E-Book

on

The Companies Act, 2013
and Rules thereon

The Institute of Chartered Accountants of India
(Set up under an Act of Parliament)
New Delhi

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***Disclaimer**: This E-Book is based on the Companies Act 2013, Rules, Circulars, Notifications as notified by the Ministry of Corporate Affairs. The Institute of Chartered Accountants of India does not own the responsibility for any error or omission. The users are advised to cross check with the original Act, Rules, Circulars, Notifications, Amendments before acting upon this E- Book.*
Source: ***www.mca.gov.in***

Website: www.icai.org

E-mail: clcgc@icai.in

Committee: The Corporate Laws & Corporate Governance Committee

Published by: The Institute of Chartered Accountants of India, ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delh-110 002

FOREWORD

The Companies Act, 2013 is an important milestone in bringing the glory of Indian Business at par with international community. The Act intends to improve corporate governance and to further strengthen regulations for the companies, keeping in view the changing economic environment as well as the growth of our economy. The Act which was much awaited and deliberated topic for a long period of time has introduced some new concepts like definition of Independent Directors alongwith the Code for Independent Directors and the Concept of Corporate Social Responsibility in the Indian context which is not only remarkable but also setting a tone for making our Law at par with the best International Standards and Practices.

The Corporate Laws & Corporate Governance Committee of ICAI has taken the initiative of bringing out a E-Book on Companies Act 2013 for the benefit of the members of the profession. The members can access the E-Book as per their convenience through their laptop, i pad, tab, or mobile etc. and refer the provisions of the Act and the Rules thereon whenever required.

I commend the Corporate Laws & Corporate Governance Committee in bringing this publication in electronic form which is so essential in our day to today lives now. I extend my profound appreciation to the Chairman of the Committee, CA S. Santhanakrishnan to bring out this timely and very useful publication.

My compliments to the Secretariat of the Committee comprising CA Sarika Singhal, Ms. S. Rita, CA Arun Sethi and CA Vijayanti Jain for their extensive effort and support in bringing out this E-Book.

I am confident that this E- Book would be of immense help to the members in carrying out their professional assignment.

New Delhi
30th April 2014

CA. K. Raghu
President

Preface

The Companies Act, 2013 replaces the decades old Companies Act, 1956, which had been amended several times. The new Act ushers a change for corporate environment and corporate democracy. New provisions are being brought out by the Act to meet the challenges of the changing environment at the national and international level. The Act seeks to consolidate and amend the law relating to the companies taking into consideration best global practices and emerging Indian perspectives.

The Ministry of Corporate Affairs has already notified a significant number of sections of the Companies Act, 2013 and the Ministry has also notified majority of the Rules to the various Chapters/Sections of the Act, which is now mostly to be driven by the Rules.

The members of the profession have an important role to play with the enactment of the new Companies Act and to make the companies operate efficiently and effectively. To facilitate easy reference and easy access to the Act and the Rules thereon, whenever and wherever required for the convenience of the members, the Institute through its Corporate Laws & Corporate Governance Committee has brought out the E- Book on Companies Act 2013. The E- Book is very user- friendly and any provision in the Act or the Rules can be quickly checked while working on the desk or on the move.

I take this opportunity in thanking CA. K. Raghu, President of ICAI and CA. Manoj Fadnis, Vice-President of ICAI for their initiatives and encouragement in bringing out the E- Book. I also thank CA. Nilesh Vikamsey, the Vice- Chairman of the Committee for his valuable inputs. Further, I thank all the colleagues in the Committee for their suggestions and comments.

I thank Dr. P. T. Giridharan, Joint Director for his inputs and suggestions. Also, the Secretariat to the Committee (comprising CA. Sarika Singhal, Ms. S. Rita, CA. Arun Sethi and CA. Vijayanti Jain) deserves appreciation for their effort in working on this project.

I sincerely believe that the members of the profession and the corporates will find the E- Book very useful.

30th April, 2014

CA. S. Santhanakrishnan
Chairman,
Corporate Laws & Corporate Governance Committee

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Introduction

The Companies Act 2013 got assent from the President of India on 29th August, 2013.The Act comprises of 29 Chapters, 470 Sections with 7 Schedules. It is substantively a law based on Rules.

The changing national and international economic environment, exponential growth of the Indian economy and changes in the stakeholders' expectations necessitated for a need for a new Companies Law.

The Ministry of Corporate Affairs has notified 98 sections of the Companies Act 2013 and made applicable from 12th September, 2013 and Section 135 and Schedule VII of the Companies Act alongwith the Rules pertaining to that section were notified in February, 2014.

In addition to that, 183 sections and 13 sub- sections of the already notified sections and rest of the schedules of the Companies Act, 2013 have been notified by the Ministry on 26th March, 2014 and are made applicable from 1st April, 2014. As of now a total of 282 sections stand notified.

Also, the Rules for 19 Chapters of the Companies Act have been notified by the Ministry of Corporate Affairs.

This E- Book contains all the sections and schedules of the Companies Act 2013 as well as the Rules notified so far.

The Forms for the Rules have been given in this E- Book for Chapter- IX and Chapter- X.

For easy reference of the readers, a Table has been included which contains provisions of Companies Act 2013 as notified up to date. Further, a Table has been provided which shows Chapter-wise Sections of the Act which are not yet notified as well as the Rules for the Chapters which are notified/not notified. Amendments made so far by MCA in the Schedules and Rules have been incorporated in their respective places.

List of Sections of Companies Act 2013 that have been notified by the Ministry of Corporate Affairs till date

Chapters	Sections Notified
Chapter 1 Preliminary	**Definitions** Section 2 (1)- Abridged prospectus Section 2 (2)- Accounting Standards Section 2 (3)- Alter" or "Alteration Section 2 (4)- Appellate Tribunal Section 2 (5)- Articles Section 2 (6)- Associate company Section 2 (7)- Auditing Standards Section 2 (8)- Authorised capital Section 2 (9)- Banking company Section 2 (10)- Board of Directors "Board" Section 2 (11)- Body Corporate or Corporation Section 2 (12)- Book and Paper and Book or Paper Section 2 (13)- Books of Account Section 2 (14)- Branch Office Section 2 (15)- Called up Capital Section 2 (16)- Charge Section 2 (17)- Chartered Accountant Section 2 (18)- Chief Executive Officer Section 2 (19)- Chief Financial Officer Section 2 (20)- Company Section 2 (21)- Company limited by Guarantee Section 2 (22)- Company limited by shares Section 2 (24)- "Company Secretary" or "Secretary" Section 2 (25)- Company Secretary in Practice Section 2 (26)- Contributory Section 2 (27)- Control Section 2 (28)- Cost Accountant Section 2 (29)- Court (Except Sub clause (iv)) Section 2 (30)- Debenture Section 2 (31)- Deposit Section 2 (32)- Depository Section 2 (33)- Derivative Section 2 (34)- Director Section 2 (35)- Dividend Section 2 (36)- Document Section 2 (37)- Employees' Stock Option Section 2 (38)- Expert Section 2 (39)- Financial Institution Section 2 (40)- Financial Statement Section 2 (41)- Financial Year (Except 1st proviso) Section 2 (42)- Foreign Company Section 2 (43)- Free Reserves Section 2 (44)- Global Depository Receipt

	Section 2 (45)- Government company Section 2 (46)- Holding Company Section 2 (47)- Independent Director Section 2 (48)- Indian Depository Receipt Section 2 (49)- Interested Director Section 2 (50)- Issued Capital Section 2 (51)- Key Managerial Personnel Section 2 (52)- Listed Company Section 2 (53)- Manager Section 2 (54)- Managing Director Section 2 (55)- Member Section 2 (56)- Memorandum Section 2 (57)- Net Worth (modified)- Section 2 (58)- Notification Section 2 (59)- Officer Section 2 (60)- Officer who is in default Section 2 (61)- Official Liquidator Section 2 (62)- One Person Company Section 2 (63)- Ordinary or Special Resolution Section 2 (64)- Paid- up Share Capital Section 2 (65)- Postal Ballot Section 2 (66)- Prescribed Section 2 (67)- Previous Company Law (Except Sub clause (ix)) Section 2 (68)- Private Company Section 2 (69)- Promoter Section 2 (70)- Prospectus Section 2 (71)- Public Company Section 2 (72)- Public Financial Institution Section 2 (73)- Recognised Stock Exchange Section 2 (74)- Register of Companies Section 2 (75)- Registrar Section 2 (76)- Related Party Section 2 (77)- Relative Section 2 (78)- Remuneration Section 2 (79)- Schedule Section 2 (80)- Scheduled Bank Section 2 (81)- Securities Section 2 (82)- Securities and Exchange Board Section 2 (83)- Serious Fraud Investigation Office Section 2 (84)- Share Section 2 (85)- Small company Section 2 (86)- Subscribed Capital Section 2 (87)- Subsidiary Company (Except the proviso) Section 2 (88)- Sweat Equity Shares Section 2 (89)- Total Voting Power Section 2 (90)- Tribunal Section 2 (91)- Turnover Section 2 (92)- Unlimited Company

	Section 2 (93)- Voting right Section 2 (94)- Whole Time Director Section 2 (95)- words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 shall have the meanings respectively assigned to them in those Acts.
Chapter II – Incorporation of Company and Matters Incidental Thereto **(3-22)**	Section 3- Formation of company Section 4- Memorandum Section 5- Articles Section 6- Act to override memorandum, articles, etc. Section 7- Incorporation of company (Except sub-section (7)) Section 8- Formation of companies with charitable objects, etc. (Except sub-section (9)) Section 9- Effect of registration Section 10- Effect of memorandum and articles Section 11- Commencement of business, etc Section 12- Registered office of company Section 13- Alteration of memorandum Section 14- Alteration of articles (Except second proviso to sub-section (1) and sub-section (2)) Section 15- Alteration of memorandum or articles to be noted in every copy Section 16- Rectification of name of company Section 17- Copies of memorandum, articles, etc., to be given to members Section 18- Conversion of companies already registered Section 19- Subsidiary company not to hold shares in its holding company Section 20- Service of documents Section 21- Authentication of documents, proceedings and contracts Section 22- Execution of Acts of exchange, etc.
Chapter III – Prospectus and Allotment of Securities **(23-42)**	Section 23- Public offer and private placement Section 24- Power of Securities and Exchange Board to regulate issue and transfer of securities, etc. Section 25- Document containing offer of securities for sale to be deemed prospectus Section 26- Matters to be stated in prospectus Section 27- Variation in terms of contract or objects in prospectus Section 28- Offer of sale of shares by certain members of company Section 29- Public offer of securities to be in dematerialised form. Section 30- Advertisement of prospectus. Section 31- Shelf prospectus

	Section 32- Red herring prospectus. Section 33- Issue of application forms for securities. Section 34- Criminal liability for mis-statements in prospectus. Section 35- Civil liability for mis-statements in prospectus Section 36- Punishment for fraudulently inducing persons to invest money Section 37- Action by affected persons Section 38- Punishment for personation for acquisition, etc., of securities Section 39- Allotment of securities by company Section 40- Securities to be dealt with in stock exchanges Section 41- Global depository receipt PART II.—*Private placement* Section 42- Offer or invitation for subscription of securities on private placement
Chapter IV – Share Capital and Debentures **(43 - 72)**	Section 43- Kinds of share capital Section 44- Nature of shares or debentures Section 45- Numbering of shares Section 46- Certificate of shares Section 47- Voting rights Section 49- Calls on shares of same class to be made on uniform basis. Section 50- Company to accept unpaid share capital, although not called up. Section 51- Payment of dividend in proportion to amount paid-up. Section 52- Application of premiums received on issue of shares. Section 53- Prohibition on issue of shares at discount. Section 54- Issue of sweat equity shares. Section 55- Issue and redemption of preference shares (Except sub-section (3)) Section 56- Transfer and transmission of securities Section 57- Punishment for personation of shareholder Section 58- Refusal of registration and appeal against refusal Section 59- Rectification of register of members Section 60- Publication of authorised, subscribed and paid-up capital Section 61- Power of limited company to alter its share capital (except proviso to clause (b) of sub-section (1)) Section 62- Further issue of share capital (except sub-sections (4) to (6)) Section 63- Issue of bonus shares Section 64- Notice to be given to Registrar for alteration of share capital Section 65- Unlimited company to provide for reserve share

	capital on re-registration. Section 67- Restrictions on purchase by company or giving of loans by it for purchase of its shares. Section 68- Power of company to purchase its own securities Section 69- Transfer of certain sums to capital redemption reserve account Section 70- Prohibition for buy-back in certain circumstances Section 71- Debentures (except sub-sections (9) to (11)) Section 72- Power to nominate
CHAPTER V Acceptance of Deposits by Companies **(73 - 76)**	Section 73- Prohibition on acceptance of deposits from public. Section 74- Sub section 1- Repayment of deposits, etc., accepted before commencement of this Act. Section 76- Acceptance of deposits from public by certain companies
Chapter VI – Registration of Charges **(77 - 87)**	Section 77- Duty to register charges, etc. Section 78- Application for registration of charge. Section 79- Section 77 to apply in certain matters. Section 80- Date of notice of charge. Section 81- Register of charges to be kept by Registrar. Section 82- Company to report satisfaction of charge. Section 83- Power of Registrar to make entries of satisfaction and release in absence of intimation from company. Section 84- Intimation of appointment of receiver or manager. Section 85- Company's register of charges. Section 86- Punishment for contravention. Section 87- Rectification by Central Government in register of charges.
Chapter VII – Management and Administration **(88 - 122)**	Section 88- Register of members, etc. Section 89- Declaration in respect of beneficial interest in any share. Section 90- Investigation of beneficial ownership of shares in certain cases. Section 91- Power to close register of members or debenture holders or other security holders. Section 92- Annual return. Section 93- Return to be filed with Registrar in case promoters' stake changes. Section 94- Place of keeping and inspection of registers, returns, etc. Section 95- Registers, etc., to be evidence. Section 96- Annual general meeting. Section 100- Calling of extraordinary general meeting. Section 101- Notice of meeting Section 102- Statement to be annexed to notice Section 103- Quorum for meetings Section 104- Chairman of meetings

	Section 105- Proxies Section 106- Restriction on voting rights. Section 107- Voting by show of hands. Section 108- Voting through electronic means. Section 109- Demand for poll. Section 110- Postal ballot. Section 111- Circulation of members' resolution. Section 112- Representation of President and Governors in meetings. Section 113- Representation of corporations at meeting of companies and of creditors. Section 114- Ordinary and special resolutions. Section 115- Resolutions requiring special notice. Section 116- Resolutions passed at adjourned meeting Section 117- Resolutions and agreements to be filed Section 118- Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot. Section 119- Inspection of minute-books of general meeting (except sub-section (4)) Section 120- Maintenance and inspection of documents in electronic form. Section 121- Report on annual general meeting. Section 122- Applicability of this Chapter to One Person Company
Chapter VIII – Declaration and Payment of Dividend **(123 - 127)**	Section 123- Declaration of dividend. Section 126- Right to dividend, rights shares and bonus shares to be held in abeyance pending registration of transfer of shares. Section 127- Punishment for failure to distribute dividends
Chapter IX – Accounts of Companies **(128 - 138)**	Section 128- Books of account, etc., to be kept by company. Section 129- Financial statement. Section 133- Central Government to prescribe accounting standards Section 135- Corporate Social Responsibility. Section 136- Right of member to copies of audited financial statement Section 137- Copy of financial statement to be filed with Registrar Section 138- Internal Audit
Chapter X – Audit and Auditors **(139 - 148)**	Section 139- Appointment of auditors. Section 140- Removal, resignation of auditor and giving of special notice (except second proviso to sub-section (4)) and (Sub-section (5)) Section 141- Eligibility, qualifications and disqualifications of auditors. Section 142- Remuneration of auditors. Section 143- Powers and duties of auditors and auditing

	standards. Section 144- Auditor not to render certain services. Section 145- Auditors to sign audit reports, etc. Section 146- Auditors to attend general meeting. Section 147- Punishment for contravention. Section 148- Central Government to specify audit of items of cost in respect of certain companies
Chapter XI – Appointment and Qualifications of Directors **(149 - 172)**	Section 149- Company to have Board of Directors. Section 150- Manner of selection of independent directors and maintenance of data bank of independent directors. Section 151- Appointment of director elected by small shareholders. Section 152- Appointment of directors. Section 153- Application for allotment of Director Identification Number. Section 154- Allotment of Director Identification Number. Section 155- Prohibition to obtain more than one Director Identification Number. Section 156- Director to intimate Director Identification Number. Section 157- Company to inform Director Identification Number to Registrar. Section 158- Obligation to indicate Director Identification Number. Section 159- Punishment for contravention. Section 160- Right of persons other than retiring directors to stand for directorship. Section 161- Appointment of additional director, alternate director and nominee director. Section 162- Appointment of directors to be voted individually. Section 163- Option to adopt principle of proportional representation for appointment of directors. Section 164- Disqualifications for appointment of director. Section 165- Number of directorships. Section 166- Duties of directors. Section 167- Vacation of office of director. Section 168- Resignation of director Section 169- Removal of directors (except sub-section (4)) Section 170- Register of directors and key managerial personnel and their shareholding. Section 171- Members' right to inspect. Section 172- Punishment
Chapter XII – Meetings of Board and its Powers **(173 - 195)**	Section 173- Meetings of Board. Section 174- Quorum for meetings of Board. Section 175- Passing of resolution by circulation. Section 176- Defects in appointment of directors not to invalidate actions taken. Section 177- Audit committee.

	Section 178- Nomination and remuneration committee and stakholders relationship committee. Section 179- Powers of Board. Section 180- Restrictions on powers of Board. Section 181- Company to contribute to bona fide and charitable funds, etc. Section 182- Prohibitions and restrictions regarding political contributions. Section 183- Power of Board and other persons to make contributions to national defence fund, etc. Section 184- Disclosure of interest by director. Section 185- Loan to directors, etc. Section 186- Loan and investment by company. Section 187- Investments of company to be held in its own name. Section 188- Related party transactions. Section 189- Register of contracts or arrangements in which directors are interested. Section 190- Contract of employment with managing or whole-time directors. Section 191- Payment to director for loss of office, etc., in connection with transfer of undertaking, property or shares. Section 192- Restriction on non-cash transactions involving directors. Section 193- Contract by One Person Company. Section 194- Prohibition on forward dealings in securities of company by key managerial personnel. Section 195- Prohibition on insider trading of securities.
Chapter XIII – Appointment and Remuneration of Managerial Personnel **(196 - 205)**	Section 196- Appointment of managing director, whole-time director or manager. Section 197- Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits. Section 198- Calculation of profits. Section 199- Recovery of remuneration in certain cases. Section 200- Central Government or company to fix limit with regard to remuneration. Section 201- Forms of, and procedure in relation to, certain applications. Section 202- Compensation for loss of office of managing or whole-time director or manager. Section 203- Appointment of key managerial personnel. Section 204- Secretarial audit for bigger companies. Section 205- Functions of company secretary.
CHAPTER XIV Inspection, Inquiry and Investigation	Section 206- Power to call for information, inspect books and conduct inquiries. Section 207- Conduct of inspection and inquiry.

(206 - 229)	Section 208- Report on inspection made. Section 209- Search and seizure. Section 210- Investigation into affairs of company. Section 211- Establishment of Serious Fraud Investigation Office. Section 212- Investigation into affairs of company by Serious Fraud Investigation Office. (except references of sub-section (10) of section 66, sub-section (5) of section 140, section 213, sub-section (1) of section 251 and sub-section (3) of section 339 made in sub-section (6) and also sub-sections (8) to (10)) Section 214- Security for payment of costs and expenses of investigation. Section 215- Firm, body corporate or association not to be appointed as inspector. Section 216- Investigation of ownership of company (except sub-section (2)) Section 217- Procedure, powers, etc., of inspectors. Section 219- Power of inspector to conduct investigation into affairs of related companies, etc. Section 220- Seizure of documents by inspector. Section 223- Inspector's report. Section 224- Actions to be taken in pursuance of inspector's report (except sub-section (2) and (5)) Section 225- Expenses of investigation. Section 228- Investigation, etc., of foreign companies. Section 229- Penalty for furnishing false statement, mutilation, destruction of documents.
CHAPTER XXI PART I.—Companies authorised to register under this Act **(366- 374)**	Section 366- Companies capable of being registered. Section 367- Certificate of registration of existing companies. Section 368- Vesting of property on registration. Section 369- Saving of existing liabilities. Section 370- Continuation of pending legal proceedings (except the proviso) Section 371- Effect of registration under this Part. Section 374- Obligation of Companies registering under this Part.
Chapter XXII- Companies Incorporated Outside India **(379- 393)**	Section 379- Application of Act to foreign companies. Section 380- Documents, etc., to be delivered to Registrar by foreign companies. Section 381- Accounts of foreign company. Section 382- Display of name, etc., of foreign company. Section 383- Service on foreign company. Section 384- Debentures, annual return, registration of charges, books of account and their inspection. Section 385- Fee for registration of documents. Section 386- Interpretation.

	Section 387- Dating of prospectus and particulars to be contained therein. Section 388- Provisions as to expert's consent and allotment. Section 389- Registration of prospectus. Section 390- Offer of Indian Depository Receipts. Section 391- sub-section 1- Application of sections 34 to 36 and Chapter XX. Section 392- Punishment for contravention. Section 393- Company's failure to comply with provisions of this Chapter not to affect validity of contracts, etc.
Chapter XXIII- Government Companies **(394 - 395)**	Section 394- Annual reports on Government companies. Section 395- Annual reports where one or more State Governments are members of companies.
CHAPTER XXIV Registration offices and fees **(396 - 404)**	Section 396- Registration offices. Section 397- Admissibility of certain documents as evidence. Section 398- Provisions relating to filing of applications, documents, inspection, etc., in electronic form. Section 399- Inspection, production and evidence of documents kept by Registrar. (except reference of word Tribunal in sub-section (2)) Section 400- Electronic form to be exclusive, alternative or in addition to physical form. Section 401- Provision of value added services through electronic form. Section 402- Application of provisions of Information Technology Act, 2000. Section 403- Fee for filing, etc. Section 404- Fees, etc., to be credited into public account.
Chapter XXV- Companies to Furnish Information or Statistics **(405)**	Section 405- Power of Central Government to direct companies to furnish information or statistics.
CHAPTER XXVI Nidhis **(406)**	Section 406- Power to modify Act in its application to *Nidhis.*
Chapter XXVII- National Company Law Tribunal and Appellate Tribunal **(407 - 434)**	Section 407- Definitions. Section 408- Constitution of National Company Law Tribunal. Section 409- Qualification of President and Members of Tribunal. Section 410- Constitution of Appellate Tribunal Section 411- Qualification of Chairperson and Members of Appellate Tribunal. Section 412- Selection of Members of Tribunal and Appellate Tribunal. Section 413- Term of office of President, Chairperson and other Members. Section 414- Salary, allowances and other terms and conditions of service of Members.

