

CORPORATE AND ECONOMIC LAWS: A CAPSULE FOR QUICK REVISION

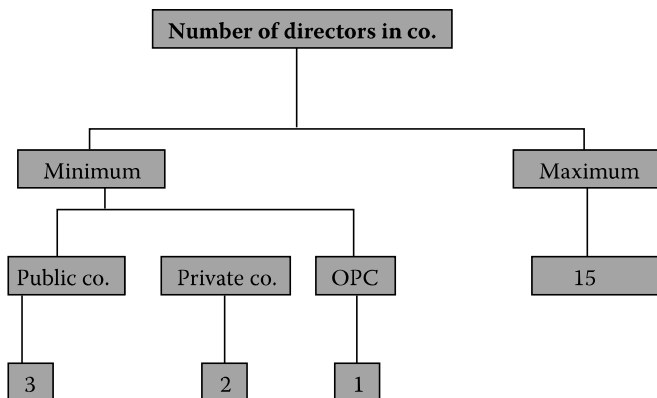
At the Final level, the Company Law portion of the subject “Corporate and Economic Laws” largely involves analysis and application of provisions of the Companies Act, 2013 to solve application-oriented issues. This subject is very dynamic on account of the large number of amendments/ circulars/ notification as issued by the Ministry of Corporate Affairs.

In this capsule for students, an attempt has been made to capture the significant provisions of Companies Act, 2013 (Sections 149 onwards). You are advised to read the August, 2017 edition of the Study Material with RTP of November 2018 for a thorough understanding of the relevant provisions and the related amendments of Companies Act, 2013 and solve the illustrations and exercise questions given therein to hone your application skills. This capsule on Final Paper 4: Corporate and Economic Laws is intended to assist you in the process of revision of concepts discussed in the Study Material.

CHAPTER 1: APPOINTMENT AND QUALIFICATIONS OF DIRECTORS

1. Company to have Board of Directors (Section 149)

(i) Number of directors [Section 149(1)]



* A co. may appoint more than 15 directors after passing special resolution (SR)

(ii) Provision related to Women director (WD) [Proviso to section 149(1) + relevant Rule]

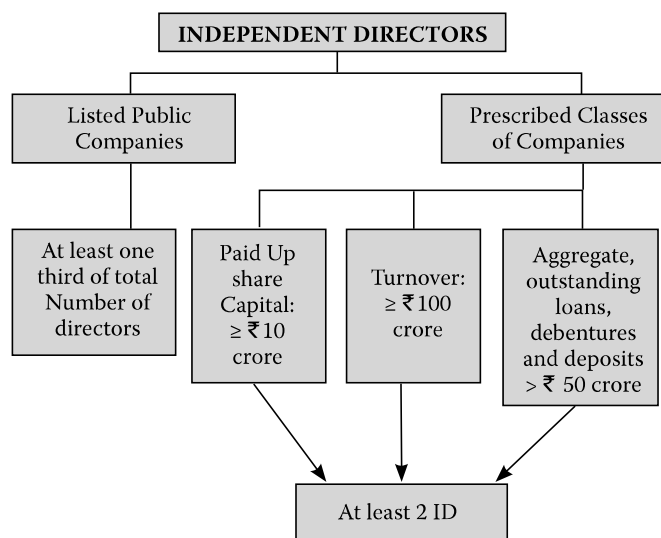
No. of Women Director	♣ Atleast one
Companies which are required to have Women directors	♣ every listed co.;
	♣ every other public co. having -
	♦ paid-up share capital of one hundred crore rupees or more; or ♦ turnover of three hundred crore rupees or more.
Filling of Intermittent Vacancy	♣ Immediate next Board meeting or three months from the date of such vacancy, whichever is later.

(iii) Provision related to Resident director (RD) [Section 149(3)]

Meaning of Resident Director	Who has stayed in India for a total period of not less than 182 days in the previous calendar year
Number	Atleast One
Companies which appoints resident director	Every Company

(iv) Provisions related to Independent Directors [Section 149 read with the relevant rules]

(A) Companies requires to appoint Independent Directors (ID)



Due to composition of audit committee, higher number of ID shall be appointed

Non-Applicability: If company ceases to fulfil any of the 3 conditions for 3 consecutive years

(B) Remuneration of Independent Directors

Entitled to	Not Entitled to
Fee provided under section 197(5)	Any stock option
Reimbursement of expenses for participation in: (i) Board Meetings (ii) Other Meetings	
Profit related commission as may be approved by the members	

2. Provisions related to Small Shareholder Director (SSD) [Section 151]

Is it compulsory to appoint SSD?	No (not mandatory)
Which co. may appoint?	Listed co.
Number	One
Who is Small Shareholders Director?	A shareholder holding shares of nominal value of not more than ₹ 20,000 or such other sum as may be prescribed
How SSD is appointed?	By notice - of not less than 1000 small shareholders; or one-tenth of the total number of such shareholders whichever is lower

3. Provisions related to Additional Director [Section 161(1)]

Additional Director		
Appointment	Disqualified	Term
- AOA of a co. may confer on its BoD the power to- - appoint any person as an additional director - at any time	A person, who fails to get appointed as a director in a GM, cannot be appointed as an additional director	Hold office up to the date of the next AGM or the last date on which the AGM should have been held, whichever is earlier.

4. Provision related to Alternate Director [Section 161(2)]

Appointed by BoD, if so authorised by AOA or by resolution passed by company in GM
Appointed during the absence of original director for a period of not less than 3 months from India.
Cannot be person who is holding any alternate directorship for any other director in the co. or holding directorship in the same co.
No person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director

Shall not hold office for a period longer than that permissible to the original director and shall vacate the office if and when the original director returns to India.

Automatic re-appointment shall apply to the original, and not to the alternate director.

5. Nominee Director [Section 161(3)]



- Subject to the articles of a company
- Board may appoint any person as a director
- nominated by any institution in pursuance of the provisions of any law for the time being in force or
- of any agreement or
- by the Central Government or the State Government by virtue of its shareholding in a Government company

6. Appointment of Director through casual vacancy [Section 161(4)]

Occurrence of casual vacancy	Filling of casual vacancy	Term
If office of any director appointed by the co. in GM is vacated before his term of office expires in the normal course	The resulting casual vacancy may be filled by the BoD at a meeting, which is to be approved by members in immediate next GM	Person appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

7. Appointment of Directors to be voted individually [Section 162]

Appointment of Directors to be voted Individually

- Two / more persons cannot be elected as directors by a single resolution.
- Unless the meeting first agreed that the appointment shall be made by a single resolution and no vote has been cast against such agreement.
- Contravention of above shall be void, whether or not objection was raised at the time it was so moved.
- A motion for approving a person or for nominating a person, for appointment as a director, shall be treated as a motion for his appointment

8. Appointment through proportional representation [Section 163]

AOA of co. may provide for appointment of not less than 2/3rd of total number of directors, in accordance with principle of proportional representation,	By single transferable vote / by system of cumulative voting / otherwise
Option to adopt principle of proportional representation for appointment of directors	
Such appointments may be made once in every three years	Casual vacancies of such directors shall be filled as per section 161(4).

9. Disqualifications for appointment of Director [Section 164 (1)]

(i) General disqualification of directors

He is of unsound mind and stands so declared by a competent court;
He is an undischarged insolvent;
He has applied to be adjudicated as an insolvent and his application is pending
He has been convicted by a court for any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence.
However, if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of 7 years or more, he shall not be eligible to be appointed as a director in any company
An order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
He has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and 6 months have elapsed from the last day fixed for the payment of the call;
He has been convicted of the offence of dealing with related party transactions under section 188 at any time during the last preceding 5 years; or
He has not complied with section 152(3) which requires a director to have a DIN under section 154.

(ii) Specific disqualifications (Section 164(2))

person who is /has been a director of a company which has not filed financial statements or annual returns for any continuous period of three financial years; or

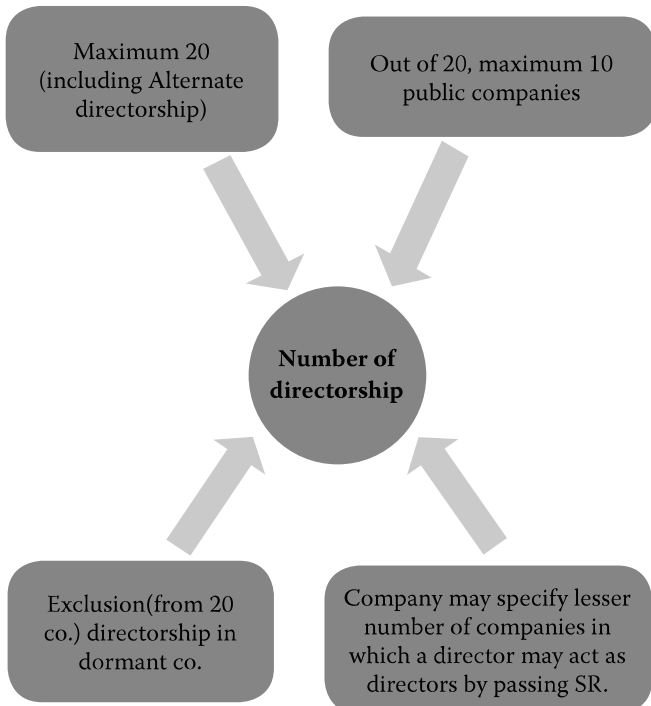
has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more

shall not be eligible to be-

re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so

*A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2).

10. Holding of maximum number of directorship [Section 165]



11. Duties of Directors [Section 166]

shall act in accordance with AOA, subject to the provisions of the Act.

Shall act in good faith in order to promote the objects of co., for benefit of its members as a whole & in the best interests of co., its employees, shareholders, community & for protection of environment.

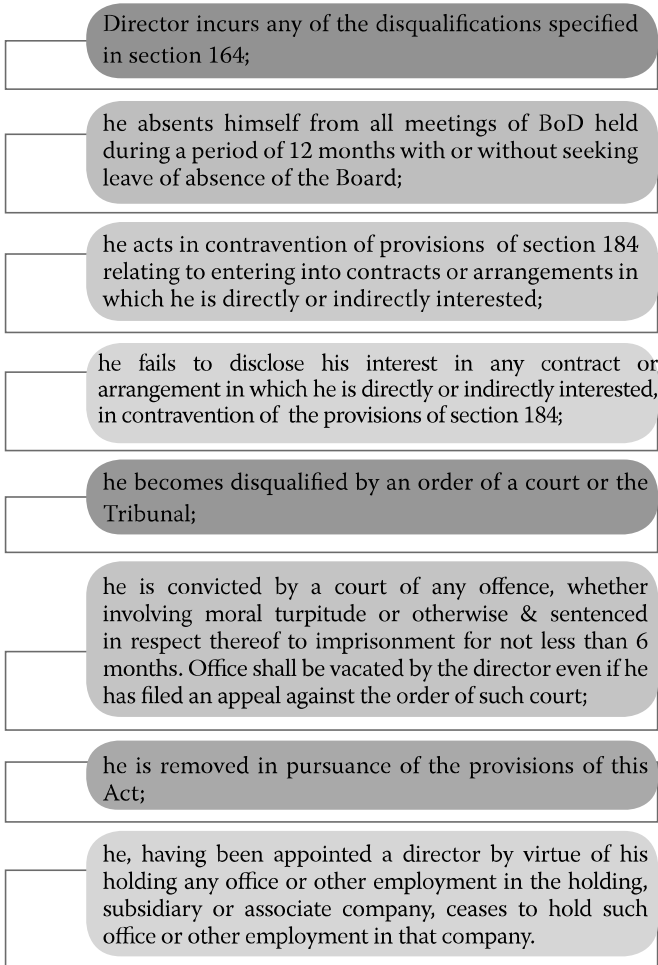
Shall exercise his duties with due & reasonable care, skill & diligence & shall exercise independent judgment.

Shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with interest of co.

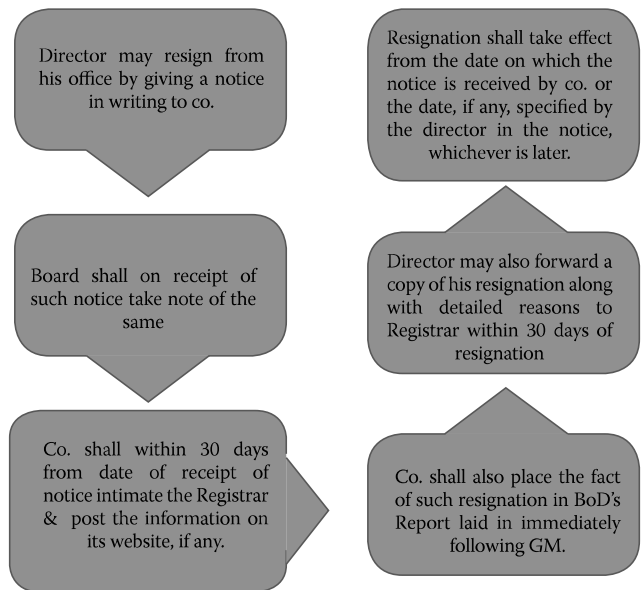
Shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates & if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company

Shall not assign his office & if any assignment so made, it shall be void.

