uses such information for either purchasing, selling or dealing in securities either as a principal or agent or the director acts a counsellor about procuring or communicating directly or indirectly the price sensitive information

b) Price sensitive information means information which directly or indirectly is related to the company and if published will affect the price of the securities of the company. For e.g. Some mergers and acquisitions, dividend policy

4) In the case of contravention, he shall be punishable with

Imprisonment

OR

Fine

5 years

Minimum 5 lakh

Maximum 25 Cr.

or

times the amount of profit (whichever is higher)

OR

Both

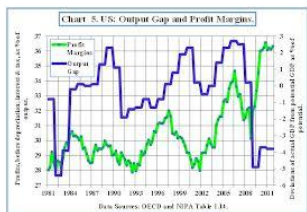


SEC 196: APPOINTMENT OF MANAGING DIRECTOR/WHOLE TIME DIRECTOR/MANAGER

- 1) No company shall appoint /employ managing director/manager.
- 2) The maximum term for which manager /managing director is appointed is 5 years
- 3) No re-appointment shall be made than one year before the expiry of the term.
- 4) No company shall appoint /continue employment of any person as managing director/whole time director/manager
 - a) who is below of age of 21 years or has attained 70 years
 - b) who is declared as insolvent.
 - c) has at any time been convicted by the court for more than 6 months
 - d) has at any time suspended payment to his creditors

Note: Appointment of person who has reached 70 years of age by passing special resolution where the explanatory statement where the explanatory statement which is attached to the notice indicate the justification for appointing such person

- 5) The managing director , whole time director or manager shall be appointed and terms and condition of appointment and remuneration shall be approved by the Board of Directors at meeting subject to the approval by resolution in the next AGM and CG (where there is variation in the terms)
- 6) Where the appointment of Managing Director , Whole time director and manager is not approved by the Board, any actions done by him are not valid



SEC 197: MANAGERIAL REMUNERATION IN THE CASE OF ABSENCE OF PROFIT

- 1) Total Remuneration payable by the company to its
Managing Director,
Whole time director , manager 11% of net profits

Note: In case of remuneration in excess of 11% the permission of Central Government is required

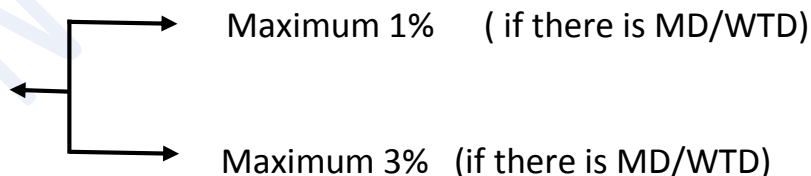
Except with the approval of company in General meeting

Remuneration payable to 1 MD /
WTD/ manager 5% of net profit

and

- A) If there are 2 WTD/Manager
then remuneration 10% of net profits

- B) Remuneration payable to
Directors other than MD/WTD



- 2) In any financial year where the company has no profits or\ its profits are inadequate then the company shall not pay any remuneration to its manager/MD/MTD
- 3) The remuneration payable to MD/MTD /Manager is payable only as per articles / Resolution / Special resolution (if articles require)
- 4) If the director renders the service in the professional nature and in the opinion of Remuneration Committee the director possess requisite professional qualification, then such remuneration will not be included
- 5) The Director may receive fees for attending the meeting, as decided by the Board different fees for different classes of companies
- 6) Remuneration paid to director/manager may be either monthly payment / specified percentage of net profits /partly monthly and partly fixed
- 7) The Net profit will be calculated as per section 198
- 8) An independent Director shall not be entitled to any stock option and may receive remuneration by way of fees, reimbursement of expenses for participation in the Board and profit related commission as may be approved by members
- 9) Any amount received in excess by the director without the permission of Central Government shall be refunded back to the company
- 10) The Company shall not waive the recovery of any sum refundable unless permitted by Central Government.
- 11) Every listed company shall disclose in Board Report , the remuneration of each director and employees remuneration and such other details
- 12) A director who is in receipt of any commission from the company and who is a MD/MTD/Manager shall not be disqualified from receiving such amount , from holding or subsidiary company if such amounts are disclosed in the Board Report



SEC 198: CALCULATION OF PROFITS

1) While calculating net profits of the company

CREDIT SHALL BE GIVEN TO THE FOLLOWING

Credit given to bounties /subsidies received from Government/ public authority

CREDIT SHALL NOT BE GIVEN FOR THE FOLLOWING

- (a) profits, by way of premium on shares or debentures of the company, which are issued or sold by the company;
- (b) profits on sales by the company of forfeited shares;
- (c) profits of a capital nature including profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof
- (d) profit from the sale of any immovable property /fixed asset of capital nature in undertaking

Note: where the amount of fixed asset

Example:

Sales	140	Original cost	130
WDV	100	WDV	100
Profit	40		30

then credit only for RS 30 will be available

- (e) any change in carrying amount of an asset /liability recognised in equity reserves including surplus in profit and loss account on the measurement of asset/liability at fair value

2) In making computations, following sums will be deducted namely,

- (a) all the usual working charges;
- (b) directors' remuneration;
- (c) bonus or commission paid or payable to any member of the company's staff, or to any engineer, technician or person employed or engaged by the company, whether on a whole-time or on a part-time basis;
- (d) any tax notified by the Central Government as being in the nature of a tax on excess or abnormal profits;
- (e) any tax on business profits imposed for special reasons or in special circumstances and notified by the Central Government in this behalf;
- (f) interest on debentures issued by the company;
- (g) interest on mortgages executed by the company and on loans and advances secured by a charge on its fixed or floating assets;

- (h) interest on unsecured loans and advances;
- (i) expenses on repairs, whether to immovable or to movable property, provided the repairs are not of a capital nature;
- (j) outgoing inclusive of contributions made under section 181;
- (k) depreciation to the extent specified in section 123;
- (l) the excess of expenditure over income, arising in the course of calculation of net profit which begins with the commencement of this Act and so much excess which has all been not been deducted in subsequent year preceding the year in which net profits are ascertained
- (m) any compensation or damages to be paid in virtue of any legal liability including a liability arising from a breach of contract;
- (n) any sum paid by way of insurance against the risk of meeting any liability
- (o) debts considered bad and written off or adjusted during the year of account.

The following sums shall not be deducted

1. Income tax and super tax payable by the company under Income tax
2. Any compensation, damages or payments made voluntarily
3. Loss of capital nature including loss on sale of undertaking or of any part thereof not including any excess of WDV of any asset which is sold, discarded, demolished or destroyed.
4. Any change in carrying amount of an asset /liability recognised in equity reserves including surplus in profit and loss account on the measurement of asset/liability at fair value

SEC 199: RECOVERY OF REMUNERATION IN CERTAIN CASES



Where a company is required to restate its financial statements due to fraud /noncompliance with the requirements of the Act the company shall recover from any past /present MD/WTD/CFO/CEO by whatever name called during the period which financial statement are required to be restated , received remuneration in excess of what would have been payable to him as per restatement of financial statement

SEC 200: CENTRAL GOVERNMENT OR COMPANY TO FIX LIMIT WITH REGARD REMUNERATION

- 1) The Central Government or company according to its approval under section 196 or 197 where the company has inadequate / no profits fix the remuneration within the specified limits in the Act % of profits the Central Government of the company shall have regards
 - (a) the financial position of the company;
 - (b) the remuneration or commission drawn by the individual concerned in any other capacity;
 - (c) the remuneration or commission drawn by him from any other company;
 - (d) professional qualifications and experience of the individual concerned;
 - (e) such other matters as may be prescribe



SEC 201: FORMS OF AND PROCEDURE IN RELATION TO CERTAIN APPLICATIONS

- 1) Every application made by the Central Government shall be in prescribed form.
- 2) Before the application is made by the company to Central Government, a general notice shall be issued by the company to the members, nature of application proposed to be made will be discussed
- 3) Such application in will be published in the regional language of the place where the Registered office is situated and also in the English newspaper circulating in the district
- 4) The copies of the notice, together with the certificate by the company shall be attached to the application

SEC 202: COMPENSATION FOR LOSS OF OFFICE OF MANAGING OR WHOLE TIME DIRECTOR OR MANAGER

- 1) A company may make payment to
 - i) managing director
 - ii) whole time director
 - iii) managerby way of compensation for loss of office / retirement from office/connection with such loss or retirement

- 2) No payment shall be made in the following cases:
 - a) director resigns from office as a result of reconstruction/amalgamation of body corporates
 - b) where the director vacates his office under sec 167(1)
 - c) where the company is wound either compulsorily or voluntarily, provided the winding up was due to negligence of director
 - d) where the director has been guilty of fraud /negligence/gross management of conduct of affairs
 - e) where the director is directly or indirectly involved in the termination of his office
 - f) where the director resigns from office other than amalgamation/reconstruction
- 3) Payment to managing director/whole time director average remuneration x period.
Period:- Remaining period of his term or 3 years whichever is less
Average remuneration:- Remuneration calculated for a period of 3 years preceding the date on which he ceased to hold office

Note: Where the period is less than 3 years, such period shall be taken into account

In the case of winding up, the payment shall not be made before or within 12 months, after the date on which he ceases to be director when the assets of company after deducting expenses are insufficient to repay the share capital including premium of the shareholders

CEO/MD/Manager	
Company Secretary	
Whole-Time Director	
Chief Financial Officer	

SEC 203: APPOINTMENT OF KEY MANAGERIAL PERSONNEL

- 1) Every class or classes of companies may appoint the following whole key managerial personnel:
 - a) Managing Director/CEO Manager
 - b) CFO
 - c) Company Secretary

Note: A person shall not be appointed/ reappointed as chairperson as well as the managing director /CEO of the company unless

- a) articles of the company provide
- b) the company does not carry multiple business

First proviso shall not be applicable to companies which carries multiple business and where one or more CEO's are appointed by the Central Government

- 2) Every whole time managerial personnel shall be appointed by passing a resolution in the Board

- 3) A whole time managerial personnel shall not hold office in more than 1 company except in the case of subsidiary of the company
 IF the managerial personnel is holding the office in more than 1 company on the date the commencement of this act, he shall within 6 month , choose the company where he wishes to continue
 A company may appoint a persons as its MD if he is a MD in more than other company, with the consent of all the directors present at the meeting and approved by Board Resolution
- 4) In the case of vacancy , the resulting vacancy shall be fille in the Board meeting, with 6 months of vacancy
- 5) In the case of contravention
- | | | | |
|------|---------|---------|--|
| | | Company | Officers |
| Fine | Minimum | 1 lakh | 50 thousand |
| | Maximum | 5 lakh | 1000 every day in the case of continuing offence |

SECRETARIAL AUDIT
 UNDER THE COMPANIE S ACT, 2013

SEC 204: SECRETARIAL AUDIT FOR BIGGER COMPANIES

- 1) Every classes of company shall annex with its Board Report , a secretarial audit given by the company secretary in practice
- 2) It shall be the duty of the company to give help to the company secretary for auditing secretarial and other related records of the company
- 3) The BOD in his report shall explain the qualifications /observation/other remark made by the company secretary
- 4) If the company/officer /company secretary contravenes the provision who is default shall be punishable with fine
- | | |
|---------|--------|
| Minimum | 1 lakh |
| Maximum | 5 lakh |



SEC 205: FUNCTION OF COMPANY SECRETARY

- 1) The functions of the company secretary
 - a) to report to the Board about compliance with the provisions of the Act/law applicable to the company
 - b) to ensure that the companies complies with secretarial standards
 - c) to discharge the duties as prescribed
- 2) The provisions of Section 204 and Section 205 shall not affect the duties of the BOD, Chairperson and Managing Directors/whole time Directors or any other law for the time being in force

Secretarial Standard: Standard issued by the company secretary of India and approved by Central Government



SEC 206: POWER TO CALL FOR INFORMATION, INSPECT BOOKS AND CONDUCT INQUIRIES

- 1) On the scrutiny of the document of the company or any information, if the Registrar is of the opinion that he needs further document, he may by written notice, ask the company to produce the document, or ask for explanation within reasonable time
- 2) After receiving such notice it is the duty of the company to furnish the required information within the specified time.
- 3) IF the information belong to the past period, the officers who had been in the employment may be called by the Registrar to furnish the information to the best of their knowledge.
- 4) If no information or explanation is furnished , or if the information is inadequate or the information is deficient or wrong , the Registrar may by another notice may ask for the documents and explanations as he may require at such place and at such time as may be specified in the notice.