Chapter XXVIII- Special Courts **(435 - 446)**	Section 439- Offences to be non-cognizable. Section 442- Mediation and conciliation penal. Section 443- Power of Central Government to appoint company prosecutors. Section 444- Appeal against acquittal. Section 445- Compensation for accusation without reasonable cause. Section 446- Application of fines.
Chapter XXIX Miscellaneous **(447 - 470)**	Section 447- Punishment for fraud. Section 448- Punishment for false statements. Section 449- Punishment for false evidence. Section 450- Punishment where no specific penalty or punishment is provided. Section 451- Punishment in case of repeated default. Section 452- Punishment for wrongful withholding of property. Section 453- Punishment for improper use of "Limited" or "Private Limited". Section 454- Adjudication of penalties. Section 455- Dormant company Section 456- Protection of action taken in good faith. Section 457- Non-disclosure of information in certain cases. Section 458- Delegation by Central Government of its powers and functions. Section 459- Powers of Central Government or Tribunal to accord approval, etc., subject to conditions and to prescribe fees on applications. Section 460- Condonation of delay in certain cases. Section 461- Annual report by Central Government. Section 462- Power to exempt a class or classes of companies from provisions of this Act. Section 463- Power of Court to grant relief in certain cases Section 464- Prohibition of association or partnership of persons exceeding certain number. Section 467- Power of Central Government to amend Schedules. Section 468- Power of Central Government to make rules relating to winding up. Section 469- Power of Central Government to make rules. Section 470- Power to remove difficulties.
Schedules	SCHEDULE I- Section 4 and 5 SCHEDULE II- Useful Lives to Compute Depreciation SCHEDULE III- General Instructions For Preparation Of Balance Sheet And Statement Of Profit And Loss Of A Company SCHEDULE IV- Code For Independent Directors SCHEDULE V - Conditions to be Fulfilled for the Appointment of a Managing or Whole Time Director or a Manager Without the Approval of the Central Government

	SCHEDULE VI- Section 55 And 186 Related To Infrastructure Projects SCHEDULE VII- Corporate Social Responsibility

List of Sections and Rules under Companies Act 2013 that have not been notified till date by the Ministry of Corporate Affairs

Chapters	Sections Not yet Notified	Rules whether notified
Chapter 1 Preliminary **(1-2)**	**Definitions** **Notified except** Section 2 (23)- Company Liquidator Section 2 (29)- Court (Sub clause (iv)) Section 2 (41)- Financial Year (first proviso) Section 2 (67)- Previous Company Law (Sub Clause (ix)) Section2 (87)- Subsidiary (except proviso) Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed	**Notified**
Chapter II – Incorporation of Company and Matters Incidental Thereto **(3-22)**	**Notified except** Section 7- Incorporation of a company (sub-section (7)) Section 8- Formation of companies with charitable objects (sub-section (9)) Section 14- Alteration of articles (second proviso to sub-section (1) and sub-section (2))	**Notified**
Chapter III – Prospectus and Allotment of Securities **(23-42)**	**Notified**	**Notified**
Chapter IV – Share Capital and Debentures **(43 - 72)**	**Notified except** Section 48- Variation of shareholders' rights. Section 55- Issue and redemption of preference shares (Sub-section (3)) Section 61- Power of limited company to alter its share capital (proviso to clause (b) of sub-section (1)) Section 62- Further issue of share capital (sub-sections (4) to (6)) Section 66- Reduction of Share Capital Section 71- Debentures (Sub-section (9) to (11))	**Notified**

CHAPTER V Acceptance of Deposits by Companies **(73 - 76)**	**Notified except** Section 74- Repayment of deposits, etc., accepted before commencement of this Act (Sub-section (2 and 3)) Section 75- Damages for fraud	**Notified**
Chapter VI – Registration of Charges **(77 - 87)**	**Notified**	**Notified**
Chapter VII – Management and Administration **(88 - 122)**	**Notified except** Section 97- Power of Tribunal to call annual general meeting. Section 98- Power of Tribunal to call meetings of members, etc. Section 99- Punishment for default in complying with provisions of sections 96 to 98. Section 119- Inspection of minutes- books of general meetings (Sub-section (4))	**Notified**
Chapter VIII – Declaration and Payment of Dividend **(123 - 127)**	**Notified except** Section 124- Unpaid Dividend Account. Section 125- Investor Education and Protection Fund.	**Notified**
Chapter IX – Accounts of Companies **(128 - 138)**	**Notified except** Section 130- Re-opening of accounts on court's or Tribunal's orders. Section 131- Voluntary revision of financial statements or Board's report. Section 132- Constitution of National Financial Reporting Authority.	**Notified**
Chapter X – Audit and Auditors **(139 - 148)**	**Notified except** Section 140 – Removal, Resignation of auditor and giving of special notice (second proviso to Sub-Section (4)) and (Sub-section (5)	**Notified**
Chapter XI – Appointment and Qualifications of Directors **(149 - 172)**	**Notified except** Section 169- Removal of directors (sub-section (4))	**Notified**
Chapter XII – Meetings of Board and its Powers **(173 - 195)**	**Notified**	**Notified**
Chapter XIII –	**Notified**	**Notified**

Appointment and Remuneration of Managerial Personnel **(196 - 205)**		
CHAPTER XIV Inspection, Inquiry and Investigation **(206 - 229)**	**Notified except** Section 212- Investigation into affairs of Company by Serious Fraud Investigation Office (references of sub-section (10) of section 66, sub-section (5) of section 140, section 213, sub-section (1) of section 251 and sub-section (3) of section 339 made in sub-section (6) and also sub-sections (8) to (10)) Section 213- Investigation into company's affairs in other cases. Section 216- Investigation of ownership of company (Sub-section (2) Section 218- Protection of employees during investigation. Section 221- Freezing of assets of company on inquiry and investigation. Section 222- Imposition of restrictions upon securities. Section 224- Actions to be taken in pursuance of inspector's report (Sub-section (2) and (5)) Section 226- Voluntary winding up of company, etc., not to stop investigation proceedings. Section 227- Legal advisers and bankers not to disclose certain information.	**Notified**
CHAPTER XV Compromises, Arrangements and Amalgamations **(230 - 240)**	**Not yet notified**	**Not yet notified**
CHAPTER XVI Prevention of oppression and Mismanagement **(241 - 246)**	**Not yet notified**	**Not yet notified**
CHAPTER XVII	**Not yet notified**	**Not yet notified**

Registered Valuers **(247)**		
CHAPTER XVIII Removal of Names of Companies From the Register of Companies **(248-252)**	**Not yet notified**	**Not yet notified**
CHAPTER XIX Revival and Rehabilitation of Sick Companies **(253 - 269)**	**Not yet notified**	**Not yet notified**
CHAPTER XX Winding up **(270-365)**	**Not yet notified**	**Not yet notified**
CHAPTER XXI PART I.—Companies authorised to register under this Act **(366- 374)** PART II.—Winding up of unregistered companies **(375-378)**	**Notified except** Section 370- Continuation of pending legal proceedings- (proviso) Section 372- Power of Court to stay or restrain proceedings. Section 373- Suits stayed on winding up order. Section 375- Winding up of unregistered companies. Section 376- Power to wind up foreign companies although dissolved. Section 377- Provisions of Chapter cumulative. Section 378- Saving and construction of enactments conferring power to wind up partnership firm, association or company, etc., in certain cases.	**Notified**
Chapter XXII- Companies Incorporated Outside India **(379- 393)**	**Notified except** Section 391- Application of sections 34 to 36 and Chapter XX (Sub-section (2))	**Notified**
Chapter XXIII- Government Companies **(394 - 395)**	**Notified**	**Not yet notified**
CHAPTER XXIV Registration offices and fees **(396 - 404)**	**Notified except** Section 399- Inspection, production and evidence of documents kept by Registrar. (Reference of	**Notified**

	word 'Tribunal in sub-section 2')	
CHAPTER XXV Companies to furnish information or Statistics **(405)**	**Notified**	**Not yet notified**
CHAPTER XXVI Nidhis **(406)**	**Notified**	**Notified**
Chapter XXVII- National Company Law Tribunal and Appellate Tribunal **(407 - 434)**	**Notified except** Section 415- Acting President and Chairperson of Tribunal or Appellate Tribunal. Section 416- Resignation of Members. Section 417- Removal of Members. Section 418- Staff of Tribunal and Appellate Tribunal. Section 419- Benches of Tribunal. Section 420- Orders of Tribunal. Section 421- Appeal from Orders of Tribunal. Section 422- Expeditious disposal by Tribunal and Appellate Tribunal. Section 423- Appeal to Supreme Court. Section 424- Procedure before Tribunal and Appellate Tribunal. Section 425- Power to punish for contempt. Section 426- Delegation of powers. Section 427- President, Members, officers, etc., to be public servants. Section 428- Protection of action taken in good faith. Section 429- Power to seek assistance of Chief Metropolitan Magistrate, etc. Section 430- Civil court not to have jurisdiction. Section 431- Vacancy in Tribunal or Appellate Tribunal not to invalidate acts or proceedings. Section 432- Right to legal representation. Section 433- Limitation.	**Not yet notified**

	Section 434- Transfer of certain pending proceedings.	
Chapter XXVIII- Special Courts **(435 - 446)**	**Notified except** Section 435- Establishment of Special Courts. Section 436- Offences triable by Special Courts. Section 437- Appeal and revision. Section 438- Application of Code to proceedings before Special Court. Section 440- Transitional provisions. Section 441- Compounding of certain offences.	**Not yet notified**
Chapter XXIX Miscellaneous **(447 - 470)**	**Notified except** Section 465- Repeal of certain enactments and savings. Section 466- Dissolution of Company Law Board and consequential provisions.	**Notified**
I- VII Schedules	**Notified**	

THE COMPANIES ACT, 2013

(NO. 18 OF 2013)

[29th *August,* 2013.]

An Act to consolidate and amend the law relating to companies.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

CHAPTER I
PRELIMINARY

1. Short title, extent, commencement and application.

(1) This Act may be called the Companies Act, 2013.

(2) It extends to the whole of India.

(3) This section shall come into force at once and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

(4) The provisions of this Act shall apply to—

(a) companies incorporated under this Act or under any previous company law;

(b) insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 or the Insurance Regulatory and Development Authority Act, 1999;

(c) banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949;

(d) companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003;

(e) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act; and

(f) such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf, subject to such exceptions, modifications or adaptation, as may be specified in the notification.

2. Definitions.

In this Act, unless the context otherwise requires,—

(*1*) "abridged prospectus" means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf;

(2) "accounting standards" means the standards of accounting or any addendum thereto for companies or class of companies referred to in section 133;

(3) "alter" or "alteration" includes the making of additions, omissions and substitutions;

(4) "Appellate Tribunal" means the National Company Law Appellate Tribunal constituted under section 410;

(5) "articles" means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act;

(6) "associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation.—For the purposes of this clause, "significant influence" means control of at least twenty per cent. of total share capital, or of business decisions under an agreement;

(7) "auditing standards" means the standards of auditing or any addendum thereto for companies or class of companies referred to in sub-section (10) of section 143;
(8) "authorised capital" or "nominal capital" means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company;
(9) "banking company" means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949;
(10) "Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company;
(11) "body corporate" or "corporation" includes a company incorporated outside India, but does not include—
  (i) a co-operative society registered under any law relating to co-operative societies; and
  (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;
(12) "book and paper" and "book or paper" include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;
(13) "books of account" includes records maintained in respect of—
  (i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
  (ii) all sales and purchases of goods and services by the company;
  (iii) the assets and liabilities of the company; and
  (iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;
(14) "branch office", in relation to a company, means any establishment described as such by the company;
(15) "called-up capital" means such part of the capital, which has been called for payment;
(16) "charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage;
(17) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;
(18) "Chief Executive Officer" means an officer of a company, who has been designated as such by it;
(19) "Chief Financial Officer" means a person appointed as the Chief Financial Officer of a company;
(20) "company" means a company incorporated under this Act or under any previous company law;
(21) "company limited by guarantee" means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;

(22) "company limited by shares" means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them;

(23) "Company Liquidator", in so far as it relates to the winding up of a company, means a person appointed by—

(a) the Tribunal in case of winding up by the Tribunal; or

(b) the company or creditors in case of voluntary winding up, as a Company Liquidator from a panel of professionals maintained by the Central Government under sub-section (2) of section 275;

(24) "company secretary" or "secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act;

(25) "company secretary in practice" means a company secretary who is deemed to be in practice under sub-section (2) of section 2 of the Company Secretaries Act, 1980;

(26) "contributory" means a person liable to contribute towards the assets of the company in the event of its being wound up.

Explanation.—For the purposes of this clause, it is hereby clarified that a person holding fully paid-up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory under the Act whilst retaining rights of such a contributory;

(27) "control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;

(28) "cost accountant" means a cost accountant as defined in clause (b) of subsection (1) of section 2 of the Cost and Works Accountants Act, 1959;

(29) "court" means—

(i) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any district court or district courts subordinate to that High Court under sub-clause (ii);

(ii) the district court, in cases where the Central Government has, by notification, empowered any district court to exercise all or any of the jurisdictions conferred upon the High Court, within the scope of its jurisdiction in respect of a company whose registered office is situate in the district;

(iii) the Court of Session having jurisdiction to try any offence under this Act or under any previous company law;

(iv) the Special Court established under section 435;

(v) any Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law;

(30) "debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not;

(31) "deposit" includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India;

(32) "depository" means a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996;
(33) "derivative" means the derivative as defined in clause (ac) of section 2 of the Securities Contracts (Regulation) Act, 1956;
(34) "director" means a director appointed to the Board of a company;

(35) "dividend" includes any interim dividend;
(36) "document" includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form;
(37) "employees' stock option" means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price;
(38) "expert" includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force;
(39) "financial institution" includes a scheduled bank, and any other financial institution defined or notified under the Reserve Bank of India Act, 1934;
(40) "financial statement" in relation to a company, includes—
(i) a balance sheet as at the end of the financial year;
(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
(iii) cash flow statement for the financial year;
(iv) a statement of changes in equity, if applicable; and
(v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;

41) "financial year", in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:

Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year:

Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause;

(42) "foreign company" means any company or body corporate incorporated outside India which—

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
(b) conducts any business activity in India in any other manner.

(43) "free reserves" means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend:

Provided that—
(i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or
(ii) any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, shall not be treated as free reserves;

(44) "Global Depository Receipt" means any instrument in the form of a depository receipt, by whatever name called, created by a foreign depository outside India and authorised by a company making an issue of such depository receipts;
(45) "Government company" means any company in which not less than fiftyone per cent. of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company;
(46) "holding company", in relation to one or more other companies, means a company of which such companies are subsidiary companies;
(47) "independent director" means an independent director referred to in sub-section (5) of section 149;
(48) "Indian Depository Receipt" means any instrument in the form of a depository receipt created by a domestic depository in India and authorised by a company incorporated outside India making an issue of such depository receipts;
(49) "interested director" means a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company;
(50) "issued capital" means such capital as the company issues from time to time for subscription;
(51) "key managerial personnel", in relation to a company, means—
(i) the Chief Executive Officer or the managing director or the manager;
(ii) the company secretary;
(iii) the whole-time director;
(iv) the Chief Financial Officer; and
(v) such other officer as may be prescribed;

(52) "listed company" means a company which has any of its securities listed on any recognized stock exchange;
(53) "manager" means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the

position of a manager, by whatever name called, whether under a contract of service or not;

(54) "managing director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

Explanation.—For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management;

(55) "member", in relation to a company, means—

(i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;

(ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;

(iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;

(56) "memorandum" means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act;

(57) "net worth" means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;

(58) "notification" means a notification published in the Official Gazette and the expression "notify" shall be construed accordingly;

(59) "officer" includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act;

(60) "officer who is in default", for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

(i) whole-time director;

(ii) key managerial personnel;

(iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

(iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

(v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
(vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

(61) "Official Liquidator" means an Official Liquidator appointed under sub-section (1) of section 359;
(62) "One Person Company" means a company which has only one person as a member;
(63) "Ordinary or special resolution" means an ordinary resolution, or as the case may be, special resolution referred to in section 114;
(64) "paid-up share capital" or "share capital paid-up" means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paidup in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called;
(65) "postal ballot" means voting by post or through any electronic mode;
(66) "prescribed" means prescribed by rules made under this Act;
(67) "previous company law" means any of the laws specified below:—
(i) Acts relating to companies in force before the Indian Companies Act, 1866;
(ii) the Indian Companies Act, 1866;
(iii) the Indian Companies Act, 1882;
(iv) the Indian Companies Act, 1913;
(v) the Registration of Transferred Companies Ordinance, 1942;
(vi) the Companies Act, 1956; and
(vii) any law corresponding to any of the aforesaid Acts or the Ordinances and in force—
(A) in the merged territories or in a Part B State (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereto of the Indian Companies Act, 1913; or
(B) in the State of Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956, in so far as banking, insurance and financial corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968, in so far as other corporations are concerned;
(viii) the Portuguese Commercial Code, in so far as it relates to sociedades anonimas; and
(ix) the Registration of Companies (Sikkim) Act, 1961;
(68) "private company" means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles,—
(i) restricts the right to transfer its shares;
(ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and

(iii) prohibits any invitation to the public to subscribe for any securities of the company;

(69) "promoter" means a person—

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;

(70) "prospectus" means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate;

(71) "public company" means a company which—

(a) is not a private company;

(b) has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles ;

(72) "public financial institution" means—

(i) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956;

(ii) the Infrastructure Development Finance Company Limited, referred to in clause (vi) of sub-section (1) of section 4A of the Companies Act, 1956 so repealed under section 465 of this Act;

(iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;

(iv) institutions notified by the Central Government under sub-section (2) of section 4A of the Companies Act, 1956 so repealed under section 465 of this Act;

(v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:

Provided that no institution shall be so notified unless—
(A) it has been established or constituted by or under any Central or State Act; or
(B) not less than fifty-one per cent. of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments;

(73) "recognized stock exchange" means a recognised stock exchange as defined in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956;
(74) "register of companies" means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act;
(75) "Registrar" means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering companies and discharging various functions under this Act;
(76) "related party", with reference to a company, means—
(i) a director or his relative;
(ii) a key managerial personnel or his relative;
(iii) a firm, in which a director, manager or his relative is a partner;
(iv) a private company in which a director or manager is a member or director;
(v) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;
(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any company which is—
(A) a holding, subsidiary or an associate company of such company; or
(B) a subsidiary of a holding company to which it is also a subsidiary;
(ix) such other person as may be prescribed;
(77) "relative", with reference to any person, means any one who is related to another, if—
(i) they are members of a Hindu Undivided Family;
(ii) they are husband and wife; or
(iii) one person is related to the other in such manner as may be prescribed;
(78) "remuneration" means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-tax Act, 1961;
(79) "Schedule" means a Schedule annexed to this Act;
(80) "scheduled bank" means the scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934;
(81) "securities" means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;
(82) "Securities and Exchange Board" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;
(83) "Serious Fraud Investigation Office" means the office referred to in section 211;

(84) "share" means a share in the share capital of a company and includes stock;
(85) "small company" means a company, other than a public company,—
(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or
(ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Provided that nothing in this clause shall apply to—
(A) a holding company or a subsidiary company;
(B) a company registered under section 8; or
(C) a company or body corporate governed by any special Act;

(86) "subscribed capital" means such part of the capital which is for the time being subscribed by the members of a company;
(87) "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company—
(i) controls the composition of the Board of Directors; or
(ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:
Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation.—For the purposes of this clause,—
(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
(b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
(c) the expression "company" includes any body corporate;
(d) "layer" in relation to a holding company means its subsidiary or subsidiaries;

(88) "sweat equity shares" means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;
(89) "total voting power", in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes;
(90) "Tribunal" means the National Company Law Tribunal constituted under section 408;
(91) "turnover" means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year;
(92) "unlimited company" means a company not having any limit on the liability of its members;

(93) "voting right" means the right of a member of a company to vote in any meeting of the company or by means of postal ballot;
(94) "whole-time director" includes a director in the whole-time employment of the company;
(95) words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 shall have the meanings respectively assigned to them in those Acts.

Rules for Chapter I

Companies (Specification of definitions details) Rules, 2014

In exercise of the powers conferred under sub clause (ix) of clause (76), sub-clause (iii) of clause (77) of section 2, read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely: -

1. Short title and commencement.-

(1) These rules may be called the **Companies (Specification of definitions details) Rules, 2014.**

(2) They shall come into force on the 1st day of April, 2014.

2. Definitions.- (1) In these rules, unless the context otherwise requires,-

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "Certifying Authority" for the purpose of Digital Signature Certificate means a person who has been granted a licence to issue a Digital Signature Certificate under section 24 of the Information Technology Act, 2000 (21 of 2000) and the Certified Filing Center (CFC) under the Act;

(c) "digital signature" means the digital signature as defined under clause (p) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(d) "Digital Signature Certificate" means a Digital Signature Certificate as defined under clause (q) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(e) "Director Identification Number" (DIN) means an identification number allotted by the Central Government to any individual, intending to be appointed as director or to any existing director of a company, for the purpose of his identification as a director of a company;

Provided that the Director Identification Number (DIN) obtained by the individuals prior to the notification of these rules shall be the DIN for the purpose of the Companies Act, 2013:

Provided further that "Director Identification Number" (DIN) includes the Designated Partnership Identification Number (DPIN) issued under section 7 of the Limited Liability Partnership Act, 2008 (6 of 2009) and the rules made thereunder;

(f) "e-Form" means a form in the electronic form as prescribed under the Act or the rules made thereunder and notified by the Central Government under the Act;

(g) "electronic Mail" means the message sent, received or forwarded in digital form using any electronic communication mechanism that the message so sent, received or forwarded is storable and retrievable;

(h) "electronic mode", for the purposes of clause (42) of section 2 of the Act, means carrying out electronically based, whether main server is installed in India or not, including, but not limited to-

(i) business to business and business to consumer transactions, data interchange and other digital supply transactions;

(ii) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;

(iii) financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;

(iv) online services such as telemarketing, telecommuting, telemedicine, education and information research; and

(v) all related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise;

(i) "electronic record" means the electronic record as defined under clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000;

(j) "electronic Registry" means an electronic repository or storage system of the Central Government in which the information or documents are received, stored, protected and preserved in electronic form;

(k) "Executive Director" means a whole time director as defined in clause (94) of section 2 of the Act;

(l) "Fees" means the fees as specified in the Companies (Registration Offices and Fees) Rules, 2014;

(m) "Form" means a form set forth in the Act or the rules made thereunder which shall be used for the matter to which it relates;

(n) "Pre-fill" means the automated process of data input by the computer system from the database maintained in electronic registry of the Central Government;

(o) "Registrar's Front Office" means an office maintained by the Central Government or an agency authorised by it to facilitate e-filing of documents into the electronic registry and their inspection and viewing;

(p) "Regional Director" means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director;

(q) "section" means the section of the Act;

(r) "Total Share Capital", for the purposes of clause (6) and clause (87) of section 2, means the aggregate of the -

(a) paid-up equity share capital; and

(b) convertible preference share capital;

(s) For the purposes of clause (d) of sub-section (1) of Section 164 and clause (f) of sub-section (1) of section 167 of the Act, "or otherwise" means any offence in respect of which he has been convicted by a Court under this Act or the Companies Act, 1956;

(2) The words and expressions used in these rules but not defined and defined in the Act or in (i) the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or (ii) the Securities and Exchange Board of India Act, 1992 (15 of 1992) or (iii) the Depositories Act, 1996 (22 of 1996) or (iv) the Information Technology Act, 2000 (21 of 2000) or rules and regulations made thereunder shall have the meanings respectively assigned to them under the Act or those Acts.

3. Related party.- For the purposes of sub-clause (ix) of clause (76) of section 2 of the Act, a director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

4. List of relatives in terms of clause (77) of section 2.- A person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:-

(1) Father:

Provided that the term "Father" includes step-father.

(2) Mother:
Provided that the term "Mother" includes the step-mother.

(3) Son:
Provided that the term "Son" includes the step-son.