12. Vacation of Office of Director [Section 167]

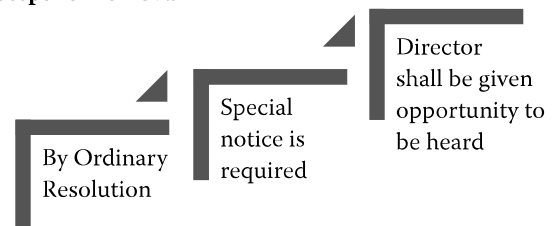


13. Resignation of Director [Section 168]

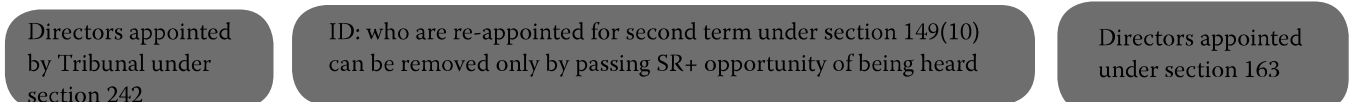


14. Removal of Directors [Section 169]

(i) Steps for removal



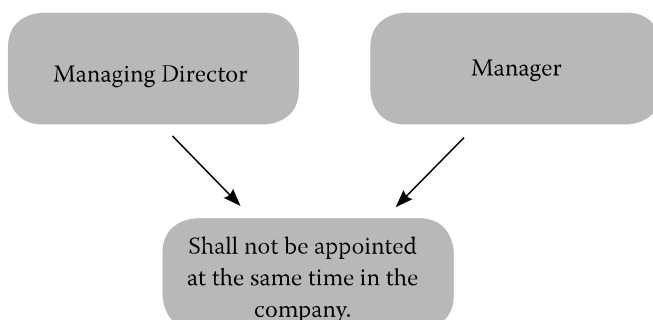
(ii) Restrictions on removal of certain directors



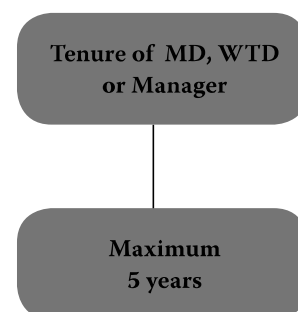
CHAPTER 2: APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

1. Appointment of Managing Director, Whole-Time Director or Manager (Section 196)

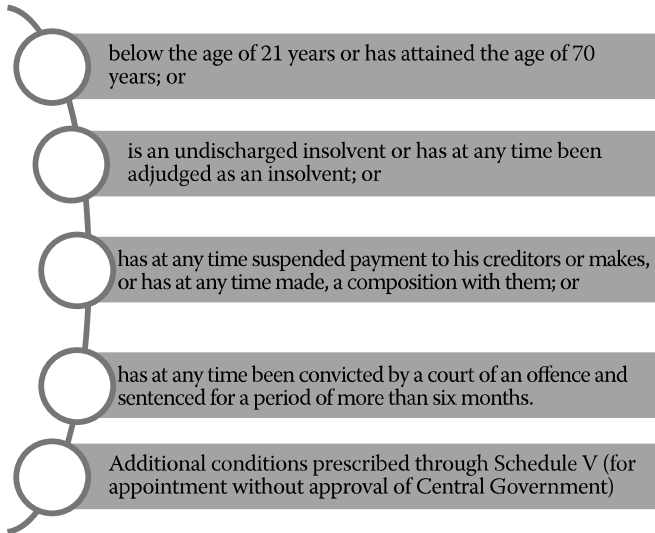
(i) Appointment of MD and Manager [Section 196(1)]



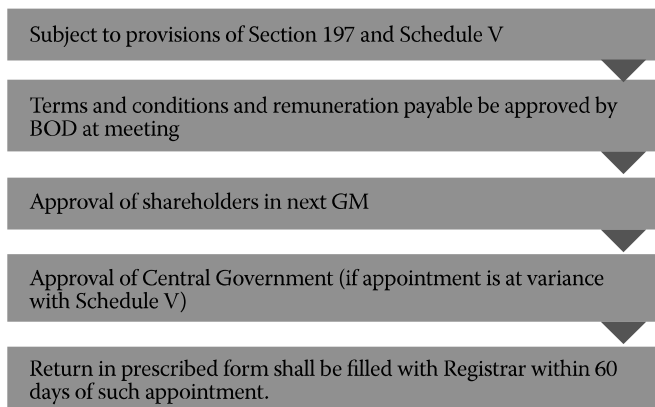
(ii) Tenure [Section 196(2)]



(iii) Disqualifications for MD, WTD or Manager [Section 196(3)]



(iv) Procedure of appointment of MD, WTD or Manager [Section 196(4)]



*In case of private company - Section 196(4) shall not apply.
**In case of government company -Section 196(2) & (4) shall not apply.

2. Overall maximum Managerial Remuneration [Section 197(1)]

S. No.	Conditions	Maximum remuneration in any financial year	Conditions when remuneration can exceed as referred in column (b)
	(a)	(b)	(c)
(i)	Overall limit	11% of the net profits of the company for that financial year	Company in general meeting with approval of Central Government subject to provisions of Schedule V

S. No.	Conditions	Maximum remuneration in any financial year	Conditions when remuneration can exceed as referred in column (b)
	(a)	(b)	(c)
(ii)	If there is one Managing director/ Whole time director/ manager	5% of the net profits of the company for that year	With the approval of the company in general meeting this limit may be exceeded.
(iii)	If there is more than one Managing director/ Whole time director/ manager	10% of the net profits	With the approval of the company in general meeting this limit may be exceeded.
(iv)	If there is directors who are neither Managing director nor whole time directors	1% of the net profits of the company if there is a managing director or a whole time director	Approval of the company in general meeting is required.
(v)	If there are directors who are neither Managing director nor whole time directors	3% of the net profits of the company if there is no managing director or whole time director	Approval of the company in general meeting is required.

* In case of Government Company, Section 197 shall not apply.

3. Appointment of KMP [Section 203]

(i) KMP [section 2(51)]



(ii) Companies which are mandatorily required to appoint whole time KMP [Section 203(1) + relevant Rule]

companies mandatorily required to appoint whole-time KMP

every listed co. & every other public co. having a paid-up share capital of ₹ 10 crore or more

(iii) Provisions related to appointment of whole time KMP [Section 203(2) &(3)]

Mode of Appointment

by means of resolution of Board containing terms & conditions & remuneration

Restriction on holding of office

Whole time KMP shall not hold office in more than one co. at the same time except its subsidiary co.

Appointment of KMP as director

KMP can be appointed as a director in any company with the permission of the Board.

(iv) Managing Director / Manager in more than one company [Third proviso to Section 203(3)]

Appointment of person as MD in more than one company

- ◆ Co. may appoint a person as its MD, if he is MD / manager of one, & of not more than one, other co.
- ◆ Approved by resolution passed at meeting of Board with consent of all directors present at the meeting
- ◆ Specific notice of such meeting & of the resolution to be moved thereat has been given to all the directors then in India.

(v) Vacancy in office of KMP [Section 203(4)]

Vacancy of KMP

- ◆ filled up by the board
- ◆ within 6 months from date of vacancy

In case of government Company, as per section 4A, the provisions of sub-sections (1), (2), (3) and (4) of section 203, shall not apply to a managing director / Chief Executive Officer / manager and in their absence, a whole-time director of the Government Company.

4. Functions of the Company Secretary [Section 205]

Functions of the CS includes

to report to the Board about compliance
to ensure that the co. complies with the applicable secretarial standards;
to provide to the directors of the co. guidance as they may require, with regard to their duties, responsibilities and powers;
to facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings;
to obtain approvals from the Board, general meeting, the government and other authorities as required
to represent before various regulators, and other authorities in connection with discharge of various duties under the Act;
to assist the Board in the conduct of the affairs of the co.;
to assist and advise the Board in ensuring good corporate governance and compliance & best practices
to discharge such other duties as have been specified under the Act or rules; &
such other duties as may be assigned by the Board from time to time.

5. Secretarial Audit [Section 204]

Companies that are required to conduct Secretarial Audit

- ◆ Every Listed co.
- ◆ Every public company having a paid up share capital of ₹ 50 crore or more; or
- ◆ Every public company having a turnover of ₹ 250 crore or more.

6. Penalty [Section 203 (5)]

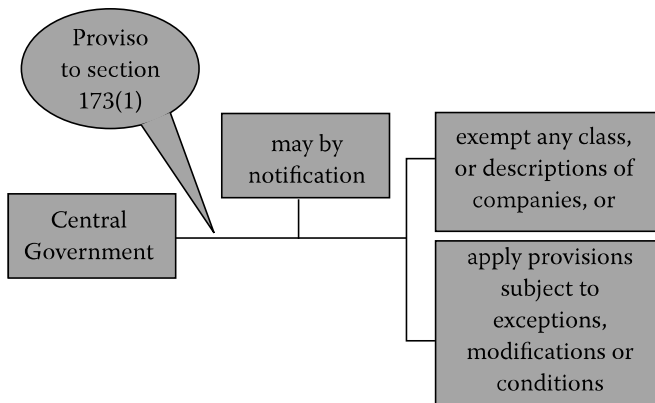
On company	Every Director & KMP in default	where the contravention is a continuing one
◆ fine not be less than 1 lakh rupees extending to five lakh rupees	◆ fine extending to fifty thousand rupees	◆ with a further fine which may extend to one thousand rupees for every day

CHAPTER 3: MEETINGS OF BOARD AND ITS POWERS

1. Board Meeting (BM) [Section 173]

(i) Frequency of holding of BM

Holding of BM [(173(1))]	
First BM ♦ shall be held within 30 days of the date of its Incorporation	Subsequent BMs ♦ hold minimum of 4 meetings every year ♦ gap between two consecutive board meetings shall not be more than 120 days



Exemption to Section 8 companies from compliance of section 173(1)

Applicable to the extent that the Board of Directors, of Section 8 companies shall hold at least one meeting within every six calendar months.

(ii) Exceptions to section 173 [Section 173(5)]

Companies deemed to have been complied with the provisions of section 173			
*One Person Company (OPC)	small company	dormant company	private start ups
if at least one meeting of the BoD has been conducted-			
in each half of a calendar year, and		the gap between the two meetings is not less than 90 days.	

**In case of OPC, in which there is only one director on its Board of Directors, it shall not be required to hold at least one Board meeting in each half of a calendar year.*

(iii) Participation in BM [Section 173 (2)]

- Directors may attend board meeting -
- ♦ in person
 - ♦ Through video conferencing
 - ♦ other audio visual means as prescribed under Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014

(iv) Notice of the BM [Section 173 + Relevant Rule]

Period & mode of serving of notice		
at least 7 days' notice in writing	to all the directors at registered address	sent by hand delivery/ by post/ by electronic means

Shorter notice less than 7 days may be served		
to transact an urgent business	to atleast one independent director, if any, shall be present	In absence, decisions taken shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any

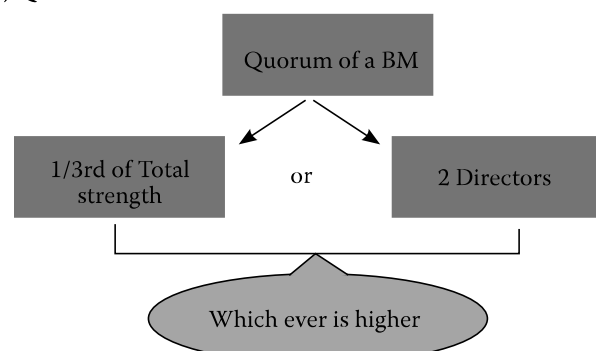
Option to participate through video conferencing mode/ other audio visual means (Rule 3)
notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means

On receipt of notice
a director intending to participate through video conferencing or audio visual means shall communicate his intention to the Chairperson or the company secretary of the company

No intimation from director of his participation through the electronic mode
it shall be assumed that the director shall attend the meeting in person

2. Quorum (Section 174)

(i) Quorum



For section 8 Companies, quorum for the BM, either 8 members or 25% of its total strength whichever is less. Provided that quorum shall not be less than two members.

(ii) Quorum when directors participate through Video Conferencing

In case of participation of directors through video conferencing or by other audio visual means, such directors

- ◆ shall also be counted for the purpose of determining the quorum at the meeting,
- ◆ unless he is to be excluded for any items of business under any provisions of the Act or the rules (Explanation as given in Rule 3 of the *Companies (Meetings of Board and its Powers) Rules, 2014*)

(iii) Section 174(3)

Where the quorum of continuing directors is reduced (as fixed by article)

- ◆ the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or
- ◆ for summoning a general meeting of the company

* Where at any time the number of interested directors exceeds or is equal to 2/3 of the total strength of the BOD

the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time

**In case of Private Company - Section 174(3), shall apply with the exception that the interested director may also be counted towards quorum in such meeting after disclosure of his interest pursuant to section 184.*

(iv) Where a meeting of the Board could not be held for want of quorum [174(4)]

Unless the articles of the company otherwise provide,

the meeting shall automatically stand adjourned

- ◆ to the same day
- ◆ at the same time and place
- ◆ in the next week,

if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place

3. Powers of Board (179)

The BoD of a company shall be entitled to

exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do

Exception to Board's Power:

The Board shall not exercise any power or do any act or thing which is directed or required,

- ◆ whether under this Act or
- ◆ by the memorandum or
- ◆ articles of the company or
- ◆ otherwise, to be exercised or done by the company in general meeting

Board may exercise its powers by means of the resolution passed at a duly convened Board meeting

Powers of Board

make calls on shareholders in respect of money unpaid
authorise buy-back of securities
issue securities
borrow monies
invest the funds of the company
grant loans or give guarantee or provide security
diversify the business
approve financial statement and the Board's report
approve amalgamation, merger or reconstruction
take over a company or acquire a controlling or substantial stake in another company
any other matter which may be prescribed in Rule 8 of the <i>Companies (Meetings of Board and its Powers) Rules, 2014</i>

Additional powers prescribed under Rule 8 of the *Companies (Meetings of Board and its Powers) Rules, 2014*

- ◆ to make political contributions;
- ◆ to appoint or remove KMP
- ◆ to appoint internal auditors and secretarial auditor;

4. Restrictions on powers of Board [Section 180]

The BoD of a company shall exercise the following powers only with the consent of the company by a special resolution

To sell, lease or dispose of the undertaking of the company

To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings

To invest the amount of compensation received as a result of any merger or amalgamation;

To invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;

Limit to borrow money,

to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital, free reserves and securities premium apart from temporary loans obtained from the company's bankers in the ordinary course of business

Settlement of amount from director

To remit, or give time for the repayment of, any debt due from a director

**Section 180, is not applicable to private company.*

5. Powers of BoD of a Company to make contributions [Sections 181, 182 & 183]

To Bonafide charitable and other funds

- ◆ any amount the aggregate of which, in any financial year, exceed 5% of its average net profits for the three immediately preceding financial years.
- ◆ prior permission of the company in general meeting shall be required

To Political Contributions

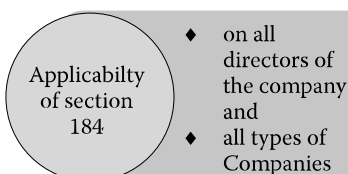
- ◆ a company, other than a Government company and a company which has been in existence for less than three financial years-
- ◆ may contribute any amount directly or indirectly to any political party, unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors,
- ◆ and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making of the contribution authorised by it.

To National Defence Fund, etc

- ◆ BoD authorised in general meeting, may, contribute such amount as it thinks fit to the National Defence Fund or any other Fund approved by the Central Government for the purpose of national defence

6. Disclosure of interest by Director [Section 184]

(i) Applicability of section:



(ii) When to disclose concern/interest in a contract or arrangement & what following disclosures shall be made

When to disclose

Every director shall:

- ◆ At the First meeting of the Board in which he participates as a director, and
- ◆ Thereafter, at the first meeting of the Board in every financial year, or
- ◆ Whenever there is any change in the disclosures already made, then at the first Board meeting held after such change.

Disclosures

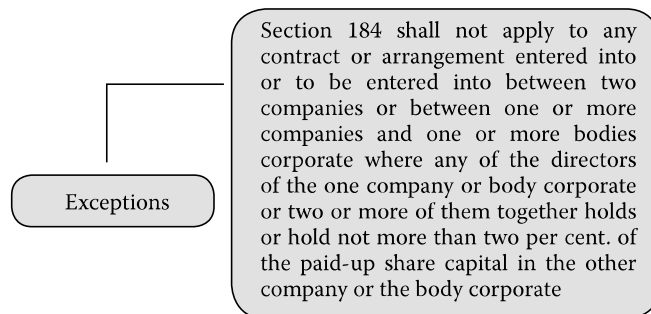
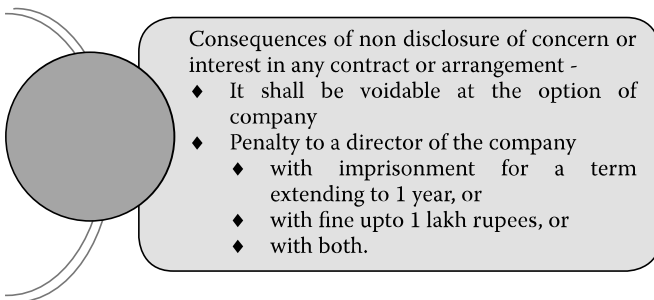
General Disclosure

- ◆ Every director shall disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding,
- ◆ the directors shall disclose his concern or interest, by giving a notice in writing

Specific Disclosure

- ◆ Whenever any director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting.