- 5) If the registrar is satisfied that on the basis of the information provided the business of the company is being carried out in a fraudulent manner or not in compliance with the provisions of the Act, the Registrar may after informing the company about the allegations by a way of written order carry out inquiry as it deems fit after providing the company a reasonable opportunity of being heard.
- 6) Where the business of the company is being carried out with the intention of fraudulent or unlawful purpose, then every officer who is in default shall be liable under section 447.
- 7) The Central Government if he is satisfied that the circumstance, so demands direct the inspection of books and paper by an inspector appointed for this purpose.
- 8) The Central Government authorize any statutory authority to carry out the inspection of book of account of a company or class of companies.
- 9) If a company fails to furnish the information every person who is in default shall be punishable with a fine of 1 lakh rupees,
- 10) And in case of continuing failure with an additional fine of Rs. 500 for every day of default.

SEC 207: CONDUCT OF INSPECTION AND INQUIRY

- 1) Where a Registrar /inspector calls for the books of accounts and other papers , it shall be the duty of every officer/employee of the company to produce all the documents to the Registrar and furnish him with all the statements and render all the assistance which is required by him
- 2) The Registrar/inspector during the course of inspection may or cause made copies of books of account and place identification marks in such books in token of the inspection being made.
- 3) The Registrar shall have all the powers vested in the Code of Civil Procedure while trying a suit. Such as discovery and production of books of account, summoning and enforcing the attendance of person, inspection of books, registers and other documents of the company at any place.
- 4) If the director /officer of the company disobeys the direction issued by the Registrar/inspector, the director/officer shall be punishable with

Imprisonment- 1 year

Fine: - Minimum-25000

Maximum-1 lakhs

- 5) If the director /officer of the company has been convicted of an offence, the director so convicted shall vacate his office and shall be disqualified from holding office of the company



SEC 208: REPORT ON THE INSPECTION MADE

- 1) The Registrar/inspector shall after the inspection of the books of account or inquiry under section 206 or other books and papers submit a report in writing to the Central Government along with such documents.
- 2) IF such report may if necessary include a recommendation that further investigation into the affairs of the company is necessary for giving reasons in support.

SEC 209: SEARCH AND SEIZURE

- 1) Where on information , the Registrar has a reasonable ground to believe that the books and papers of a company relating to key managerial personnel or any director /auditors/company secretary are likely to be altered/mutilated/destroyed/altere/falsified, he may after obtaining the order from the special court for seizure of such books
 - ✓ Enter the search the place where books are kept
 - ✓ Seize such books and papers as he may consider necessary, after allowing the company to take copies, extract from such papers at its cost
- 2) The Registrar/Inspector shall return the paper seized within 180 days to the company from whose custody the papers are seized
- 3) After 180 days if the Registrar /inspector for a further period of 180 days if needed again
- 4) The Registrar/inspection may place their identification marks before returning the book in such other manner as he consider necessary.
- 5) The code of Criminal Procedure relating to every search and seizure will apply



SEC 210: INVESTIGATIONS INTO AFFAIRS OF THE COMPANY

- 1) Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of the company, the Central government shall order an investigations into the affair of the company.
- 2) The affairs of the company shall be investigated on the receipt of a report of the Registrar/inspector under section 208, on intimation of special resolution, or in the public interest.
- 3) The Central Government shall order into the investigation into the affairs of the company before the affairs of the company ought to be investigated before the Tribunal/court passes an order.
- 4) The Central Government shall appoint one or more inspectors to investigate into the matters and report to the Central Government.



SEC 211: ESTABLISHMENT OF SERIOUS FRAUD INVESTIGATION OFFICE

- 1) The Central Government shall investigate an office called as Serious Fraud Investigation Office to investigate into the affairs of the company.
- 2) The Office shall be headed by director and consist of such number of experts appointed by the Central Government from the field of banking, corporate affair, taxation, forensic audit, capital market, information technology, law or such other fields as may be prescribed.
- 3) The Central Government shall appoint Director, who shall be an officer not below the rank of a joint secretary having knowledge and experience in dealing the matters relating to corporate affairs.
- 4) The Central Government may appoint such officers and employees in the office as it considers necessary for the efficient discharge of functions.
- 5) The term and condition of the officers, employees shall be prescribed.

SEC 212: INVESTIGATION INTO THE AFFAIRS OF THE COMPANY BY SERIOUS FRAUD INVESTIGATION OFFICE

- 1) Where according to section 210 , the Central Government feels necessary to investigate into the affairs of the company by Serious Fraud Investigation office(SFIO) :-
 - (a) on receipt of a report of the Registrar or inspector under section 208;
 - (b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;
 - (c) in the public interest; or
 - (d) on request from any Department of the Central Government or a State Government,The Central Government may assign the investigation into the affairs of the said company to Serious Fraud Investigation Office and the directors may designate appropriate number of inspectors.
- 2) Where the case has been assigned to Serious Fraud Investigation office by the Central Government, no other investigating agency of the Central Government or the State Government shall carry on the investigation, and if any investigation is in the process, then such investigation will be stopped and all the files and the relevant document will be transferred to Serious Fraud Investigation office.
- 3) Where the investigation is assigned to the SFIO, then the investigation shall be carried on as per the provisions of the Chapter and the report shall be submitted to the Central Government within such period as may be specified.
- 4) The Director of the SFIO shall cause the affairs to be investigated by an inspector under section 217.
- 5) The company, officers, employees shall provide all the information, explanation, document and assistance to the Investigating officer.
- 6) The offences covered under offences covered under sub-sections (5) and (6) of section 7, section 34, section 36, subsection
(1) Of section 38, sub-section (5) of section 46, sub-section (7) of section 56, subsection (10) of section 66, sub-section (5) of section 140, sub-section (4) of section 206, section 213, section 229, sub-section (1) of section 251, sub-section (3) of section 339 and section 448 which attract the punishment for fraud provided in section 447 of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—
 - (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail

Note:- The person under 16 years , woman, sick , infirm may be released on bail if the Special Court directs.

- 7) The Special Court shall not take notice of any offence unless an application in writing as been made to the Director, SFIO/the officer of the Central Government authorized by general/special order n writhing on behalf of Central Government.
- 8) The limitation on granting a bail is in addition to the limitation under code of criminal procedure or any other law.
- 9) IF the Director/Addl Director , Asst Director of SFIO has the reason to believe that person is guilty of offence on the basis of relevant information and material possessed by them , then such person are liable to be arrested
- 10) After the arrest of person, the Director, Addl Director, Asst Director of SFIO, shall forward a copy of the order along with the relevant information in possession in a sealed envelope, and the SFIO shall keep such order and the information for such prescribed period.
- 11) Every person who is arrested shall be sent to the Judicial/Metropolitan Magistrate within 24 hours, however the time of the journey to the Magistrate officer shall be excluded.
- 12) The SFIO on the direction of the Central Government may submit an interim order to the Central Government.
- 13) When the investigation ends the SFIO shall submit a report t the Central Govt.
- 14) After the receipt of the report the Central Govt. may direct the SFIO to initiate prosecution against the company, its officer. Employees who have been in the employment of a company/other person directly or indirectly connected with the affairs of the company.
- 15) The provisions of the Criminal Procedure code shall be applicable according.
- 16) In case an investigation by SFIO, other agencies, the State Government, police authority, Income tax, shall cooperate them accordingly.

SEC 213: INVESTIGATION INTO THE COMPANY AFFAIR IN OTHER CASES

- 1) The Tribunal may on the application made by:-
 - ✓ In the case of company having Share Capital:-Minimum 100 member holding 1/10th of total voting power
 - ✓ In the case of company having no Share capital: Minimum 1/5th of the company's Register of members.
 - ✓ And supported by enough evidence by the applicants for conducting the investigation into the affair of the company.
- 2) If on the application made by other person the Tribunal is satisfied that :-
 - ✓ The business of the company is conducted in a fraudulent manner /oppressive manner /or that the company has been formed for fraudulent or unlawful purpose.
 - ✓ Person concerned in formation of the company /management are guilty of fraud,
 - ✓ Misfeance or misconduct towards the company.
 - ✓ The members of the company have not been given all the information relating to the calculation of commission payable to the managing director /manager of the company.
 - ✓ After giving a reasonable opportunity of being heard to the parties concerned, that the affairs are company ought to be investigated by inspector appointed by Central Government to investigate into the affairs of the company in respect of such matter.
- 3) If the investigation it is proved that:-
 - ✓ The business of the company is conducted with the intention to defraud the creditor/fraudulent or unlawful purpose of the company,
 - ✓ Person concerned in the formation of the company /management of the company are found guilty of fraud.
 - ✓ Then every officer shall be punishable for fraud under Section 447.

SEC 214: SECURITY FOR PAYMENT OF COST AND EXPENSES OF INVESTIGATION

- 1) Where an investigation is ordered by the Central Government is in pursuance of clause 210(1)(b) , or in pursuance of Tribunal under Section 213, the Central Government may before appointing the inspector, require the applicant
 - ✓ To give security of RS 25000/- maximum for payment of cost and expenses of the investigation
 - ✓ And such sum will be refunded in case of the investigation results in prosecution.

SEC 215: FIRM, BODY CORPORATE OR ASSOCIATION NOT TO BE APPOINTED AS INSPECTOR

No firm, body corporate or other association shall be appointed as inspector.



SEC 216: INVESTIGATION OF THE OWNERSHIP OF THE COMPANY

- 1) Where it appears to Central Government, it may appoint one or more inspectors to investigate into the affairs of the company and its membership for the purpose of determining the true person who are financially interested in the success and failure of the company/who have able to control the material influence the policy of the company
- 2) The Central Government shall appoint on or more inspectors, if the Tribunal in the course of any proceeding before it , direct by an order that the affair of the company ought to be investigated as regard to the membership of the company and the other matters relating to the company.
- 3) While appointing inspectors the Central Government may define the scope of investigation whether with the respects to the matter or time or any other matter.
- 4) However it may limit this to the investigation of shares or debentures
- 5) The inspector shall extend the investigation of any circumstances, where there is an existence in the arrangement which is not legally binding but which is the relevant for the purpose of the investigation.