(4) Son's wife.
(5) Daughter.
(6) Daughter's husband.
(7) Brother:
Provided that the term "Brother" includes the step-brother;

(8) Sister:
Provided that the term "Sister" includes the step-sister.

CHAPTER II

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

3. Formation of company.

(*1*) A company may be formed for any lawful purpose by—

(*a*) seven or more persons, where the company to be formed is to be a public company;

(*b*) two or more persons, where the company to be formed is to be a private company; or

(*c*) one person, where the company to be formed is to be One Person Company that is to say, a private company, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration:

Provided that the memorandum of One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles:

Provided further that such other person may withdraw his consent in such manner as may be prescribed:

Provided also that the member of One Person Company may at any time change the name of such other person by giving notice in such manner as may be prescribed:

Provided also that it shall be the duty of the member of One Person Company to intimate the company the change, if any, in the name of the other person nominated by him by indicating in the memorandum or otherwise within such time and in such manner as may be prescribed, and the company shall intimate the Registrar any such change within such time and in such manner as may be prescribed:

Provided also that any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

(*2*) A company formed under sub-section (*1*) may be either—

(*a*) a company limited by shares; or

(*b*) a company limited by guarantee; or

(*c*) an unlimited company.

4. Memorandum.

(*1*) The memorandum of a company shall state—

(*a*) the name of the company with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company:

Provided that nothing in this clause shall apply to a company registered under section 8;

(*b*) the State in which the registered office of the company is to be situated;

(*c*) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof;

(*d*) the liability of members of the company, whether limited or unlimited, and also state,—

(*i*) in the case of a company limited by shares, that liability of its members is limited to the amount unpaid, if any, on the shares held by them; and

(*ii*) in the case of a company limited by guarantee, the amount up to which each member undertakes to contribute—

(*A*) to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; and

(*B*) to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves;

(*e*) in the case of a company having a share capital,—

(*i*) the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share; and

(*ii*) the number of shares each subscriber to the memorandum intends to take, indicated opposite his name;

(*f*) in the case of One Person Company, the name of the person who, in the event of death of the subscriber, shall become the member of the company.

(*2*) The name stated in the memorandum shall not—

(*a*) be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law; or

(*b*) be such that its use by the company—

(*i*) will constitute an offence under any law for the time being in force; or

(*ii*) is undesirable in the opinion of the Central Government.

(*3*) Without prejudice to the provisions of sub-section (*2*), a company shall not be registered with a name which contains—

(*a*) any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the Central Government, any State Government, or any local authority, corporation or body constituted by the Central Government or any State Government under any law for the time being in force; or

(*b*) such word or expression, as may be prescribed, unless the previous approval of the Central Government has been obtained for the use of any such word or expression.

(*4*) A person may make an application, in such form and manner and accompanied by such fee, as may be prescribed, to the Registrar for the reservation of a name set out in the application as—

(*a*) the name of the proposed company; or

(*b*) the name to which the company proposes to change its name.

(*5*) (*i*) Upon receipt of an application under sub-section (*4*), the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of sixty days from the date of the application.

(*ii*) Where after reservation of name under clause (*i*), it is found that name was applied by furnishing wrong or incorrect information, then,—

(*a*) if the company has not been incorporated, the reserved name shall be cancelled and the person making application under sub-section (*4*) shall be liable to a penalty which may extend to one lakh rupees;

(*b*) if the company has been incorporated, the Registrar may, after giving the company an opportunity of being heard—

(*i*) either direct the company to change its name within a period of three months, after passing an ordinary resolution;

(*ii*) take action for striking off the name of the company from the register of companies; or

(*iii*) make a petition for winding up of the company.

(*6*) The memorandum of a company shall be in respective forms specified in Tables A, B, C, D and E in Schedule I as may be applicable to such company.

(*7*) Any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

5. Articles.

(*1*) The articles of a company shall contain the regulations for management of the company.

(*2*) The articles shall also contain such matters, as may be prescribed:

Provided that nothing prescribed in this sub-section shall be deemed to prevent a company from including such additional matters in its articles as may be considered necessary for its management.

(*3*) The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

(*4*) The provisions for entrenchment referred to in sub-section (*3*) shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

(*5*) Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

(*6*) The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company.

(*7*) A company may adopt all or any of the regulations contained in the model articles applicable to such company.

(*8*) In case of any company, which is registered after the commencement of this Act, in so far as the registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to such company, those regulations shall, so far as applicable, be the regulations of that company in the same manner and to the extent as if they were contained in the duly registered articles of the company.

(*9*) Nothing in this section shall apply to the articles of a company registered under any previous company law unless amended under this Act.

6. Act to override memorandum, articles, etc.

Save as otherwise expressly provided in this Act—

(*a*) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and

(*b*) any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

7. Incorporation of company.

(*1*) There shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the following documents and information for registration, namely:—

(*a*) the memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;

(*b*) a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with;

(*c*) an affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

(*d*) the address for correspondence till its registered office is established;

(*e*) the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate, such particulars as may be prescribed;

(*f*) the particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity as may be prescribed; and

(*g*) the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.

(*2*) The Registrar on the basis of documents and information filed under sub-section (*1*) shall register all the documents and information referred to in that subsection in the register and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.

(*3*) On and from the date mentioned in the certificate of incorporation issued under sub-section (*2*), the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate.

(*4*) The company shall maintain and preserve at its registered office copies of all documents and information as originally filed under sub-section (*1*) till its dissolution under this Act.

(*5*) If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action under section 447.

(*6*) Without prejudice to the provisions of sub-section (*5*) where, at any time after the incorporation of a company, it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action, the promoters, the persons named as the first directors of the company and the persons making declaration under clause (*b*) of subsection (*1*) shall each be liable for action under section 447.

(*7*) Without prejudice to the provisions of sub-section (*6*), where a company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants,—

(*a*) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or

(*b*) direct that liability of the members shall be unlimited; or

(*c*) direct removal of the name of the company from the register of companies; or

(*d*) pass an order for the winding up of the company; or

(*e*) pass such other orders as it may deem fit:

Provided that before making any order under this sub-section,—

(*i*) the company shall be given a reasonable opportunity of being heard in the matter; and

(*ii*) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

8. Formation of companies with charitable objects, etc

(*1*) Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—

(*a*) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;

(*b*) intends to apply its profits, if any, or other income in promoting its objects; and

(*c*) intends to prohibit the payment of any dividend to its members, the Central Government may, by licence issued in such manner as may be prescribed, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited" , and

thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section.

(*2*) The company registered under this section shall enjoy all the privileges and be subject to all the obligations of limited companies.

(*3*) A firm may be a member of the company registered under this section.

(*4*) (*i*) A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.

(*ii*) A company registered under this section may convert itself into company of any other kind only after complying with such conditions as may be prescribed.

(*5*) Where it is proved to the satisfaction of the Central Government that a limited company registered under this Act or under any previous company law has been formed with any of the objects specified in clause (*a*) of sub-section (*1*) and with the restrictions and prohibitions as mentioned respectively in clauses (*b*) and (*c*) of that sub-section, it may, by licence, allow the company to be registered under this section subject to such conditions as the Central Government deems fit and to change its name by omitting the word "Limited", or as the case may be, the words "Private Limited" from its name and thereupon the Registrar shall, on application, in the prescribed form, register such company under this section and all the provisions of this section shall apply to that company.

(*6*) The Central Government may, by order, revoke the licence granted to a company registered under this section if the company contravenes any of the requirements of this section or any of the conditions subject to which a licence is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest, and without prejudice to any other action against the company under this Act, direct the company to convert its status and change its name to add the word "Limited" or the words "Private Limited", as the case may be, to its name and thereupon the Registrar shall, without prejudice to any action that may be taken under sub-section (*7*), on application, in the prescribed form, register the company accordingly:

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard:

Provided further that a copy of every such order shall be given to the Registrar.

(*7*) Where a licence is revoked under sub-section (*6*), the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section:

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard.

(*8*) Where a licence is revoked under sub-section (*6*) and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

(*9*) If on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects,

subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to the Rehabilitation and Insolvency Fund formed under section 269.

(*10*) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.

(*11*) If a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees, or with both:

Provided that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.

9. Effect of registration.

From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.

10. Effect of memorandum and articles.

(*1*) Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.

(*2*) All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

11. Commencement of business, etc.

(*1*) A company having a share capital shall not commence any business or exercise any borrowing powers unless—

(*a*) a declaration is filed by a director in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him and the paid-up share capital of the company is not less than five lakh rupees in case of a public company and not less than one lakh rupees in case of a private company on the date of making of this declaration; and

(*b*) the company has filed with the Registrar a verification of its registered office as provided in sub-section (*2*) of section 12.

(*2*) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty which may extend to five thousand rupees and every officer who is in default shall be punishable with fine which may extend to one thousand rupees for every day during which the default continues.

(*3*) Where no declaration has been filed with the Registrar under clause (*a*) of subsection (*1*) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (*2*), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.

12. Registered office of company.

(*1*) A company shall, on and from the fifteenth day of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

(*2*) The company shall furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation in such manner as may be prescribed.

(*3*) Every company shall—

(*a*) paint or affix its name, and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, and if the characters employed therefor are not those of the language or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages;

(*b*) have its name engraved in legible characters on its seal;

(*c*) get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and

(*d*) have its name printed on *hundies*, promissory notes, bills of exchange and such other documents as may be prescribed:

Provided that where a company has changed its name or names during the last two years, it shall paint or affix or print, as the case may be, along with its name, the former name or names so changed during the last two years as required under clauses (*a*) and (*c*):

Provided further that the words "One Person Company" shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

(*4*) Notice of every change of the situation of the registered office, verified in the manner prescribed, after the date of incorporation of the company, shall be given to the Registrar within fifteen days of the change, who shall record the same.

(*5*) Except on the authority of a special resolution passed by a company, the registered office of the company shall not be changed,—

(*a*) in the case of an existing company, outside the local limits of any city, town or village where such office is situated at the commencement of this Act or where it may be situated later by virtue of a special resolution passed by the company; and

(*b*) in the case of any other company, outside the local limits of any city, town or village where such office is first situated or where it may be situated later by virtue of a special resolution passed by the company:

Provided that 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.

(*6*) The confirmation referred to in sub-section (*5*) shall be communicated within a period of thirty days from the date of receipt of application by the Regional Director to the company

and the company shall file the confirmation with the Registrar within a period of sixty days of the date of confirmation who shall register the same and certify the registration within a period of thirty days from the date of filing of such confirmation.

(*7*) The certificate referred to in sub-section (*6*) shall be conclusive evidence that all the requirements of this Act with respect to change of registered office in pursuance of subsection (*5*) have been complied with and the change shall take effect from the date of the certificate.

(*8*) If any default is made in complying with the requirements of this section, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees.

13. Alteration of memorandum.

(*1*) Save as provided in section 61, a company may, by a special resolution and after complying with the procedure specified in this section, alter the provisions of its memorandum.

(*2*) Any change in the name of a company shall be subject to the provisions of subsections (*2*) and (*3*) of section 4 and shall not have effect except with the approval of the Central Government in writing:

Provided that no such approval shall be necessary where the only change in the name of the company is the deletion therefrom, or addition thereto, of the word "Private", consequent on the conversion of any one class of companies to another class in accordance with the provisions of this Act.

(*3*) When any change in the name of a company is made under sub-section (*2*), the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.

(*4*) The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.

(*5*) The Central Government shall dispose of the application under sub-section (*4*) within a period of sixty days and before passing its order may satisfy itself that the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company or that the sufficient provision has been made by the company either for the due discharge of all its debts and obligations or that adequate security has been provided for such discharge.

(*6*) Save as provided in section 64, a company shall, in relation to any alteration of its memorandum, file with the Registrar—

(*a*) the special resolution passed by the company under sub-section (*1*);

(*b*) the approval of the Central Government under sub-section (*2*), if the alteration involves any change in the name of the company.

(*7*) Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same, and the Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.

(*8*) A company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it

raised the money through prospectus unless a special resolution is passed by the company and—

(*i*) the details, as may be prescribed, in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change;

(*ii*) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.

(*9*) The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution in accordance with clause (*a*) of sub-section (*6*) of this section.

(*10*) No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.

(*11*) Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

14. Alteration of articles.

(*1*) Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution, alter its articles including alterations having the effect of conversion of—

(*a*) a private company into a public company; or

(*b*) a public company into a private company:

Provided that where a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, the company shall, as from the date of such alteration, cease to be a private company:

Provided further that any alteration having the effect of conversion of a public company into a private company shall not take effect except with the approval of the Tribunal which shall make such order as it may deem fit.

(*2*) Every alteration of the articles under this section and a copy of the order of the Tribunal approving the alteration as per sub-section (*1*) shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same.

(*3*) Any alteration of the articles registered under sub-section (*2*) shall, subject to the provisions of this Act, be valid as if it were originally in the articles.

15. Alteration of memorandum or articles to be noted in every copy.

(*1*) Every alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles, as the case may be.

(*2*) If a company makes any default in complying with the provisions of sub-section (*1*), the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the memorandum or articles issued without such alteration.

16. Rectification of name of company.

(*1*) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which,—

(*a*) in the opinion of the Central Government, is identical with or too nearly resembles the name by which a company in existence had been previously registered, whether under this Act or any previous company law, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of three months from the issue of such direction, after adopting an ordinary resolution for the purpose;

(*b*) on an application by a registered proprietor of a trade mark that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999, made to the Central Government within three years of incorporation or registration or change of name of the company, whether under this Act or any previous company law, in the opinion of the Central Government, is identical with or too nearly resembles to an existing trade mark, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of six months from the issue of such direction, after adopting an ordinary resolution for the purpose.

(*2*) Where a company changes its name or obtains a new name under sub-section (*1*), it shall within a period of fifteen days from the date of such change, give notice of the change to the Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and the memorandum.

(*3*) If a company makes default in complying with any direction given under sub-section (*1*), the company shall be punishable with fine of one thousand rupees for every day during which the default continues and every officer who is in default shall be punishable with fine which shall not be less than five thousand rupees but which may extend to one lakh rupees.

17. Copies of memorandum, articles, etc., to be given to members.

(*1*) A company shall, on being so requested by a member, send to him within seven days of the request and subject to the payment of such fees as may be prescribed, a copy of each of the following documents, namely:—

(*a*) the memorandum;

(*b*) the articles; and

(*c*) every agreement and every resolution referred to in sub-section (*1*) of section 117, if and in so far as they have not been embodied in the memorandum or articles.

(*2*) If a company makes any default in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable for each default, to a penalty of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

18. Conversion of companies already registered.

(*1*) A company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of this Chapter.

(*2*) Where the conversion is required to be done under this section, the Registrar shall on an application made by the company, after satisfying himself that the provisions of this Chapter applicable for registration of companies have been complied with, close the

former registration of the company and after registering the documents referred to in sub-section (*1*), issue a certificate of incorporation in the same manner as its first registration.

(*3*) The registration of a company under this section shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by or on behalf of the company before conversion and such debts, liabilities, obligations and contracts may be enforced in the manner as if such registration had not been done.

19. Subsidiary company not to hold shares in its holding company.

(*1*) No company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void:

Provided that nothing in this sub-section shall apply to a case—

(*a*) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or

(*b*) where the subsidiary company holds such shares as a trustee; or

(*c*) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company:

Provided further that the subsidiary company referred to in the preceding proviso shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee, as referred to in clause (*a*) or clause (*b*) of the said proviso.

(*2*) The reference in this section to the shares of a holding company which is a company limited by guarantee or an unlimited company, not having a share capital, shall be construed as a reference to the interest of its members, whatever be the form of interest.

20. Service of documents.

(*1*) A document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed:

Provided that where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

(*2*) Save as provided in this Act or the rules made thereunder for filing of documents with the Registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed:

Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

Explanation.—For the purposes of this section, the term "courier" means a person or agency which delivers the document and provides proof of its delivery.

21. Authentication of documents, proceedings and contracts.

Save as otherwise provided in this Act,—

(*a*) a document or proceeding requiring authentication by a company; or

(*b*) contracts made by or on behalf of a company, may be signed by any key managerial personnel or an officer of the company duly authorised by the Board in this behalf.

22. Execution of bills of exchange, etc.

(*1*) A bill of exchange, *hundi* or promissory note shall be deemed to have been made, accepted, drawn or endorsed on behalf of a company if made, accepted, drawn, or endorsed in the name of, or on behalf of or on account of, the company by any person acting under its authority, express or implied.

(*2*) A company may, by writing under its common seal, authorise any person, either generally or in respect of any specified matters, as its attorney to execute other deeds on its behalf in any place either in or outside India.

(*3*) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the effect as if it were made under its common seal.

Rules for Chapter II

Companies (Incorporation) Rules, 2014

In exercise of the powers conferred under section 3, section 4, sub-sections (5) and (6)of section 5, section 6, sub-section (1) and (2) of section 7, sub-section (1) and (2) of section 8, clauses (a) and (b) of sub-section (1) of section11, sub-sections (2), (3), (4) and (5) of section 12, sub-sections (3), (4) and proviso to sub-section (5) of section 13, sub-section (2) of section 14, sub-section (1) of section 17, sub-section (1) and (2) of section 20 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013) and in supersession of the Companies (Central Government's) General Rules and Forms, 1956 or any other relevant rules prescribed under the Companies Act, 1956 (1 of 1956) on matters covered under these rules, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely: -

1. Short title and commencement.-

(1) These rules may be called the Companies **(Incorporation)** Rules, 2014.

(2) They shall come into force on the 1st day of April, 2014.

2. Definitions.- (1) In these rules, unless the context otherwise requires,-

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "Annexure" means the Annexure to these rules;

(c) "Form" or "e-Form" means a form in the electronic form or non-electronic form as specified under the Act or Rules made there under and notified by the Central Government under the Act;

(d) "Fees" means fees as specified in the Companies (Registration offices and fees) Rules, 2014;

(e) "Regional Director" means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director;

(f) "Section" means the section of the Act;

(2) Words and expressions used in these rules but not defined and defined in the Act or in Companies (Specification of definitions details) Rules, 2014 shall have the meanings respectively assigned to them in the Act and said rules.

3. One Person Company.-

(1) Only a natural person who is an Indian citizen and resident in India-

(a) shall be eligible to incorporate a One Person Company;

(b) shall be a nominee for the sole member of a One Person Company.

Explanation.- For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one calendar year.

(2) No person shall be eligible to incorporate more than a One Person Company or become nominee in more than one such company.

(3) Where a natural person, being member in One Person Company in accordance with this rule becomes a member in another such Company by virtue of his being a nominee in that One Person Company, such person shall meet the eligibility criteria specified in sub rule (2) within a period of one hundred and eighty days.

(4) No minor shall become member or nominee of the One Person Company or can hold share with beneficial interest.
(5) Such Company cannot be incorporated or converted into a company under section 8 of the Act.
(6) Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporates.
(7) No such company can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of One Person Company, except threshold limit (paid up share capital) is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

4. Nomination by the subscriber or member of One Person Company.-

For the purposes of first proviso to sub-section (1) of section 3-

(1) The subscriber to the memorandum of a One Person Company shall nominate a person, after obtaining prior written consent of such person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of that One Person Company.
(2) The name of the person nominated under sub-rule (1) shall be mentioned in the memorandum of One Person Company and **such** nomination in Form No **INC.2** along with consent of such nominee obtained in Form No **INC.3** and fee as provided in the **Companies (Registration offices and fees) Rules, 2014** shall be filed with the Registrar at the time of incorporation of the company along with its memorandum and articles.
(3) The person nominated by the subscriber or member of a One Person Company may, withdraw his consent by giving a notice in writing to such sole member and to the One Person Company:

Provided that the sole member shall nominate another person as nominee within fifteen days of the receipt of the notice of withdrawal and shall send an intimation of such nomination in writing to the Company, along with the written consent of such other person so nominated in **Form No.INC.3.**

(4) The company shall within thirty days of receipt of the notice of withdrawal of consent under sub-rule (3) file with the Registrar, a notice of such withdrawal of consent and the intimation of the name of another person nominated by the sole member in **Form No INC.4** along with fee as provided in the **Companies (Registration offices and fees) Rules, 2014** and the written consent of such another person so nominated in **Form No.INC.3.**
(5) The subscriber or member of a One Person Company may, by intimation in writing to the company, change the name of the person nominated by him at any time for any reason including in case of death or incapacity to contract of nominee and nominate another person after obtaining the prior consent of such another person in Form No **INC.3**:

Provided that the company shall, on the receipt of such intimation, file with the Registrar, a notice of such change in Form No **INC.4** along with fee as provided in the **Companies (Registration offices and fees) Rules, 2014** and with the written consent of the new nominee in Form No.**INC.3** within thrity days of receipt of intimation of the change.

(6) Where the sole member of One Person Company ceases to be the member in the event of death or incapacity to contract and his nominee becomes the member of such One Person Company, such new member shall nominate within fifteen days of becoming member, a person who shall in the event of his death or his incapacity to contract become the member of such company, and the company shall file with the Registrar an intimation of such cessation and nomination in Form No **INC.4** along with the fee as provided in the **Companies (Registration offices and fees) Rules, 2014** within thirty days of the change in membership and with the prior written consent of the person so nominated in Form No.**INC.3.**

5. Penalty.-

If One Person Company or any officer of such company contravenes the provisions of these rules, One Person Company or any officer of the One Person Company shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

6. One Person Company to convert itself into a public company or a private company in certain cases.-

(1) Where the paid up share capital of an One Person Company exceeds fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees, it shall cease to be entitled to continue as a One Person Company.

(2) Such One Person Company shall be required to convert itself, within six months of the date on which its paid up share capital is increased beyond fifty lakh rupees or the last day of the relevant period during which its average annual turnover exceeds two crore rupees as the case may be, into either a private company with minimum of two members and two directors or a public company with at least of seven members and three directors in accordance with the provisions of section 18 of the Act.

(3) The One Person Company shall alter its memorandum and articles by passing a resolution in accordance with sub-section (3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto.

(4) The One Person Company shall within period of sixty days from the date of applicability of sub-rule (1), give a notice to the Registrar in **Form No.INC.5** informing that it has ceased to be a One Person Company and that it is now required to convert itself into a private company or a public company by virtue of its paid up share capital or average annual turnover, having exceeded the threshold limit laid down in sub-rule (1).

Explanation.-For the purposes of this rule,- "relevant period" means the period of immediately preceding three consecutive financial years;

(5) If One Person Company or any officer of the One Person Company contravenes the provisions of these rules, One Person Company or any officer of the One Person Company shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

(6) A One Person company can get itself converted into a Private or Public company after increasing the minimum number of members and directors to two or minimum of seven members and two or three directors as the case may be, and by maintaining the minimum paid-up capital as per requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion.

7. Conversion of private company into One Person Company.-

(1) A private company other than a company registered under section 8 of the Act having paid up share capital of fifty lakhs rupees or less or average annual turnover during the relevant period is two crore rupees or less may convert itself into one person company by passing a special resolution in the general meeting.

(2) Before passing such resolution, the company shall obtain No objection in writing from members and creditors.

(3) The one person company shall file copy of the special resolution with the Registrar of Companies within thirty days from the date of passing such resolution in **Form No. MGT.14**.

(4) The company shall file an application in **Form No.INC.6** for its conversion into **One Person Company** along with fees as provided in in the **Companies (Registration offices and fees) Rules, 2014**, by attaching the following documents, namely:-

(i) The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital company is fifty lakhs rupees or less or average annual turnover is less than two crores rupees, as the case may be;

(ii) the list of members and list of creditors;

(iii) the latest Audited Balance Sheet and the Profit and Loss Account; and

(iv) the copy of No Objection letter of secured creditors.