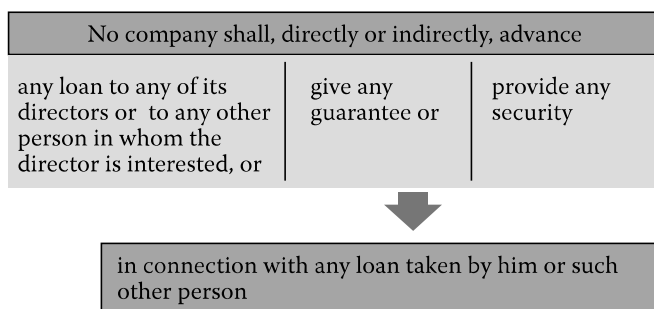
(iii) Consequences of non-disclosure



- * In case of private company - Section 184 (2) shall apply; with the exception that the interested director may participate in such meeting after disclosure of his interest.
- * Whereas with respect to the companies covered under section 8 of the Companies Act, 2013, the Section 184(2) shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.

7. Loan to Directors, etc. [Section 185]

(i) Providing loan / guarantee / security



(ii) Exceptions to section 185

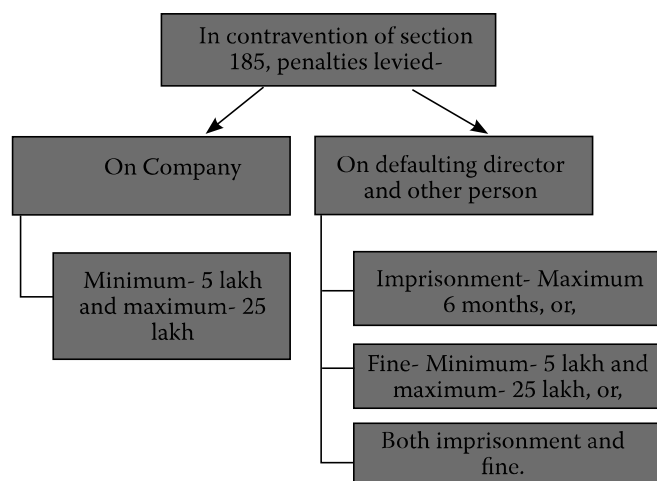
giving of any loan to a managing director or whole-time director—	as a part of the conditions of service extended by the company to all its employees; or
	pursuant to any scheme approved by the members by a special resolution; or
a company which in the ordinary course of its business provides loans/ gives guarantees / securities for-	the due repayment of any loan and
	in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India

any loan made by a holding company to its wholly owned subsidiary company / any guarantee given/ security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or

Any guarantee given or security provided by a holding company in respect of any loan made by any bank or financial institution to its subsidiary company:

Provided loans made are utilised by the subsidiary company for its principal business activities

(iii) Contravention



(iv) Exemptions

Exemptions to following companies from application of section 185 –		
Nidhis	Private company	Government company
◆ Provided the loan is given to a director or his relative in their capacity as members and such transaction is disclosed in the annual accounts by a note.	◆ In whose share capital no other body corporate has invested any money; ◆ If the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower, and ◆ Such company has no default in repayment of such borrowings subsisting at the time of making transactions under this section	◆ Such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the state Government before making any loan or giving any guarantee or providing any security under the Section

8. Loan and Investment by Company [Section 186(1)]

(i) Investment by company

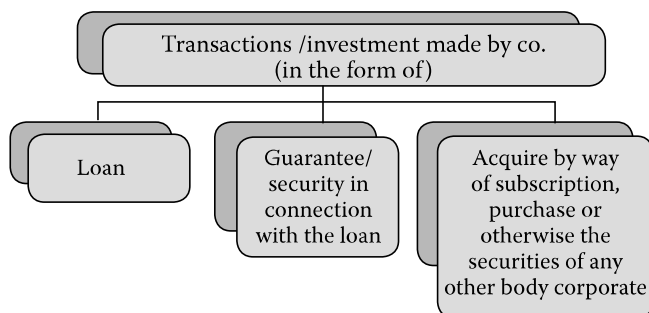
Investment by company

a company shall unless otherwise prescribed, make investment through not more than 2 layers of investment companies

Exemption

- ◆ However, above provisions shall not affect,—
- ◆ a company from acquiring any other company incorporated in a country outside India
 - ♣ if such other company has investment subsidiaries beyond two layers as per the laws of such country;
- ◆ a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law / under any rule / regulation framed under any law for the time being in force.

(ii) Ceiling on the investment [Section 186(2) & (3) Read with Rule 13 of the Companies (Meetings of Board and its Powers) Rules, 2014]



Company shall make such investment

exceeding 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more on prior approval by means of a special resolution passed at a general meeting

A resolution passed at a general meeting to give any loan / guarantee / investment / providing any security / the acquisition—

- shall specify the total amount up to which the Board of Directors are authorised to give such loan or guarantee, to provide such security or make such acquisition
- the company shall disclose to the members in the financial statement the full particulars
- Resolution sanctioning passed at a meeting of the Board with the consent of all the directors present at the meeting.

company in default in the repayment of any deposits, or in payment of interest thereon, shall not —

- give any loan or give any guarantee or provide any security or make an acquisition
- till such default is subsisting

(iii) Maintenance of register [Section 186(9) & (10)]

Every company giving loan / a guarantee / providing security / making an acquisition shall

- ◆ keep a register
- ◆ containing such particulars and maintained as per Rule 12 of the *Companies (Meetings of Board and its Powers) Rules, 2014*
- ◆ be kept at the registered office of the company
- ◆ be open to inspection at such office and extracts may be taken therefrom by any member

(iv) Non-applicability of section 186 [Section 186(11)]

Except sub-section (1) of section 186

Section 186 shall not apply

to a loan made, guarantee given / security provided by—

- ◆ a banking company or
- ◆ an insurance company or
- ◆ a housing finance company

to any acquisition—

- ◆ made by a non-banking financial company registered under the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities: However, exemption to NBFC shall be in respect of its investment and lending activities;
- ◆ made by a company whose principal business is the acquisition of securities;
- ◆ of shares allotted in pursuance of section 62(1)(a)
- ◆ made by the banking company or an insurance company or a housing finance company, making acquisition of securities in the ordinary course of its business.

(v) Penalty [Section 186(13)]

In contravention to section 186

company shall be punishable with fine —

- ◆ Min.- ₹ 25,000
- ◆ Max.- ₹ 5 lakh

And

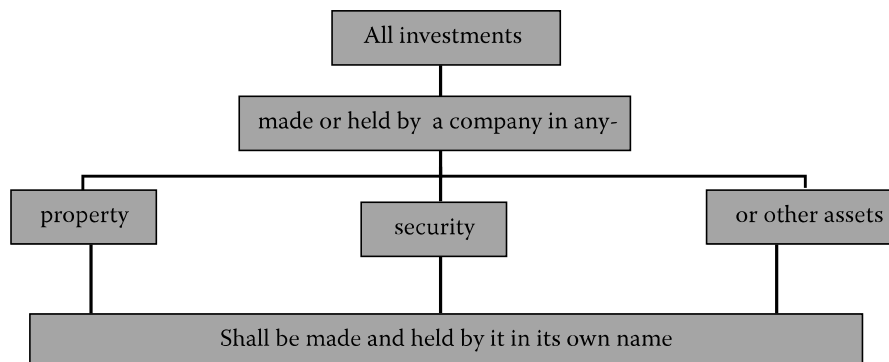
In contravention to section 186

- ◆ every officer of the company who is in default shall be punishable—
- ◆ with imprisonment—extending upto 2 years, and with fine —
- ◆ Min.- ₹ 25,000
- ◆ Max.- ₹ 1,00,000

* Section 186 shall not apply to a Government company engaged in defence production.

* In case of a Government company, other than a listed company, such company shall obtain approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before making any loan or giving any guarantee or providing any security or making any investment under the section.

9. Investments of company to be held in its own name [Section 187]



* However, the company may hold any shares in its subsidiary company in the name of any nominee or nominees of the company, if it is necessary to do so, to ensure that the number of members of the subsidiary company is not reduced below the statutory limit.

10. Related Party Transactions [Section 188 read with Rule 3 of the Companies (Specification of Definitions Details) Rules, 2014]

(i) Meaning of Related Party

Related Party (Section 2 clause 76) with reference to a company, means-

a director / his relative;	a KMP / his relative;	a firm, in which a director, manager / his relative is a partner;	a private company in which a director / manager / his relative is a member or director;	a public company in which a director / manager is a director and holds along with his relatives, more than 2% of its paid-up share capital;	any body corporate whose BoD, MD or manager is accustomed to act in accordance with the advice, directions or instructions of a director / manager;	any person on whose advice, directions or instructions a director or manager is accustomed to act;	any body corporate which is— a holding, subsidiary or an associate company of such company; or a subsidiary of a holding company to which it is also a subsidiary; an investing company or venturer of the company	such other person as prescribed in Rule 3 of the Companies (Specification of Definitions Details) Rules, 2014 ;
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(ii) Contracts with related parties (RP) which are covered under section 188 [Section 188(1)]

Company shall enter into any contract or arrangement with a RP with respect to the transactions (given below) with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as prescribed under rule 15(1) of the Companies (Meetings of Board and its Powers) Rules, 2014

Transactions

A sale, purchase or supply of any goods or materials;	E appointment of any agent for purchase or sale of goods, materials, services or property;
B selling or otherwise disposing of, or buying, property of any kind;	F such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
C leasing of property of any kind;	G underwriting the subscription of any securities or derivatives thereof, of the company;
D availing or rendering of any services;	

*However, no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as prescribed under Rule 15(3) of the Companies (Meetings of Board and its Powers) Rules, 2014, shall be entered into except with the prior approval of the company by a resolution. [First proviso to section 188(1)]

(iii) Prescribed limits for the transactions to be entered into as contracts or arrangements with the prior approval of the Company [Rule 15(3) of the Companies (Meetings of Board and its Powers) Rules, 2014]

(A) Transaction/s to be entered into as contracts or arrangements with respect to clauses (a) to (e) of section 188(1), are with criteria as mentioned below -

Transactions to be entered into with the prior approval	Prescribed limits for the transactions to be entered into as contracts or arrangements
sale, purchase or supply of any goods or materials, directly or through appointment of agent	Amounting to 10% or more of the turnover of the company or rupees 100 crore, whichever is lower, as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188
selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent	Amounting to 10% or more of net worth of the company or rupees 100 crore, whichever is lower, as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188
leasing of property of any kind	Amounting to 10% or more of the net worth of the company or 10% or more of turnover of the company or rupees 100 crore, whichever is lower, as mentioned in clause (c) of sub-section (1) of section 188
availing or rendering of any services, directly or through appointment of agent	Amounting to 10% or more of the turnover of the company or rupees 50 crore, whichever is lower, as mentioned in clause (d) and clause (e) respectively of sub-section (1) of section 188:

* It is hereby clarified that the limits specified above, shall apply for transaction/s to be entered into either individually or taken together with the previous transactions during a financial year.

- (B) Transaction/s to be entered into as contracts or arrangements is for appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding 2.5 lakh rupees; or
- (C) Transaction/s to be entered into as contracts or arrangements is for remuneration for underwriting the subscription of any securities or derivatives thereof, of the company exceeding 1% of the net worth as mentioned in section 188(1)(g)

(iv) Concept of "Arm's length transaction"

Meaning			
a transaction	between two related parties	conducted as if they were unrelated,	so that there is no conflict of interest

Applicability of section 188 on transactions on arm's length basis	
Section 188(1) shall not apply to any transactions	Except the transactions which are not on an arm's length basis
♦ entered into by the company in its ordinary course of business	

(v) Relevant particulars to disclose in the notice of a general meeting and consequences on being a related party/or in relation to a related party, in a transaction. [Proviso & explanation to Section 188]

The explanatory statement to be annexed to the notice of a general meeting as per section 101, shall contain-

- ♦ name of the related party;
- ♦ name of the director / KMP who is related, if any;
- ♦ nature of relationship;
- ♦ nature, material terms, monetary value and particulars of the contract / arrangement;
- ♦ any other information relevant / important for the members to take a decision on the proposed resolution."

No voting by related member

- ♦ no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party.

Where any director is interested in any contract / arrangement with a related party, such director shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement. [Rule 15(2)]

(vi) Passing of resolution is not necessitated [Proviso to Section 188(1)]

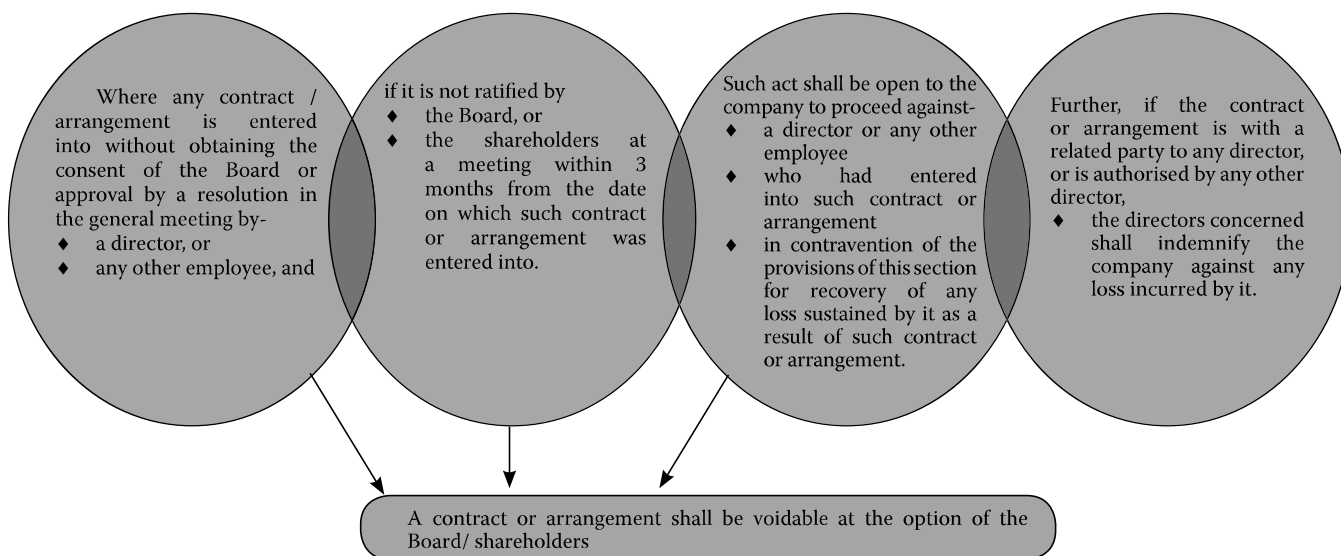
No resolution required to be passed under first proviso to section 188

for transactions entered into between a holding company and its wholly owned subsidiary,

whose accounts are consolidated with such holding company, and

are placed before the shareholders at the general meeting for approval.