SEC 217: POWER OF THE INSPECTOR

- 1) It shall be the duty of all officers / other employed/agents of the company under investigation and where the affairs of the company are investigated under section 219 then all officers /employees shall
 - ✓ Preserve and produce before the inspector or any person authorized by him all the books and papers relating to the company/body corporate which is in their custody
 - ✓ Otherwise give the inspector all assistance in connection with the investigation.
- 2) The inspector may require the body corporate to furnish such information or to produce such books as he may consider necessary, if furnishing of such information is necessary.
- 3) The inspector shall not keep in his custody books for more than 180 days
- 4) An inspector may examine on oath any employee/director, Manager or any other person with the permission of Central Government in relation to any affairs of the company/other body corporate and for other purpose the person may appear personally.
- 5) The inspector shall have the powers vested in the Civil court under the code of civil procedure 1908 in respect of the following matters:-
 - ✓ Discovery and production of books of accounts and other documents at such places and time as may be specified
 - ✓ Summoning and enforcing the attendance of person and examining them on oath
 - ✓ Inspection of books, register and other documents of the company.
- 6) If the director /officer does not follow the instruction of the Registrar then he will be punishable with Imprisonment- 1 year and fine –Minimum- Rs 25000 and Maximum - 1 lakh.
- 7) The director/officer shall be deemed to have vacated the office from the date when he is convicted and shall be disqualified from holding office in any company.
- 8) The notes of any examination shall be in writing and shall be read and signed by the person examined and used as a evidence against them.

- 9) If any person fails without reasonable cause /refuses
- ✓ To produce to an inspector /person authorized by him any book/paper which is duty to produce.
 - ✓ To furnish any information which is his duty to furnish.
 - ✓ To appear before the inspector and answer the inspector his questions.
 - ✓ To sign the notes of any examination.

He shall be punishable with imprisonment- 6 months and fine –minimum-Rs 25000 and Maximum- 1 lakh and further fine of Rs 2000/- every day after the first during which the failure /refusal continues.

- 10) The officers of the Central Government, State Government , police and statutory authority shall provide assistance to the inspector for the purpose of the investigation , inspection , inquiry require by the inspector with the approval of central Government.
- 11) For the purpose of carrying on the inspection, inquiry, investigation in a foreign state, the Central Government may enter into an agreement for the purpose of reciprocal agreements and by notification render the application of this Chapter applicable subject to necessary modification, for the purpose of implementing the agreement with the State.
- 12) Where the inspector is of the view that the evidence is available in the foreign country then he may issue a letter of request to the appropriate court who will deal with the foreign country to examine orally or collect the necessary evidence and transfer such evidence to the court of India which had sent a letter of request.
- 13) Upon the receipt of letter request from the court/authority from place outside India for examination of person/documents relating to the affairs of the company under investigation who shall investigate into the affairs of the company and the inspector shall submit the report within 30 days or such extended time as the court may allow.

SEC 218: PROTECTION OF EMPLOYEES DURING INVESTIGATION

- 1) During the course of an investigation of the affairs of the company and other matters under section 210/ 212/213/219 or of the membership and other matter / relating to company or the ownership of shares / debentures of the company or body corporate and other matters relating to body corporate or

- 2) During the pendency of the proceeding against any person concerned in the conduct and management of the affairs of the company, such company other body corporate proposes to discharge or suspend any employee/punish whether dismissal, removal, reduction in rank or otherwise or change the term of the employment to his disadvantage
- 3) The company/other body corporate or person shall appoint approval of Tribunal of action proposed and if the Tribunal has objection of the action proposed it shall send notice by post in writing to the company /body corporate/person concerned.
- 4) If the company/body corporate /person concerned is dissatisfied with the objection of the Tribunal it may within 30 days of the receipt of the notice of the objection make an appeal to the Appellate Tribunal on the payment of prescribed fees.
- 5) The decision of the Appellate Tribunal on such appeal shall be final and binding on the Tribunal and company, other body corporate /person concerned.

SEC 219: POWER OF INSPECTOR TO CONDUCT INVESTIGATION INTO AFFAIR OF RELATED COMPANIES ETC.

- 1) If the inspector appointed under Section 210/212/213 to investigate into the affairs of the company , he may also investigate into the following:-
 - A company holding/subsidiary company
 - A company managed by its managing director/manager
 - A company which consist of Nominee director
 - A person who has been company's managing director/manager/employee
- 2) He shall with the prior approval of the Central Government investigate into the affairs of the company in so far as he considers the investigation results are relevant for the company for which he is appointed.

SEC 220: SEIZURE OF DOCUMENTS BY INSPECTOR

- 1) Where in the course of investigation, the inspector has reasonable ground to believe that books and papers, relating to body corporate, managing director, manager, are destroyed mutilated , altered, falsified the inspector may:-
 - ✓ Enter, which such assistance the place where such books are kept
 - ✓ Seize books and paper after allowing the company to take copies or extract of them for the purpose of investigation
- 2) The inspector shall keep in custody the books and papers for a period till the conclusion of the investigation and after that he will return the same to the company , managing director, manager or any person from whom it is seized
- 3) The inspector may before returning such books and paper place identification marks or deal with the same in such manner as may be considered necessary.
- 4) The code of Criminal Procedure may apply to every search and Seizure made under this section.

SEC 221: FREEZING OF THE ASSETS OF THE COMPANY ON INQUIRY AND INVESTIGATION

- 1) Where it appears to the Tribunal on a reference made by the Central Government/in connection with the inquiry and investigation into the affairs of the company/complaint made by such number of members as specified in Sec 224(1) / creditor having Rs 1 lakh as

Outstanding amount having a reasonable ground to believe

- ✓ The removal/disposal of funds, assets, properties of the company is likely to take place in a manner prejudicial to the interest of the company/shareholder/creditor/or in public interest

It may by order direct that such removal / disposal shall take place within 3 years from the time specified in the order subject to the condition as prescribed by Tribunal

- 2) In case of removal in contravention of the rule , if the removal/disposal is made then the

Company: - Fine: - Minimum: - 1lakh

Maximum: - 25 lakhs

Every officer: Imprisonment – 3 years

Fine: - Minimum: - 50000

Maximum: - 5 lakh

Or both

SEC 222: IMPOSITION OF RESTRICTION UPON SECURITIES

- 1) Where it appear to Tribunal in connection with any investigation under section 216, or on a complaint made by any person, there is a good reason to find out the relevant fact about the securities issued /to be issued by the company and the Tribunal is of the opinion that such facts cannot be found unless certain restriction as it deem fit are imposed , The Tribunal by order direct that the securities will be subject to such restriction for a period not exceeding 3 years
- 2) Where the securities are transferred in contravention of the rules the
Company- fine- Minimum:- 1 lakh rupees
Maximum:- 25 lakh rupees
Every officer:-Imprisonment- 6 months
Fine:-Minimum- 25000
Maximum- 5 lakh
Or both.

SEC 223: INSPECTOR'S REPORT

- 1) An inspector appointed may if directed by the Central Government, shall submit interim reports to the Government, and on conclusion of investigation submit final report to the Central Government.
- 2) Every report made shall be in writing printed by the Central Government.
- 3) A copy of the report may be obtained by making an application to the Central Government.
- 4) The report of the inspector appointed under this chapter shall be authenticated either by seal of the company/ certificate of a public officer under section 76 of the Indian Evidence act.
- 5) Such Report shall be allowed as evidence in any legal proceeding in relation to matter contained in the report.

SEC 224: ACTIONS TAKEN IN PURSUANCE OF INSPECTOR'S REPORT

- 1) If from the inspector report under Section 233, it appears to the Central Government that any person who is in relation to company /body corporate /other person whose affair have been investigated under this chapter has been guilty of offence for which he is criminally liable
- 2) The Central Government may prosecute such person and all the employees/body corporate shall give the necessary assistance in connection with prosecution.
- 3) If any company/body corporate liable to be wound up , and it appears to Central Government that it is wise do so , the Central Government may unless the body corporate is already being wound up by the Tribunal,
 - ✓ may ask any person to file a petition for winding up of the company on a just and equitable ground
 - ✓ make an application under Section 241
 - ✓ or both
- 4) If from such report , it appears to the Central Government that proceedings in public interest be brought by the company /body corporate whose affair have been investigated
 - ✓ For recovery of damage in respect of fraud , misfeasance /other misconduct in connection with promotion /formation, management of the affairs of such company/body corporate
 - ✓ For recovery of any property which have been misapplied/wrongfully retained
- 5) The Central Government shall be indemnified by such company /body corporate against any cost/expenses
- 6) Where the report made by the inspector that the fraud has taken place and it is due to such fraud that director , key managerial personnel, other officers of the company
- 7) Has taken advantage whether in any form whether asset, property, cash, in any manner.
- 8) The Central Government may file an application before the Tribunal for appropriate orders to give up the asset , property ,cash and also for holding such director , key managerial personnel or other person liable

SEC 225: EXPENSES OF INVESTIGATION

- 1) The expenses of investigation by an inspector appointed by Central Government Under this chapter other than expenses of inspection shall be given by the Central Government, but shall be reimbursed by the following person
 - ✓ Any person convicted by the court on a prosecution or ordered to pay damage be ordered to pay such expense as may be specified by court convicting such person.
 - ✓ A company in whose name proceedings are brought to the extent of the amount or value of any sums of the property.
 - ✓ Unless the investigation is converted / results in prosecution under Section 224 any company/body corporate, managing director/manager dealt with by report of the inspector and the applicants for the investigation where inspector was appointed under section 213. To the extent Central Government may direct.
- 2) Any amount for which a company/ body corporate shall be a first charge on the sums or property mentioned in that clause.

SEC 226: VOLUNTARY WINDING UP OF COMPANY NOT TO STOP INVESTIGATION PROCEEDING

- 1) An investigation may be initiated and no such investigation shall be stopped /suspended on a fact that
 - ✓ Application has been made under section 241
 - ✓ The company passed a special resolution for voluntary winding up
 - ✓ Any other proceeding for winding up of the company pending before Tribunal
- 2) Where a winding up order is passed by the Tribunal in a proceeding, the inspector shall inform the Tribunal about the pendency of the investigation proceeding before him and the Tribunal shall pass such order as may deem fit.
- 3) Every director/ other employee of the company can participate in the proceeding before the inspector / any liability as a result of finding by the inspector.

SEC 227: LEGAL ADVISERS, BANKERS NOT TO DISCLOSE CERTAIN INFORMATION

- 1) Legal advisors/ bankers of the company shall not be required to disclose information pertaining to their client/customers.
- 2) The legal advisors /bankers are not required to disclose any confidential information to the Tribunal /Central Government.

SEC 228: INVESTIGATION OF FOREIGN COMPANIES

- 1) The provision of this chapter shall apply to the inspection, inquiry, investigation in relation of foreign companies.