(5) On being satisfied and complied with requirements stated herein the Registrar shall issue the Certificate.

8. Undesirable names.-

(1) In determining whether a proposed name is identical with another, the differences on account of the following shall be disregarded-

(a) the words like Private, Pvt, Pvt., (P), Limited, Ltd, Ltd., LLP, Limited Liability Partnership;

(b) words appearing at the end of the names – company, and company, co., co, corporation, corp, corpn, corp.;

(c) plural version of any of the words appearing in the name;

(d) type and case of letters, spacing between letters and punctuation marks;

(e) joining words together or separating the words does not make a name distinguishable from a name that uses the similar, separated or joined words;

(f) use of a different tense or number of the same word does not distinguish one name from another;

(g) using different phonetic spellings or spelling variations shall not be considered as distinguishing one name from another. Illustration (For example, P.Q. Industries limited is existing then P and Q Industries or Pee Que Industries or P n Q Industries or P & Q Industries shall not be allowed and similarly if a name contains numeric character like 3, resemblance shall be checked with 'Three' also;)

(h) misspelled words, whether intentionally misspelled or not, do not conflict with the similar, properly spelled words;

(i) the addition of an internet related designation, such as .com, .net, .edu, .gov, .org, .in does not make a name distinguishable from another, even where (.) is written as 'dot';

(j) the addition of words like New, Modern, Nav, Shri, Sri, Shree, Sree, Om, Jai, Sai, The, etc. does not make a name distinguishable from an existing name and similarly, if it is

different from the name of the existing company only to the extent of adding the name of the place, the same shall not be allowed; such names may be allowed only if no objection from the existing company by way of Board resolution is submitted;

(k) different combination of the same words does not make a name distinguishable from an existing name, e.g., if there is a company in existence by the name of "Builders and Contractors Limited", the name "Contractors and Builders Limited" shall not be allowed unless it is change of name of existing company;

(l) if the proposed name is the Hindi or English translation or transliteration of the name of an existing company or limited liability partnership in English or Hindi, as the case may be.

(2) (a) The name shall be considered undesirable, if-

(i) it attracts the provisions of section 3 of the Emblems and Names (Prevention and Improper Use) Act, 1950 (12 of 1950);

(ii) it includes the name of a registered trade mark or a trade mark which is subject of an application for registration, unless the consent of the owner or applicant for registration, of the trade mark, as the case may be, has been obtained and produced by the promoters;

(iii) it includes any word or words which are offensive to any section of the people;

(b) The name shall also be considered undesirable, if-

(i) the proposed name is identical with or too nearly resembles the name of a limited liability partnership;

(ii) it is not in consonance with the principal objects of the company as set out in the memorandum of association;

Provided that every name need not be necessarily indicative of the objects of the company, but when there is some indication of objects in the name, then it shall be in conformity with the objects mentioned in the memorandum;

(iii) the company's main business is financing, leasing, chit fund, investments, securities or combination thereof, such name shall not be allowed unless the name is indicative of such related financial activities, viz., Chit Fund or Investment or Loan, etc.;

(iv) it resembles closely the popular or abbreviated description of an existing company or limited liability partnership;

(v) the proposed name is identical with or too nearly resembles the name of a company or limited liability partnership incorporated outside India and reserved by such company or limited liability partnership with the Registrar:

Provided that if a foreign company is incorporating its subsidiary company in India, then the original name of the holding company as it is may be allowed with the addition of word India or name of any Indian state or city, if otherwise available;

(vi) any part of the proposed name includes the words indicative of a separate type of business constitution or legal person or any connotation thereof e.g. co-operative, sehkari, trust, LLP, partnership, society, proprietor, HUF, firm, Inc., PLC, GmbH, SA, PTE, Sdn, AG etc.;

Explanation.- For the purposes of this sub-clause, it is hereby clarified that the name including phrase **'Electoral Trust'** may be allowed for Registration of companies to be

formed under section 8 of the Act, in accordance with the Electoral Trusts Scheme, 2013 notified by the Central Board of Direct Taxes (CBDT):

Provided that name application is accompanied with an affidavit to the effect that the name to be obtained shall be only for the purpose of registration of companies under Electoral Trust Scheme as notified by the Central Board of Direct Taxes;

(vii) the proposed name contains the words 'British India';

(viii) the proposed name implies association or connection with embassy or consulate or a foreign government;

(ix) the proposed name includes or implies association or connection with or patronage of a national hero or any person held in high esteem or important personages who occupied or are occupying important positions in Government;

(x) the proposed name is vague or an abbreviated name such as 'ABC limited' or '23K limited' or 'DJMO' Ltd: abbreviated name based on the name of the promoters will not be allowed. For example:- BMCD Limited representing first alphabet of the name of the promoter like Bharat, Mahesh, Chandan and David:

Provided that existing company may use its abbreviated name as part of the name for formation of a new company as subsidiary or joint venture or associate company but such joint venture or associated company shall not have an abbreviated name only e.g. Delhi Paper Mills Limited can get a joint venture or associated company as DPM Papers Limited and not as DPM Limited:

Provided further that the companies well known in their respective field by abbreviated names are allowed to change their names to abbreviation of their existing name after following the requirements of the Act;

(xi) the proposed name is identical to the name of a company dissolved as a result of liquidation proceeding and a period of two years have not elapsed from the date of such dissolution:

Provided that if the proposed name is identical with the name of a company which is struck off in pursuance of action under section 248 of the Act, then the same shall not be allowed before the expiry of twenty years from the publication in the Official Gazette being so struck off;

(xii) it is identical with or too nearly resembles the name of a limited liability partnership in liquidation or the name of a limited liability partnership which is struck off up to a period of five years;

(xiii) the proposed name include words such as 'Insurance', 'Bank', 'Stock Exchange', 'Venture Capital', 'Asset Management', 'Nidhi', 'Mutual fund' etc., unless a declaration is submitted by the applicant that the requirements mandated by the respective regulator, such as IRDA, RBI, SEBI, MCA etc. have been complied with by the applicant;

(xiv) the proposed name includes the word "State", the same shall be allowed only in case the company is a government company;

(xv) the proposed name is containing only the name of a continent, country, state, city such as Asia limited, Germany Limited, Haryana Limited, Mysore Limited;

(xvi) the name is only a general one, like Cotton Textile Mills Ltd. or Silk Manufacturing Ltd., and not Lakshmi Silk Manufacturing Co. Ltd;

(xvii) it is intended or likely to produce a misleading impression regarding the scope or scale of its activities which would be beyond the resources at its disposal:

(xviii) the proposed name includes name of any foreign country or any city in a foreign country, the same shall be allowed if the applicant produces any proof of significance of business relations with such foreign country like Memorandum Of Understanding with a company of such country:

Provided that the name combining the name of a foreign country with the use of India like India Japan or Japan India shall be allowed if, there is a government to government participation or patronage and no company shall be incorporated using the name of an enemy country. Explanation.- For the purposes of this clause, enemy country means so declared by the Central Government from time to time.

(3) If any company has changed its activities which are not reflected in its name, it shall change its name in line with its activities within a period of six months from the change of activities after complying with all the provisions as applicable to change of name.

(4) In case the key word used in the name proposed is the name of a person other than the name(s) of the promoters or their close blood relatives, No objection from such other person(s) shall be attached with the application for name. In case the name includes the name of relatives, the proof of relation shall be attached and it shall be mandatory to furnish the significance and proof thereof for use of coined words made out of the name of the promoters or their relatives.

(5) The applicant shall declare in affirmative or negative (to affirm or deny) whether they are using or have been using in the last five years , the name applied for incorporation of company or LLP in any other business constitution like Sole proprietor or Partnership or any other incorporated or unincorporated entity and if, yes details thereof and No Objection Certificate from other partners and associates for use of such name by the proposed Company or LLP, as the case may be, and also a declaration as to whether such other business shall be taken over by the proposed company or LLP or not .

(6) The following words and combinations thereof shall not be used in the name of a company in English or any of the languages depicting the same meaning unless the previous approval of the Central Government has been obtained for the use of any such word or expression-

(a) Board;
(b) Commission;
(c) Authority;
(d) Undertaking;
(e) National;
(f) Union;
(g) Central;
(h) Federal;
(i) Republic;
(j) President;
(k) Rashtrapati;
(l) Small Scale Industries;
(m) Khadi and Village Industries Corporation;
(n) Financial, Corporation and the like;
(o) Municipal;

(p) Panchayat;
(q) Development Authority;
(r) Prime Minister or Chief Minister;
(s) Minister;
(t) Nation;
(u) Forest corporation;
(v) Development Scheme;
(w) Statute or Statutory;
(x) Court or Judiciary;
(y) Governor;
(z) the use of word Scheme with the name of Government (s) , State , India, Bharat or any government authority or in any manner resembling with the schemes launched by Central, state or local Governments and authorities; and
(za) Bureau

(7) For the Companies under section 8 of the Act, the name shall include the words foundation, Forum, Association, Federation, Chambers, Confederation, council, Electoral trust and the like etc. Every company incorporated as a "Nidhi" shall have the last word 'Nidhi Limited' as part of its name.

(8) The names released on change of name by any company shall remain in data base and shall not be allowed to be taken by any other company including the group company of the company who has changed the name for a period of three years from the date of change subject to specific direction from the competent authority in the course of compromise, arrangement and amalgamation.

9. Reservation of name.-
An application for the reservation of a name shall be made in **Form No. INC.1** along with the fee as provided in the **Companies (Registration offices and fees) Rules, 2014.**

10. Where the articles contain the provisions for entrenchment, the company shall give notice to the Registrar of such provisions in **Form No.INC.2 or Form No.INC.7,** as the case may be, along with the fee as provided in the **Companies (Registration offices and fees) Rules, 2014** at the time of incorporation of the company or in case of existing companies, the same shall be filed in **Form No.MGT.14** within thirty days from the date of entrenchment of the articles, as the case may be, along with the fee as provided in the **Companies (Registration offices and fees) Rules, 2014.**

11. The model articles as prescribed in Table F, G, H, I and J of Schedule I may be adopted by a company as may be applicable to the case of the company, either in totality or otherwise.

12. Application for incorporation of companies.-
An application shall be filed, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, in **Form No.INC.2 (for One Person Company) and Form no. INC.7 (other than One Person Company)** along with the fee as provided in the **Companies (Registration offices and fees) Rules, 2014** for registration of a company:

13. Signing of memorandum and articles.-

The Memorandum and Articles of Association of the company shall be signed in the following manner, namely:-

(1) The memorandum and articles of association of the company shall be signed by each subscriber to the memorandum, who shall add his name, address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise sign and add his name, address, description and occupation, if any and the witness shall state that "I witness to subscriber/subscriber(s), who has/have subscribed and signed in my presence (date and place to be given); further I have verified his or their Identity Details (ID) for their identification and satisfied myself of his/her/their identification particulars as filled in"

(2) Where a subscriber to the memorandum is illiterate, he shall affix his thumb impression or mark which shall be described as such by the person, writing for him, who shall place the name of the subscriber against or below the mark and authenticate it by his own signature and he shall also write against the name of the subscriber, the number of shares taken by him.

(3) Such person shall also read and explain the contents of the memorandum and articles of association to the subscriber and make an endorsement to that effect on the memorandum and articles of association.

(4) Where the subscriber to the memorandum is a body corporate, the memorandum and articles of association shall be signed by director, officer or employee of the body corporate duly authorized in this behalf by a resolution of the board of directors of the body corporate and where the subscriber is a Limited Liability Partnership, it shall be signed by a partner of the Limited Liability Partnership, duly authorized by a resolution approved by all the partners of the Limited Liability Partnership:

Provided that in either case, the person so authorized shall not, at the same time, be a subscriber to the memorandum and articles of Association.

(5) Where subscriber to the memorandum is a foreign national residing outside India-

(a) in a country in any part of the Commonwealth, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized by a Notary (Public) in that part of the Commonwealth.

(b) in a country which is a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized before the Notary (Public) of the country of his origin and be duly apostillised in accordance with the said Hague Convention.

(c) in a country outside the Commonwealth and which is not a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity, shall be notarized before the Notary (Public) of such country and the certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (40 of 1948) or, where there is no such officer by any of the officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vic.C.10), or in any Act amending the same;

(d) visited in India and intended to incorporate a company, in such case the incorporation shall be allowed if, he/she is having a valid Business Visa.

Explanation.- For the purposes of this clause, it is hereby clarified that, in case of Person is of Indian Origin or Overseas Citizen of India, requirement of business Visa shall not be applicable.

14. Declaration by professionals.-

For the purposes of clause (b) of sub-section (1) of section 7, the declaration by an advocate, a Chartered Accountant, Cost accountant or Company Secretary in practice shall be in **Form No. INC.8.**

Explanation (i) "chartered accountant" means a chartered accountant as defined in clause (b) of sub section 1 of section 2 of the Chartered Accountants Act, 1949 (ii) "Cost Accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and (iii) "company secretary" means a "company secretary" or "secretary" means as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980.

15. Affidavit from subscribers and first directors.-

For the purposes of clause (c) of sub-section (1) of section 7, the affidavit shall be submitted by each of the subscribers to the memorandum and each of the first directors named in the articles in **Form No.INC.9**

16. Particulars of every subscriber to be filed with the Registrar at the time of incorporation.

(1) The following particulars of every subscriber to the memorandum shall be filed with the Registrar-

(a) Name (including surname or family name) and recent Photograph affixed and scan with MOA and AOA:
(b) Father's/Mother's/ name:
(c) Nationality:
(d) Date of Birth:
(e) Place of Birth (District and State):
(f) Educational qualification:
(g) Occupation:
(h) Income-tax permanent account number:
(i) Permanent residential address and also Present address (Time since residing at present address and address of previous residence address (es) if stay of present address is less than one year) similarly the office/business addresses :
(j) Email id of Subscriber;
(k) Phone No. of Subscriber;
(l) Fax no. of Subscriber (optional)

Explanation.- information related to (i) to (l) shall be of the individual subscriber and not of the professional *engaged in the incorporation of the company;*

(m) Proof of Identity:

- For Indian Nationals:
- PAN Card (mandatory) and any one of the following
- Voter's identity card
- Passport copy
- Driving License copy

- Unique Identification Number (UIN)
- For Foreign nationals and Non Resident Indians
- Passport

(n) Residential proof such as Bank Statement, Electricity Bill, Telephone / Mobile Bill: **Provided** that Bank statement Electricity bill, Telephone or Mobile bill shall not be more than two months old;

(o) Proof of nationality in case the subscriber is a foreign national.

(p) If the subscriber is already a director or promoter of a company(s), the particulars relating to-

(i) Name of the company;

(ii) Corporate Identity Number;

(iii) Whether interested as a director or promoter;

(q) the specimen signature and latest photograph duly verified by the banker or notary shall be in the prescribed **Form No.INC.10.**

(2) Where the subscriber to the memorandum is a body corporate, then the following particulars shall be filed with the Registrar-

(a) Corporate Identity Number of the Company or Registration number of the body corporate, if any

(b) GLN, if any;

(c) the name of the body corporate

(d) the registered office address or principal place of business;

(e) E-mail Id;

(f) if the body corporate is a company, certified true copy of the board resolution specifying inter alia the authorization to subscribe to the memorandum of association of the proposed company and to make investment in the proposed company, the number of shares proposed to be subscribed by the body corporate, and the name, address and designation of the person authorized to subscribe to the Memorandum;

(g) if the body corporate is a limited liability partnership or partnership firm, certified true copy of the resolution agreed to by all the partners specifying *inter alia* the authorization to subscribe to the memorandum of association of the proposed company and to make investment in the proposed company, the number of shares proposed to be subscribed in the body corporate, and the name of the partner authorized to subscribe to the Memorandum;

(h) the particulars as specified above for subscribers in terms of clause (e) of sub- section (1) of section 7 for the person subscribing for body corporate;

(i) in case of foreign bodies corporate, the details relating to-

(i) the copy of certificate of incorporation of the foreign body corporate; and

(ii) the registered office address.

17. Particulars of first directors of the company and their consent to act as such.-

The particulars of each person mentioned in the articles as first director of the company and his interest in other firms or bodies corporate along with his consent to act as director of the company shall be filed in **Form No.DIR.12 along with** the fee as provided in the **Companies (Registration offices and fees) Rules, 2014.**

18. Certificate of incorporation.-

The Certificate of Incorporation shall be issued by the Registrar in **Form No.INC.11.**

19. License under section 8 for new companies with charitable objects etc.-

(1) A person or an association of persons (hereinafter referred to in this rule as "the proposed company"), desirous of incorporating a company with limited liability under sub-section (1) of section 8 without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited", shall make an application in **Form No.INC.12** along with the fee as provided in the **Companies (Registration offices and fees) Rules, 2014** to the Registrar for a license under sub-section (1) of section 8.

(2) The memorandum of association of the proposed company shall be in **Form No.INC.13.**

(3) The application under sub-rule (1) shall be accompanied by the following documents, namely:—

(a) the draft memorandum and articles of association of the proposed company;

(b) the declaration in **Form No.INC.14** by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, that the draft memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made thereunder and that all the requirements of the Act and the rules made thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;

(c) an estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure;

(d) the declaration by each of the persons making the application in **Form No. INC.15**.

20. License for existing companies.-

(1) A limited company registered under this Act or under any previous company law, with any of the objects specified in clause (a) of sub-section (1) of section 8 and the restrictions and prohibitions as mentioned respectively in clause (b) and (c) of that sub-section, and which is desirous of being registered under section 8, without the addition to its name of the word "Limited" or as the case may be, the words "Private Limited", shall make an application in **Form No.INC.12** along with the fee as provided in the **Companies (Registration offices and fees) Rules, 2014** to the Registrar for a licence under sub-section (5) of section 8.

(2) The application under **sub-rule (1)**, shall be accompanied by the following documents, namely:-

(a) the memorandum and articles of association of the company;

(b) the declaration as given in **Form No.INC.14** by an Advocate, a Chartered accountant, Cost Accountant or Company Secretary in Practice, that the memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made thereunder and that all the requirements of the Act and the rules made thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;

(c) For each of the two financial years immediately preceding the date of the application, or when the company has functioned only for one financial year, for such year (i) the financial statements, (ii) the Board's reports, and (iii) the audit reports, relating to existing companies

(d) a statement showing in detail the assets (with the values thereof), and the liabilities of the company, as on the date of the application or within thirty days preceding that date;

(e) an estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure;

(f) the certified copy of the resolutions passed in general/ board meetings approving registration of the company under section 8; and
(g) a declaration by each of the persons making the application in **Form No.INC.15.**

(3) The company shall, within a week from the date of making the application to the Registrar, publish a notice at his own expense, and a copy of the notice, as published, shall be sent forthwith to the Registrar and the said notice shall be in **Form No. INC.26** and shall be published-
(a) at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the proposed company is to be situated or is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district; and
(b) on the websites as may be notified by the Central Government.

(4) The Registrar may require the applicant to furnish the approval or concurrence of any appropriate authority, regulatory body, department or Ministry of the Central Government or the State Government(s).

(5) The Registrar shall, after considering the objections, if any, received by it within thirty days from the date of publication of notice, and after consulting any authority, regulatory body, Department or Ministry of the Central Government or the State Government(s), as it may, in its discretion, decide whether the license should or should not be granted.

(6) The licence shall be in **Form No.INC.16**. or **Form No.INC.17,** as the case may be, and the Registrar shall have power to include in the licence such other conditions as may be deemed necessary by him.

(7) The Registrar may direct the company to insert in its memorandum, or in its articles, or partly in one and partly in the other, such conditions of the license as may be specified by the Registrar in this behalf.

21. Conditions for conversion of a company registered under Section 8 into a company of any other kind.

(1) A company registered under section 8 which intends to convert itself into a company of any other kind shall pass a special resolution at a general meeting for approving such conversion.

(2) The explanatory statement annexed to the notice convening the general meeting shall set out in detail the reasons for opting for such conversion including the following, namely:-
(a) the date of incorporation of the company;
(b) the principal objects of the company as set out in the memorandum of association;
(c) the reasons as to why the activities for achieving the objects of the company cannot be carried on in the current structure i.e. as a section 8 company;
(d) if the principal or main objects of the company are proposed to be altered, what would be the altered objects and the reasons for the alteration;
(e) what are the privileges or concessions currently enjoyed by the company, such as tax exemptions, approvals for receiving donations or contributions including foreign contributions, land and other immovable properties, if any, that were acquired by the company at concessional rates or prices or gratuitously and, if so, the market prices prevalent at the time of acquisition and the price that was paid by the company, details of any donations or bequests received by the company with conditions attached to their utilization etc.

(f) details of impact of the proposed conversion on the members of the company including details of any benefits that may accrue to the members as a result of the conversion.

(2) A certified true copy of the special resolution along with a copy of the Notice convening the meeting including the explanatory statement shall be filed with the Registrar in **Form No.MGT.14** along with the fee

(3) The company shall file an application in **Form No.INC.18** with the Regional Director with the fee along with a certified true copy of the special resolution and a copy of the Notice convening the meeting including the explanatory statement for approval for converting itself into a company of any other kind and the company shall also attach the proof of serving of the notice served to all the authorities mentioned in sub-rule (2) of rule 22.

(4) A copy of the application with annexures as filed with the Regional Director shall also be filed with the Registrar.

22. Other conditions to be complied with by companies registered under section 8 seeking conversion into any other kind.-

(1) The company shall, within a week from the date of submitting the application to the Regional Director, publish a notice at its own expense, and a copy of the notice, as published, shall be sent forthwith to the Regional Director and the said notice shall be in **Form No. INC.19** and shall be published-

(a) at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district; and

(b) on the website of the company, if any, and as may be notified or directed by the Central Government.

(2) The company shall send a copy of the notice, simultaneously with its publication, together with a copy of the application and all attachments by registered post or hand delivery, to the Chief Commissioner of Income Tax having jurisdiction over the company, Income Tax Officer who has jurisdiction over the company, the Charity Commissioner, the Chief Secretary of the State in which the registered office of the company is situated, any organisation or Department of the Central Government or State Government or other authority under whose jurisdiction the company has been operating and if any of these authorities wish to make any representation to Regional Director, it shall do so within sixty days of the receipt of the notice, after giving an opportunity to the Company.

(3) The copy of proof of serving such notice shall be attached to the application.

(4) The Board of directors shall give a declaration to the effect that no portion of the income or property of the company has been or shall be paid or transferred directly or indirectly by way of dividend or bonus or otherwise to persons who are or have been members of the company or to any one or more of them or to any persons claiming through any one or more of them.

(4) Where the company has obtained any special status, privilege, exemption, benefit or grant(s) from any authority such as Income Tax Department, Charity Commissioner or any organisation or Department of Central Government, State Government, Municipal Body or any recognized authority, a "No Objection Certificate" must be obtained, if required under the terms of the said special status, privilege, exemption, benefit or grant(s) from the concerned authority and filed with the Regional Director, along with the application.

(5) The company should have filed all its financial statements and Annual Returns upto the financial year preceding the submission of the application to the Regional Director and all

other returns required to be filed under the Act up to the date of submitting the application to the Regional Director and in the event the application is made after the expiry of three months from the date of preceding financial year to which the financial statement has been filed, a statement of the financial position duly certified by chartered accountant made up to a date not preceding thirty days of filing the application shall be attached.