(vii) Consequences of Related party transaction [Section 188(3) & (4)]



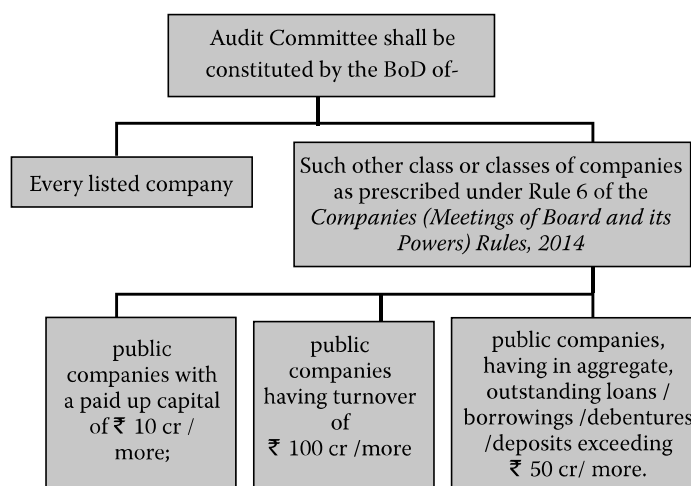
(viii) Penalty for contravention [Section 188 (5)]:

In the case of a-	Liability
listed company	Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall- be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than 25,000 rupees but which may extend to 5 lakh rupees, or with both; and
any other company	Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall- be punishable with fine which shall not be less than 25,000 rupees but which may extend to 5 lakh rupees.

* *Exemption from applicability of section 188 for transactions arising out of Compromises, Arrangements and Amalgamations dealt with under specific provisions of the Companies Act, 2013.*

(i) Audit Committee [Section 177]

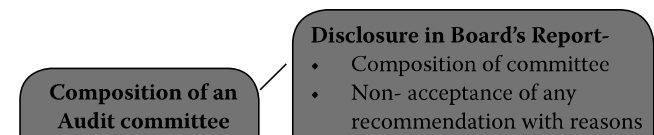
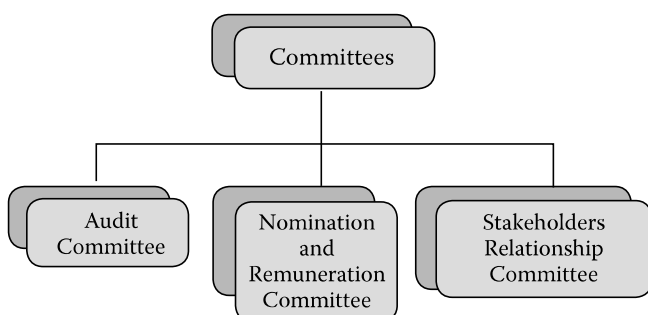
(A) Formation & composition of an Audit Committee:



* *The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited Financial Statements shall be taken into account for the purposes of this rule.*

(B) Composition of Audit Committee

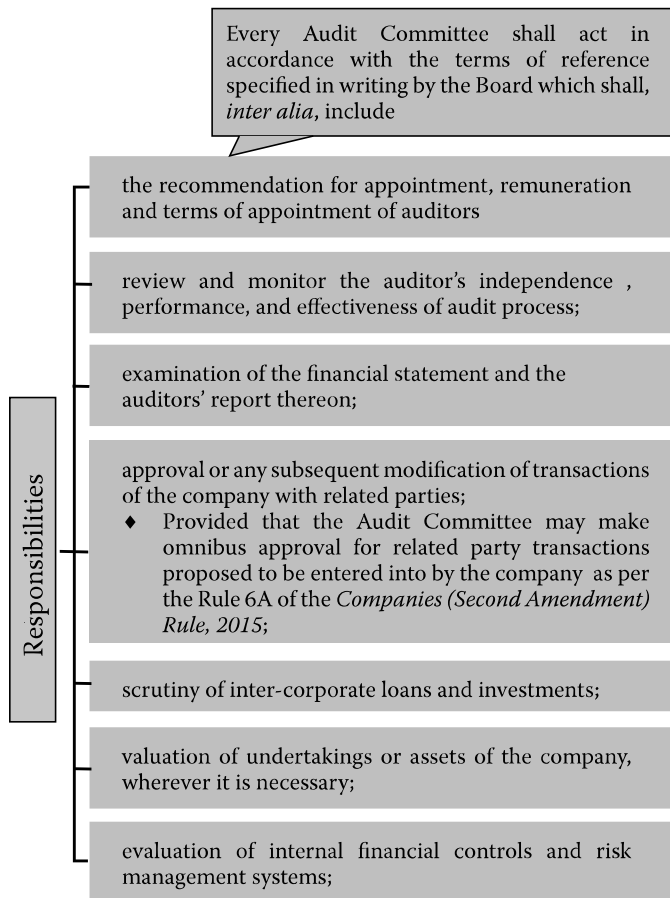
11. Committees



- ♦ Minimum -3 directors
- ♦ independent directors forming a majority
- ♦ members of Audit Committee including its Chairperson shall be persons with ability to read and understand the financial statement

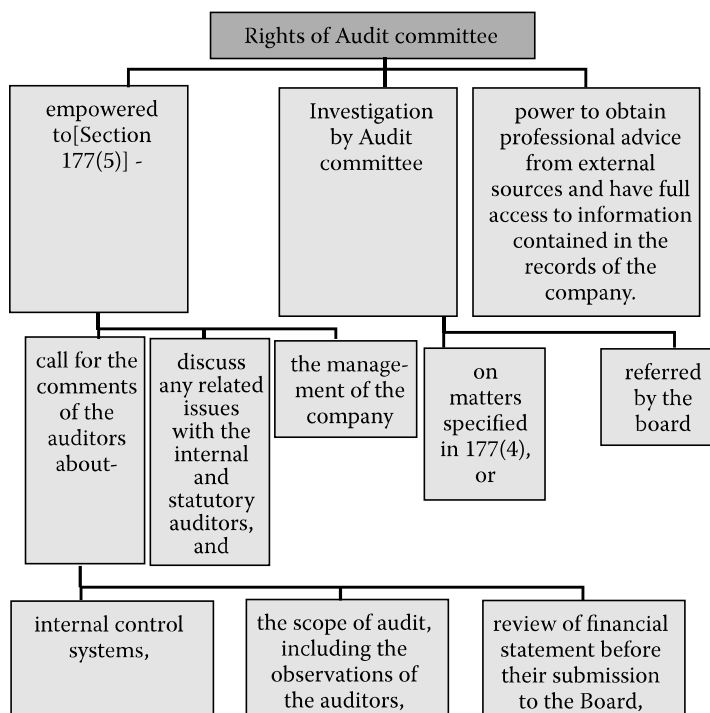
* *'Independent Directors forming a majority' is omitted in constitution of audit committee for the Companies covered under Section 8 of the Companies Act, 2013.*

(C) Responsibilities of an Audit Committee

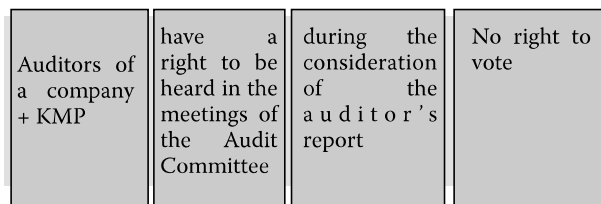


* In case of Government companies, for point 1st, for the word "recommendation for appointment, remuneration and terms of appointment" the words "recommendation for remuneration" shall be substituted.

(D) Rights of Audit Committee



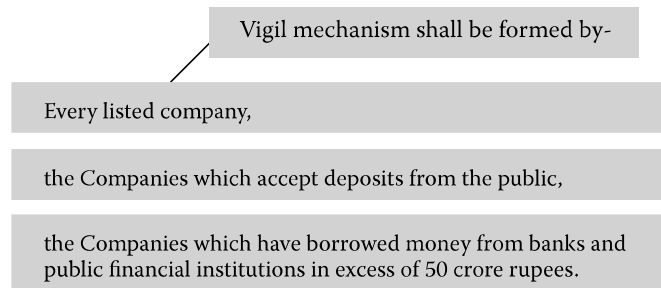
(E) Rights of others in Audit Committee



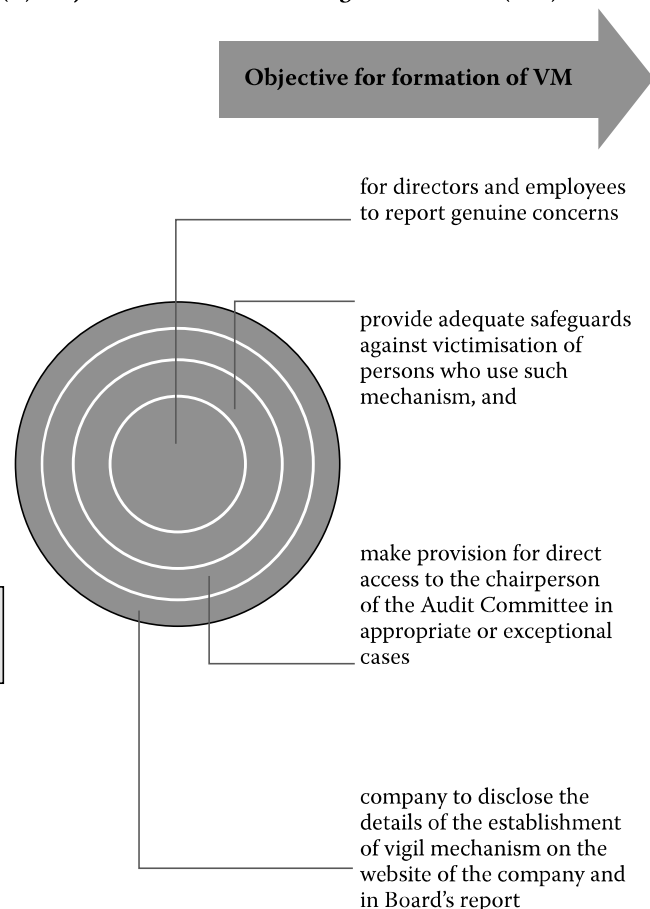
*In the case of Listed company formation, composition, responsibilities and rights of Audit committee shall be governed by SEBI (LODR) Regulations issued under SEBI Act, 1992.

(ii) Vigil mechanism [Section 177(9) read with Rule 7 of the Companies (Meetings of Board and its Powers) Rules, 2014]

(A) Formation of vigil mechanism



(B) Objective of formation of vigil mechanism (VM)



(C) Working of VM

Who may use Mechanism	employees and directors
Who will regulate the VM	(i) an audit committee (where company is required to constitute Audit Committee) (ii) BoD shall nominate a director to play the role of audit committee (In case of other companies)
How VM may work	(i) Directors and employees may report their concerns to VM. (ii) They may have direct access to the Chairperson of the Audit Committee or the director nominated to play the role of Audit Committee, in exceptional case. (iii) In case of repeated frivolous complaints being filed by a director or an employee, the audit committee or the director nominated to play the role of audit committee may take suitable action against the concerned director or employee including reprimand.

(iii) Nomination and Remuneration Committee (N&R C) [Section 178 (1) -178(4)]

(A) Formation of nomination & remuneration committee by

Every Listed company	Unlisted public company with a paid up capital of ten crore rupees or more; or	Unlisted public company having turnover of one hundred crore rupees or more; or	Unlisted public company having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more
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* The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited Financial Statements shall be taken into account for the purposes of this rule.

(B) Composition of nomination & remuneration committee (N&R C)

N&R C consist of	3 or more non-executive directors
Restriction on Chairman of Co.	The Chairman (whether executive or non-executive) of the company shall not chair such a committee

However, he may be appointed as a member to the committee

(C) Functions of the nomination and remuneration committee (N&R C)

- formulate the criteria for determining qualifications; positive attributes and independence of a director,
- recommend to the Board a policy, relating to the remuneration for the directors, KMP and other employees

identify persons who are qualified to become directors who may be appointed in senior management in accordance with the criteria laid down.

recommend to the Board the appointment and removal of directors and senior management carry out evaluation of every director's performance

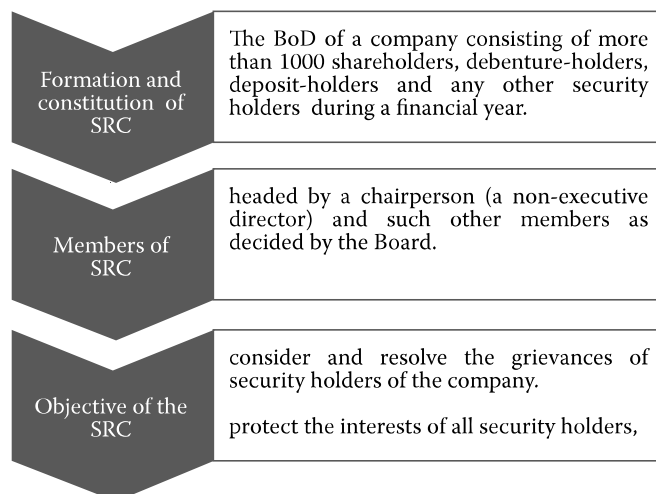
According to section 178(4), the Nomination and Remuneration Committee shall, while formulating the above policy ensure that—

- the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;
- relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and
- remuneration to directors, KMP and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals.

* It is imperative to disclose such a policy in Board's Report.

** In the case of Listed company formation, composition, responsibilities and rights of Nomination and Remuneration committee shall be governed by SEBI (LODR) Regulations issued under SEBI Act, 1992.

(iv) Stakeholders Relationship Committee (SRC) [Section 178(5)-178(6)]

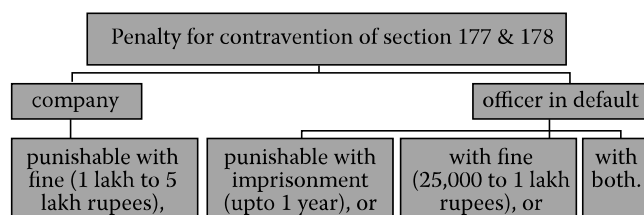


* In the case of listed company formation, composition, responsibilities and rights of Stakeholder Relationship committee shall be governed by SEBI (LODR) Regulations issued under SEBI Act, 1992.

** This section 178 shall not apply to the Companies covered under section 8 of the Companies Act

*** In case of Government company- Sub-sections (2), (3) and (4) of Section 178 i.e. relating to the N&R C, shall not apply except with regard to appointment of 'senior management' and other employees.