SEC 229: PENALTY FOR FURNISHING FALSE STATEMENT, MUTILATION DESTRUCTION OF DOCUMENT

- 1) Where a person is required to provide an explanation /make statement during the course of inspection , inquiry/investigation, or an officer/employee of company/body corporate which is also under investigation:-
 - ✓ Destroys/mutilates/falsifies/ conceals/tamper /or is a party to such destruction/unauthorized removal of document relating to property, assets /affair of the company
 - ✓ Makes /or is party to the making of false entry in any document concerning the company /body corporate.
 - ✓ Provides an explanation which is false or which he knows to be false.

SEC 230: COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

- 1) Where a compromise or arrangement is proposed between company and its members/ creditors , the Tribunal may on application of the company /creditor /member which is being wound up order a meeting of creditors which will be called, held and conducted as per the directions of the Tribunal.
- 2) An affidavit will be made by the company or other person who makes an application to the Tribunal
- 3) The application will consist of the following :-
 - ✓ All material fact relating to company viz, the latest financial position, auditor report, pendency of investigation or proceedings against the company.
 - ✓ Reduction of share capital
 - ✓ Scheme of corporate debt restructuring with the consent of 75% of secured creditor
 - ✓ creditor's responsibility statement in the prescribed form;
 - ✓ safeguards for the protection of other secured and unsecured creditors
 - ✓ Auditor report that the fund requirement of the company after corporate debt restructuring shall conform to the liquidity test provided by the Board
 - ✓ Where the company adopts corporate debt restructuring guidelines specified by the RBI

- ✓ Valuation Report in the respect of shares /property of all assets (tangible &intangible), (movable &immovable) of company of Registered valuer.
- 4) Where a meeting is to be called in the response of the Tribunal's order, a notice of such meeting shall be sent to all the creditors, members, debenture holders shall be sent to the address registered with the company.
- 5) The notice shall be accompanied by the valuation Report, and their effect on Creditor, key managerial personnel, promoters and non-promoter, debenture holder and the effect of compromise/ arrangement on any material interest of directors. Debenture trustee
- 6) In the case of listed companies , this notice and documents shall be sent to SEBI, and also be placed on the website of the company, and also published in newspaper
- 7) In the case of notice by advertisement, the time within which copies of compromise /arrangement will be made available to the concerned person free of charge will be specified.
- 8) The notice shall provide voting by themselves or by proxy or by postal ballot to the adoption of the compromise /arrangement within 1 month from the date of receipt of such notice.
- 9) The objection to the compromise can be made by person holding at least 10% of the shareholding or having 5%of the total outstanding debt as per latest audited financial statement.
- 10) The notice shall also be to all the statutory authorities which will be affected by the compromise and arrangement such as SEBI, stock exchanges, official liquidator, Competition Commission of India, and shall be made within 30 days from the date of receipt.
- 11) Where in a meeting held, a majority of person who represent $\frac{3}{4}$ th of the value of creditors, voting in person, or by proxy or postal ballot agree to compromise /arrangement sanctioned by Tribunal, the same shall be binding on the company, all the creditors, members, class of members or in the case the company is wound up by the liquidator or the contributories of the company.

- 12) An order of the Tribunal shall consist of the following:-
- (a) where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable;
 - (b) The protection of any class of creditors;
 - (c) If the compromise or arrangement results in the variation of the shareholders' rights, it shall be given effect to under the provisions of section 48;
 - (d) If the compromise or arrangement is agreed to by the creditors under sub-section (6), any proceedings pending before the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall abate
 - (e) Such other matters including exit offer to dissenting shareholders,
- 13) The order of the Tribunal shall be filed with the Registrar of the company within 30 days
- 14) The Tribunal can avoid calling the meeting of the creditor having 90% of value agree and conform the compromise and agreement by way of affidavit.
- 15) The compromise /arrangement on the buyback shall not be sanctioned by the Tribunal unless it is in accordance with section 68.
- 16) Any compromise/arrangement may include take over, in the case of listed companies it shall be as per the regulations framed by SEBI.
- 17) An aggrieved party may make an application to the Tribunal in the case of grievances in respect of takeover of companies other than listed companies
- 18) The tribunal may provide order as it may deem fit.

SEC 231: POWER OF THE TRIBUNAL TO ENFORCE COMPROMISE OR ARRANGEMENT.

- 1) Where the Tribunal makes order under section 230, sanctioning compromise /arrangement in respect of company it
- ✓ Shall have the power to supervise the implementation of compromise/arrangement.
 - ✓ May at the time of making such order, give such direction in regards to any matter / make modifications in the compromise /arrangement.

- 2) If the Tribunal is satisfied that the compromise /arrangement sanctioned cannot be implemented satisfactorily without any modification, and the company is not able to pay debts, it may order the winding up of the company and an order shall be made under sec 273.
- 3) The provisions of this section shall also apply to the company where the compromise. Arrangement has been made before the commencement of this Act.

SEC 232: MERGER OR THE AMALGAMATION OF THE COMPANIES

- 1) Where an application is made for sanctioning the compromise /arrangement proposed between a company and such person the Tribunal:-
 - ✓ The compromise /arrangement have been for the purpose for the reconstruction of the company involving merger or amalgamation of the companies.
 - ✓ That under the scheme the whole part of the undertaking (transferor company) is required to be transferred to transferee company /proposed to divide between 2 or more companies.
- 2) The Tribunal may on application order meeting of creditors called, conducted in such manner as the Tribunal may direct.
- 3) The following documents shall be required to be circulated by the Tribunal in the case of amalgamation/division :-
 - ✓ The draft of the proposed term of the scheme drawn or adopted by the director of the merging company.
 - ✓ Confirmation that the copy of the draft scheme has been filed by the Registrar.
 - ✓ A report by the director of the merging companies explaining the effect of compromise on each class of shareholders , key managerial personnel , promoter, non-promoter shareholder in particular share exchange ration specifying the difficulties in valuation
 - ✓ The report of the expert in regards to valuation.
 - ✓ A supplementary accounting statement stating if the financial statement relates to financial year which ends more than 6 months before the first meeting of the company for the purpose of approving the scheme
- 4) The Tribunal after it is satisfied that that the procedure mentioned , sanction the compromise /arrangement subsequent order and make the provision for the following:-
 - ✓ Complete transfer of the assets, liabilities from the transferor company to the transferee company.

- ✓ The allotment by the transferee company of any shares /debentures /policies or other like instruments under the compromise /arrangement to be allotted by that company
- ✓ The continuation by or against the transferee company of any legal proceedings pending by or against any transferor company on the date of transfer; dissolution, without winding-up, of any transferor company;
- ✓ the provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement;
- ✓ where share capital is held by any non-resident shareholder under the foreign direct investment norms or guidelines specified by the Central Government or in accordance with any law for the time being in force, the allotment of shares of the transferee company to such shareholder shall be in the manner specified in the order; the transfer of the employees of the transferor company to the transferee company;
- ✓ where the transferor company is a listed company and the transferee company is an unlisted company,—
 - The Transferee company shall remain unlisted company till it becomes listed company
 - If the shareholders of the transferor company decide to opt out of Transferee Company, then provision shall be made for the payment of value of shares held by him at a predetermined price formula or after valuation is made.
 - The amount of payment or valuation shall not be less than specified by SEBI under any regulation framed by it.
- ✓ Where the Transferor Company is dissolved the fee paid by the transferor company on its authorized share capital shall be off set against any fees payable by the transferee company on its authorized share capital.
- ✓ Such incidental, consequential and supplemental necessary to secure the amalgamation is fully& effectively carried out.
- ✓ The Compromise /arrangement shall be sanctioned by the Tribunal when the company auditors gives a certificate that the accounting treatment are in consonance of accounting standards

- 5) After the transfer, the property and the liability shall become the asset and the liability of the transferee company and the property may be freed of any charge by the compromise /arrangement cease to have effect.
- 6) Every company shall file a certified copy of the order with the Registrar for registration within 30 days of the receipt of the certified copy of the order.
- 7) The scheme shall indicate the date from which it will be effective, and it shall be effective from the appointed date only.

8) Every company till the completion of the scheme shall file a statement in such form and prescribed time with the Registrar every year duly certified by CA, Cost Accountant, Company Secretary in practice, whether the scheme is compiled in accordance with the orders of the Tribunal.

9) If the transferor company or the transferee company contravenes the provisions of the Act then they shall be punishable with

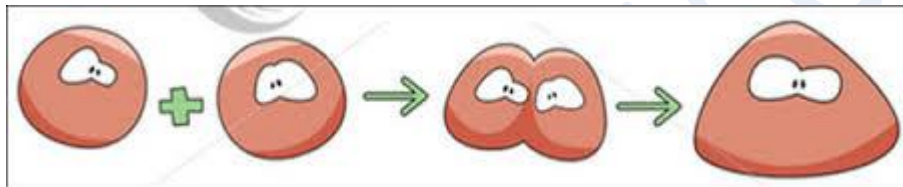
Fine:-Minimum: - 1 lakh

Maximum-25 lakhs,

And every officer of the transferor company/ transferee company shall be punishable with imprisonment: - 1 year or

Fine:-Minimum-1 lakh

Maximum-3 lakh or both.



SEC 233: MERGER OR AMALGAMATION OF CERTAIN COMPANIES



- 1) The scheme of merger/amalgamation may be entered between 2 or more small companies or between a holding company and its wholly owned subsidiary company subject to the following conditions :-
 - ✓ A notice of the proposed scheme inviting objections if any from the Registrar and Official Liquidator where the registered office is situated within 30 days is issued by the transferor company and the transferee company.
 - ✓ The objections and the suggestions are considered in the general meeting by each companies and the scheme is approved by at least 90% of the total number of shareholder.
 - ✓ Each company shall file a declaration of solvency in the prescribed form, with the Registrar of the place where the registered office of the company situated.
 - ✓ The scheme is approved by the majority i.e 9/10th in value of the creditors indicated in a meeting convened by giving notice of 21 days along with the scheme of its creditors for the purpose approved in writing.

- 2) The transferee company shall file a copy of the approved scheme with the Central Government, Registrar, Official liquidator where the registered office is situated.
- 3) If the scheme is approved by the Registrar/official liquidator, then the Central Government shall register the same and issue a confirmation to the companies.
- 4) If the Registrar has any objections he may communicate the same in writing to the Central Government within 30 days.
- 5) IF the Central Government is of the opinion that the suggestions is not in public interest of the creditors, it has to file application to the Tribunal within 60 days stating its objections
- 6) If the Tribunal is of the opinion that scheme should be considered as per procedure in Sec 232, the Tribunal may pass the necessary order
- 7) A copy of the order confirming the scheme shall be communicated to the Registrar who has a jurisdiction over the transferee company and person concerned, the Registrar shall register the scheme and issue confirmation to the companies which shall be communicated to the Registrars where the transferor company is situated.
- 8) The registration shall have the effect of the dissolution of the transferor company without winding up.
- 9) The registration of the scheme shall have the following effects:-
 - ✓ Transfer of the property and the liabilities of the transferor companies becomes the property and the liabilities of the transferee company
 - ✓ The charges shall be applicable and enforceable as if they were on the property of transferee company
 - ✓ The purchase of the shares held by dissenting shareholder or settlement of debt due to dissenting creditors such amount shall become the liability of the transferee company.
 - ✓ Legal proceedings against the Transferor Company pending before any court of law shall be constituted against the transferee company.
- 10) The transferee company shall not hold any shares on its name or in the name of trust or on behalf of its subsidiary /associate company and such shares shall be cancelled /extinguished on the merger/amalgamation.
- 11) The Transferee Company shall file an application with the Registrar along with the scheme registered indicating the revised authorized capital and pay prescribed fee due on revised capital.