(6) The company shall attach with the application a certificate from practicing Chartered Accountant or Company Secretary in practice or Cost Accountant in practice certifying that the conditions laid down in the Act and these rules relating to conversion of a company registered under section 8 into any other kind of company, have been complied with.

(7) The Regional Director may require the applicant to furnish the approval or concurrence of any particular authority for grant of his approval for the conversion and he may also obtain the report from the Registrar

(8). On receipt of the application, and on being satisfied , the Regional Director shall issue an order approving the conversion of the company into a company of any other kind subject to such terms and conditions as may be imposed in the facts and circumstances of each case including the following conditions, namely;-

(a) the company shall give up and shall not claim, with effect from the date its conversion takes effect, any special status, exemptions or privileges that it enjoyed by virtue of having been registered under the provisions of section 8;

(b) if the company had acquired any immovable property free of cost or at a concessional cost from any government or authority, it may be required to pay the difference between the cost at which it acquired such property and the market price of such property at the time of conversion either to the government or to the authority that provided the immovable property;

(c) any accumulated profit or unutilised income of the company brought forward from previous years shall be first utilized to settle all outstanding statutory dues, amounts due to lenders claims of creditors, suppliers, service providers and others including employees and lastly any loans advanced by the promoters or members or any other amounts due to them and the balance, if any, shall be transferred to the Investor Education and Protection Fund within thirty days of receiving the approval for conversion;

(9) Before imposing the conditions or rejecting the application, the company shall be given a reasonable opportunity of being heard by the Regional Director

(10) On receipt of the approval of the Regional Director,

(i) the company shall convene a general meeting of its members to pass a special resolution for amending its memorandum of association and articles of association as required under the Act consequent to the conversion of the section 8 company into a company of any other kind;

(ii) the Company shall thereafter file with the Registrar.-

(a) a certified copy of the approval of the Regional Director within thirty days from the date of receipt of the order in **Form No.INC.20** along with the fee;

(b) amended memorandum of association and articles of association of the company.

(c) a declaration by the directors that the conditions, if any imposed by the Regional Director have been fully complied with.

(11) On receipt of the documents referred to in sub rule (10) above, the Registrar shall register the documents and issue the fresh Certificate of Incorporation.

23. Intimation to Registrar of revocation of licence issued under section 8.-

Where the licence granted to a company registered under section 8 has been revoked, the company shall apply to the Registrar **in Form No.INC.20** along with the fee to convert its status and change of name accordingly.

24. Declaration at the time of commencement of business.-

The declaration filed by a director shall be in **Form No.INC.21** along with the fee as and the contents of the form shall be verified by a Company Secretary in practice or a Chartered Accountant or a Cost Accountant in practice:

Provided that in the case of a company requiring registration from sectoral regulators such as Reserve Bank of India, Securities and Exchange Board of India etc, the approval from such regulator shall be required.

25. Verification of registered office.-

(1) The verification of the registered office shall be filed in **Form No.INC.22** along with the fee, and

(2) There shall be attached to said Form, any of the following documents, namely :-

(a) the registered document of the title of the premises of the registered office in the name of the company; or

(b) the notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;

(c) the authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and

(d) the proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be**,** which is not older than two months.

26. Publication of name by company.-

The Central Government may as and when required, notify the other documents on which the name of the company shall be printed.

27. Notice and verification of change of situation of the registered office.-

The notice of change of the situation of the registered office and verification thereof shall be filed in **Form No.INC.22** along with the fee and shall be attached to the said form, the similar documents and manner of verification as are specified for verification of Registered office on incorporation in terms of sub-section (2) of section 12.

28. Shifting of registered office within the same State.-

(1) An application seeking confirmation from the Regional Director for shifting the registered office within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies, shall be filed by the company with the Regional Director in **Form no.INC.23** along with the fee.

(2) The company shall, not less than one month before filing any application with the Regional Director for the change of registered office.-

(a) publish a notice, at least once in a daily newspaper published in English and in the principal language of that district in which the registered office of the company is situated and circulating in that district; and

(b) serve individual notice on each debenture holder, depositor and creditor of the company, clearly indicating the matter of application and stating that any person whose interest is likely to be affected by the proposed alteration of the memorandum may intimate his nature of interest and grounds of opposition to the Regional Director with a copy to the company within twenty one days of the date of publication of that notice:

Provided that in case no objection is received by the Regional Director within twenty one days from the date of service or publication of the notice, the person concerned shall be deemed to have given his consent to the change of registered office proposed in the application:

Provided further that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

29. Alteration of Memorandum by change of name.-

(1) The change of name shall not be allowed to a company which has defaulted in filing its annual returns or financial statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposits or debentures.

(2) An application shall be filed in **Form No.INC.24** along with the fee for change in the name of the company and a new certificate of incorporation in **Form No.INC.25** shall be issued to the company consequent upon change of name.

30. Shifting of registered office from one State or Union territory to another State.-

(1) An application under sub-section (4) of section 13, for the purpose of seeking approval for alteration of memorandum with regard to the change of place of the registered office from one State Government or Union territory to another, shall be filed with the Central Government in **Form No. INC.23** along with the fee and shall be accompanied by the following documents, namely:-

(a) a copy of the memorandum and articles of association;

(b) a copy of the notice convening the general meeting along with relevant Explanatory Statement;

(c) a copy of the special resolution sanctioning the alteration by the members of the company;

(d) a copy of the minutes of the general meeting at which the resolution authorizing such alteration was passed, giving details of the number of votes cast in favor or against the resolution;

(e) an affidavit verifying the application;

(f) the list of creditors and debenture holders entitled to object to the application;

(g) an affidavit verifying the list of creditors;

(h) the document relating to payment of application fee;

(i) a copy of board resolution or Power of Attorney or the executed Vakalatnama, as the case may be.

(2) There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than one month, setting forth the following details, namely:-
(a) the names and address of every creditor and debenture holder of the company;
(b) the nature and respective amounts due to them in respect of debts, claims or liabilities:

Provided that the applicant company shall file an affidavit, signed by the Company Secretary of the company, if any and not less than two directors of the company, one of whom shall be a managing director, where there is one, to the effect that they have made a full enquiry into the affairs of the company and, having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of or claims against the company to their knowledge.

(3) There shall also be attached to the application an affidavit from the directors of the company that no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state and also there shall be an application filed by the company to the Chief Secretary of the concerned State Government or the Union territory

(4) A duly authenticated copy of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of a sum not exceeding ten rupees per page to the company.

(5) There shall also be attached to the application a copy of the acknowledgment of service of a copy of the application with complete annexures to the Registrar and Chief Secretary of the State Government or Union territory where the registered office is situated at the time of filing the application.

(6) The company shall at least fourteen days before the date of hearing-
(a) advertise the application in the **Form No.INC.26** in a vernacular newspaper in the principal vernacular language in the district in which the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district;
(b) serve, by registered post with acknowledgement due, individual notice(s), to the effect set out in clause (a) on each debenture-holder and creditor of the company; and
(c) serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to the Securities and Exchange Board of India, in the case of listed companies and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.

(7) Where any objection of any person whose interest is likely to be affected by the proposed application has been received by the applicant, it shall serve a copy thereof to the Central Government on or before the date of hearing.

(8) Where no objection has been received from any of the parties, who have been duly served, the application may be put up for orders without hearing.

(9) Before confirming the alteration, the Central Government shall ensure that, with respect to every creditor and debenture holder who, in the opinion of the Central government, is entitled to object to the alteration, and who signifies his objection in the manner directed

by the Central government, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Central Government.

(10) The Central Government may make an order confirming the alteration on such terms and conditions, if any, as it thinks fit, and may make such order as to costs as it thinks proper:

Provided that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

31. The certified copy of the order of the Central Government, approving the alteration of the memorandum for transfer of registered office of the company from one State to another, shall be filed in **Form No.INC.28** along with the fee as with the Registrar of the State within thirty days from the date of receipt of certified copy of the order.

32. Change of objects for which money is raised through prospectus.

(1) Where the company has raised money from public through prospectus and has any unutilised amount out of the money so raised, it shall not change the objects for which the money so raised is to be applied unless a special resolution is passed through postal ballot and the notice in respect of the resolution for altering the objects shall contain the following particulars, namely:-

(a) the total money received;
(b) the total money utilized for the objects stated in the prospectus;
(c) the unutilized amount out of the money so raised through prospectus,
(d) the particulars of the proposed alteration or change in the objects;
(e) the justification for the alteration or change in the objects;
(f) the amount proposed to be utilised for the new objects;
(g) the estimated financial impact of the proposed alteration on the earnings and cash flow of the company;
(h) the other relevant information which is necessary for the members to take an informed decision on the proposed resolution;
(i) the place from where any interested person may obtain a copy of the notice of resolution to be passed.

(2) The advertisement giving details of each resolution to be passed for change in objects which shall be published simultaneously with the dispatch of postal ballot notices to shareholders.

(3) The notice shall also be placed on the website of the company, if any.

33. Alteration of articles.-

(1) For **effecting the** conversion of a private company into a public company or vice versa, the application shall be filed in **Form No.INC.27** with fee**.**

(2) A copy of order of the competent authority approving the alteration, shall be filed with the Registrar in **Form No. INC.27** with fee together with the printed copy of the altered articles within fifteen days of the receipt of the order from the Central Government.

Explanation.- For the purposes of this sub-rule, the term "competent authority" means, the Central Government.

34. Copies of memorandum and articles, etc. to be given to members on request being made by them.-

A company shall on payment of fee, send a copy of each of the following documents to a member within seven days of the request being made by him-

(1) the memorandum;
(2) the articles;
(3) every agreement and every resolution referred to in sub-section (1) of section 117, if and so far as they have not been embodied in the memorandum and articles.

35. Service of documents.-

(1) A document may be served on a company or an officer thereof through electronic transmission.
(2) For the purposes of sub-rule (1), the term, "electronic transmission" means a communication–
  (a) delivered by –
  (i) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the company or the officer has provided from time to time for sending communications to the company or the officer respectively;
  (ii) posting of an electronic message board or network that the company or the officer has designated for such communications, and which transmission shall be validly delivered upon the posting; or
  (iii) other means of electronic communication, in respect of which the company or the officer has put in place reasonable systems to verify that the sender is the person purporting to send the transmission; and
  (b) that creates a record that is capable of retention, retrieval and review, and which may thereafter be rendered into clearly legible tangible form.
(3) A document may be served on the Registrar or any member through electronic transmission.
(4) For the purposes of sub-rule (3), the term, "electronic transmission" means a communication –
  (a) delivered by –
    (i) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the Registrar or the member has provided from time to time for sending communications to the Registrar or the member respectively;
    (ii) posting of an electronic message board or network that the Registrar or the member has designated for those communications, and which transmission shall be validly delivered upon the posting; or
    (iii) other means of electronic communication, in respect of which the Registrar or the member has put in place reasonable systems to verify that the sender is the person purporting to send the transmission, and
  (b) that creates a record that is capable of retention, retrieval and review, and which may thereafter be rendered into clearly legible tangible form.
(5) For the purposes of sub-section (1) and (2) of section 20, "courier" means a document sent through a courier which provides proof of delivery.
(6) In case of delivery by post, such service shall be deemed to have been effected- (i) in the case of a notice of a meeting, at the expiration of forty eight hours after the letter

containing the same is posted; and (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.

CHAPTER III

PROSPECTUS AND ALLOTMENT OF SECURITIES

PART I.—*Public offer*

23. Public offer and private placement.

(*1*) A public company may issue securities—

(*a*) to public through prospectus (herein referred to as "public offer") by complying with the provisions of this Part; or

(*b*) through private placement by complying with the provisions of Part II of this Chapter; or

(*c*) through a rights issue or a bonus issue in accordance with the provisions of this Act and in case of a listed company or a company which intends to get its securities listed also with the provisions of the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder.

(*2*) A private company may issue securities—

(*a*) by way of rights issue or bonus issue in accordance with the provisions of this Act; or

(*b*) through private placement by complying with the provisions of Part II of this Chapter.

Explanation.—For the purposes of this Chapter, "public offer" includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus.

24. Power of Securities and Exchange Board to regulate issue and transfer of securities, etc.

(*1*) The provisions contained in this Chapter, Chapter IV and in section 127 shall,—

(*a*) in so far as they relate to —

(*i*) issue and transfer of securities; and

(*ii*) non-payment of dividend, by listed companies or those companies which intend to get their securities listed on any recognised stock exchange in India, except as provided under this Act, be administered by the Securities and Exchange Board by making regulations in this behalf;

(*b*) in any other case, be administered by the Central Government.

Explanation.—For the removal of doubts, it is hereby declared that all powers relating to all other matters relating to prospectus, return of allotment, redemption of preference shares and any other matter specifically provided in this Act, shall be exercised by the Central Government, the Tribunal or the Registrar, as the case may be.

(*2*) The Securities and Exchange Board shall, in respect of matters specified in subsection (*1*) and the matters delegated to it under proviso to sub-section (*1*) of section 458, exercise the powers conferred upon it under sub-sections (*1*), (*2A*), (*3*) and (*4*) of section 11, sections 11A, 11B and 11D of the Securities and Exchange Board of India Act, 1992.

25. Document containing offer of securities for sale to be deemed prospectus.

(*1*) Where a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company; and all enactments and rules of law as to the contents of

prospectus and as to liability in respect of mis-statements, in and omissions from, prospectus, or otherwise relating to prospectus, shall apply with the modifications specified in subsections (*3*) and (*4*) and shall have effect accordingly, as if the securities had been offered to the public for subscription and as if persons accepting the offer in respect of any securities were subscribers for those securities, but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.

(*2*) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, securities was made with a view to the securities being offered for sale to the public if it is shown—

(*a*) that an offer of the securities or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

(*b*) that at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it.

(*3*) Section 26 as applied by this section shall have effect as if —

(*i*) it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

(*a*) the net amount of the consideration received or to be received by the company in respect of the securities to which the offer relates; and

(*b*) the time and place at which the contract where under the said securities have been or are to be allotted may be inspected;

(*ii*) the persons making the offer were persons named in a prospectus as directors of a company.

(*4*) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document referred to in sub-section (*1*) is signed on behalf of the company or firm by two directors of the company or by not less than one-half of the partners in the firm, as the case may be.

26. Matters to be stated in prospectus.

(*1*) Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall—

(*a*) state the following information, namely:—

(*i*) names and addresses of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed;

(*ii*) dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time;

(*iii*) a statement by the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred and disclosure of details of all monies including utilised and unutilised monies out of the previous issue in the prescribed manner;

(*iv*) details about underwriting of the issue;

(*v*) consent of the directors, auditors, bankers to the issue, expert's opinion, if any, and of such other persons, as may be prescribed;

(*vi*) the authority for the issue and the details of the resolution passed therefor;

(*vii*) procedure and time schedule for allotment and issue of securities;

(*viii*)capital structure of the company in the prescribed manner;

(*ix*) main objects of public offer, terms of the present issue and such other particulars as may be prescribed;

(*x*) main objects and present business of the company and its location, schedule of implementation of the project;

(*xi*) particulars relating to—

(*A*) management perception of risk factors specific to the project;

(*B*) gestation period of the project;

(*C*) extent of progress made in the project;

(*D*) deadlines for completion of the project; and

(*E*) any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company;

(*xii*)minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash;

(*xiii*)details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed; and

(*xiv*)disclosures in such manner as may be prescribed about sources of promoter's contribution;

(*b*) set out the following reports for the purposes of the financial information, namely:—

(*i*) reports by the auditors of the company with respect to its profits and losses and assets and liabilities and such other matters as may be prescribed;

(*ii*) reports relating to profits and losses for each of the five financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries and in such manner as may be prescribed:

Provided that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in such manner as may be prescribed, the reports relating to profits and losses for each of the financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries;

(*iii*) reports made in the prescribed manner by the auditors upon the profits and losses of the business of the company for each of the five financial years immediately preceding issue and assets and liabilities of its business on the last date to which the accounts of the business were made up, being a date not more than one hundred and eighty days before the issue of the prospectus:

Provided that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in the prescribed manner, the reports made by the auditors upon the profits and losses of the business of the company for all financial years from the date of its incorporation, and assets and liabilities of its business on the last date before the issue of prospectus; and

(*iv*) reports about the business or transaction to which the proceeds of the securities are to be applied directly or indirectly;

(*c*) make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder; and

(*d*) state such other matters and set out such other reports, as may be prescribed.

(*2*) Nothing in sub-section (*1*) shall apply—

(*a*) to the issue to existing members or debenture-holders of a company, of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant has a right to renounce the shares or not under sub-clause (*ii*) of clause (*a*) of sub-section (*1*) of section 62 in favour of any other person; or

(*b*) to the issue of a prospectus or form of application relating to shares or debentures which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognized stock exchange.

(*3*) Subject to sub-section (*2*), the provisions of sub-section (*1*) shall apply to a prospectus or a form of application, whether issued on or with reference to the formation of a company or subsequently.

Explanation.—The date indicated in the prospectus shall be deemed to be the date of its publication.

(*4*) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless on or before the date of its publication, there has been delivered to the Registrar for registration, a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his duly authorised attorney.

(*5*) A prospectus issued under sub-section (*1*) shall not include a statement purporting to be made by an expert unless the expert is a person who is not, and has not been, engaged or interested in the formation or promotion or management, of the company and has given his written consent to the issue of the prospectus and has not withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for registration and a statement to that effect shall be included in the prospectus.

(*6*) Every prospectus issued under sub-section (*1*) shall, on the face of it,—

(*a*) state that a copy has been delivered for registration to the Registrar as required under sub-section (*4*); and

(*b*) specify any documents required by this section to be attached to the copy so delivered or refer to statements included in the prospectus which specify these documents.

(*7*) The Registrar shall not register a prospectus unless the requirements of this section with respect to its registration are complied with and the prospectus is accompanied by the consent in writing of all the persons named in the prospectus.

(*8*) No prospectus shall be valid if it is issued more than ninety days after the date on which a copy thereof is delivered to the Registrar under sub-section (*4*).

(*9*) If a prospectus is issued in contravention of the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

27. Variation in terms of contract or objects in prospectus.

(1) A company shall not, at any time, vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, except subject to the approval of, or except subject to an authority given by the company in general meeting by way of special resolution:

Provided that the details, as may be prescribed, of the notice in respect of such resolution to shareholders, shall also be published in the newspapers (one in English and one in

vernacular language) in the city where the registered office of the company is situated indicating clearly the justification for such variation:

Provided further that such company shall not use any amount raised by it through prospectus for buying, trading or otherwise dealing in equity shares of any other listed company.

(*2*) The dissenting shareholders being those shareholders who have not agreed to the proposal to vary the terms of contracts or objects referred to in the prospectus, shall be given an exit offer by promoters or controlling shareholders at such exit price, and in such manner and conditions as may be specified by the Securities and Exchange Board by making regulations in this behalf.

28. Offer of sale of shares by certain members of company.

(*1*) Where certain members of a company propose, in consultation with the Board of Directors to offer, in accordance with the provisions of any law for the time being in force, whole or part of their holding of shares to the public, they may do so in accordance with such procedure as may be prescribed.

(*2*) Any document by which the offer of sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company and all laws and rules made thereunder as to the contents of the prospectus and as to liability in respect of mis-statements in and omission from prospectus or otherwise relating to prospectus shall apply as if this is a prospectus issued by the company.

(*3*) The members, whether individuals or bodies corporate or both, whose shares are proposed to be offered to the public, shall collectively authorise the company, whose shares are offered for sale to the public, to take all actions in respect of offer of sale for and on their behalf and they shall reimburse the company all expenses incurred by it on this matter.

29. Public offer of securities to be in dematerialized form.

(*1*) Notwithstanding anything contained in any other provisions of this Act,—

(*a*) every company making public offer; and

(*b*) such other class or classes of public companies as may be prescribed, shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

(*2*) Any company, other than a company mentioned in sub-section (*1*), may convert its securities into dematerialised form or issue its securities in physical form in accordance with the provisions of this Act or in dematerialised form in accordance with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

30. Advertisement of prospectus.

Where an advertisement of any prospectus of a company is published in any manner, it shall be necessary to specify therein the contents of its memorandum as regards the objects, the liability of members and the amount of share capital of the company, and the names of the signatories to the memorandum and the number of shares subscribed for by them, and its capital structure.

31. Shelf prospectus.

(*1*) Any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

(*2*) A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus:

Provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.

(*3*) Where an information memorandum is filed, every time an offer of securities is made under sub-section (*2*), such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

Explanation.—For the purposes of this section, the expression "shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

32. Red herring prospectus.

(*1*) A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.

(*2*) A company proposing to issue a red herring prospectus under sub-section (*1*) shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer.

(*3*) A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.

(*4*) Upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.

Explanation.—For the purposes of this section, the expression "red herring prospectus" means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

33. Issue of application forms for securities.

(*1*) No form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an abridged prospectus:

Provided that nothing in this sub-section shall apply if it is shown that the form of application was issued—

(*a*) in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to such securities; or

(*b*) in relation to securities which were not offered to the public.

(*2*) A copy of the prospectus shall, on a request being made by any person before the closing of the subscription list and the offer, be furnished to him.

(*3*) If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.

34. Criminal liability for misstatements in prospectus.

Where a prospectus, issued, circulated or distributed under this Chapter, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorises the issue of such prospectus shall be liable under section 447:

Provided that nothing in this section shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.

35. Civil liability for misstatements in prospectus.

(*1*) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who—

(*a*) is a director of the company at the time of the issue of the prospectus;

(*b*) has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time;

(*c*) is a promoter of the company;

(*d*) has authorised the issue of the prospectus; and

(*e*) is an expert referred to in sub-section (*5*) of section 26, shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage.

(*2*) No person shall be liable under sub-section (*1*), if he proves—

(*a*) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(*b*) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

(*3*) Notwithstanding anything contained in this section, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or

any other person or for any fraudulent purpose, every person referred to in subsection (*1*) shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

36. Punishment for fraudulently inducing persons to invest money.

Any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into,—

(*a*) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or

(*b*) any agreement, the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or

(*c*) any agreement for, or with a view to obtaining credit facilities from any bank or financial institution, shall be liable for action under section 447.

37. Action by affected persons.

A suit may be filed or any other action may be taken under section 34 or section 35 or section 36 by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus.

38. Punishment for personation for acquisition, etc., of securities

(*1*) Any person who—

(*a*) makes or abets making of an application in a fictitious name to a company for acquiring, or subscribing for, its securities; or

(*b*) makes or abets making of multiple applications to a company in different names or in different combinations of his name or surname for acquiring or subscribing for its securities; or

(*c*) otherwise induces directly or indirectly a company to allot, or register any transfer of, securities to him, or to any other person in a fictitious name, shall be liable for action under section 447.

(*2*) The provisions of sub-section (*1*) shall be prominently reproduced in every prospectus issued by a company and in every form of application for securities.

(*3*) Where a person has been convicted under this section, the Court may also order disgorgement of gain, if any, made by, and seizure and disposal of the securities in possession of, such person.

(*4*) The amount received through disgorgement or disposal of securities under subsection (*3*) shall be credited to the Investor Education and Protection Fund.

39. Allotment of securities by company.

(*1*) No allotment of any securities of a company offered to the public for subscription shall be made unless the amount stated in the prospectus as the minimum amount has been subscribed and the sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument.

(*2*) The amount payable on application on every security shall not be less than five per cent. of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board by making regulations in this behalf.