(v) Penalty for contravention of section 177 & 178



CHAPTER 4: INSPECTION, INQUIRY AND INVESTIGATION

1. Power to call for information, inspect books and conduct inquiries [Section 206]

Concerned authorities	In the following circumstances	Have following Powers
Registrar under section 206 (1)	- On a scrutiny of any document filed by a company, or - on any information received by him, -the Registrar is of the opinion that any further information / explanation /any further documents relating to the company is necessary	He, may by a written notice require the company— (a) to furnish in writing such information or explanation; or (b) to produce such documents
Registrar under section 206 (3)	(a) If no information or explanation is furnished within time, or (b) If on an examination of the documents furnished, he is of the opinion that the information or explanation furnished is inadequate; or (c) If he is satisfied on a scrutiny of the documents furnished that an unsatisfactory state of affairs exists in the company and the information or documents do not disclose a full and fair statement of the information required.	He, may by another written notice call on the company to produce for his inspection such further books of account, books, papers and explanations as he may be required at such place & time as specified in the notice
Registrar under section 206(4)	(1) on the basis of information available with or furnished; or (2) on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act; or (3) the grievances of investors are not being addressed,	He may call on the company to furnish in writing any information or explanation on matters specified in the order (within specified time) and carry out such inquiry after providing the co. a reasonable opportunity of being heard
Central Government [Section 206(4)]	if it is satisfied that the circumstances so warrant	direct the Registrar / an inspector to carry out the inquiry under this section 206(4)
Central Government [Section 206 (5)]	if satisfied that the circumstances so warrant	direct inspection of books and papers of a company by an inspector appointed by it for the purpose
Central Government [Section 206 (6)]	having regard to the circumstances	by general or special order, authorise any statutory authority to carry out the inspection of books of account of a company or class of companies

** If a company fails to furnish any information /explanation /production of any document, the company and every officer in default shall be punishable with a fine upto to one lakh rupees and in the case of a continuing failure, with an additional fine upto to five hundred rupees per day.*

2. Search and Seizure [Section 209]

(i) Circumstances for search & seizure

Where, upon information, the Registrar /inspector has reasonable ground to believe that

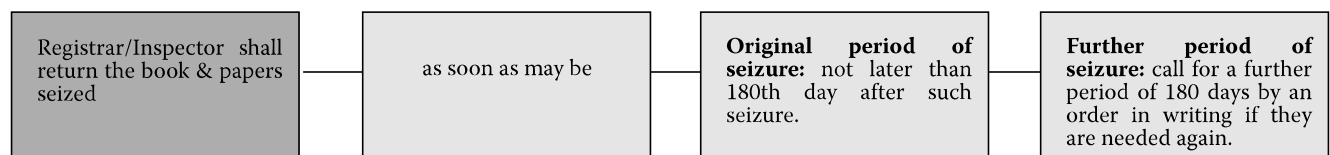
the books & papers of a co. / relating to the KMP /any director /auditor /CS in practice if the co. has not appointed a CS,

are likely to be destroyed, mutilated, altered, falsified / secreted, he may, after obtaining an order from the Special Court for the seizure of such books and papers,—

(a) enter, with / assistance and search, the place /s where such books or papers are kept; and

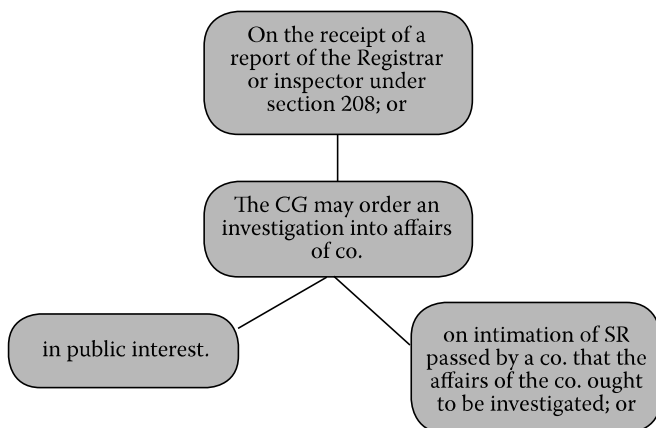
(b) seize such books and papers as he considers necessary after allowing the co. to take copies of, or extracts from, such books or papers at its cost.

(ii) Period of Seizure

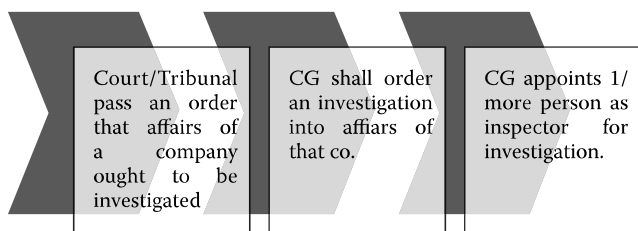


3. Investigation into affairs of company [Section 210]

(i) By Central Government



(ii) By Court/Tribunal



4. Investigation into affairs of Co. by SFIO [Section 212]

CG consider it necessary to investigate into affairs of company by SFIO, may by order assign its investigation to SFIO

on receipt of report of Registrar or inspector u/s 208	On intimation of SR by company	In Public Interest	on request from any dept. of CG or SG
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On receipt of such order, SFIO may designate inspectors

If investigation is pending with other investigating agency, such concerned agency shall transfer the relevant documents and records to SFIO

SFIO shall conduct the investigation according to chapter XIV and submit its report to CG within such period as specified in order

the investigating officer shall have the power of the inspector u/s 217

the company and its officers and employees shall be responsible to provide assistance to investigating Officer as may be required

Offences covered u/s 447 shall be cognizable and person accused shall not be released on bail or on bond except under certain circumstances

the concerned officers of SFIO may arrest the guilty person if has reason to believe and inform him of the grounds for such arrest.

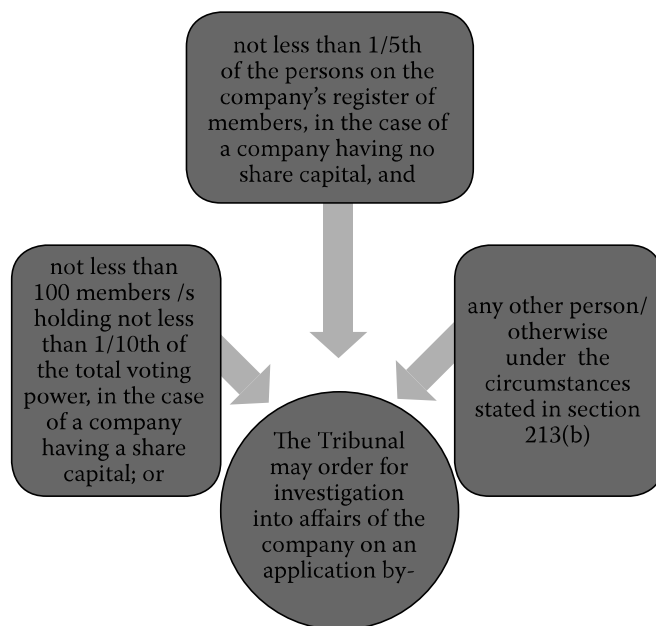
the concerned officers of SFIO shall immediately after arrest forward a copy of order to SFIO

Every person arrested shall within 24 hours be taken to JM or MM having jurisdiction

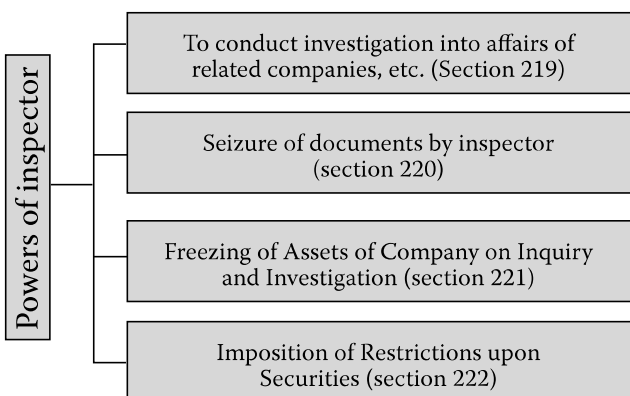
Submission of interim report and Investigation report to CG

CG may order the SFIO to initiate prosecution against the company and its officers and employees

5. Investigation into company's affairs in other cases (Section 213)



6. Powers of inspector



CHAPTER 5: COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

1. Power to Compromise or make arrangements with Creditors and Members [Section 230]

Where a compromise or arrangement is proposed between—
a company and its creditors or any class of them; or a company and its members or any class of them,

the Tribunal may, on the application of the-

Company, or	creditor, or	member of the company, or	Liquidator in case of company is into voluntary liquidation
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order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

The company or any other person, by whom an application is made, shall disclose to the Tribunal by affidavit—

all material facts relating to the company	reduction of share capital	any scheme of corporate debt restructuring
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Where a meeting is proposed to be called in pursuance of an order of the Tribunal, a notice of such meeting shall be sent to-

all the creditors or class of creditors, and	to all the members or class of members,	and the debenture-holders of the company,	Sectoral regulators u/s 230(5)
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Notice of meeting shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, explaining their effect, the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees

Notices to sectoral regulators to make representation, if likely to be affected by the compromise or arrangement

Meeting can be dispensed by Tribunal if atleast 90% value of creditors agree & confirm to scheme of compromise or arrangement.

Objection to the compromise/arrangement shall be made by persons-

holding 10% or more of shareholding	having outstanding debt 5 % or more of total outstanding debt
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Where, at a meeting, majority of persons representing three-fourths in value agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding

Filing of order of Tribunal with registrar within thirty days of the receipt of the order.

2. Power of Tribunal to enforce Compromise or Arrangement [Section 231]

Where the Tribunal makes an order u/s 230 sanctioning a compromise or an arrangement in respect of a co., it—

shall have power to **supervise the implementation** of the compromise or arrangement; &

give such directions as it may consider necessary for the proper implementation of the compromise or arrangement.

3. Circulation of information for the meeting by the merging companies / the companies in respect of which a division is proposed

draft of the proposed terms of the scheme

drawn up and adopted by the directors of the merging company;

confirmation of filing of draft scheme

a copy of the draft scheme has been filed with the Registrar;

report adopted by the directors

a report of the merging companies explaining effect of compromise on shareholders, KMP, promoters and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties;

report of the expert

with regard to valuation

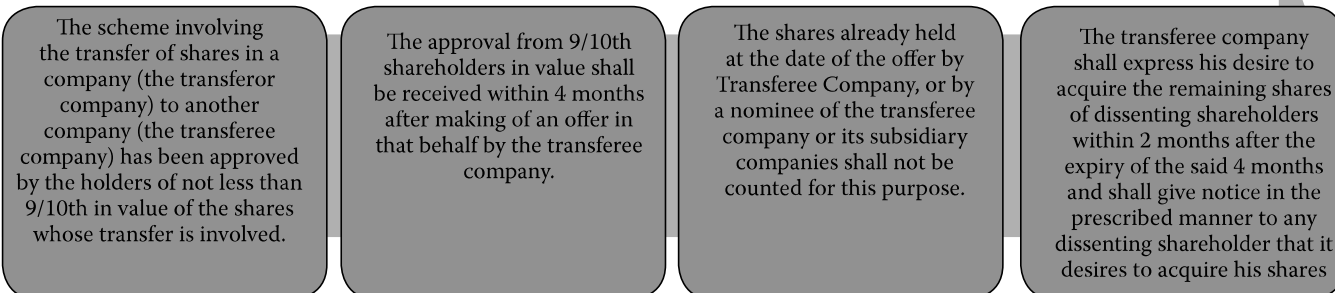
supplementary accounting statement

if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme.

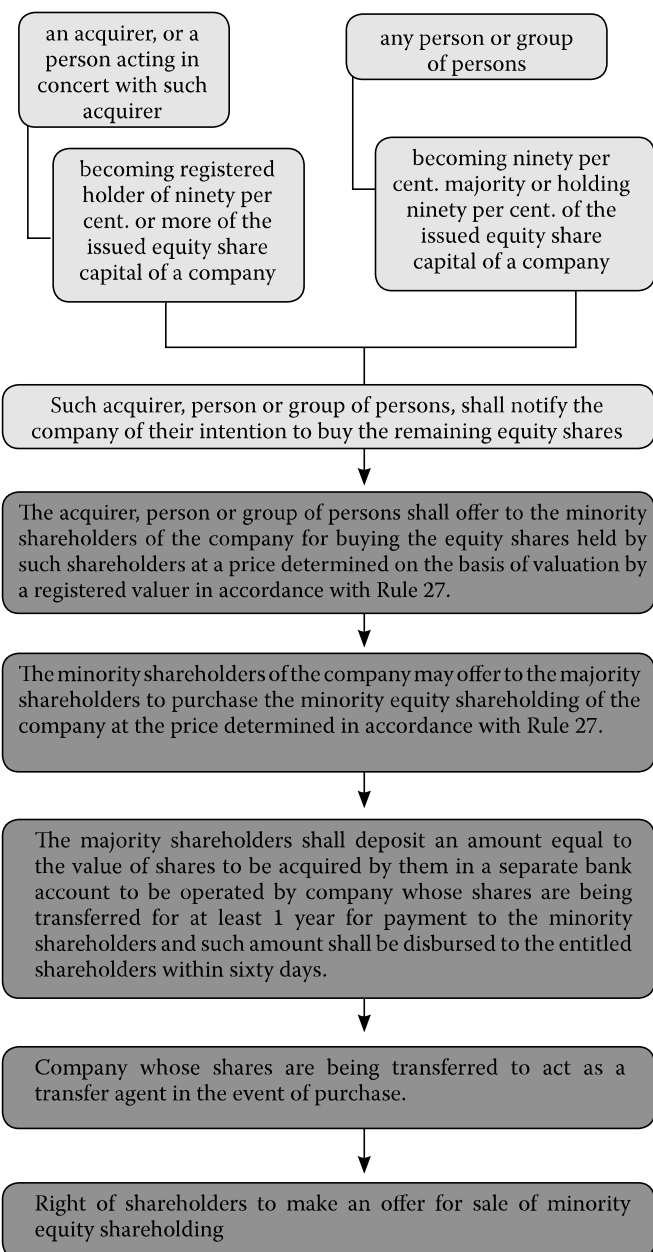
4. Order of Tribunal on the agreement of compromise or arrangement



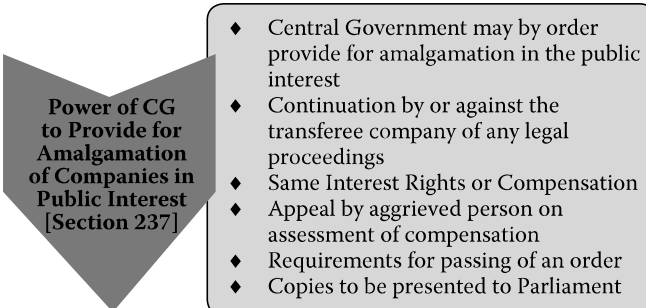
5. Requirements as to acquisition of shares of Shareholders dissenting from Scheme or Contract Approved by Majority [Section 235]



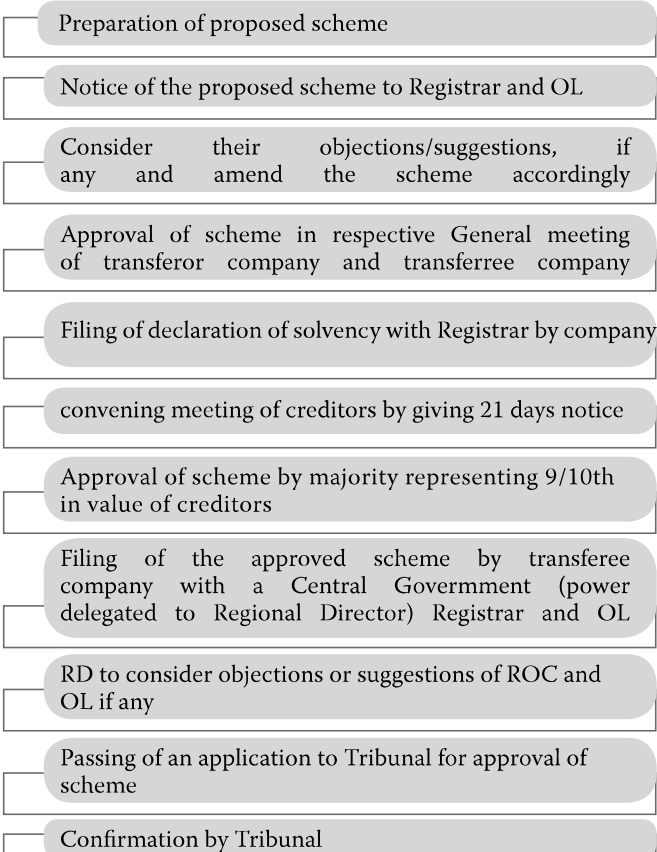
6. Purchase of Minority Shareholding [Section 236]