- 12) The provision of this section shall apply to company in respect of scheme of compromise /arrangement or division or transfer of company.
- 13) A company covered under this section shall use the provision of section 232 for the approval of any scheme for merger and amalgamation.



SEC 234: MERGER OR AMALGAMATION OF COMPANY WITH FOREIGN COMPANY

- 1) The provisions of this Chapter shall apply to merger and amalgamation between companies registered under this act and foreign company as may be notified from time to time by Central Government.
- 2) A foreign company may merge into a company registered under this Act or vice versa.
- 3) The term and condition of the scheme of merger for the payment of consideration to the shareholder of merging company in cash/Depository receipt/partly in cash or depository receipt.

SEC 235: POWER TO ACQUIRE SHARES OF SHAREHOLDERS DISSENTING FROM SCHEMER CONTRACT APPROVED BY MAJORITY

- 1) Where in the case of transfer by the transferor company to the transferee company involving transfer of share then within 4 months after making an offer on behalf of the transferee company and which has been approved by 9/10th shareholders whose transfer is involved (other than shares already held on the date of offer /nominee of the transferee company/ subsidiary), then the transferee company within 2 months after the expiry of 4 months give notice in the prescribed manner to the dissenting shareholders that it wants to acquire the shares.

Note:-Dissenting shareholders are shareholders who oppose the firm's or the management's policy.

- 2) Where the notice is given, the transferee company can acquire shares under the scheme/contract, the shares of the approving shareholder that are to be transferred to the transferee company

- 3) However such shares can be acquired only if the dissenting shareholders makes an order to the Tribunal within 1 month from the date of notice.
- 4) Where the notice given by the transferee company has not been accepted by the Tribunal or such application is pending the transferee company, then after the expiry of 1 month the transferor company send a copy of the notice together with instrument of transfer (executed on behalf of the transferor company and by the transferee company) pay or transfer to the transferor company the amount representing the price payable.
- 5) The transferor company can register the transferee company as the holder of shares.
- 6) Within 1 month of the date of such registration, inform the dissenting shareholders of the fact of registration and the amount of consideration payable
- 7) Any sum received by the transferor company will be deposited in a separate bank account and will be held on behalf of the shareholders and will be dispatched to shareholder within 60 days.

SEC 236: PURCHASE OF MINORITY SHAREHOLDING.

- 1) In the event of acquirer or person in concern acting on behalf of acquirer becomes registered holder of 90% of issued share capital of company , or person becomes holder of 90% of shares by virtue of amalgamation, share exchange , conversion , then the acquirer of 90 % shares notify the company of their intention to buy the minority(remaining) shares.
- 2) The acquirer person or group of person shall offer to the minority shareholders of the company for buying equity shares held at a price determined on the basis of valuation of the Registered valuer.
- 3) The minority shareholder may offer the majority shareholders to buy the minority equity shareholding of the company at a price determined in accordance of such rules.
- 4) The majority shareholders shall deposit an amount equal to value of shares acquired by them in a separate bank account which will be operated by the transferor company for a period of 1 year for paying the minority shareholders within 60 days.
Note:-Such disburse meant shall be continued to be done for a period of 1 year, where the disbursement couldn't be done within 60 days.

- 5) The transferor company shall act as transfer agent in the case of receiving and paying of price to the minority shareholders for taking such shares and delivering them to the majority.
- 6) Where the physical delivery of shares could not be done within the prescribed time limit, the shares certificates shall be deemed to be cancelled, and the transferor company shall issues shares in lieu of the shares cancelled and complete the transfer and make payment of the price out of deposit by majority in advance to the minority.
- 7) Where the majority shareholders wants to make full purchase and make payment by way of deposit with the company for any shareholder who have died /whose heirs, successors, administrators have not been in the record by way of transmission, the right of such shareholders to make an offer of sale of minority shareholding shall continue to be done for a period of 3 years from the date of majority acquisition.
- 8) Where the shares of minority shareholders have been acquired according to this section on or before the date of transfer following such acquisitions , the shareholders holding 75% or more minority shareholdings negotiate for reaching a higher price for transfer, the majority shareholders shall share the additional compensation so received by them with such minority shareholder on a pro rata basis.
- 9) Where a shareholder/majority shareholder fails to acquire full purchase of the shares of the minority shareholders then the provision of this section shall continue to apply to the remaining shareholder even:-
 - ✓ The shares of remaining minority shareholders have been delisted
 - ✓ The period of 1 year has elapsed.

Note:-Person acting in concert are individuals/companies acting together for a common objective or for a purpose of substantial acquisition of shares or voting rights or gaining control over the transferee company by way of agreement/understanding.

SEC 237:-POWER OF THE CENTRAL GOVERNMENT TO PROVIDE FOR AMALGAMATION IN THE PUBLIC INTEREST.

- 1) Where the Central Government is of the opinion that in the public interest it is necessary to amalgamate 2 companies, the Central Government may by notification in the official Gazette, provide for amalgamation of 2 companies into a single company and all the assets and the liabilities, rights, privileges, interest and authorities shall be as per the specified order.

- 2) The transferee company may continue the legal proceedings against the transferor company and the incidental, supplemental provisions may apply, which the Central Government feels necessary to give effect to such amalgamation.
- 3) The rights of the creditors, debenture holder of the transferor company shall be the same after the amalgamation against the transferee company (new company), where the rights of the creditors, debenture holders in the new transferee company is less than the original company then they will be compensated for such difference.
- 4) Any person who is aggrieved by the assessment of compensation may appeal to the Tribunal within 30 days from the date of assessment by the official Gazette, and the Tribunal may then decide.
- 5) No order shall be made under this section unless
 - ✓ A copy of the proposed order has been sent to all the companies.
 - ✓ The time for appeal has expired or the appeal has been disposed off
 - ✓ The Central Government has modified the order, on the basis of modification received by the company within period of 2 month maximum from the date on which the company is received by the company/ shareholders / creditors / or any class of them
- 6) The copies of the order after it is made shall lie before the Parliament

SEC 238: REGISTRATION OF OFFER OF SCHEMES INVOLVING TRANSFER OF SHARES

- 1) Where there is a transfer of shares /class of shares from the transferor company to the transferee company.
- 2) Such transfer shall be accompanied by the following:-
 - ✓ Circular containing such offer to the member of the transferor company by its director to accept such offer shall be accompanied by the necessary information.
 - ✓ A statement on behalf of the transferee, that necessary cash will be available
 - ✓ Such circular shall be presented to the Registrar for Registration, and only after that only the circular will be registered.
- 3) Where the circular is refused to be registered by the Registrar, then appeal will lie before the Tribunal.
- 4) The director who issuing the circular, but not presenting for registration shall be punishable with

Fine: - Minimum:- Rs 25000

Maximum:-Rs 5 lakhs.

SEC 239: PRESERVATION OF BOOKS AND PAPERS OF AMALGAMATED COMPANIES.

- 1) The books and the papers of the company which has been amalgamated /or whose shares are acquired shall be disposed of only with the permission of the Central Government.
- 2) Before granting such permission, the Government may appoint person to examine the books for the purpose of ascertaining whether it contains any evidence relating to promotion/formation /management/affairs of the transferor company /its amalgamation /acquisition of shares.

SEC 240: LIABILITY OF THE OFFICERS IN RESPECT OF OFFENCES COMMITTED PRIOR TO MERGER/AMALGAMATION

- 1) When the officer in default commits any offence before the transfer / merger/amalgamation/acquisition shall continue after such merger/amalgamation and transfer.

SEC 241: APPLICATION OF THE TRIBUNAL FOR RELIEF IN CASE OF OPPRESSION ETC.

- 1) When a member complains that the :-
 - ✓ The affairs of the company are being conducted in a manner prejudicial to the interest of the company, oppressive to him.
 - ✓ When there has been a material change , and because of such change the affairs of the company are conducted prejudicial to the interest of members or class of members
 - ✓ May apply to Tribunal, such member should have the right to apply under sec 244
- 2) The Central Government if it is the opinion of the affairs of the company are prejudicial to the interest of the company then it may apply to the Tribunal.

SEC 242: POWER OF THE TRIBUNAL

- 1) If on the application under Section 241, the Tribunal is of the opinion that
 - ✓ The company affairs are being conducted in the manner prejudicial to the interest of the company and
 - ✓ That to wind up the company would be unfair to any member/members, and if the facts provide that it would be just and equitable that the company should be wound up.
 - ✓ The Tribunal may with the view of bringing to an end of matter, make such order as it thinks fit.
- 2) An order under that section should provide:-
 - (a) the regulation of conduct of affairs of the company in future;
 - (b) the purchase of shares or interests of any members of the company by other members thereof or by the company;
 - (c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;
 - (d) restrictions on the transfer or allotment of the shares of the company;
 - (e) The termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;
 - (f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e)
 - (g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;
 - (h) removal of the managing director, manager or any of the directors of the company;
 - (i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;
 - (j) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);
 - (k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;
 - (l) imposition of costs as may be deemed fit by the Tribunal;
 - (m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

- 3) A certified copy of the order of the Tribunal shall be filed by company with the Registrar within 30 days of the order of the Tribunal.
- 4) The Tribunal may make an interim order for regulating the affairs of the company affair upon such terms and conditions as appears fair and equitable.
- 5) Where an order of the Tribunal requires to make alteration in the memorandum and articles of the company, then such alteration shall be made in the respect of the provision which are inconsistent with the order either in the memorandum or articles.
- 6) The alterations made by the memorandum /articles of the company shall have the same effect as if they have been made in accordance with the provisions of the Act.
- 7) A certified copy of order altering the company memorandum/articles shall within 30 days be filed by the company with the Register who shall register the same.
- 8) If a company contravenes the provision of the Act he shall be punishable
Fine:-Minimum_ 1 lakh
Maximum_25lakh
Every officer: - Imprisonment –minimum- 6 months
Fine: - Minimum- Rs 25000
Maximum- Rs 1 lakh
Or both.

SEC 243: CONSEQUENCES OF TERMINATION **/MODIFICATION OF CERTAIN AGREEMENTS**

- 1) Where under section 242 a section is terminate ,set aside or modified, such order
 - ✓ Shall not give rise to any claims against the company by any person for damages /compensation for loss of office whether the agreement agrees or not.
 - ✓ No managing director /director/manager/ whose agreement is terminated shall for a period of 5 years be appointed as director/manager without the permission of the Tribunal.
- 2) Any person who knowingly acts a director/ manager of a company in contravention of the section he shall be punishable with the following:-
Fine: - 5 lakhs
Imprisonment: - 6 months or both

SEC 244: RIGHT TO APPLY UNDER SECTION 241

1) The following members shall apply under this section:-

- In the case of company having share capital
 - ✓ Minimum 100 members or
 - ✓ 1/10th of its total member or
 - ✓ Members holding than 1/10th of the issued share capital

Condition: - Applicant have paid all calls and other sums due on their shares

- In the case of company not share capital
 - ✓ 1/5th of its total member.