(*3*) If the stated minimum amount has not been subscribed and the sum payable on application is not received within a period of thirty days from the date of issue of the prospectus, or such other period as may be specified by the Securities and Exchange Board, the amount received under sub-section (*1*) shall be returned within such time and manner as may be prescribed.

(*4*) Whenever a company having a share capital makes any allotment of securities**,** it shall file with the Registrar a return of allotment in such manner as may be prescribed.

(*5*) In case of any default under sub-section (*3*) or sub-section (*4*), the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

40. Securities to be dealt with in stock exchanges.

(*1*) Every company making public offer shall, before making such offer, make an application to one or more recognised stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.

(*2*) Where a prospectus states that an application under sub-section (*1*) has been made, such prospectus shall also state the name or names of the stock exchange in which the securities shall be dealt with.

(*3*) All monies received on application from the public for subscription to the securities shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—

(*a*) for adjustment against allotment of securities where the securities have been permitted to be dealt with in the stock exchange or stock exchanges specified in the prospectus; or

(*b*) for the repayment of monies within the time specified by the Securities and Exchange Board, received from applicants in pursuance of the prospectus, where the company is for any other reason unable to allot securities.

(*4*) Any condition purporting to require or bind any applicant for securities to waive compliance with any of the requirements of this section shall be void.

(*5*) If a default is made in complying with the provisions of this section, the company shall be punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

(*6*) A company may pay commission to any person in connection with the subscription to its securities subject to such conditions as may be prescribed.

41. Global depository receipt.

A company may, after passing a special resolution in its general meeting, issue depository receipts in any foreign country in such manner, and subject to such conditions, as may be prescribed.

42. Offer or invitation for subscription of securities on private placement.

(*1*) Without prejudice to the provisions of section 26, a company may, subject to the provisions of this section, make private placement through issue of a private placement offer letter.

(*2*) Subject to sub-section (*1*), the offer of securities or invitation to subscribe securities, shall be made to such number of persons not exceeding fifty or such higher number as may be prescribed, [excluding qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option as per provisions of clause (*b*) of sub-section (*1*) of section 62], in a financial year and on such conditions (including the form and manner of private placement) as may be prescribed.

Explanation I.—If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter.

Explanation II.— For the purposes of this section, the expression—

(*i*) "qualified institutional buyer" means the qualified institutional buyer as defined in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirments) Regulations, 2009 as amended from time to time.

(*ii*) "private placement" means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in this section.

(*3*) No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company.

(*4*) Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of this Act, and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be required to be complied with.

(*5*) All monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not by cash.

(*6*) A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the date of completion of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent. per annum from the expiry of the sixtieth day:

Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—

(*a*) for adjustment against allotment of securities; or

(*b*) for the repayment of monies where the company is unable to allot securities.

(*7*) All offers covered under this section shall be made only to such persons whose names are recorded by the company prior to the invitation to subscribe, and that such persons shall receive the offer by name, and that a complete record of such offers shall be kept by the company in such manner as may be prescribed and complete information about such offer shall be filed with the Registrar within a period of thirty days of circulation of relevant private placement offer letter.

(*8*) No company offering securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an offer.

(*9*) Whenever a company makes any allotment of securities under this section, it shall file with the Registrar a return of allotment in such manner as may be prescribed, including the complete list of all security-holders, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.

(*10*) If a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two crore rupees, whichever is higher, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.

Rules for Chapter III

Companies (Prospectus and Allotment of Securities) Rules, 2014

In exercise of the powers conferred under section 26, sub-section (1) of section 27, section 28, section 29, sub-section (2) of section 31, sub-sections (3) and (4) of section 39, sub-section (6) of section 40 and section 42 read with section 469 of the Companies Act, 2013 and in supersession of the Companies (Central Government's) General Rules and Forms, 1956 or any other rules prescribed under the Companies Act, 1956 (1 of 1956) on matters covered under these rules except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:-

1. Short title and commencement. –

(1) These rules may be called the Companies (Prospectus and Allotment of Securities) Rules, 2014.

(2) They shall come into force on the 1st day of April, 2014.

2. **Definitions.-** (1) In these rules, unless the context otherwise requires,-

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "Annexure" means the Annexure to these rules;

(c) "fees" means fees as specified in the Companies (Registration Offices and Fees) Rules, 2014;

(d) "Form" or 'e-Form" means a form set forth in Annexure to these rules which shall be used for the matter to which it relates;

(e) "Regional Director" means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director;

(f) "section" means section of the Act;

(2) Words and expressions used in these rules but not defined and defined in the Act or in the Companies (Specification of definitions details) Rules, 2014, shall have the meanings respectively assigned to them in the Act or in the said Rules.

3. Information to be stated in the prospectus.- (1) The Prospectus to be issued shall contain-

(a) the names, addresses and contact details of the corporate office of the issuer company, compliance officer of the issuer company, merchant bankers and co-managers to the issue, registrar to the issue, bankers to the issue, stock brokers to the issue, credit rating agency for the issue, arrangers, if any, of the instrument, names and addresses of such other persons as may be specified by the Securities and Exchange Board in its regulations;

(b) the dates relating to opening and closing of the issue;

(c) a declaration which shall be made by the Board or the Committee authorised by the Board in the prospectus that the allotment letters shall be issued or application money shall be refunded within fifteen days from the closure of the issue or such lesser time as may be specified by Securities and Exchange Board or else the application money shall be refunded to the applicants forthwith, failing which interest shall be due to be paid to the applicants at the rate of fifteen per cent. per annum for the delayed period.

(d) a statement given by the Board that all monies received out of the issue shall be transferred to a separate bank account maintained with a Scheduled Bank;

(e) the details of all utilized and unutilised monies out of the monies collected in the previous issue made by way of public offer shall be disclosed and continued to be disclosed in the balance sheet till the time any part of the proceeds of such previous issue remains unutilized indicating the purpose for which such monies have been utilized, and the securities or other forms of financial assets in which such unutilized monies have been invested;

(f) the names, addresses, telephone numbers, fax numbers and e-mail addresses of the underwriters and the amount underwritten by them;

(g) the consent of trustees, solicitors or advocates, merchant bankers to the issue, registrar to the issue, lenders and experts;

(2) The capital structure of the company shall be presented in the following manner, namely:

(i) (a) the authorised, issued, subscribed and paid up capital (number of securities, description and aggregate nominal value);

(b) the size of the present issue;

(c) the paid up capital-

(A) after the issue;

(B) after conversion of convertible instruments (if applicable);

(d) the share premium account (before and after the issue);

(ii) the details of the existing share capital of the issuer company in a tabular form, indicating therein with regard to each allotment, the date of allotment, the number of shares allotted, the face value of the shares allotted, the price and the form of consideration:

Provided that in the case of an initial public offer of an existing company, the details regarding individual allotment shall be given from the date of incorporation of the issuer and in the case of a listed issuer company, the details shall be given for five years immediately preceding the date of filing of the prospectus:

Provided that the issuer company shall also disclose the number and price at which each of the allotments were made in the last two years preceding the date of the prospectus separately indicating the allotments made for considerations other than cash and the details of the consideration in each case.

(3) The prospectus to be issued shall contain the following particulars, namely: -

(a) the objects of the issue;

(b) the purpose for which there is a requirement of funds ;

(c) the funding plan (means of finance);

(d) the summary of the project appraisal report (if any);

(e) the schedule of implementation of the project;

(f) the interim use of funds, if any

(4) The prospectus to be issued shall contain the following details and disclosures, namely:-

(i) the details of any litigation or legal action pending or taken by any Ministry or Department of the Government or a statutory authority against any promoter of the issuer company during the last five years immediately preceding the year of the issue of the prospectus and any direction issued by such Ministry or Department or statutory authority upon conclusion of such litigation or legal action shall be disclosed;

(ii) the details of pending litigation involving the issuer, promoter, director, subsidiaries, group companies or any other person, whose outcome could have material adverse effect on the position of the issuer;

(iii) the details of pending proceedings initiated against the issuer company for economic offences;

(iv) the details of default and non-payment of statutory dues etc.

(5) The details of directors including their appointment and remuneration, and particulars of the nature and extent of their interests in the company shall be disclosed in the following manner, namely:-

(i) the name, designation, Director Identification Number (DIN), age, address, period of directorship, details of other directorships;

(ii) the remuneration payable or paid to the director by the issuer company, its subsidiary and associate company; shareholding of the director in the company including any stock options; shareholding in subsidiaries and associate companies; appointment of any relatives to an office or place of profit;

(iii) the full particulars of the nature and extent of interest, if any, of every director:

(a) in the promotion of the issuer company; or

(b) in any immoveable property acquired by the issuer company in the two years preceding the date of the Prospectus or any immoveable property proposed to be acquired by it.

(iv) where the interest of such a director consists in being a member of a firm or company, the nature and extent of his interest in the firm or company, with a statement of all sums paid or agreed to be paid to him or to the firm or company in cash or shares or otherwise by any person either to induce him to become, or to help him qualify as a director, or otherwise for services rendered by him or by the firm or company, in connection with the promotion or formation of the issuer company shall be disclosed.

(6) The sources of promoters' contribution, if any, shall be disclosed in the following manner, namely:-

(i) the total shareholding of the promoters, clearly stating the name of the promoter, nature of issue, date of allotment, number of shares, face value, issue price or consideration, source of funds contributed , date when the shares were made fully paid up, percentage of the total pre and post issue capital;

(ii) the proceeds out of the sale of shares of the company and shares of its subsidiary companies previously held by each of the promoters;

(iii) the disclosure for sources of promoters contribution shall also include the particulars of name, address and the amount so raised as loan, financial assistance etc , if any, by promoters for making such contributions and in case of own sources, complete details thereof.

4. Reports to be set out in the Prospectus.- The following reports shall be set out with the prospectus, namely:-

(1) The reports by the auditors with respect to profits and losses and assets and liabilities.

Explanation.- For the purposes of this sub-rule, the report shall also include the amounts or rates of dividends, if any, paid by the issuer company in respect of each class of shares for each of the five financial years immediately preceding the year of issue of the prospectus, giving particulars of each class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares for any of those years:

Provided that if no accounts have been made up in respect of any part of the period of five years ending on a date three months before the issue of the prospectus, a statement

of that fact accompanied by a statement of the accounts of the issuer company in respect of that part of the said period up to a date not earlier than six months of the date of issue of the prospectus indicating the profit or loss for that period and assets and liabilities position as at the end of that period together with a certificate from the auditors that such accounts have been examined and found correct and the said statement may indicate the nature of provision or adjustments made or which are yet to be made.

(2) The reports relating to profits and losses for each of the five financial years or where five financial years have not expired, for each of the financial year immediately preceding the issue of the prospectus shall-

(a) if the company has no subsidiaries, deal with the profits or losses of the company (distinguishing items of a non-recurring nature) for each of the five financial years immediately preceding the year of the issue of the prospectus; and

(b) if the company has subsidiaries, deal separately with issuer company's profits or losses as provided in clause (a) and in addition, deal either -

(i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the issuer company; or

(ii) individually with the profits or losses of each subsidiary, so far as they concern members of the issuer company; or

(iii) as a whole with the profits or losses of the company, and, so far as they concern members of the issuer company, with the combined profits or losses of its subsidiaries.

(3) The reports made by the auditors in respect of the business of the company shall be stated in the prospectus in the manner provided in sub-rule (2).

5. Other matters and reports to be stated in the prospectus. -The prospectus shall include the following other matters and reports, namely:-

(1) If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly –

(a) in the purchase of any business; or

(b) in the purchase of an interest in any business and by reason of that purchase, or anything to be done in consequence thereof, or in connection therewith; the company shall become entitled to an interest in either the capital or profits and losses or both, in such business exceeding fifty per cent. thereof, a report made by a chartered accountant (who shall be named in the prospectus) upon-

(i) the profits or losses of the business for each of the five financial years immediately preceding the date of the issue of the prospectus ; and

(ii) the assets and liabilities of the business as on the last date to which the accounts of the business were made up, being a date not more than one hundred and twenty days before the date of the issue of the prospectus;

(c) in purchase or acquisition of any immoveable property including indirect acquisition of immoveable property for which advances have been paid to even third parties, disclosures regarding -

(i) the names, addresses, descriptions and occupations of the vendors;

(ii) the amount paid or payable in cash, to the vendor and, where there is more than one vendor, or the company is a sub-purchaser, the amount so paid or payable to each vendor, specifying separately the amount, if any, paid or payable for goodwill;

(iii) the nature of the title or interest in such property proposed to be acquired by the company; and

(iv) the particulars of every transaction relating to the property, completed within the two preceding years, in which any vendor of the property or any person who is, or was at the time of the transaction, a promoter, or a director or proposed director of the company had any interest, direct or indirect, specifying the date of the transaction and the name of such promoter, director or proposed director and stating the amount payable by or to such vendor, promoter, director or proposed director in respect of the transaction.

(2) (a) If -

(i) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or are to be applied directly or indirectly and in any manner resulting in the acquisition by the company of shares in any other body corporate; and

(ii) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith, that body corporate shall become a subsidiary of the company, a report shall be made by a Chartered Accountant (who shall be named in the prospectus) upon -

(A) the profits or losses of the other body corporate for each of the five financial years immediately preceding the issue of the prospectus; and

(B) the assets and liabilities of the other body corporate as on the last date to which its accounts were made up.

(b) The said report shall -

(i) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the issuer company and what allowance would have been required to be made, in relation to assets and liabilities so dealt with for the holders of the balance shares, if the issuer company had at all material times held the shares proposed to be acquired; and

(ii) where the other body corporate has subsidiaries, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner as provided in sub-clause (ii) of clause (a).

(3) The matters relating to terms and conditions of the term loans including re-scheduling, prepayment, penalty, default.

(4) The aggregate number of securities of the issuer company and its subsidiary companies purchased or sold by the promoter group and by the directors of the company which is a promoter of the issuer company and by the directors of the issuer company and their relatives within six months immediately preceding the date of filing the prospectus with the Registrar of Companies shall be disclosed.

(5) The matters relating to -

(A) Material contracts;

(B) Other material contracts;

(C) Time and place at which the contracts together with documents will be available for inspection from the date of prospectus until the date of closing of subscription list.

(6) The related party transactions entered during the last five financial years immediately preceding the issue of prospectus as under -

(a) all transactions with related parties with respect to giving of loans or, guarantees, providing securities in connection with loans made, or investments made ;

(b) all other transactions which are material to the issuer company or the related party, or any transactions that are unusual in their nature or conditions, involving goods, services, or tangible or intangible assets, to which the issuer company or any of its parent companies was a party:

Provided that the disclosures for related party transactions for the period prior to notification of these rules shall be to the extent of disclosure requirements as per the Companies Act, 1956 and the relevant accounting standards prevailing at the said time.

(7) The summary of reservations or qualifications or adverse remarks of auditors in the last five financial years immediately preceding the year of issue of prospectus and of their impact on the financial statements and financial position of the company and the corrective steps taken and proposed to be taken by the company for each of the said reservations or qualifications or adverse remarks.

(8) The details of any inquiry, inspections or investigations initiated or conducted under the Companies Act or any previous companies law in the last five years immediately preceding the year of issue of prospectus in the case of company and all of its subsidiaries; and if there were any prosecutions filed (whether pending or not); fines imposed or compounding of offences done in the last five years immediately preceding the year of the prospectus for the company and all of its subsidiaries.

(9) The details of acts of material frauds committed against the company in the last five years, if any, and if so, the action taken by the company.

(10) A fact sheet shall be included at the beginning of the prospectus which shall contain -

(a) the type of offer document ("Red Herring Prospectus" or "Shelf Prospectus" or "Prospectus").

(b) the name of the issuer company, date and place of its incorporation, its logo, address of its registered office, its telephone number, fax number, details of contact person, website address, e-mail address;

(c) the names of the promoters of the issuer company;

(d) the nature, number, price and amount of securities offered and issue size, as may be applicable;

(e) the aggregate amount proposed to be raised through all the stages of offers of specified securities made through the shelf prospectus;

(f) the name, logo and address of the registrar to the issue, along with its telephone number, fax number, website address and e-mail address;

(g) the issue schedule -

(i) date of opening of the issue;

(ii) date of closing of the issue;

(iii) date of earliest closing of the issue, if any.

(h) the credit rating, if applicable;

(i) all the grades obtained for the initial public offer;

(j) the name(s) of the recognised stock exchanges where the securities are proposed to be listed;

(k) the details about eligible investors;

(l) coupon rate, coupon payment frequency, redemption date, redemption amount and details of debenture trustee in case of debt securities.

6. **Period for which information to be provided in certain cases.-** For the matters specified in rules 3 to 5, which require a company to provide certain particulars or

information relating to the preceding five financial years, it shall be sufficient compliance for a company which has not completed five years, if such company provides such particulars or information for all the previous years since its incorporation.

7. Variation in terms of contracts referred to in the prospectus or objects for which prospectus was issued.-

(1) where the company has raised money from public through prospectus and has any unutilized amount out of the money so raised, it shall not vary the terms of contracts referred to in the prospectus or objects for which the prospectus was issued except by passing a special resolution through postal ballot and the notice of the proposed special resolution shall contain the following particulars, namely:-
(a) the original purpose or object of the Issue;
(b) the total money raised;
(c) the money utilised for the objects of the company stated in the prospectus;
(d) the extent of achievement of proposed objects(that is fifty percent, sixty percent, etc);
(e) the unutilised amount out of the money so raised through prospectus,
(f) the particulars of the proposed variation in the terms of contracts referred to in the prospectus or objects for which prospectus was issued;
(g) the reason and justification for seeking variation;
(h) the proposed time limit within which the proposed varied objects would be achieved;
(i) the clause-wise details as specified in sub-rule (3) of rule 3 as was required with respect to the originally proposed objects of the issue;
(j) the risk factors pertaining to the new objects; and
(k) the other relevant information which is necessary for the members to take an informed decision on the proposed resolution.

(2) The advertisement of the notice for getting the resolution passed for varying the terms of any contract referred to in the prospectus or altering the objects for which the prospectus was issued, shall be in Form **PAS-1** and such advertisement shall be published simultaneously with dispatch of Postal Ballot Notices to Shareholders.

(3) The notice shall also be placed on the web-site of the company, if any.

8. Offer of Sale by Members.-

(1) The provisions of Part I of Chapter III namely "Prospectus and Allotment of Securities" and rules made there under shall be applicable to an offer of sale referred to in section 28 except for the following, namely:-
(a) the provisions relating to minimum subscription;
(b) the provisions for minimum application value;
(c) the provisions requiring any statement to be made by the Board of directors in respect of the utilization of money; and
(d) any other provision or information which cannot be compiled or gathered by the offeror, with detailed justifications for not being able to comply with such provisions.

(2) The prospectus issued under section 28 shall disclose the name of the person or persons or entity bearing the cost of making the offer of sale along with reasons.

9. Dematerialisation of securities.- The promoters of every public company making a public offer of any convertible securities may hold such securities only in dematerialised form:

Provided that the entire holding of convertible securities of the company by the promoters held in physical form up to the date of the initial public offer shall be converted into dematerialised form before such offer is made and thereafter such promoter shareholding shall be held in dematerialized form only.

10. Shelf prospectus and Information Memorandum.- The information memorandum shall be prepared in Form **PAS-2** and filed with the Registrar along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within one month prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

11. Refund of Application Money.-

(1) If the stated minimum amount has not been subscribed and the sum payable on application is not received within the period specified therein, then the application money shall be repaid within a period of fifteen days from the closure of the issue and if any such money is not so repaid within such period, the directors of the company who are officers in default shall jointly and severally be liable to repay that money with interest at the rate of fifteen percent per annum.

(2) The application money to be refunded shall be credited only to the bank account from which the subscription was remitted.

12. Return of Allotment.- (1) Whenever a company having a share capital makes any allotment of its securities, the company shall, within thirty days thereafter, file with the Registrar a return of allotment in Form **PAS-3**, along with the fee as specified in the Companies (Registration Offices and Fees) Rules, 2014.

(2) There shall be attached to the Form **PAS-3** a list of allottees stating their names, address, occupation, if any, and number of securities allotted to each of the allottees and the list shall be certified by the signatory of the Form **PAS-3** as being complete and correct as per the records of the company.

(3) In the case of securities (not being bonus shares) allotted as fully or partly paid up for consideration other than cash, there shall be attached to the Form **PAS-3** a copy of the contract, duly stamped, pursuant to which the securities have been allotted together with any contract of sale if relating to a property or an asset, or a contract for services or other consideration.

(4) Where a contract referred to in sub-rule (3) is not reduced to writing, the company shall furnish along with the Form **PAS-3** complete particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing and those particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act, 1899 (2 of 1899), and the Registrar may, as a condition of filing the particulars, require that the stamp duty payable thereon be adjudicated under section 31 of the Indian Stamp Act, 1899.

(5) A report of a registered valuer in respect of valuation of the consideration shall also be attached along with the contract as mentioned in sub-rule (3) and sub-rule (4).

(6) In the case of issue of bonus shares, a copy of the resolution passed in the general meeting authorizing the issue of such shares shall be attached to the Form **PAS-3**.

(7) In case the shares have been issued in pursuance of clause (c) of sub-section (1) of section 62 by a company other than a listed company whose equity shares or convertible preference shares are listed on any recognised stock exchange, there shall be attached to Form **PAS-3**, the valuation report of the registered valuer.

Explanation.- Pending notification of sub-section (1) of section 247 of the Act and finalisation of qualifications and experience of valuers, valuation of stocks, shares, debentures, securities etc. shall be conducted by an independent merchant banker who is registered with the Securities and Exchange Board of India or an independent chartered accountant in practice having a minimum experience of ten years.

13. Payment of commission.- A company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the following conditions, namely: -

(a) the payment of such commission shall be authorized in the company's articles of association;

(b) the commission may be paid out of proceeds of the issue or the profit of the company or both;

(c) the rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed two and a half per cent of the price at which the debentures are issued, or as specified in the company's articles, whichever is less;

(d) the prospectus of the company shall disclose -

(i) the name of the underwriters;

(ii) the rate and amount of the commission payable to the underwriter; and

(iii) the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.

(e) there shall not be paid commission to any underwriter on securities which are not offered to the public for subscription;

(f) a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

14. Private Placement.-

(1)(a) For the purposes of sub-section (1) of section 42, a company may make an offer or invitation to subscribe to securities through issue of a private placement offer letter in Form **PAS-4**.

(b) A private placement offer letter shall be accompanied by an application form serially numbered and addressed specifically to the person to whom the offer is made and shall be sent to him, either in writing or in electronic mode, within thirty days of recording the names of such persons in accordance with sub-section (7) of section 42:

Provided that no person other than the person so addressed in the application form shall be allowed to apply through such application form and any application not conforming to this condition shall be treated as invalid.

(2) A company shall not make a private placement of its securities unless -

(a) the proposed offer of securities or invitation to subscribe securities has been previously approved by the shareholders of the company, by a Special Resolution, for each of the Offers or Invitations:

Provided that in the explanatory statement annexed to the notice for the general meeting the basis or justification for the price (including premium, if any) at which the offer or invitation is being made shall be disclosed:

Provided further that in case of offer or invitation for non-convertible debentures, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitation for such debentures during the year.