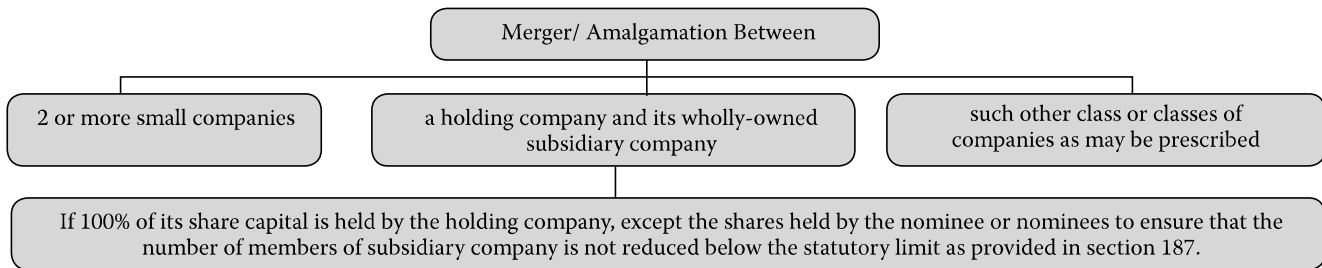


7. Power of CG to provide for amalgamation of companies in Public interest (Section 237)

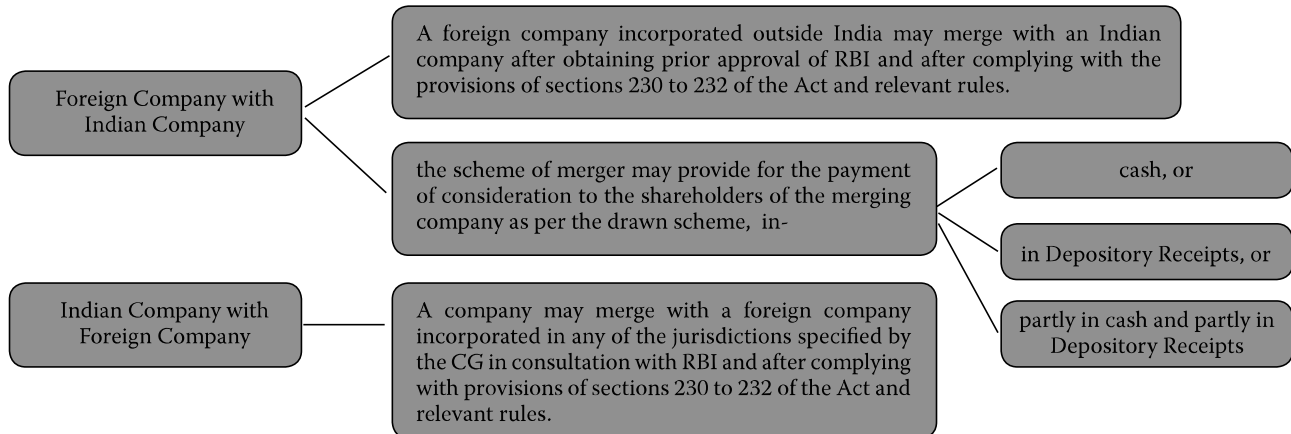


8. Fast Track Mode Of Merger Or Amalgamation Of Certain Companies [Section 233]





9. Merger or Amalgamation of Company with Foreign Company [Section 234]



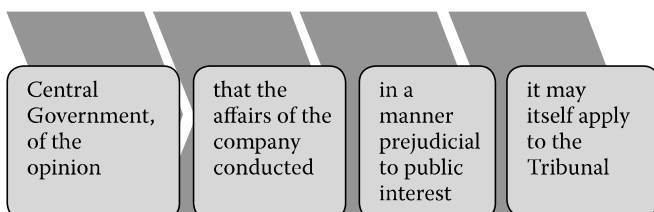
CHAPTER 6: PREVENTION OF OPPRESSION AND MISMANAGEMENT

1. Application to Tribunal for Relief in cases of Oppression, etc. [Section 241]

(i) Right to apply to Tribunal:

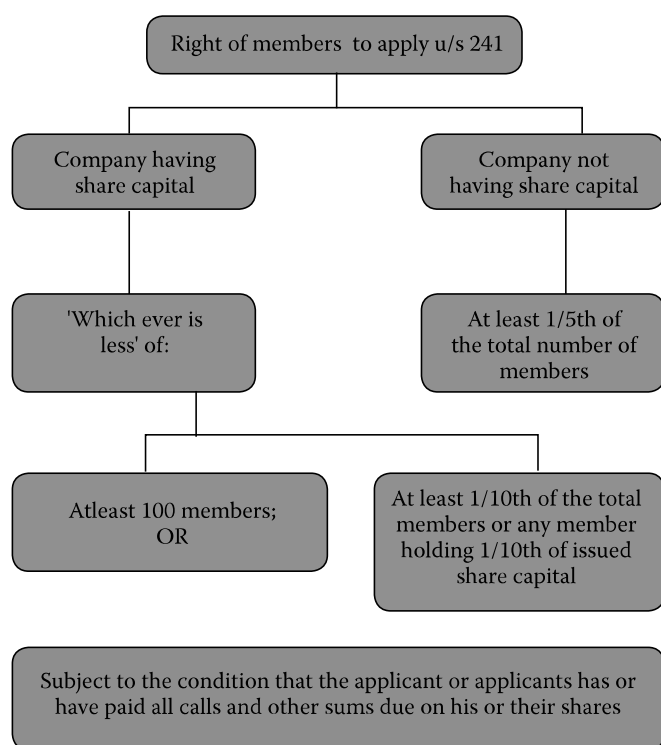
Members of the co. may apply to the Tribunal (provided has a right to apply under section 244) where-	affairs of the company have been / are being conducted prejudicial to-	public interest	
		him or any other member /s	
		the interests of the company	
		has taken place in the management /control of the company (in case of share capital)	
		in its membership, or in any other manner	
	the material change	affairs of the company will be conducted in a manner prejudicial to its	interests or members/ any class of members

(ii) Central Government *suo moto* to apply the Tribunal:



2. Right to Apply under Section 241 [Section 244]

Rights of Members to Apply:



3. Powers of Tribunal [Section 242]

Order to be passed by the Tribunal

- ◆ on any application, if the Tribunal is of the opinion—
- ◆ that the company's affairs have been /are being conducted in a manner prejudicial or oppressive to
- ◆ any member /s or
- ◆ to public interest or
- ◆ the interests of the company; and
- ◆ that to wind up the company would unfairly prejudice such member/s,
- ◆ the making of a winding-up order on just and equitable ground
- ◆ the Tribunal may, with a view to bringing to an end the matters complained of, make
- ◆ such order as it thinks fit.

Nature of orders that can be passed by the Tribunal

- ◆ regulation of conduct of affairs of the company in future
- ◆ purchase of shares or interests of any members of the company by other members / company
- ◆ purchase of its shares consequent to reduction of its share capital
- ◆ restrictions on the transfer /allotment of the shares
- ◆ termination, setting aside or modification, of any agreement
- ◆ 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
- ◆ removal and recovery of undue gains made by any MD, M /D during the period of his appointment
- ◆ appointment of MD /M subsequent to an order removing the existing MD /M
- ◆ appointment of directors to report to Tribunal
- ◆ imposition of costs
- ◆ any other matter

Filing of copy of Order of Tribunal

- ◆ certified copy of the order of the Tribunal shall be filed by the company with the Registrar within 30 days of the order of the Tribunal

Alteration through order of the Tribunal

- ◆ Where an order of the Tribunal makes any alteration in the MoA /AoA, the company shall, permitted in the order, to make, without the leave of the Tribunal, any alteration

Punishment in case of contravention

- ◆ the company with fine varying from 1 lakh rupees -25 lakh rupees and
- ◆ every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than 25,000 rupees but which may extend to 1 lakh rupees, or with both.

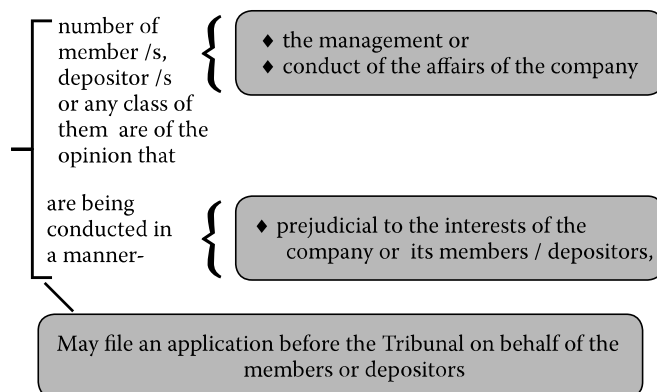
4. Consequences of Termination or Modification of Certain Agreements [Section 243]

Where an order passed	Such passed order shall not give rise to-	No MD/ other D / M whose agreement is so terminated or set aside shall,	Penalty to MD/D /M of a company and every other director of the company knowingly acts in contravention
◆ terminates, ◆ sets aside or ◆ modifies an agreement referred in section 242(2)	◆ to any claims against the company by any person for damages or ◆ for compensation for loss of office or ◆ in any other respect either in pursuance of the agreement or ◆ otherwise;	◆ for a period of five years from the date of the order terminating or setting aside the agreement, ◆ without the leave of the Tribunal, ◆ be appointed, or act, as the managing director or other director or manager of the company	◆ shall be punishable with imprisonment for a term extending to 6 months or ◆ with fine extending to 5 lakh rupees, or ◆ with both.

PROVIDED THAT THE TRIBUNAL SHALL GRANT LEAVE ONLY WHEN NOTICE OF THE INTENTION TO APPLY FOR LEAVE HAS BEEN SERVED ON THE CENTRAL GOVERNMENT AND THAT GOVERNMENT HAS BEEN GIVEN A REASONABLE OPPORTUNITY OF BEING HEARD IN THE MATTER.

5. Class Action (Section 245)

(i) Filing of application before the Tribunal on behalf of the members /depositors:



(ii) Order of tribunal: Members/depositors may seek the following orders –

- restrain the company from committing an *ultravires* act
- to restrain the company from committing breach of any provision of the company's AoA/MoA
- to declare a resolution altering the memorandum or articles of the co. 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 co. and its directors from acting on such resolution;

to restrain the co. from doing an act contrary to the provisions of this Act / any other law

to restrain the company from taking action contrary to any resolution passed by the members;

to claim damages / compensation / demand / any other suitable action from or against—

- ♦ the co. / its directors for any fraudulent, unlawful / wrongful act / omission / conduct / any likely act / omission / conduct on its / their part;
- ♦ the auditor including audit firm of the co. for any improper / misleading statement of particulars made in his audit report / for any fraudulent, unlawful / wrongful act / conduct; or
- ♦ any expert or advisor or consultant / any other person for any incorrect / misleading statement made to the company / for any fraudulent, unlawful / wrongful act / conduct / any likely act / conduct on his part;

to seek any other remedy as the Tribunal may deem fit.

(v) Consideration of application by Tribunal under section 245(1):

member / depositor is acting in good faith in making the application

any evidence as to the involvement of any person (other than directors) or officers of the company on any of the matters under 245(1)

same cause of action which the member / depositor could pursue in his own right rather than through an order

any evidence as to the views of the members / depositors of the company who have no personal interest, direct / indirect, in the matter being proceeded

where the cause of action is an act / omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be—

authorised by the company before it occurs; or

ratified by the company after it occurs;

where the cause of action is an act / 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.

(iii) Required number of members to apply:

whichever is less

in the case of a company having a share capital

at least 100 members, or
such percentage of the total number of its members as prescribed under respective rules or
any member or members holding not less than such percentage of the issued share capital of the company as may be prescribed

in the case of a company not having a share capital

not less than one-fifth of the total number of its members

(vi) In case of admission of application

When an application is admitted, the Tribunal shall

- ♦ serve public notice on admission of the application to all the members / depositors
- ♦ all similar applications prevalent in any jurisdiction should be consolidated into a single application
- ♦ the class members or depositors should be allowed to choose the lead applicant
- ♦ the class members / depositors should be allowed to choose the lead applicant
- ♦ the members or depositors of the class are unable to come to a consensus, the Tribunal shall appoint a lead applicant, who shall be in charge of the proceedings from the applicant's side
- ♦ two class action applications for the same cause of action shall not be allowed;
- ♦ the cost / expenses connected with the application for class action shall be defrayed by the company or any other person responsible for any oppressive act

(iv) Required number of depositors to apply:

No. of depositors who may apply

at least 100 or such % of the total number of depositors as may be prescribed, whichever is less, or

any depositor/s to whom the company owes such % of total deposits of the company as may be prescribed

(vii) Order to be binding on the parties:

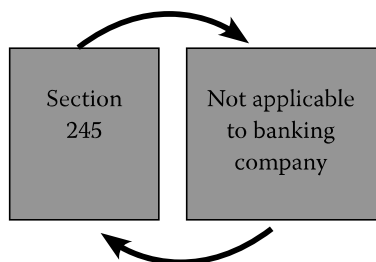
order passed by the Tribunal shall be binding on the

- ♦ company and all its members,
- ♦ depositors and
- ♦ auditor including
 - ♦ audit firm or
 - ♦ expert or
 - ♦ consultant or
 - ♦ advisor or
 - ♦ any other person associated with the company.

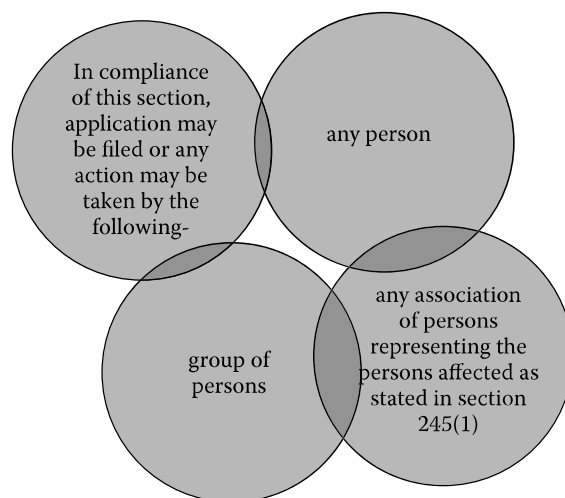
(viii) Punishment for non-compliance of section 245

Company which fails to comply with an order of Tribunal shall be punishable with-		every officer of the company who is in default
fine - minimum 5 lakh rupees to maximum 25 lakh rupees,	and	Imprisonment for a term extending to 3 years + fine not be less than 25 thousand rupees extending to 1 lakh rupees.