2) Where any members of a company are entitled to make an application, any one or more of the party having obtained the consent may make an application on behalf and for the benefit of them.

SEC 245: CLASS ACTION

1) Where the members /depositors are of the opinion that the management are conducted in the manner prejudicial to the interest of the company , then it may file an application before the Tribunal on behalf of the members for seeking the following orders

- ✓ To restrain the company from committing an act which is ultra vires the articles or memorandum of the company;
- ✓ To restrain the company from committing breach of any provision of the company's memorandum or articles;
- ✓ declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors;
- ✓ to restrain the company and its directors from acting on such resolution;
- ✓ to restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;
- ✓ to restrain the company from taking action contrary to any resolution passed by the members
- ✓ To claim damages or compensation or demand any suitable action against

• The company /directors for fraudulent /unlawful /wrongful act /omission /conduct.

• The auditor including the audit firm for any improper/misleading statement in his audit report.

• Any expert /advisor/consultant for any incorrect or misleading statement made to the company.

- ✓ To seek any remedy as the Tribunal may deem fit.

- 2) The damages or the compensation shall be from both the audit firm as well each partner who was involved in making improper or misleading statement.
- 3) The requisite number of member shall be as under
 - In the case of company having share capital
 - ✓ Minimum 100 members or
 - ✓ 1/10th of its total member or
 - ✓ Members holding than 1/10th of the issued share capital
 - Condition: - Applicant have paid all calls and other sums due on their shares
 - In the case of company not share capital
 - ✓ 1/5th of its total member.
- 4) In considering the application the Tribunal shall take into account the
 - (a) whether the member or depositor is acting in good faith in making the application for seeking an order;
 - (b) any evidence before it as to the involvement of any person other than directors or officers of the company on any of the matters provided in clauses (a) to (f) of subsection(1);
 - (c) whether the cause of action is one which the member or depositor could pursue in his own right rather than through an order under this section;
 - (d) any evidence before it as to the views of the members or depositors of the company who have no personal interest, direct or indirect, in the matter being proceeded under this section;
 - (e) where the cause of action is an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be—
 - (i) authorised by the company before it occurs; or
 - (ii) ratified by the company after it occurs;
 - (f) where the cause of action is an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company.
- 5) If the application is admitted then the Tribunal shall have regard to the following:-
 - ✓ Public notice shall be served on the admission to all the members /depositors
 - ✓ All application should be grouped into a single application and a lead applicant should be chosen, (tribunal has the power to choose lead applicant who shall be in charge of the proceedings on the applicants aside.
 - ✓ class action for the same cause shall not be allowed
 - ✓ The company who behaves in the fraudulent manner shall be responsible to bear the expenses.
- 6) The order passed by the Tribunal shall be binding on the company, its member, auditors, audit firm, expert, advisor and any person associated with company.

- 7) A company which fails to comply with the provisions shall be punishable with
Fine:-Minimum-5 lakhs
Maximum-25 lakhs
And every officer shall be punishable with
Imprisonment- 3 years
Fine:-Minimum- 25000
Maximum-1 lakh
- 8) Where the application filed before the Tribunal is waste of time /or it is wrong then Tribunal may reject the application and ask the other party to pay the expenses which may be maximum 1 lakh.
- 9) The provisions of the act will not be applicable to banking company

SEC 246: APPLICATION OF CERTAIN PROVISIONS TO THE PROCEEDING UNDER SECTION 241 TO SEC 245.

- 1) The provisions of section 337 to 341 (both inclusive) shall apply in relation to an application made to the Tribunal under section 241 /245.

SEC 247: VALUATIONS BY REGISTERED VALUER

- 1) Where a valuation is required to be made in respect of shares, debenture, goodwill, or any other asset or net worth of companies, it shall be done by person having such qualification and experience and registered as valuers.
- 2) The valuer appointed shall:-
- ✓ Make impartial, true, and fair valuation of any assets required to be valued
 - ✓ Exercise due diligence while performing his functions
 - ✓ Make valuation in accordance with the rules as prescribed.
 - ✓ Not undertake valuation of assets where he is interested directly/indirectly or become so interested at any time during the valuation of assets.
- 3) If the valuer contravenes the provision of this section he shall be punishable
Fine:-Minimum:- 1 lakh
Maximum:-5 lakh.
Imprisonment:- 1 year.
- 4) Where the valuer has been convicted , he shall be liable to:-
- ✓ Refund the remuneration received by him to the company
 - ✓ Pay for the damages to the company /person for loss arising out of incorrect /misleading statement of particular made in his report.

SEC 248: POWER OF REGISTRAR TO REMOVE NAME OF THE COMPANY FROM REGISTER OF COMPANIES

- 1) Where the Registrar has reasonable cause to believe that:-
 - ✓ A company has failed to commence its business within 1 year of incorporation
 - ✓ The subscribers to the memorandum have not paid subscription which they have undertaken to pay within a period of 180 days from the date of incorporation
 - ✓ A company is not carrying any business /operation for a period of 2 immediately preceding financial years and has not made any application within the period of attaining dormant status
 - ✓ He shall send notice to the company and all director requesting them to remove his name from the ROC and send their representations along with the copies of relevant documents within a period of 30 days
- 2) A company may after extinguishing all its liabilities by special resolution or consent of 75% members in term of paid up share capital file an application to remove the name of company from the ROC.
- 3) However this provision will not be applicable to companies registered under sec 8.
- 4) A notice will be published in the prescribed manner and also in the official Gazette for the information of general public.
- 5) At the expiry of the time in the notice, the name of the company will be struck from the registrar of companies and shall publish in the Official Gazette, once published in the Gazette, the company stands dissolved.
- 6) The Registrar before passing the order shall make sure that enough provisions has been made for the realization of the all the amounts due to the company and for the payment of discharge of its liabilities/obligations by company within a reasonable time , and if necessary undertakings from MD , director , other person in charge of the management of the company.
- 7) The liability of every director, manager, officer who was exercising any power of the management of the dissolved company shall continue and will be in force the company has not been dissolved.
- 8) However the power of the Tribunal shall remain unaffected in winding up and in striking the name of the company.

SEC 249: RESTRICTION ON MAKING APPLICATION UNDER SEC 248

- 1) An application under section 248(2) on behalf of the company shall not be made if at any time in the previous 3 month the company:-
 - ✓ Has changed its name or shifted its registered office from one state to another.
 - ✓ Has made disposal for value of property or rights held by t.
 - ✓ Has engaged in any other activity apart from those necessary for the purpose of making application or concluding the affairs of the company
 - ✓ Has made an application to the Tribunal for the sanctioning of the scheme of compromise /arrangement and the matter has not been finally concluded.
 - ✓ Is being wound either voluntarily or by the Tribunal.
- 2) If the company files an application under section 248(2) in violation of subsection (1) it shall be punishable with fine to the maximum of 1 lakh
- 3) An application filed shall be withdrawn by the company /rejected by the Registrar as soon as the condition are brought to his notice.

SEC 250: EFFECT OF THE COMPANY NOTIFIED AS DISSOLVED

- 1) Where the companies stand dissolved under sec 248, the company shall cease to carry on its business and the Certificate of Incorporation shall be deemed to have been cancelled except where the amount due to the company is to be realized and for the payment of the liabilities of the company

SEC 251: FRAUDULENT APPLICATION FOR THE REMOVAL OF NAME

- 1) Where it is found that the application has been made with the intention to deceive the creditors / evading the liabilities of the company then the person in charge shall be
 - ✓ Be jointly and severally liable to any person or persons who had incurred loss /damage in the result of dissolved company
 - ✓ Be punishable for fraud under sec 447
- 2) The Registrar may also recommend for prosecution of the person responsible for filing an application.

SEC 252: APPEAL TO THE TRIBUNAL

- 1) Any person aggrieved by the order of the Registrar may file an appeal to the Tribunal within 3 years from the date of order of the Registrar.
- 2) If the Tribunal is of the opinion that the winding up is not justified then he may order for the restoring of the name.
- 3) Before making such order, the Tribunal shall give an opportunity of being heard to the company, Registrar and all the person concerned.
- 4) IF the Registrar is satisfied that the name of the company was struck from the ROC ,on the basis of incorrect information furnished by the company/ director , he may within a period of 3 years from the date of passing of order file an application before the Tribunal seeking restoration of the name of the company
- 5) A copy of the order passed by the Tribunal shall be filed within 30 days by the company and the name of the company shall be restored in the ROC and fresh certificate of incorporation shall be issued.
- 6) The striking name of the company does not materially affect the creditors of the company because the creditor may enforce their claim against every director /other officer of the company and within 20 years from the date of publication in the official gazette that the name of the company which has be struck off to be restored. And the Tribunal may order for such restoration.

SEC 253: DETERMINATION OF SICKNESS

- 1) For a company to be declared a sick company , an application has to be filed with the Tribunal by a secured creditor,
- 2) The Secured Creditor will file an application for the non-payment or failure to pay the security or compound it within 30 days of the service of notice.
Note:-Secured Creditors means creditors who represent 50 % or more of the outstanding amount of the debt.
- 3) The applicant along with the application for winding up also give an application for stay of an proceedings of winding up of the company/ appointment of receiver and no suit of recovery of any money/ enforcement of security shall be proceeded with
- 4) The Tribunal may pass an order which shall be effective for a period of 120 days.

- 5) The company may also file an application for winding up
- 6) The RBI/Central Government/Public financial institution, if it has reasons to believe that a company has become a sick company make reference in the respect of such company to the Tribunal.
- 7) However reference cannot be made in the respect of the following :-
 - ✓ The Government of any state unless one or more undertaking are situated in that state
 - ✓ A public financial institution/ Scheduled bank/state level institution unless it has by reason of financial assistance or obligation with respect to such company
- 8) Where an application has been filed , the company shall not dispose of or otherwise enter into obligation except as required in normal course of business
- 9) The Tribunal shall within a period of 60 days of the receipt of application determine whether the company is sick or not.
- 10) The Tribunal shall declare a company a s sick company only when the company has given notice of application and a reasonable opportunity to reply to the notice is given within 30 days
- 11) The Tribunal if it is satisfied that the company is a sick company after considering all the relevant fact decide whether it is practicable for the company to make repayment of its debts within reasonable time.
- 12) If the Tribunal thinks it fit for the company to pay its debt within reasonable time then it shall give such time to the company for the repayment of debt

SEC 254: APPLICATION FOR REVIVAL AND REHABILITATION

- 1) After a company has been declared as sick company under Section 253, a secured creditor make application to the Tribunal for determining the measures for its revival and rehabilitation.
- 2) IF the secured creditor having three fourth in value of the amount outstanding against financial assistance given to the borrower is able to recover their secured debt under SARFAESI Act then such reference shall come to an end.

- 3) An application shall be accompanied by
 - ✓ Audited financial statements of the immediately preceding financial year
 - ✓ Such particulars and document authenticated along with fees prescribed
 - ✓ Draft of revival and rehabilitation of the company
- 4) Where a sick company has no draft scheme of revival and rehabilitation, it shall file a declaration to that effect along with the application.
- 5) An application made under subsection (1) shall be made within a period of 60 days from the date of determination of the company as sick company by Tribunal under Section 253.