(b) such offer or invitation shall be made to not more than two hundred persons in the aggregate in a financial year:

Provided that any offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees stock option as per provisions of clause (b) of sub-section (1) of section 62 shall not be considered while calculating the limit of two hundred persons;

Explanation.– For the purposes of this sub-rule, it is hereby clarified that -

(i) the restrictions under sub-clause (b) would be reckoned individually for each kind of security that is equity share, preference share or debenture;

(ii) the requirement of provisions of sub-section (3) of section 42 shall apply in respect of offer or invitation of each kind of security and no offer or invitation of another kind of security shall be made unless allotments with respect to offer or invitation made earlier in respect of any other kind of security is completed;

(c) the value of such offer or invitation per person shall be with an investment size of not less than twenty thousand rupees of face value of the securities;

(d) the payment to be made for subscription to securities shall be made from the bank account of the person subscribing to such securities and the company shall keep the record of the Bank account from where such payments for subscriptions have been received:
Provided that monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application.

(3) The company shall maintain a complete record of private placement offers in Form **PAS-5**:

Provided that a copy of such record along with the private placement offer letter in Form **PAS-4** shall be filed with the Registrar with fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and where the company is listed, with the Securities and Exchange Board within a period of thirty days of circulation of the private placement offer letter.

Explanation.- For the purpose of this rule, it is hereby clarified that the date of private placement offer letter shall be deemed to be the date of circulation of private placement offer letter.

(4) A return of allotment of securities under section 42 shall be filed with the Registrar within thirty days of allotment in Form **PAS-3** and with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 along with a complete list of all security holders containing-

(i) the full name, address, Permanent Account Number and E-mail ID of such security holder;

(ii) the class of security held;
(iii) the date of allotment of security ;
(iv) the number of securities held, nominal value and amount paid on such securities; and particulars of consideration received if the securities were issued for consideration other than cash.

(5) The provisions of clauses (b) and (c) of sub-rule (2) shall not be applicable to -
(a) non-banking financial companies which are registered with the Reserve Bank of India under Reserve Bank of India Act, 1934; and
(b) housing finance companies which are registered with the National Housing Bank under National Housing Bank Act, 1987, if they are complying with regulations made by Reserve Bank of India or National Housing Bank in respect of offer or invitation to be issued on private placement basis:

Provided that such companies shall comply with sub-clauses (b) and (c) of sub-rule (2) in case the Reserve Bank of India or the National Housing Bank have not specified similar regulations.

Companies (Global Depository Receipts) Rules, 2014

In exercise of the powers conferred by section 41 read with 469 of the Companies Act, 2013, the Central Government hereby makes the following rules, namely:-

1. Short title and commencement. –

(1) These Rules may be called Companies (Issue of Global Depository Receipts) Rules, 2014.

(2) They shall come into force on the 1st day of April, 2014.

2. Definitions.

(1) In these Rules, unless the context otherwise requires, -

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "Section" means section of the Act;

(c) "Scheme" means the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 or any modification or re-enactment thereof;

(2) Words and expressions occurring in these rules shall bear the same meaning as in the Act and the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 or any modification or re-enactment thereof.

3. Eligibility to issue depository receipts. - A company may issue depository receipts provided it is eligible to do so in terms of the Scheme and relevant provisions of the Foreign Exchange Management Rules and Regulations.

4. Conditions for issue of depository receipts. –

(1) The Board of Directors of the company intending to issue depository receipts shall pass a resolution authorising the company to do so.

(2) The company shall take prior approval of its shareholders by a special resolution to be passed at a general meeting:

Provided that a special resolution passed under section 62 for issue of shares underlying the depository receipts, shall be deemed to be a special resolution for the purpose of section 41 as well.

(3) The depository receipts shall be issued by an overseas depository bank appointed by the company and the underlying shares shall be kept in the custody of a domestic custodian bank.

(4) The company shall ensure that all the applicable provisions of the Scheme and the rules or regulations or guidelines issued by the Reserve Bank of India are complied with before and after the issue of depository receipts.

(5) The company shall appoint a merchant banker or a practising chartered accountant or a practising cost accountant or a practising company secretary to oversee all the compliances relating to issue of depository receipts and the compliance report taken from such merchant banker or practising chartered accountant or practising cost accountant or practising company secretary, as the case may be, shall be placed at the meeting of the Board of Directors of the company or of the committee of the Board of directors authorised by the Board in this regard to be held immediately after closure of all formalities of the issue of depository receipts:

Provided that the committee of the Board of directors referred to above shall have at least one independent director in case the company is required to have independent directors.

5. Manner and form of depository receipts. –

(1) The depository receipts can be issued by way of public offering or private placement or in any other manner prevalent abroad and may be listed or traded in an overseas listing or trading platform.

(2) The depository receipts may be issued against issue of new shares or may be sponsored against shares held by shareholders of the company in accordance with such conditions as the Central Government or Reserve Bank of India may prescribe or specify from time to time.

(3) The underlying shares shall be allotted in the name of the overseas depository bank and against such shares, the depository receipts shall be issued by the overseas depository bank abroad.

6. Voting rights. –

(1) A holder of depository receipts may become a member of the company and shall be entitled to vote as such only on conversion of the depository receipts into underlying shares after following the procedure provided in the Scheme and the provisions of this Act.

(2) Until the conversion of depository receipts, the overseas depository shall be entitled to vote on behalf of the holders of depository receipts in accordance with the provisions of the agreement entered into between the depository, holders of depository receipts and the company in this regard.

7. Proceeds of issue. - The proceeds of issues of depository receipts shall either be remitted to a bank account in India or deposited in an Indian bank operating abroad or any foreign bank (which is a Scheduled Bank under the Reserve Bank of India Act, 1934) having operations in India with an agreement that the foreign bank having operations in India shall take responsibility for furnishing all the information which may be required and in the event of a sponsored issue of Depository Receipts, the proceeds of the sale shall be credited to the respective bank account of the shareholders.

8. Depository receipts prior to commencement. –

(1) A company which has issued depository receipts prior to commencement of these rules shall comply with the requirements under this rule within six months of such commencement.

(2) Any issue of depository receipts after six months of commencement of these rules shall be in accordance with the requirements of these rules.

9. Non applicability of certain provisions of the Act. –

(1) The provisions of the Act and any rules issued thereunder insofar as they relate to public issue of shares or debentures shall not apply to issue of depository receipts abroad.

(2) The offer document, by whatever name called and if prepared for the issue of depository receipts, shall not be treated as a prospectus or an offer document within the meaning of

this Act and all the provisions as applicable to a prospectus or an offer document shall not apply to a depository receipts offer document.

(3) Notwithstanding anything contained under section 88 of the Act, until the redemption of depository receipts, the name of the overseas depository bank shall be entered in the Register of Members of the company.

CHAPTER IV

SHARE CAPITAL AND DEBENTURES

43. Kinds of share capital.

The share capital of a company limited by shares shall be of two kinds, namely:—

(*a*) equity share capital—

(*i*) with voting rights; or

(*ii*) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; and

(*b*) preference share capital:

Provided that nothing contained in this Act shall affect the rights of the preference shareholders who are entitled to participate in the proceeds of winding up before the commencement of this Act.

Explanation.—For the purposes of this section,—

(*i*) "equity share capital", with reference to any company limited by shares, means all share capital which is not preference share capital;

(*ii*) "preference share capital", with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to—

(*a*) payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and

(*b*) repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company;

(iii) capital shall be deemed to be preference capital, notwithstanding that it is entitled to either or both of the following rights, namely:—

(*a*) that in respect of dividends, in addition to the preferential rights to the amounts specified in sub-clause (*a*) of clause (*ii*), it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;

(*b*) that in respect of capital, in addition to the preferential right to the repayment, on a winding up, of the amounts specified in sub-clause (*b*) of clause (*ii*), it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

44. Nature of shares or debentures.

The shares or debentures or other interest of any member in a company shall be movable property transferable in the manner provided by the articles of the company.

45. Numbering of shares.

Every share in a company having a share capital shall be distinguished by its distinctive number:

Provided that nothing in this section shall apply to a share held by a person whose name is entered as holder of beneficial interest in such share in the records of a depository.

46. Certificate of shares.

(*1*) A certificate, issued under the common seal of the company, specifying the shares held by any person, shall be *prima facie* evidence of the title of the person to such shares.

(*2*) A duplicate certificate of shares may be issued, if such certificate —

(*a*) is proved to have been lost or destroyed; or

(*b*) has been defaced, mutilated or torn and is surrendered to the company.

(*3*) Notwithstanding anything contained in the articles of a company, the manner of issue of a certificate of shares or the duplicate thereof, the form of such certificate, the particulars to be entered in the register of members and other matters shall be such as may be prescribed.

(*4*) Where a share is held in depository form, the record of the depository is the *prima facie* evidence of the interest of the beneficial owner.

(*5*) If a company with intent to defraud issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares or rupees ten crores whichever is higher and every officer of the company who is in default shall be liable for action under section 447.

47. Voting rights.

(*1*) Subject to the provisions of section 43 and sub-section (*2*) of section 50,—

(*a*) every member of a company limited by shares and holding equity share capital therein, shall have a right to vote on every resolution placed before the company; and

(*b*) his voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company.

(*2*) Every member of a company limited by shares and holding any preference share capital therein shall, in respect of such capital, have a right to vote only on resolutions placed before the company which directly affect the rights attached to his preference shares and, any resolution for the winding up of the company or for the repayment or reduction of its equity or preference share capital and his voting right on a poll shall be in proportion to his share in the paid-up preference share capital of the company:

Provided that the proportion of the voting rights of equity shareholders to the voting rights of the preference shareholders shall be in the same proportion as the paid-up capital in respect of the equity shares bears to the paid-up capital in respect of the preference shares:

Provided further that where the dividend in respect of a class of preference shares has not been paid for a period of two years or more, such class of preference shareholders shall have a right to vote on all the resolutions placed before the company.

48. Variation of shareholders' rights.

(*1*) Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class,—

(*a*) if provision with respect to such variation is contained in the memorandum or articles of the company; or

(*b*) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class:

Provided that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

(*2*) Where the holders of not less than ten per cent. of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal:

Provided that an application under this section shall be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(*3*) The decision of the Tribunal on any application under sub-section (*2*) shall be binding on the shareholders.

(*4*) The company shall, within thirty days of the date of the order of the Tribunal, file a copy thereof with the Registrar.

(*5*) Where any default is made in complying with the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five 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 twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

49. Calls on shares of same class to be made on uniform basis.

Where any calls for further share capital are made on the shares of a class, such calls shall be made on a uniform basis on all shares falling under that class.

Explanation.—For the purposes of this section, shares of the same nominal value on which different amounts have been paid-up shall not be deemed to fall under the same class.

50. Company to accept unpaid share capital, although not called up.

(*1*) A company may, if so authorised by its articles, accept from any member, the whole or a part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up.

(*2*) A member of the company limited by shares shall not be entitled to any voting rights in respect of the amount paid by him under sub-section (*1*) until that amount has been called up.

51. Payment of dividend in proportion to amount paid-up.

A company may, if so authorised by its articles, pay dividends in proportion to the amount paid-up on each share.

52. Application of premiums received on issue of shares.

(*1*) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.

(*2*) Notwithstanding anything contained in sub-section (*1*), the securities premium account may be applied by the company—

(*a*) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;

(*b*) in writing off the preliminary expenses of the company;

(*c*) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;

(*d*) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or

(*e*) for the purchase of its own shares or other securities under section 68.

(*3*) The securities premium account may, notwithstanding anything contained in sub-sections (*1*) and (*2*), be applied by such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133,—

(*a*) in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or

(*b*) in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or

(*c*) for the purchase of its own shares or other securities under section 68.

53. Prohibition on issue of shares at discount.

(*1*) Except as provided in section 54, a company shall not issue shares at a discount.

(*2*) Any share issued by a company at a discounted price shall be void.

(*3*) Where a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer 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 one lakh rupees but which may extend to five lakh rupees, or with both.

54. Issue of sweat equity shares.

(*1*) Notwithstanding anything contained in section 53, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely:—

(a) the issue is authorised by a special resolution passed by the company;

(b) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;

(c) not less than one year has, at the date of such issue, elapsed since the date on which the company had commenced business; and

(d) where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the

Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as may be prescribed.

(*2*) The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank *pari passu* with other equity shareholders.

55. Issue and redemption of preference shares.

(*1*) No company limited by shares shall, after the commencement of this Act, issue any preference shares which are irredeemable.

(*2*) A company limited by shares may, if so authorised by its articles, issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue subject to such conditions as may be prescribed:

Provided that a company may issue preference shares for a period exceeding twenty years for infrastructure projects, subject to the redemption of such percentage of shares as may be prescribed on an annual basis at the option of such preferential shareholders:

Provided further that—

(*a*) no such shares shall be redeemed except out of the profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of such redemption;

(*b*) no such shares shall be redeemed unless they are fully paid;

(*c*) where such shares are proposed to be redeemed out of the profits of the company, there shall, out of such profits, be transferred, a sum equal to the nominal amount of the shares to be redeemed, to a reserve, to be called the Capital Redemption Reserve Account, and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the Capital Redemption Reserve Account were paid-up share capital of the company; and

(*d*) (*i*) in case of such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133, the premium, if any, payable on redemption shall be provided for out of the profits of the company, before the shares are redeemed:

Provided also that premium, if any, payable on redemption of any preference shares issued on or before the commencement of this Act by any such company shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed.

(*ii*) in a case not falling under sub-clause (*i*) above, the premium, if any, payable on redemption shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed.

(*3*) Where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may, with the consent of the holders of three-fourths in value of such preference shares and with the approval of the Tribunal on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed:

Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.

Explanation.—For the removal of doubts, it is hereby declared that the issue of further redeemable preference shares or the redemption of preference shares under this section shall not be deemed to be an increase or, as the case may be, a reduction, in the share capital of the company.

(*4*) The capital redemption reserve account may, notwithstanding anything in this section, be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

Explanation.—For the purposes of sub-section (*2*), the term "infrastructure projects" means the infrastructure projects specified in Schedule VI.

56. Transfer and transmission of securities.

(*1*) A company shall not register a transfer of securities of the company, or the interest of a member in the company in the case of a company having no share capital, other than the transfer between persons both of whose names are entered as holders of beneficial interest in the records of a depository, unless a proper instrument of transfer, in such form as may be prescribed, duly stamped, dated and executed by or on behalf of the transferor and the transferee and specifying the name, address and occupation, if any, of the transferee has been delivered to the company by the transferor or the transferee within a period of sixty days from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities:

Provided that where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period, the company may register the transfer on such terms as to indemnity as the Board may think fit.

(*2*) Nothing in sub-section (*1*) shall prejudice the power of the company to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted.

(*3*) Where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless the company gives the notice of the application, in such manner as may be prescribed, to the transferee and the transferee gives no objection to the transfer within two weeks from the receipt of notice.

(*4*) Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted—

(*a*) within a period of two months from the date of incorporation, in the case of subscribers to the memorandum;

(*b*) within a period of two months from the date of allotment, in the case of any allotment of any of its shares;

(*c*) within a period of one month from the date of receipt by the company of the instrument of transfer under sub-section (*1*) or, as the case may be, of the intimation

of transmission under sub-section (*2*), in the case of a transfer or transmission of securities;

(*d*) within a period of six months from the date of allotment in the case of any allotment of debenture:

Provided that where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

(*5*) The transfer of any security or other interest of a deceased person in a company made by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer.

(*6*) Where any default is made in complying with the provisions of sub-sections (*1*) to (*5*), the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

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

57. Punishment for personation of shareholder.

If any person deceitfully personates as an owner of any security or interest in a company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

58. Refusal of registration and appeal against refusal.

(*1*) If a private company limited by shares refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any securities or interest of a member in the company, it shall within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

(*2*) Without prejudice to sub-section (*1*), the securities or other interest of any member in a public company shall be freely transferable:

Provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.

(*3*) The transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

(*4*) If a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.

(*5*) The Tribunal, while dealing with an appeal made under sub-section (*3*) or subsection (*4*), may, after hearing the parties, either dismiss the appeal, or by order—

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or

(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

(*6*) If a person contravenes the order of the Tribunal under this section, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

59. Rectification of register of members.

(*1*) If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, omitted therefrom, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal, or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register.

(*2*) The Tribunal may, after hearing the parties to the appeal under sub-section (*1*) by order, either dismiss the appeal or direct that the transfer or transmission shall be registered by the company within a period of ten days of the receipt of the order or direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved.

(*3*) The provisions of this section shall not restrict the right of a holder of securities, to transfer such securities and any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.

(*4*) Where the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 or this Act or any other law for the time being in force, the Tribunal may, on an application made by the depository, company, depository participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to set right the contravention and rectify its register or records concerned.

(*5*) If any default is made in complying with the order of the Tribunal under this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

60. Publication of authorised, subscribed and paid-up capital.

(*1*) Where any notice, advertisement or other official publication, or any business letter, billhead or letter paper of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication, or such letter, billhead or letter paper shall also contain a statement, in an equally prominent position and in equally conspicuous characters, of the amount of the capital which has been subscribed and the amount paid-up.

(*2*) If any default is made in complying with the requirements of sub-section (*1*), the company shall be liable to pay a penalty of ten thousand rupees and every officer of the company who is in default shall be liable to pay a penalty of five thousand rupees, for each default.

61. Power of limited company to alter its share capital.

(*1*) A limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to—

(*a*) increase its authorised share capital by such amount as it thinks expedient;

(*b*) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares:

Provided that no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;

(c) convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;

(d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(*2*) The cancellation of shares under sub-section (*1*) shall not be deemed to be a reduction of share capital.

62. Further issue of share capital.

(*1*) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—

(*a*) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:—

(*i*) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;

(*ii*) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (*i*) shall contain a statement of this right;

(*iii*) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company;

(*b*) to employees under a scheme of employees' stock option, subject to special resolution passed by company and subject to such conditions as may be prescribed; or

(*c*) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (*a*) or clause (*b*), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.

(*2*) The notice referred to in sub-clause (*i*) of clause (*a*) of sub-section (*1*) shall be despatched through registered post or speed post or through electronic mode to all the existing shareholders at least three days before the opening of the issue.

(*3*) Nothing in this section shall apply to the increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company:

Provided that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in general meeting.

(*4*) Notwithstanding anything contained in sub-section (*3*), where any debentures have been issued, or loan has been obtained from any Government by a company, and if that Government considers it necessary in the public interest so to do, it may, by order, direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to the Government to be reasonable in the circumstances of the case even if terms of the issue of such debentures or the raising of such loans do not include a term for providing for an option for such conversion:
Provided that where the terms and conditions of such conversion are not acceptable to the company, it may, within sixty days from the date of communication of such order, appeal to the Tribunal which shall after hearing the company and the Government pass such order as it deems fit.

(*5*) In determining the terms and conditions of conversion under sub-section (*4*), the Government shall have due regard to the financial position of the company, the terms of issue of debentures or loans, as the case may be, the rate of interest payable on such debentures or loans and such other matters as it may consider necessary.

(*6*) Where the Government has, by an order made under sub-section (*4*), directed that any debenture or loan or any part thereof shall be converted into shares in a company and where no appeal has been preferred to the Tribunal under sub-section (*4*) or where such appeal has been dismissed, the memorandum of such company shall, where such order as the effect of increasing the authorised share capital of the company, stand altered and the authorised share capital of such company shall stand increased by an amount equal to the amount of the value of shares which such debentures or loans or part thereof has been converted into.

63. Issue of bonus shares.

(*1*) A company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—

(*i*) its free reserves;

(*ii*) the securities premium account; or

(*iii*) the capital redemption reserve account:

Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

(*2*) No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares under sub-section (*1*), unless—

(*a*) it is authorised by its articles;

(*b*) it has, on the recommendation of the Board, been authorised in the general meeting of the company;

(*c*) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;

(*d*) it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;

(*e*) the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;

(*f*) it complies with such conditions as may be prescribed.

(*3*) The bonus shares shall not be issued in lieu of dividend.

64. Notice to be given to Registrar for alteration of share capital.

(*1*) Where—

(a) a company alters its share capital in any manner specified in sub-section (*1*) of section 61;

(*b*) an order made by the Government under sub-section (*4*) read with sub-section (*6*) of section 62 has the effect of increasing authorised capital of a company; or

(*c*) a company redeems any redeemable preference shares, the company shall file a notice in the prescribed form with the Registrar within a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum.

(*2*) If a company and any officer of the company who is in default contravenes the provisions of sub-section (*1*), it or he shall be punishable with fine which may extend to one thousand rupees for each day during which such default continues, or five lakh rupees, whichever is less.

65. Unlimited company to provide for reserve share capital on conversion into limited company.

An unlimited company having a share capital may, by a resolution for registration as a limited company under this Act, do either or both of the following things, namely—

(a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;

(b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

66. Reduction of share capital.

(*1*) Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in particular, may—

(*a*) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or

(*b*) either with or without extinguishing or reducing liability on any of its shares,—

(*i*) cancel any paid-up share capital which is lost or is unrepresented by available assets; or

(*ii*) pay off any paid-up share capital which is in excess of the wants of the company, alter its memorandum by reducing the amount of its share capital and of its shares accordingly:

Provided that no such reduction shall be made if the company is in arrears in the repayment of any deposits accepted by it, either before or after the commencement of this Act, or the interest payable thereon.

(*2*) The Tribunal shall give notice of every application made to it under sub-section (*1*) to the Central Government, Registrar and to the Securities and Exchange Board, in the case of listed companies, and the creditors of the company and shall take into consideration the representations, if any, made to it by that Government, Registrar, the Securities and Exchange Board and the creditors within a period of three months from the date of receipt of the notice:

Provided that where no representation has been received from the Central Government, Registrar, the Securities and Exchange Board or the creditors within the said period, it shall be presumed that they have no objection to the reduction.

(*3*) The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit:

Provided that no application for reduction of share capital shall be sanctioned by the Tribunal unless the accounting treatment, proposed by the company for such reduction is in conformity with the accounting standards specified in section 133 or any other provision of this Act and a certificate to that effect by the company's auditor has been filed with the Tribunal.

(*4*) The order of confirmation of the reduction of share capital by the Tribunal under sub-section (*3*) shall be published by the company in such manner as the Tribunal may direct.

(*5*) The company shall deliver a certified copy of the order of the Tribunal under subsection (*3*) and of a minute approved by the Tribunal showing—

(*a*) the amount of share capital;

(*b*) the number of shares into which it is to be divided;

(*c*) the amount of each share; and

(*d*) the amount, if any, at the date of registration deemed to be paid-up on each share, to the Registrar within thirty days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.

(*6*) Nothing in this section shall apply to buy-back of its own securities by a company under section 68.

(*7*) A member of the company, past or present, shall not be liable to any call or contribution in respect of any share held by him exceeding the amount of difference, if any, between the amount paid on the share, or reduced amount, if any, which is to be deemed to have been paid thereon, as the case may be, and the amount of the share as fixed by the order of reduction.

(*8*) Where the name of any creditor entitled to object to the reduction of share capital under this section is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his debt or claim, not entered on the list of creditors, and after such reduction, the company is unable, within the meaning of sub-section (*2*) of section 271, to pay the amount of his debt or claim,—

(*a*) every person, who was a member of the company on the date of the registration of the order for reduction by the Registrar, shall be liable to contribute to the payment of that debt or claim, an amount not exceeding the amount which he would have been liable to contribute if the company had commenced winding up on the day immediately before the said date; and

(*b*) if the company is wound up, the Tribunal may, on the application of any such creditor and proof of his ignorance as aforesaid, if it thinks fit, settle a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(*9*) Nothing in sub-section (*8*) shall affect the rights of the contributories among themselves.

(*10*) If any officer of the company—

(*a*) knowingly conceals the name of any creditor entitled to object to the reduction;

(*b*) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or

(*c*) abets or is privy to any such concealment or misrepresentation as aforesaid, he shall be liable under section 447.