(ix) Exemption from application of section:

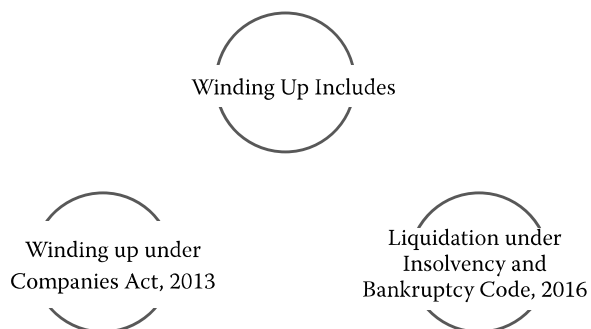


(x) Application may be filed on behalf of affected persons:

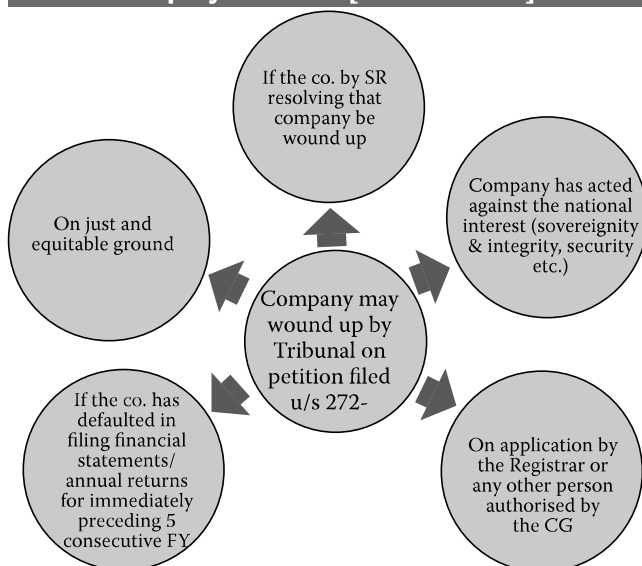


CHAPTER 7: WINDING UP (WU)

1. Definition of Winding Up [Section 2(94A)]

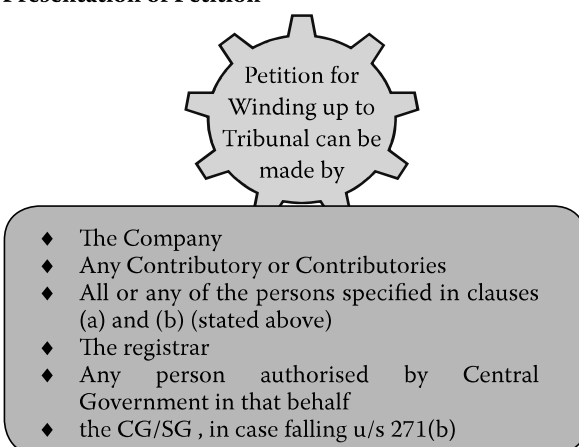


2. Circumstances in which Company may be wound up by Tribunal [Section 271]



3. Petition for Winding up [Section 272 (1)]

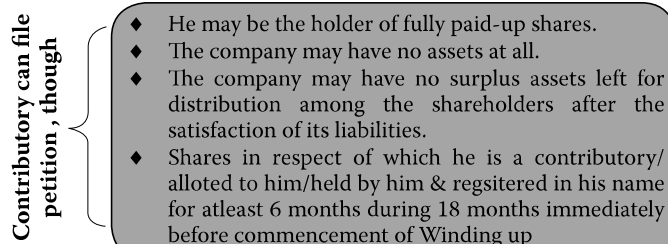
(i) Presentation of Petition



Copy of petition shall also be filed with the registrar

Registrar submit his views to Tribunal within 60 days of receipt of petition.

(ii) Petition filed by contributory [Section 272(2)]

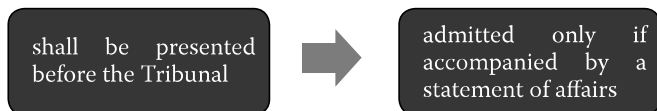


(iii) Petition filed by Registrar [Section 272(3)]



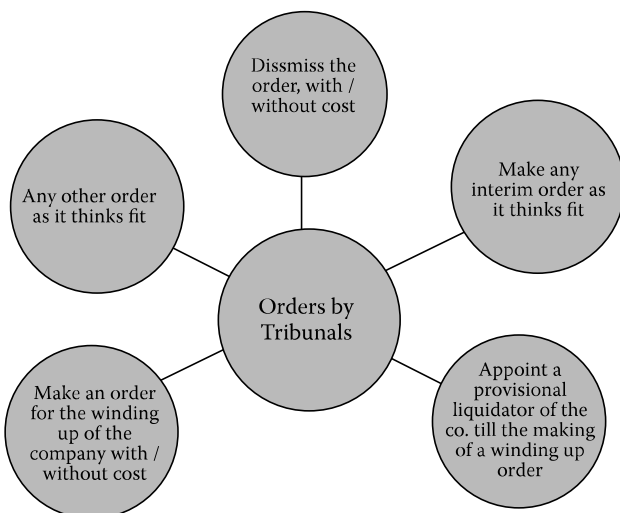
*Registrar cannot file petition for winding up on the grounds given u/s 271(a) & 271(e)

(iv) Petition presented by Co. for winding up

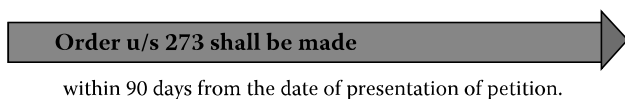


4. Powers of Tribunal [Section 273]

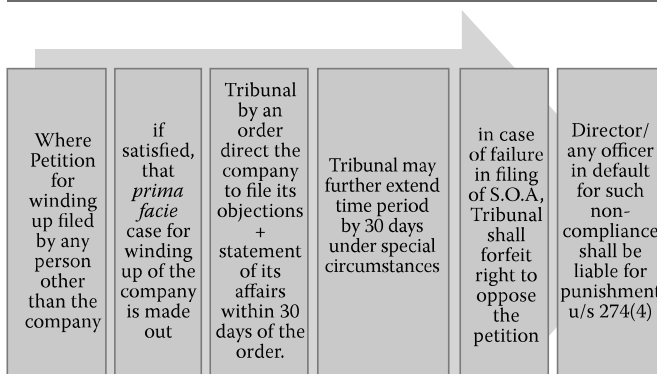
(i) Order passed by Tribunal



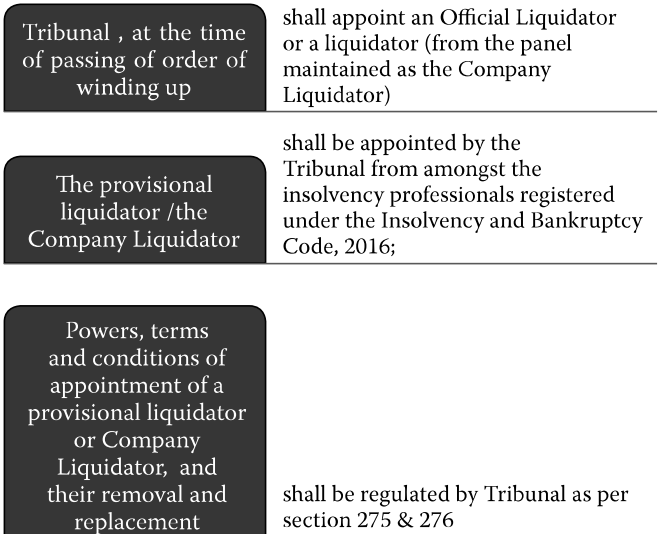
(ii) Time period for passing of an order



5. Tribunal may order company to file a statement of its affairs (SOA) [Section 274(1)]

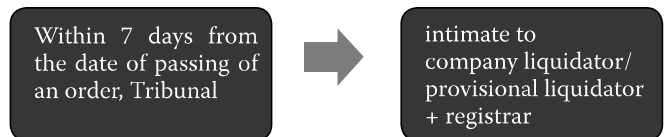


6. Company Liquidator (CL) & their appointments [Section 275]

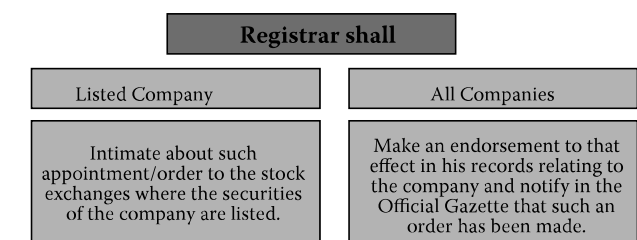


7. Intimation of order of Tribunal [Section 277]

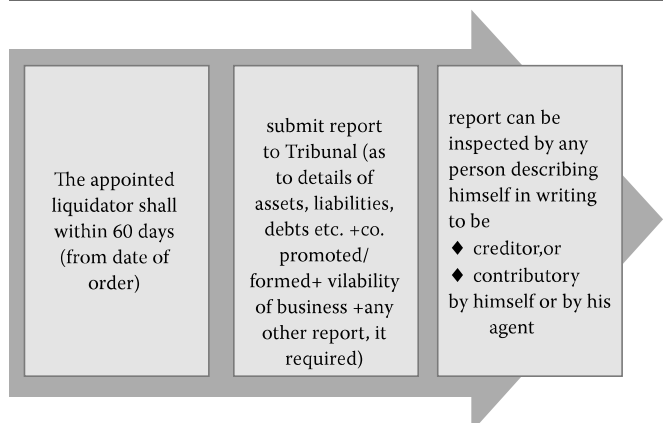
(i) Intimation of order of Tribunal of an appointment of provisional liquidator or winding up of a company [Section 277 (1)]



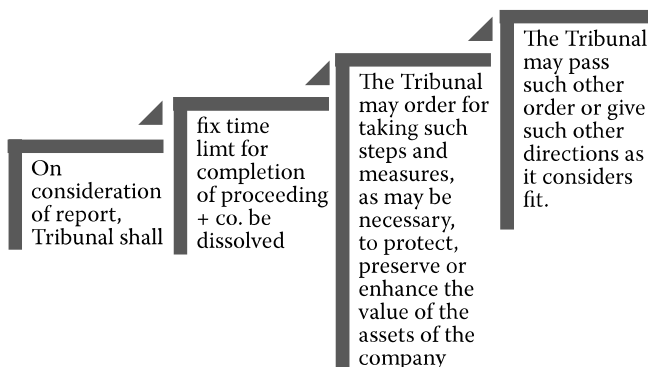
(ii) On receipt of order of appointment /winding up [Section 277(2)]



8. Submission of report by Company Liquidator [Section 281]



9. Direction of Tribunal on report of Company liquidator [Section 282]



10. Payment of Debts by Contributory and Extent of Set-off [Section 295]

(i) Payment of debts by contributory

The Tribunal may, after passing of a winding up order,

pass an order requiring any contributory on the list of contributories to pay,

in the manner directed by the order, any money due to the company, from him or from the estate of the person whom he represents,

exclusive of any money payable by him / the estate by virtue of any call in pursuance of this Act.

(ii) Setoff of amount due to any contributory

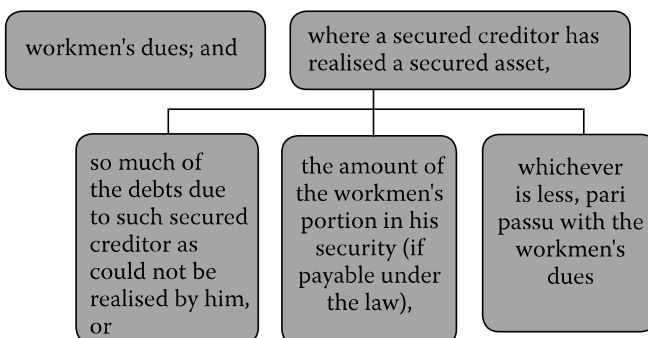
The Tribunal, in making an order, may	
in the case of an unlimited company	allow to the contributory, by – • way of set-off, any money due to him, or • to the estate which he represents, from the company, on any independent dealing or contract with the company. But not any money due to him as a member of the company in respect of any dividend or profit;
in the case of a limited company	allow to any director or manager whose liability is unlimited, or to his estate, such set-off.

12. Dissolution of Company by Tribunal [Section 302]

When affairs of a company have been completely wound up	Tribunal shall on an application filed by the CL, or when the Tribunal is of the opinion that it is just and reasonable in the circumstances that an order for the dissolution of the company should be made	Copy of the order shall, within 30 days from the date, be forwarded by the CL to the Registrar	If the CL makes a default in forwarding a copy of the order within the period specified
the Company Liquidator (CL) shall make an application to the Tribunal for dissolution of such company	Tribunal shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly	Registrar shall record in the register relating to the company a minute of the dissolution of the company	the CL shall be punishable with fine which may extend to ₹ 5,000 for every day during which the default continues

13. Overriding Preferential Payments [Section 326]

Debts to be paid in priority



11. Arrest of Person trying to Leave India or Abscond [Section 301]

Any time either before or after passing a winding up order, if the Tribunal is satisfied that –

- ♦ a contributory, or
- ♦ a person having property, accounts or papers of the company in his possession

is about–

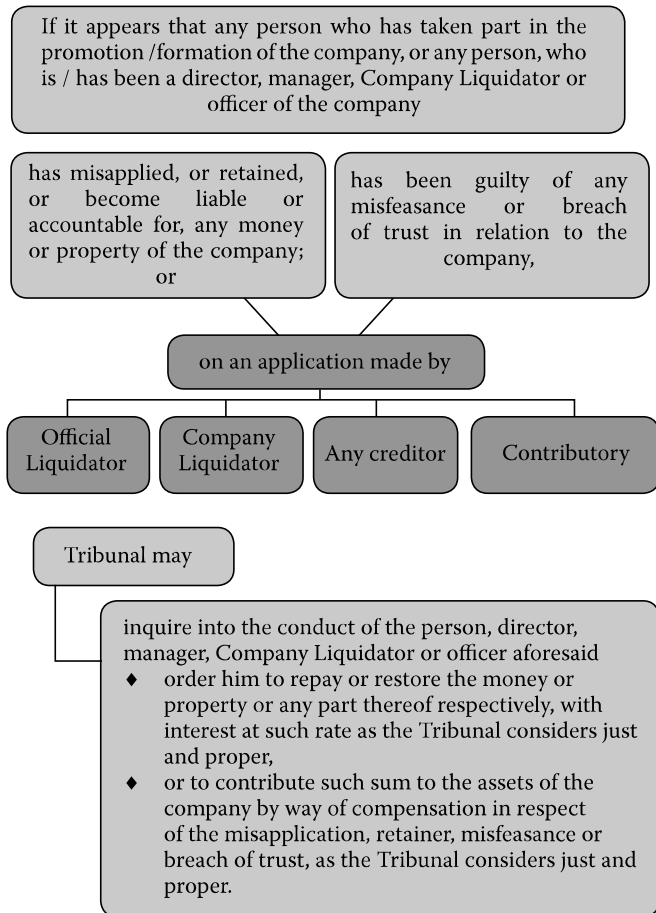
- ♦ to leave India or
- ♦ otherwise to abscond, or
- ♦ is about to remove or conceal any of his property, for evading payment of calls, or
- ♦ of avoiding examination respecting the affairs of the company,

the Tribunal may cause—

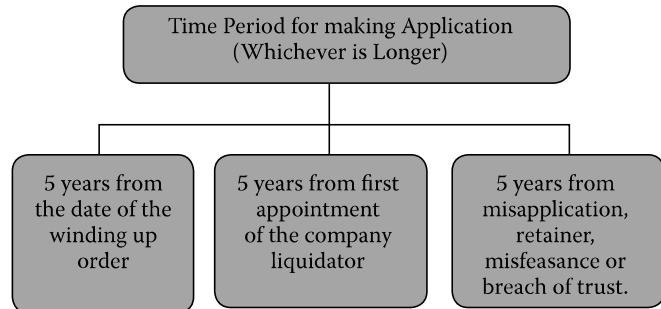
- ♦ the contributory to be detained until such time as the Tribunal may order; and
- ♦ his books and papers and movable property to be seized and safely kept until such time as the Tribunal may order.