SEC 255: EXCLUSION OF CERTAIN TIME IN COMPUTING PERIOD OF LIMITATION

- 1) For the purpose of computing the period of limitation for any suit or application in the name of company for which application, the period of the stay shall be exceeded.

SEC 256: APPOINTMENT OF INTERIM ADMINISTRATOR

- 1) On the receipt of the application under Section 254, Tribunal shall within 7 days from such receipt:-
 - ✓ Fix a date for hearing within maximum 90 days from the date of its receipt.
 - ✓ Appoint an Interim Administrator to convene a meeting of creditor with the provision of section 257 to be held within 45 days from the receipt of order of the Tribunal filed along with the application, it is possible to revive and rehabilitate the sick company and such other matters within 60 days from the date of order.
 - ✓ Where no draft scheme is filed by the company and declaration has been made by the Board of Directors. Tribunal may direct the interim administrator to take over the management of the company
 - ✓ Issue such direction to interim administrator as the Tribunal may consider necessary to protect and preserve the assets of the company
- 2) Where an interim administrator has been directed to take over the management of the company, the directors and the management shall give all the possible cooperation to the interim administrator to manage the affairs of the company.

SEC 257: COMMITTEE OF CREDITORS

- 1) The interim administrator shall appoint committee of creditors to take over the management of the company, the maximum number of member will be 7 and as far as possible with representative of each class of creditor.
- 2) The Interim administrator shall decide on the meeting of the creditors, holding of meeting, election of chairperson.
- 3) The interim administrator may direct promoter, director , key managerial personnel to attend any meeting and furnish such information to the interim administrator

SEC 258: ORDER OF TRIBUNAL

- 1) On the date of hearing fixed by the Tribunal after considering the report by interim administrator , if the Tribunal is satisfied that the creditors who represent three fourth in the value of outstanding amount against sick company present and voting have resolved that:-
 - ✓ Where it is not possible to revive and rehabilitate such company, The Tribunal will record the opinion and proceed against winding up of such company. OR
 - ✓ By adopting certain measures the sick company may be revived and rehabilitated, the Tribunal shall appoint interim administrator to carry out the revival and rehabilitation of the sick company.
 - ✓ Tribunal if it think fits appoint interim administrator as company administrator.

SEC 259: APPOINTMENT OF ADMINISTRATOR.

- 1) The interim administrator/company administrator shall be appointed by the Tribunal from databank appointed by Central Government/ institute or agency authorized by Central Government consist of CS, CA, Cost Accountant and other professionals as may be notified by Central Government
- 2) The Tribunal orders the condition for the appointment of interim/company administrators
- 3) The Tribunal may direct the company administrator to take over the assets /management of the company.
- 4) The Company administrator may with the approval of the Tribunal engage in the service of experts.

SEC 260: POWER AND DUTIES OF COMPANY ADMINISTRATOR

- 1) The company administrator shall perform such function as Tribunal may direct.
- 2) The company administrator may in the respect to the company
 - ✓ A complete inventory for all assets and liabilities
 - ✓ All books of accounts, register, maps, plan, and documents of title by whatever name called.
 - ✓ A list of shareholder, creditor (secured creditor, unsecured creditor)
 - ✓ A valuation report in the respect of shares in order to achieve at the reserve price or for the fixation of lease rent /share exchange ratio.
 - ✓ Estimate of reserve price, lease rent, share exchange ratio.
 - ✓ Preform accounts of company where audited accounts are not available.
 - ✓ List of workmen of the company and dues referred to in section 325.

SEC 261: SCHEME OF REVIVAL AND REHABILITATION

The company administrator shall prepare/ cause to prepare a scheme of revival and rehabilitation of the sick company after the consideration of the draft scheme filed along with the application under section 254.

- 1) A scheme prepared in relation to sick company may provide one of the following measures:-
 - ✓ Financial reconstruction of the sick company
 - ✓ Proper management of the sick company, or by taking over the management of the sick company.
 - ✓ The amalgamation of sick company with the other company and vice versa
 - ✓ Takeover of the sick company by solvent company
 - ✓ The sale or lease of part /whole of any asset/business of the sick company
 - ✓ Rationalise of managerial personnel, supervisory staff and workmen in accordance with law.
 - ✓ Such preventive, ameliorative and remedial measures as may be appropriate.
 - ✓ Repayment/Rescheduling/Restructuring of the debts or the obligations of the sick company to its creditor/creditors

SEC 262: SANCTION OF SCHEME

- 1) The scheme prepared in Section 261 shall be placed by the company administrator before the creditors of the sick company who shall approve within 60 days, or by the Tribunal within 120 days.
- 2) The company administrator shall convene separate meetings of secured and unsecured creditors of the sick company. IF the scheme is approved by unsecured creditor who hold 1/4th of the amount owed by the company and secured creditor who represent 3/4th of the outstanding amount given by such creditor to the sick company, then the company administrator shall submit the scheme for the approval to the Tribunal.
- 3) Where the sick company amalgamates with the other company then along with the approval of the creditor, it is necessary that it has to be approved by the respective shareholder of the companies in the respective general meeting, and no such scheme unless it is approved with/without modification by shareholder of the company
- 4) The scheme prepared by the company administrator shall be examined by the Tribunal with modifications and sent to the sick company and company administrator and in case of amalgamation to other company and Tribunal shall publish the draft scheme in daily newspaper within specified time as decided by Tribunal.
- 5) The complete draft shall be kept at the registered office of the company mentioned in the advertisement.
- 6) The Tribunal shall within 60 days after it is satisfied that the scheme has been approved pass an order sanctioning the scheme.
- 7) Where a sanctioned scheme provided for the transfer of any property/liability of the sick company to other company or transfer of any property /liability to the sick company then from the date when the scheme comes into operation, the property and the liability shall become the property and liability of the other company.
- 8) The Tribunal may review the scheme and make modification or may ask the company administrator to prepare fresh scheme for providing the necessary measures.
- 9) The sanctioned scheme shall become the conclusive evidence that all the requirements of amalgamation/reconstruction and merger have been complied, and the scheme which is certified by the officer of the Tribunal in writing shall be admitted as evidence in legal proceedings.
- 10) A copy of the sanctioned scheme shall be filed with the Registrar by the sick company within 30 days from the receipt of copy.

SEC 263: SCHEME OF BINDING

- 1) From the date of operation of the sanctioned scheme, it shall be binding on both sick company and the transferee company or other company, employees, shareholder, creditors and guarantors of the said companies

SEC 264: IMPLEMENTATION OF THE SCHEME

- 1) The Tribunal may modify or terminate any contract/agreement/obligation entered into by the company with any person.
- 2) The Company administrator may be authorized by the Tribunal to implement a sanctioned scheme till its successful implementation on such terms and condition and for that purpose require to file periodic reports
- 3) Where the whole /substantial assets of the undertaking of the sick company are sold under the sanctioned scheme in such manner as the Tribunal may direct, the debtors and creditors have the power to scrutinize and make an appeal of the review before final order.
- 4) Where the scheme fails due to non-implementation of obligations under the scheme, the company, secured creditors, Transferee Company in the case of amalgamation make application before the Tribunal for modification of the scheme, declare of the scheme as failed and the company may be wound up.
- 5) The Tribunal within 30 days of the presentation of application /modification declaring the scheme as failed and pass an order for winding up if it is consented by 3/4th of the secured creditor.
- 6) Where the application is made before the Tribunal and if 3/4th of the secured creditor make an effort to recover the debt under SARFAESI Act, then such application will come to an end.

SEC 265: WINDING UP OF THE COMPANY ON REPORT OF COMPANY ADMINISTRATOR

- 1) If the scheme is not approve by the creditors then company administrator shall submit a report to the Tribunal within 15 days and order the winding up of the company,
- 2) On passing such winding up order, the Tribunal shall conduct the proceedings for winding up the sick company in accordance with the provisions of the act

SEC 266: POWER OF THE TRIBUNAL TO ASSESS DAMAGE AGAINST DELINQUENT DIRECTORS

- 1) If in the course of scrutiny /implementation of any scheme or proposal and it appears to the Tribunal that any person who has taken part in promotion/formation/management of the sick company and includes director , manager, officer of the sick company
 - ✓ Has misapplied /retained or become accountable of any property of the sick company
 - ✓ Has been guilty of misfeance, malfeasance, breach of trust in relation of sick company
 - ✓ It may order the person to repay /restore the money/property with or without interest in the respect of such misapplication/ retainer/breach of trust as the Tribunal thinks just and proper.
- 2) The Tribunal shall take the legal action against a person for the punishment of fraud under section 447.
- 3) If the Tribunal is satisfied that on the basis of information and evidence that:-
 - ✓ Any person who is a director /officer has diverted funds or other property for other purpose and
 - ✓ Managed the affairs of the company in a manner which is not in the best interest of the company
 - ✓ Then the Tribunal shall order all the Public financial institution , Scheduled banks not to give any financial assistance for a period of 10 years to such person /company/body corporate **OR**
 - ✓ Disqualify that particular director /manager for a maximum period of 6 years.
- 4) No order of such Tribunal shall be valid unless he is given opportunity of being heard.

SEC 267: PUNISHMENT OF CERTAIN OFFENCE

- 1) Any person who violates the provision of Chapter, order of Tribunal/Appellate Tribunal, attempts to tamper with the records of reference shall be punishable
With **Imprisonment: - 7 years**
Fine: - 10 lakhs

SEC 268: BAR OF JURISDICTION.

- 1) No appeal shall lie in any court /other authority, no civil court shall have any jurisdiction in respect of any matter in which Tribunal/Appellate Tribunal is empowered, no injunction is granted by any court in respect of action taken or proposed to be taken in pursuance of any court.

SEC 269: REHABILITATION AND INSOLVENCY FUND

- 1) For the purpose of Rehabilitation, Insolvency fund for the purpose of the sick companies a fund is created by the name Rehabilitation and Insolvency Fund.
- 2) The following sums shall be credited to the account:-
 - ✓ Grant made by the Central Government for the purpose of the Fund.
 - ✓ The amount deposited by companies as contribution to Fund
 - ✓ The amount given to the Fund from any other source
 - ✓ The income from the investment of the amount of the fund.
- 3) A company may make an application to the Tribunal for withdrawal of the fund to the maximum of the contributed by it, for making payment to the workmen, protecting the assets of the company /meeting the incidental cost during the proceedings
- 4) The fund shall be managed by the Company administrator.

SEC 271: CIRCUMSTANCES IN WHICH COMPANY MAY BE WOUND UP BY THE TRIBUNAL

- 1) A company may on the petition under section 272 be wound up by the Tribunal
 - ✓ If the company is unable to debts
 - ✓ If the company has by special resolution, proposes to wind the company
 - ✓ If the company acts against the integrity and sovereignty of India, security of the state, public order, decency or morality.
 - ✓ If the Tribunal has ordered the winding up of the company
 - ✓ If on application made by the Registrar, or any other person authorized by the Central Government, the affairs of the company have been conducted in the fraudulent manner
 - ✓ If the company has made default in filing its annual return or financial statement for immediately preceding five consecutive financial years
 - ✓ If the Tribunal, it is just and equitable that the company should be wound up

2) A Company shall be unable to pay its debts:-

- ✓ If a creditor by assignment to whom the company is indebted for an amount exceeding 1lakh rupees has sent a notice via registered post or otherwise and the company has failed to deliver it to pay the amount within 21 days after the receipt of the notice .
- ✓ If any order /decree in favour of creditor is not satisfied in whole
- ✓ If it is proved to the satisfaction of the Tribunal , the company is unable to pay its debts, and while determining the amount of debts , the Tribunal shall take into account the contingent and future liabilities of the company

SEC 272: PETITION OF WINDING UP

- 1) Petition of the tribunal for the winding up of the company shall be presented by
- a. The Company
 - b. Any Creditor/including any contingent or prospective creditors
 - c. Any contributory
 - d. The Registrar
 - e. Any person authorized by the Central Government

In the case falling under section 271(c) by the Central or State government

2) A secured creditor, the holder of any debentures, the trustee of debenture.

3) A contributory

Note:-

- ✓ A contributory can present the petition for winding up even if he is a holder of fully paid shares/ if the company has no assets/surplus assets left for distribution for the satisfaction of liabilities and the contributory is registered within 6 months during 18 months of the winding up before the commencement of the winding up
- ✓ The registrar shall not present a petition on the winding up unless it appears from the company balance sheet that the company is not able to pay its debt , or report from the inspector appointed under section 210 that the company is unable to pay its debt
- ✓ Petition shall be admitted only if it is accompanied by statement of affair
- ✓ The prospective creditor can present the petition of winding up, only if the Tribunal is satisfied that there is a prime reason of winding up of the company.
- ✓ A copy of the petition shall be filed with the Registrar, and the registrar shall file the same with the Tribunal within 60 days of the receipt of such petition.

SEC 273: POWERS OF TRIBUNAL

- 1) The Tribunal on receiving the petition for winding up under Section 272 pass the following orders:-
 - ✓ Dismiss it
 - ✓ Make interim order
 - ✓ Appoint provisional liquidator till winding up
 - ✓ Make order for winding up
 - ✓ any other order as it think fit
- 2) An order shall be made within 90 days from the date of presentation of petition.
- 3) Before appointing the provisional liquidator, the Tribunal shall give notice to the company and afford a reasonable opportunity, unless for special reason the Tribunal think to dispense with it
- 4) The Tribunal shall not refuse winding up on the ground that the company has no assets or the assets have been mortgaged for equal value or greater than value of assets
- 5) When an alternative remedy is available, and if the petitioners are not following the remedy then the Tribunal may refuse to make order of winding up

SEC 274: DIRECTIONS FOR FILING STATEMENT OF AFFAIRS

- 1) Where the petition for winding up is filed before the Tribunal by any person other than company, The Tribunal shall if its satisfied that the winding up of the company , by order direct the company to file the objections along with statement of affair within 30 days of such order and in the manner as may be prescribed.
- 2) The Tribunal may allow further period of 30 days in the situation of contingency or special circumstances
- 3) The Tribunal may direct the petitioner to deposit such security for cost as a precondition to issue any direction to the company
- 4) A company which fail to file the statement of affair cannot oppose the petition and such directors and officers of the company found responsible for noncompliance shall be liable for punishment.

- 5) In the respect of winding orders, the director and every officer shall within a period of 30 days submit the books of accounts and audited up to the date at the cost of the company.
- 6) If the director /officer of the company contravenes the provision, the director or the officer shall be punishable with
Imprisonment – 6 months
Fine – Minimum- Rs 25 thousand
a. Maximum- Rs 5 lakhs
- 7) The complaint may be filed before the Special Court of the Registrar, provisional liquidator, Company liquidator, or any person authorized by Tribunal.

SEC 275: COMPANY LIQUIDATORS AND THEIR APPOINTMENTS

- 1) The Tribunal at the time of passing any order of winding up shall appoint an official Liquidator or a liquidator from the panel as Company liquidator
- 2) The Company liquidator shall be appointed from the panel maintained by the Central Government consisting the names of CA. advocates, CS, Cost accountants and other professionals
- 3) Where the provisional liquidator is appointed by the Tribunals, his power is restricted to that given in the orders
- 4) The Central Government shall remove the name of any person or firm or body corporate from the panel on the grounds of misconduct, breach of duties or professional competence
- 5) The terms and the conditions of the appointment of the provisional liquidator and fee payable to him shall be specified on the basis of the task required to be performed, qualification of such liquidator
- 6) On appointment of provisional or company liquidator, the liquidator within 7 days shall file a declaration from the date of appointment disclosing conflict of interest or lack of independence

SEC 276: REMOVE AND REPLACEMENT OF LIQUIDATOR

- 1) The Tribunal may remove the provisional or the company liquidator on the following grounds:=
 - ✓ Misconduct
 - ✓ Fraud or misfeasance
 - ✓ Professional incompetence
 - ✓ Inability to act as provisional liquidator /company liquidator
 - ✓ Conflict of interest / lack of independence
- 2) In the event of death, resignation or removal of the provisional/Company liquidator, Tribunal may transfer the work assigned to another Company liquidator for the reason recorded in writing.
- 3) Where the Tribunal is of the opinion that liquidator is responsible for causing any damage to the company, the Tribunal may recover the loss or damage from the liquidator and pass such orders as it thinks fit.
- 4) The Tribunal before passing an order will give a reasonable opportunity of being heard to the provisional liquidator/company liquidator

SEC 277: INTIMATION TO THE COMPANY LIQUIDATOR PROVISIONAL LIQUIDATOR AND REGISTRAR.

- 1) Where an order for appointment of provisional liquidator /winding up of a company is made by the Tribunal within 7 days from the date of passing order shall intimate the company liquidator/provisional liquidator and the Registrar.
- 2) After receiving the copy of the appointment order of the provisional liquidator/winding up order, the Registrar will make recordings in his books and notify the official Gazette and in case of the listed company, the Registrar shall intimate about the appointment to all the stock exchange, where securities are listed.
- 3) The winding up order acts as a notice of discharge of duties to the officers, employees and workmen of the company except when the company is continuing.
- 4) The company liquidator shall , make an application to the Tribunal for constituting a winding up Committee within 3 weeks, which will assist and monitor the progress of liquidation proceedings by Company Liquidator .

- 5) The winding up Committee will comprise of the following:-
- ✓ Official liquidator of the Company.
 - ✓ Nominee of the secured creditors
 - ✓ Professional nominated by the Tribunal.
- 6) The company liquidator shall be the convener of the meetings of the winding up committee, which shall assist and monitor the liquidation proceeding:-
- ✓ Taking over assets
 - ✓ Examination of the state of affairs
 - ✓ Recovery of property cash, other assets of the company including benefits derived there from.
 - ✓ Review of audit reports and accounts of the company
 - ✓ Sale of assets
 - ✓ Finalization of list of creditors and contributories
 - ✓ Compromise, Abandonment and settlement of claims
 - ✓ Payment of dividend
 - ✓ Any other function, as Tribunal from time to time.
- 7) The company liquidator shall place before the Tribunal report along with the minutes of the committee monthly which will be signed by the members present in the meeting for consideration till the final report of dissolution is submitted before the Tribunal.
- 8) The Company liquidator shall prepare the draft final report for consideration and approval of winding up committee
- 9) The final report which is approved by the winding up committee shall be submitted by the company liquidator before the Tribunal for passing of dissolution order.

SEC 278:- EFFECT OF WINDING UP ORDER

- 1) The orders for winding of the company shall be in favour of all the creditors and all contributories, as if the creditors and the contributories made a joint petition

SEC 279:- STAY OF SUITS ETC. ON WINDING UP

- 1) When the winding up orders has been passed /provisional liquidator has been appointed then no other suit /legal proceeding shall commence or if such suits are pending before the court then they shall be proceeded against the company with the permission of the Tribunal
- 2) The application to the Tribunal seeking the permission shall be disposed within 60 days.
- 3) However this will not apply to any proceeding pending in appeal before the Supreme Court or High Court.

SEC 280: JURISDICTION OF TRIBUNAL

- 1) The Tribunal have the power to entertain/dispose of the following:-
 - ✓ Any suit/proceeding pending before the court
 - ✓ Any claim made by the company including its branches.
 - ✓ Any claim made against the company including its branches
 - ✓ Any application made under Section 233
 - ✓ Any Scheme submitted under Section 262
 - ✓ Any question whether relating to law or of fact

Whether such suits has started, or such claim has arisen or such scheme has been submitted before the winding up of the company

SEC 281: SUBMISSION OF REPORT BY COMPANY LIQUIDATOR

- 1) Where the Tribunal has made a winding up order or appointed a Company Liquidator, then within 60 days such liquidator from the order, submit a report containing:-

(a) The nature and details of the assets of the company including their location and value, stating separately the cash balance in hand and in the bank, if any, and the negotiable securities, if any, held by the company:

Note: -The valuation of the assets shall be obtained from registered valuers for this purpose;

(b) Amount of capital issued, subscribed and paid-up;

(c) the existing and contingent liabilities of the company including names, addresses and occupations of its creditors, stating separately the amount of secured and unsecured debts, and in the case of secured debts, particulars of the securities given,

whether by the company or an officer thereof, their value and the dates on which they were given;

(d) the debts due to the company and the names, addresses and occupations of the persons from whom they are due and the amount likely to be realised on account thereof;

(e) guarantees, if any, extended by the company;

(f) list of contributories and dues, if any, payable by them and details of any unpaid call;

(g) details of trade marks and intellectual properties, if any, owned by the company;

(h) details of subsisting contracts, joint ventures and collaborations, if any;

(i) details of holding and subsidiary companies, if any;

(j) details of legal cases filed by or against the company; and

(k) any other information which the Tribunal may direct or the Company

2) The company liquidator shall include in its report

- ✓ The manner in which the company was promoted /formed
- ✓ If any fraud has been committed during the promotion/formation
- ✓ By any officers
- ✓ In relation to company formation and any matters
- ✓ Which is necessary to bring to the notice of the Tribunal.

3) The company liquidator shall also make a report on the company's viability, and the steps necessary for maximizing the value of the assets of the company.

4) IF necessary , the company liquidator may make further reports

5) The report can be inspected by the creditor/contributory/or his agent, and he may copies after the payment of prescribed fees.

SEC 282: DIRECTIONS OF THE TRIBUNAL ON REPORT OF THE COMPANY LIQUIDATOR

1) Based on the report of the Company Liquidator, the Tribunal may fix the time limit with which the entire proceedings are to be completed.

2) After hearing the Company Liquidator, creditor and contributories, it will not be advantageous /economical to the proceedings shall be completed and the company dissolved.

3) After hearing to the parties (Creditor, contributories, and any interested person) order the sale of the company as going concern /asset.

- 4) The Tribunal may appoint a sale committee comprising of the creditors, promoters, and officers, to assist the Company Liquidator in the sale.
- 5) Where the reports received from the Company liquidator/Central Government/that fraud has been committed, The Tribunal order the investigation of the winding up under section 210, and on the consideration of the report may pass order and give direction under Section 339 to 342, direct the Company liquidator to file criminal complaint against person who were involved in the commission of fraud.
- 6) The Tribunal may order for taking such steps, as may be necessary to protect, preserve, and enhance the value of the assets of the company.
- 7) The Tribunal may give such order /or give such directions as it consider fit.

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