14. Power of Tribunal to Assess Damages against Delinquent Directors, etc. [Section 340]

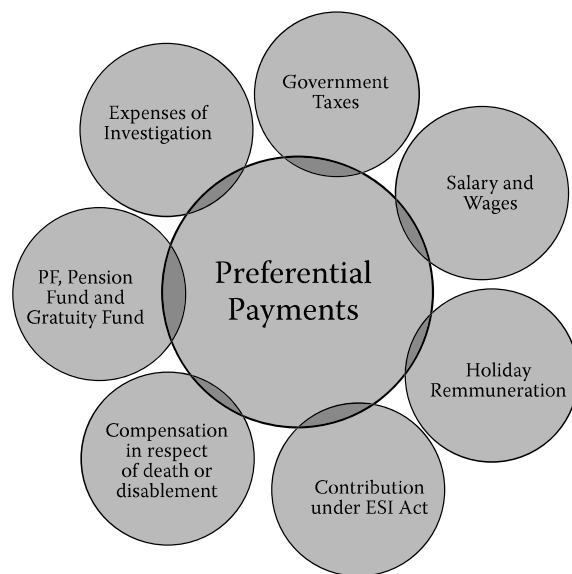
(i) Power of Tribunal to assess damages



(ii) Time limit for filing of an application for assessing of damages



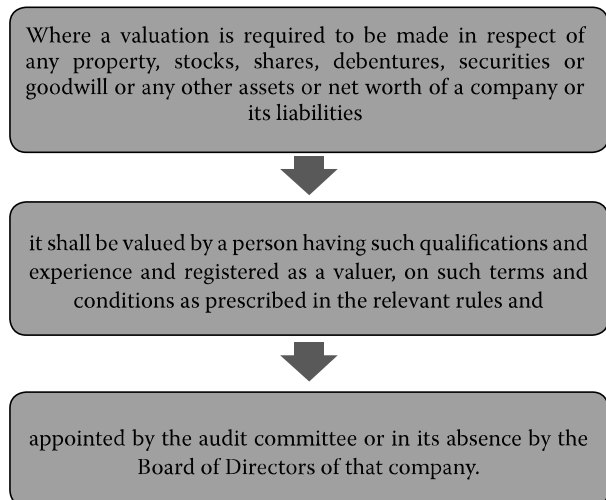
15. Preferential Payments [Section 327]



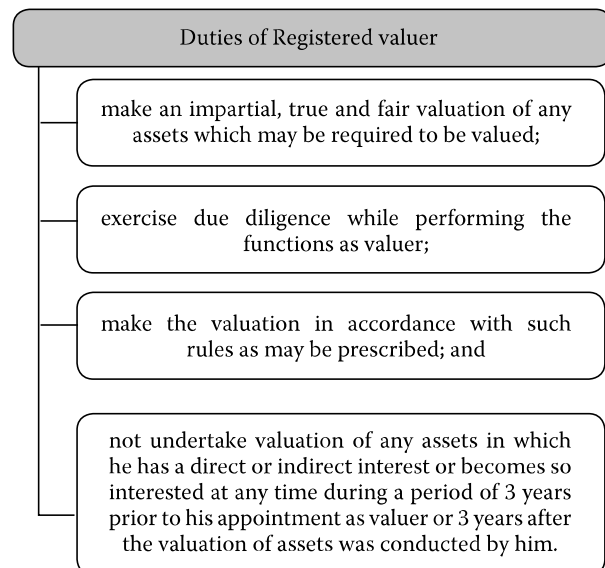
CHAPTER 10: MISCELLANEOUS PROVISIONS

1. Registered Valuer (Section 247)

(i) Valuation

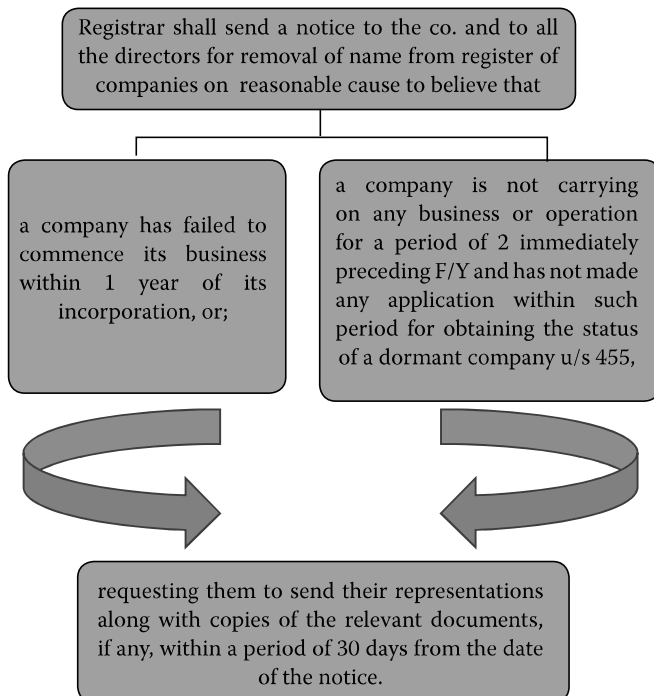


(ii) Duties of Registered valuer

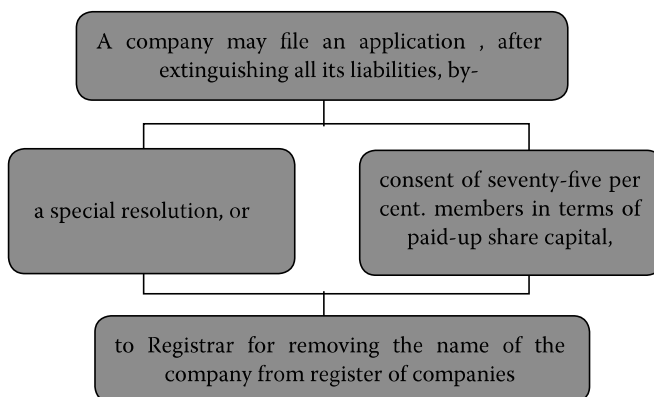


2. Power of Registrar to Remove Name of Company from Register of Companies [Section 248]

(i) Removal of name by registrar



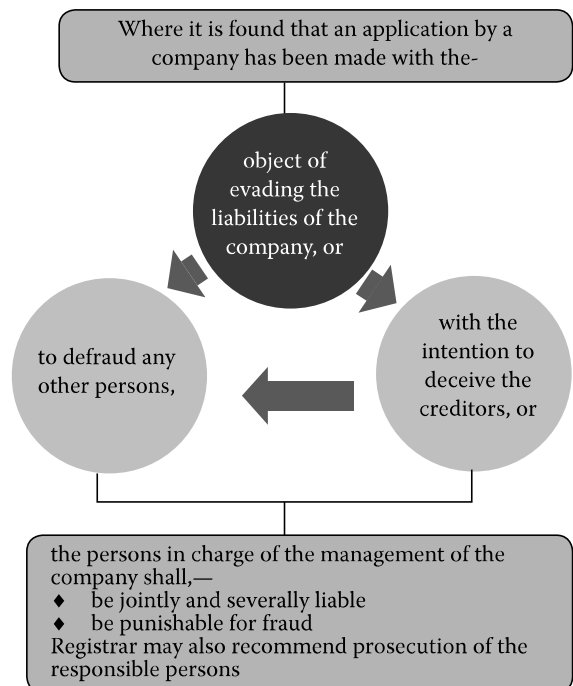
(ii) Removal of name by company



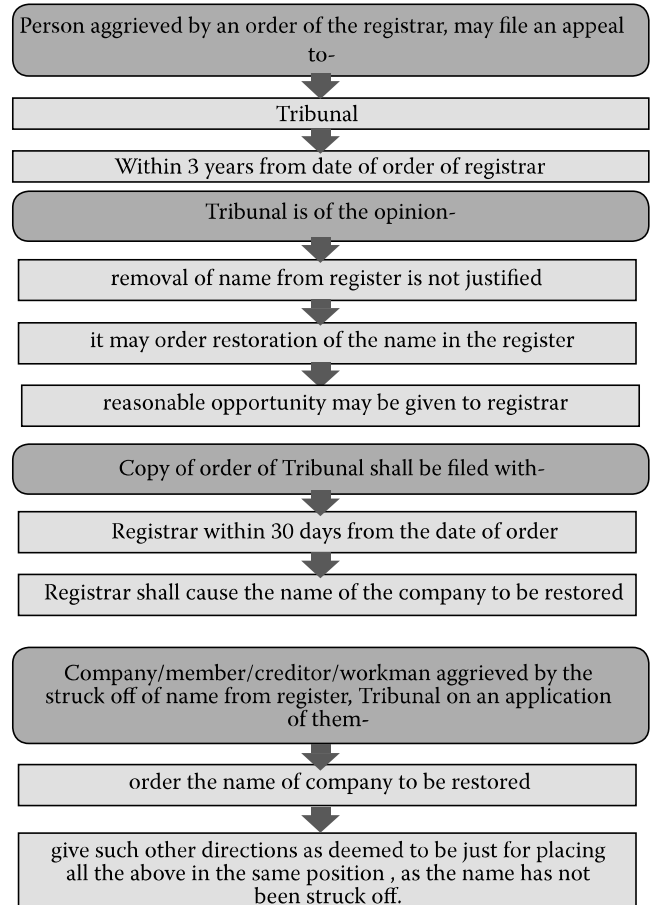
3. Restrictions on making application under section 248 in certain situations [Section 249]

- Application made by co. u/s 248 is restricted, if at any time in the previous three months, the company-
- ◆ changed its name or shifted its registered office
 - ◆ made a disposal for value of property or rights held by it
 - ◆ engaged in any other activity except the one which is necessary or expedient
 - ◆ made an application to the Tribunal for the sanctioning of a compromise or arrangement
 - ◆ is wound up

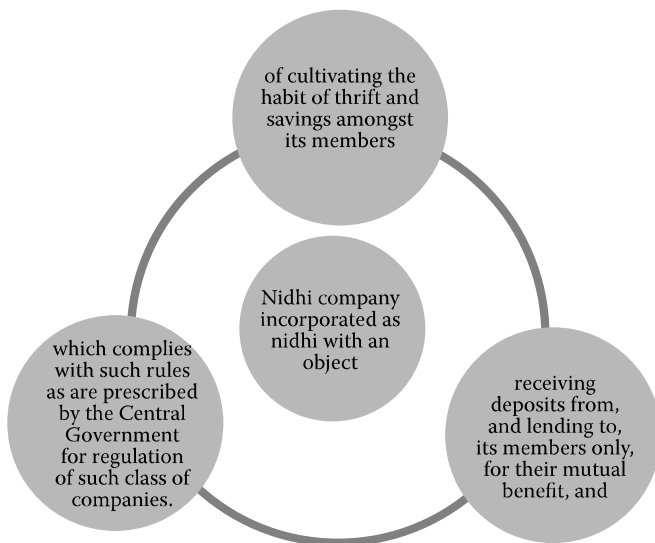
4. Fraudulent Application for Removal of Name [Section 251]



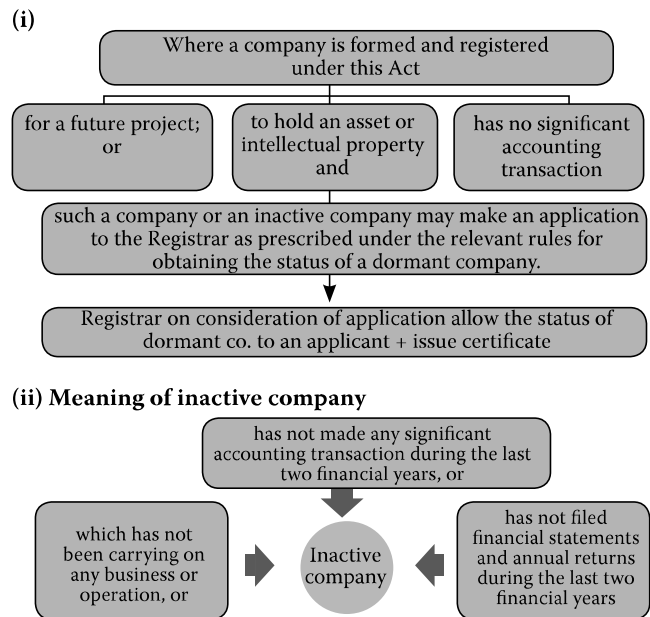
5. Appeal to Tribunal [Section 252]



6. Nidhi Company (Section 406)



7. Dormant company [section 455]



Residential Programme on Professional Skills Development at Centre of Excellence, Hyderabad and Jaipur

The Board of Studies is pleased to announce the next two batches of ICAI's 'Four Weeks Residential Programme' on Professional Skills Development as below:

Venue	Participant	Fees	Date	Online Registration
Centre of Excellence (CoE), Hyderabad	Women	₹ 48,000/-	25 th November, 2018 to 22 nd December, 2018	https://resource.cdn.icai.org/50872bos40499main.pdf
Centre of Excellence (CoE), Jaipur	Men	₹ 48,000/-	26 th November, 2018 to 23 rd December, 2018	https://resource.cdn.icai.org/50874bos40500main.pdf

This programme aims to help the Chartered Accountancy students and newly qualified Chartered Accountants in imbibing the professional skills required for effective functioning in business organisations and the profession. The Programme environment focuses on development of communication skills, personal qualities, interpersonal and teamwork skills, problem solving skills, leadership skills etc.

Salient Features of the Programme:

- ♣ Emphasis on Soft Skills, Communication Skills and Personality Development.
- ♣ Exemption from payment of Fees to Top 10 Rank holders.
- ♣ Part of Practical Training.
- ♣ No need for Separate Management and Communication Skills (MCS) forming part of Advanced Integrated Course on Information Technology and Soft Skills (AICITSS).
- ♣ Special Session on Group Discussion & Interview.
- ♣ Preparation of Project and Presentation Skills.
- ♣ Building Team Spirit.

Students who have passed Chartered Accountancy IPCC/ PCC/ PE- II examination and pursuing last year of Practical training or completed Practical training are invited to join the course for this batch. Recently qualified Chartered Accountants are also welcome to join the course.

Student's opinion

CoE is a place to learn from best of speakers who fill the session with loads of earnings and bundle of creativity. It is a great place to learn from students and professional with diverse background. A must-do course for all CA Students.

- CA. Kevin Dharmesh Gandhi
from Western Region
(Participant of 37th batch)

It was an amazing experience and the faculties were exceptionally good. It bridges the gap between a CA student and a professional. It influences us to be creative and think out of the box.

- Ms. Parnika Poddar
from Eastern Region
(Participant of 40th batch)

For online registration, you can proceed with 'Board of Studies Announcements' https://www.icai.org/new_category.html?c_id=345 under the 'Students' tab on the Home Page of the ICAI's website www.icai.org. For any query, you can write us at ashokdua@icai.in or may also contact us on 0120-3045935 and Mobile No. 9868879548.

Director, Board of Studies