(*11*) If a company fails to comply with the provisions of sub-section (*4*), it shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees.

67. Restrictions on purchase by company or giving of loans by it for purchase of its shares.

(*1*) No company limited by shares or by guarantee and having a share capital shall have power to buy its own shares unless the consequent reduction of share capital is effected under the provisions of this Act.

(*2*) No public company shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.

(*3*) Nothing in sub-section (*2*) shall apply to—

(a) the lending of money by a banking company in the ordinary course of its business;

(*b*) the provision by a company of money in accordance with any scheme approved by company through special resolution and in accordance with such requirements as may be prescribed, for the purchase of, or subscription for, fully paidup shares in the company or its holding company, if the purchase of, or the subscription for, the shares held by trustees for the benefit of the employees or such shares held by the employee of the company;

(*c*) the giving of loans by a company to persons in the employment of the company other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership:

Provided that disclosures in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report in such manner as may be prescribed.

(*4*) Nothing in this section shall affect the right of a company to redeem any preference shares issued by it under this Act or under any previous company law.

(*5*) If a company contravenes the provisions of this section, it shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

68. Power of company to purchase its own securities.

(*1*) Notwithstanding anything contained in this Act, but subject to the provisions of sub-section (*2*), a company may purchase its own shares or other specified securities (hereinafter referred to as buy-back) out of—

(*a*) its free reserves;

(*b*) the securities premium account; or

(*c*) the proceeds of the issue of any shares or other specified securities:

Provided that no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

(*2*) No company shall purchase its own shares or other specified securities under sub-section (*1*), unless—

(*a*) the buy-back is authorised by its articles;

(*b*) a special resolution has been passed at a general meeting of the company authorising the buy-back:

Provided that nothing contained in this clause shall apply to a case where—

(*i*) the buy-back is, ten per cent. or less of the total paid-up equity capital and free reserves of the company; and

(*ii*) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;

(*c*) the buy-back is twenty-five per cent. or less of the aggregate of paid-up capital and free reserves of the company:

Provided that in respect of the buy-back of equity shares in any financial year, the reference to twenty-five per cent. in this clause shall be construed with respect to its total paid-up equity capital in that financial year;

(*d*) the ratio of the aggregate of secured and unsecured debts owed by the company after buy-back is not more than twice the paid-up capital and its free reserves:

Provided that the Central Government may, by order, notify a higher ratio of the debt to capital and free reserves for a class or classes of companies;

(*e*) all the shares or other specified securities for buy-back are fully paid-up;

(*f*) the buy-back of the shares or other specified securities listed on any recognized stock exchange is in accordance with the regulations made by the Securities and Exchange Board in this behalf; and

(*g*) the buy-back in respect of shares or other specified securities other than those specified in clause (*f*) is in accordance with such rules as may be prescribed:

Provided that no offer of buy-back under this sub-section shall be made within a period of one year reckoned from the date of the closure of the preceding offer of buy-back, if any.

(*3*) The notice of the meeting at which the special resolution is proposed to be passed under clause (*b*) of sub-section (*2*) shall be accompanied by an explanatory statement stating—

(*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.

(*4*) Every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board under clause (*b*) of sub-section (*2*).

(*5*) The buy-back under sub-section (*1*) 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.

(*6*) Where a company proposes to buy-back its own shares or other specified securities under this section in pursuance of a special resolution under clause (*b*) of sub-section (*2*) or a resolution under item (*ii*) of the proviso thereto, it shall, before making such buy-back, file with the Registrar and the Securities and Exchange Board, a declaration of solvency signed by at least two directors of the company, one of whom shall be the managing director, if any, in such form as may be prescribed and verified by an affidavit to the effect that the Board of Directors of the company has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration adopted by the Board:

Provided that no declaration of solvency shall be filed with the Securities and Exchange Board by a company whose shares are not listed on any recognised stock exchange.

(*7*) Where a company buys back its own shares or other specified securities, it shall extinguish and physically destroy the shares or securities so bought back within seven days of the last date of completion of buy-back.

(*8*) Where a company completes a buy-back of its shares or other specified securities under this section, it shall not make a further issue of the same kind of shares or other securities including allotment of new shares under clause (*a*) of sub-section (*1*) of section 62 or other specified securities within a period of six months except by way of a bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

(*9*) Where a company buys back its shares or other specified securities under this section, it shall maintain a register of the shares or securities so bought, the consideration paid for the shares or securities bought back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities and such other particulars as may be prescribed.

(*10*) A company shall, after the completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board a return containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed:

Provided that no return shall be filed with the Securities and Exchange Board by a company whose shares are not listed on any recognized stock exchange.

(*11*) If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board, for the purposes of clause (*f*) of sub-section (*2*), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

Explanation I.—For the purposes of this section and section 70, "specified securities" includes employees' stock option or other securities as may be notified by the Central Government from time to time.

Explanation II.—For the purposes of this section, "free reserves" includes securities premium account.

69. Transfer of certain sums to capital redemption reserve account.

(*1*) Where a company purchases its own shares out of free reserves or securities premium account, a sum equal to the nominal value of the shares so purchased shall be transferred to the capital redemption reserve account and details of such transfer shall be disclosed in the balance sheet.

(*2*) The capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

70. Prohibition for buy-back in certain circumstances.

(*1*) No company shall directly or indirectly purchase its own shares or other specified securities—

(*a*) through any subsidiary company including its own subsidiary companies;

(*b*) through any investment company or group of investment companies; or

(*c*) if a default**,** is made by the company**,** in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company:

Provided that the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

(*2*) No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the provisions of sections 92, 123, 127 and section 129.

71. Debentures.

(*1*) A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption:

Provided that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.

(*2*) No company shall issue any debentures carrying any voting rights.

(*3*) Secured debentures may be issued by a company subject to such terms and conditions as may be prescribed.

(*4*) Where debentures are issued by a company under this section, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures.

(*5*) No company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.

(*6*) A debenture trustee shall take steps to protect the interests of the debentureholders and redress their grievances in accordance with such rules as may be prescribed.

(*7*) Any provision contained in a trust deed for securing the issue of debentures, or in any contract with the debenture-holders secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from, or indemnifying him against, any liability for breach of trust, where he fails to show the degree of care and due diligence required of him as a trustee, having regard to the provisions of the trust deed conferring on him any power, authority or discretion:

Provided that the liability of the debenture trustee shall be subject to such exemptions as may be agreed upon by a majority of debenture-holders holding not less than threefourths in value of the total debentures at a meeting held for the purpose.

(*8*) A company shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue.

(*9*) Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Tribunal and the Tribunal may, after hearing the company and any other person interested in the matter, by order, impose such restrictions on the incurring of any further liabilities by the company as the Tribunal may consider necessary in the interests of the debenture-holders.

(*10*) Where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the Tribunal may, on the application of any or all of the debenture-holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon.

(*11*) If any default is made in complying with the order of the Tribunal under this section, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than two lakh rupees but which may extend to five lakh rupees, or with both.

(*12*) A contract with the company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

(*13*) The Central Government may prescribe the procedure, for securing the issue of debentures, the form of debenture trust deed, the procedure for the debenture-holders to inspect the trust deed and to obtain copies thereof, quantum of debenture redemption reserve required to be created and such other matters.

72. Power to nominate

(*1*) Every holder of securities of a company may, at any time, nominate, in the prescribed manner, any person to whom his securities shall vest in the event of his death.

(*2*) Where the securities of a company are held by more than one person jointly, the joint holders may together nominate, in the prescribed manner, any person to whom all the rights in the securities shall vest in the event of death of all the joint holders.

(*3*) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of the securities of a company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the securities of the company, the nominee shall, on the death of the holder of securities or, as the case may be, on the death of the joint holders, become entitled to all the rights in the securities, of the holder or, as the case may be, of all the joint holders, in relation to such securities, to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

(*4*) Where the nominee is a minor, it shall be lawful for the holder of the securities, making the nomination to appoint, in the prescribed manner, any person to become entitled to the securities of the company, in the event of the death of the nominee during his minority.

Rules for Chapter IV

Companies (Share Capital and Debentures) Rules, 2014

In exercise of the powers conferred under clause (a) (ii) of section 43, sub-clause (d) of sub-section (1) of section 54, sub-section (2) of 55, sub-section (1) of section 56, sub-section (3) of section 56, sub-section (1) of section 62, sub-section (2) of section 42, clause (f) of sub-section (2) of section 63, sub-section (1) of section 64 , clause (b) of sub-section 3 of section 67, sub-section (2) of section 68 sub-section (6) of section 68, sub-section (9) of section 68, sub-section (10) of section 68, sub-section (3) of section 71, sub-section (6) of section 71, sub-section (13) of section 71 and sub-sections (1) and (2) of section 72, read with sub-section (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013) and in supersession of the Companies (Central Government's) General Rules and Forms, 1956 or any other relevant rules prescribed under the Companies Act, 1956 (1 of 1956) on matters covered under these rules, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely: -

1. Short title and commencement.-

(1) These rules may be called the Companies (**Share Capital and Debentures**) Rules, 2014.

(2) They shall come into force on the 1st day of April, 2014.

2. Definitions.- (1) In these rules, unless the context otherwise requires,-

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "Annexure" means the Annexure to these rules;

(c) "Fees" means the fees as specified in the Companies (Registration offices and fees) Rules, 2014;

(d) "Form" or "e-form" means a form set forth in Annexure to these rules which shall be used for the matter to which it relates;

(e) "Regional Director" means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director;

(f) "section" means the section of the Act.

(2) Words and expressions used in these rules but not defined and defined in the Act or in **Companies (Specification of definitions details) Rules, 2014** shall have the meanings respectively assigned to them in the Act and **said** rules.

3. Application.- The provisions of these rules shall apply to

(a) all unlisted public companies;

(b) all private companies; and

(c) listed companies, so far as they do not contradict or conflict with any other provision framed in this regard by the Securities and Exchange Board of India**.**

4. Equity shares with differential rights.-

(1) No company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions, namely:-

(a) the articles of association of the company authorizes the issue of shares with differential rights;
(b) the issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders:

Provided that where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot;

(c) the shares with differential rights shall not exceed twenty-six percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;
(d) the company having consistent track record of distributable profits for the last three years;
(e) the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;
(f) the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;
(g) **the company has not defaulted in payment of** the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government;
(h) the company has not been penalized by Court or Tribunal during the last three years of any offence under the Reserve Bank of India Act, 1934 , the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated by sectoral regulators.

(2) The explanatory statement to be annexed to the notice of the general meeting in pursuance of section 102 or of a postal ballot in pursuance of section 110 shall contain the following particulars, namely:-
(a) the total number of shares to be issued with differential rights;
(b) the details of the differential rights ;
(c) the percentage of the shares with differential rights to the total post issue paid up equity share capital including equity shares with differential rights issued at any point of time;
(d) the reasons or justification for the issue;
(e) the price at which such shares are proposed to be issued either at par or at premium;
(f) the basis on which the price has been arrived at;
(g) (i) in case of private placement or preferential issue-

(a) details of total number of shares proposed to be allotted to promoters, directors and key managerial personnel;

(b) details of total number of shares proposed to be allotted to persons other than promoters, directors and key managerial personnel and their relationship if any with any promoter, director or key managerial personnel;

(ii) in case of public issue - reservation, if any, for different classes of applicants including promoters, directors or key managerial personnel;

(h) the percentage of voting right which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;

(i) the scale or proportion in which the voting rights of such class or type of shares shall vary;

(j) the change in control, if any, in the company that may occur consequent to the issue of equity shares with differential voting rights;

(k) the diluted Earning Per Share pursuant to the issue of such shares, calculated in accordance with the applicable accounting standards;

(l) the pre and post issue shareholding pattern along with voting rights as per clause 35 of the listing agreement issued by Security Exchange Board of India from time to time.

(3) The company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and *vice–versa.*

(4) The Board of Directors shall, *inter alia,* disclose in the Board's Report for the financial year in which the issue of equity shares with differential rights was completed, the following details, namely:-

(a) the total number of shares allotted with differential rights;

(b) the details of the differential rights relating to voting rights and dividends;

(c) the percentage of the shares with differential rights to the total post issue equity share capital with differential rights issued at any point of time and percentage of voting rights which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;

(d) the price at which such shares have been issued;

(e) the particulars of promoters, directors or key managerial personnel to whom such shares are issued;

(f) the change in control, if any, in the company consequent to the issue of equity shares with differential voting rights;

(g) the diluted Earning Per Share pursuant to the issue of each class of shares, calculated in accordance with the applicable accounting standards;

(h) the pre and post issue shareholding pattern along with voting rights in the format specified under sub-rule (2) of rule 4.

(5) The holders of the equity shares with differential rights shall enjoy all other rights such as bonus shares, rights shares etc., which the holders of equity shares are entitled to, subject to the differential rights with which such shares have been issued.

(6) Where a company issues equity shares with differential rights, the Register of Members maintained under section 88 shall contain all the relevant particulars of the shares so issued along with details of the shareholders.

Explanation.- For the purposes of this rule, it is hereby clarified that differential rights attached to such shares issued by any company under the provisions of Companies Act, 1956, shall continue till such rights are converted with the differential rights in accordance with the provisions of the Companies Act, 2013.

5. Certificate of shares (where shares are not in demat form).-

(1) Where a company issues any share capital, no certificate of any share or shares held in the company shall be issued, except-

(a) in pursuance of a resolution passed by the Board; and
(b) on surrender to the company of the letter of allotment or fractional coupons of requisite value, save in cases of issues against letters of acceptance or of renunciation, or in cases of issue of bonus shares:

Provided that if the letter of allotment is lost or destroyed, the Board may impose such reasonable terms, if any, as to seek supporting evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating evidence, as it may think fit.

(2) Every certificate of share or shares shall be in **Form No. SH.1** or as near thereto as possible and shall specify the name(s) of the person(s) in whose favor the certificate is issued, the shares to which it relates and the amount paid-up thereon.

(3) Every share certificate shall be issued under the seal of the company, which shall be affixed in the presence of, and signed by-
(*a*) two directors duly authorized by the Board of Directors of the company for the purpose or the committee of the Board, if so authorized by the Board; and
(*b*) the secretary or any person authorised by the Board for the purpose:

Provided that, in companies wherein a Company Secretary is appointed under the provisions of the Act, he shall deemed to be authorised for the purpose of this rule:

Provided further that, if the composition of the Board permits of it, at least one of the aforesaid two directors shall be a person other than the managing or whole-time director:

Provided also that, in case of a One Person Company, every share certificate shall be issued under the seal of the company, which shall be affixed in the presence of and signed by one director or a person authorized by the Board of Directors of the company for the purpose and the Company Secretary, or any other person authorized by the Board for the purpose.

***Explanation*.-** For the purposes of this sub-rule, a director shall be deemed to have signed the share certificate if his signature is printed thereon as a facsimile signature by means of any machine, equipment or other mechanical means such as engraving in metal or lithography, or digitally signed, but not by means of a rubber stamp, provided that the director shall be personally responsible for permitting the affixation of his signature thus and the safe custody of any machine, equipment or other material used for the purpose.

(4) The particulars of every share certificate issued in accordance with sub-rule (1) shall be entered in the Register of Members maintained in accordance with the provisions of section 88 along with the name(s) of person(s) to whom it has been issued, indicating the date of issue.

6. Issue of renewed or duplicate share certificate.-

(1) the certificate of any share or shares shall not be issued either in exchange for those which are sub-divided or consolidated or in replacement of those which are defaced, mutilated, torn or old, decrepit, worn out, or where the pages on the reverse for recording transfers have been duly utilised, unless the certificate in lieu of which it is issued is surrendered to the company:

Provided that the company may charge such fee as the Board thinks fit, not exceeding fifty rupees per certificate issued on splitting or consolidation of share certificate(s) or in replacement of share certificate(s) that are defaced, mutilated, torn or old, decrepit or worn out:

(b) Where a certificate is issued in any of the circumstances specified in this sub-rule, it shall be stated on the face of it and be recorded in the Register maintained for the purpose, that it is "*Issued in lieu of share certificate No..... sub-divided/replaced/on consolidation" and also that no fee shall be payable pursuant to scheme of arrangement sanctioned by the High Court or Central Government:*

(c) A company may replace all the existing certificates by new certificates upon sub-division or consolidation of shares or merger or demerger or any reconstitution without requiring old certificates to be surrendered subject to compliance with clause (a) of sub-rule (1) rule 5, sub-rule (2) of rule 5 and sub-rule (3) of rule 5.

(2)(a) The duplicate share certificate shall be not issued in lieu of those that are lost or destroyed, without the prior consent of the Board and without payment of such fees as the Board thinks fit, not exceeding rupees fifty per certificate and on such reasonable terms, such as furnishing supporting evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating the evidence produced:

(b) Where a certificate is issued in any of the circumstances specified in this sub-rule, it shall be stated prominently on the face of it and be recorded in the Register maintained for the purpose, that it is "*duplicate issued in lieu of share certificate No.*.....". and the word "duplicate" shall be stamped or printed prominently on the face of the share certificate:

(c) In case unlisted companies, the duplicate share certificates shall be issued within a period of three months and in case of listed companies such certificate shall be issued within fifteen days, from the date of submission of complete documents with the company respectively.

(3)(a) The particulars of every share certificate issued in accordance with sub-rules (1) and (2) shall be entered forthwith in a Register of Renewed and Duplicate Share Certificates maintained in **Form No.SH.2** indicating against the name(s) of the person(s) to whom the certificate is issued, the number and date of issue of the share certificate in lieu of which the new certificate is issued, and the necessary changes indicated in the Register of Members by suitable cross-references in the "Remarks" column.

(b) The register shall be kept at the registered office of the company or at such other place where the Register of Members is kept and it shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for the purpose.

(c) All entries made in the Register of Renewed and Duplicate Share Certificates shall be authenticated by the company secretary or such other person as may be authorised by the Board for the purposes of sealing and signing the share certificate under the provisions of sub-rule (3) of rule 5.

7. Maintenance of share certificate forms and related books and documents.-

(1) All blank forms to be used for issue of share certificates shall be printed and the printing shall be done only on the authority of a resolution of the Board and the blank form shall

be consecutively machine-numbered and the forms and the blocks, engravings, facsimiles and hues relating to the printing of such forms shall be kept in the custody of the secretary or such other person as the Board may authorise for the purpose; and the company secretary or other person aforesaid shall be responsible for rendering an account of these forms to the Board.

(2) The following persons shall be responsible for the maintenance, preservation and safe custody of all books and documents relating to the issue of share certificates, including the blank forms of share certificates referred to in sub-rule (1), namely:—

(*a)* the committee of the Board, if so authorized by the Board or where the company has a company secretary, the company secretary; or

(*b*) where the company has no company secretary, a Director specifically authorised by the Board for such purpose.

(3) All books referred to in sub-rule (2) shall be preserved in good order not less than thirty years and in case of disputed cases, shall be preserved permanently, and all certificates surrendered to a company shall immediately be defaced by stamping or printing the word "cancelled" in bold letters and may be destroyed after the expiry of three years from the date on which they are surrendered, under the authority of a resolution of the Board and in the presence of a person duly appointed by the Board in this behalf:

Provided that nothing in this sub-rule shall apply to cancellation of the certificates of securities, under sub-section (2) of section 6 of the Depositories Act, 1996 (22 of 1996), when such certificates are cancelled in accordance with sub-regulation (5) of regulation 54 of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996, made under section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) read with section 25 of the Depositories Act, 1996 (22 of 1996).

8. Issue of sweat equity shares.-

(1) A company other than a listed company, which is not required to comply with the Securities and Exchange Board of India Regulations on sweat equity, shall not issue sweat equity shares to its directors or employees at a discount or for consideration other than cash, for their providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called, unless the issue is authorised by a special resolution passed by the company in general meeting.

Explanation.- For the purposes of this rule-

(i) the expressions "Employee" means-

(a) a permanent employee of the company who has been working in India or outside India, for at least last one year; or

(b) a director of the company, whether a whole time director or not; or

(c) an employee or a director as defined in sub-clauses (a) or (b) above of a subsidiary, in India or outside India, or of a holding company of the company;

(ii) the expression 'Value additions' means actual or anticipated economic benefits derived or to be derived by the company from an expert or a professional for providing know-how or making available rights in the nature of intellectual property rights, by such person to whom sweat equity is being issued for which the consideration is not paid or included in the normal remuneration payable under the contract of employment, in the case of an employee.

(2) The explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 shall contain the following particulars, namely:-

(a) the date of the Board meeting at which the proposal for issue of sweat equity shares was approved;

(b) the reasons or justification for the issue;

(c) the class of shares under which sweat equity shares are intended to be issued;

(d) the total number of shares to be issued as sweat equity;

(e) the class or classes of directors or employees to whom such equity shares are to be issued;

(f) the principal terms and conditions on which sweat equity shares are to be issued, including basis of valuation ;

(g) the time period of association of such person with the company;

(h) the names of the directors or employees to whom the sweat equity shares will be issued and their relationship with the promoter or/and Key Managerial Personnel;

(i) the price at which the sweat equity shares are proposed to be issued;

(j) the consideration including consideration other than cash, if any to be received for the sweat equity;

(k) the ceiling on managerial remuneration, if any, be breached by issuance of such sweat equity and how it is proposed to be dealt with;

(l) a statement to the effect that the company shall conform to the applicable accounting standards; and

(m) diluted Earning Per Share pursuant to the issue of sweat equity shares , calculated in accordance with the applicable accounting standards.

(3) The special resolution authorising the issue of sweat equity shares shall be valid for making the allotment within a period of not more than twelve months from the date of passing of the special resolution.

(4) The company shall not issue sweat equity shares for more than fifteen percent of the existing paid up equity share capital in a year or shares of the issue value of rupees five crores, whichever is higher:

Provided that the issuance of sweat equity shares in the Company shall not exceed twenty five percent, of the paid up equity capital of the Company at any time.

(5) The sweat equity shares issued to directors or employees shall be locked in/non transferable for a period of three years from the date of allotment and the fact that the share certificates are under lock-in and the period of expiry of lock in shall be stamped in bold or mentioned in any other prominent manner on the share certificate.

(6) The sweat equity shares to be issued shall be valued at a price determined by a registered valuer as the fair price giving justification for such valuation.

(7) The valuation of intellectual property rights or of know how or value additions for which sweat equity shares are to be issued, shall be carried out by a registered valuer, who shall provide a proper report addressed to the Board of directors with justification for such valuation.

(8) A copy of gist along with critical elements of the valuation report obtained under clause (6) and clause (7) shall be sent to the shareholders with the notice of the general meeting.

(9) Where sweat equity shares are issued for a non-cash consideration on the basis of a valuation report in respect thereof obtained from the registered valuer, such non-cash

consideration shall be treated in the following manner in the books of account of the company-

(a) where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the accounting standards; or

(b) where clause (a) is not applicable, it shall be expensed as provided in the accounting standards.

(10) The amount of sweat equity shares issued shall be treated as part of managerial remuneration for the purposes of sections 197 and 198 of the Act, if the following conditions are fulfilled, namely.-

(a) the sweat equity shares are issued to any director or manager; and

(b) they are issued for consideration other than cash, which does not take the form of an asset which can be carried to the balance sheet of the company in accordance with the applicable accounting standards.

(11) In respect of sweat equity shares issued during an accounting period, the accounting value of sweat equity shares shall be treated as a form of compensation to the employee or the director in the financial statements of the company, if the sweat equity shares are not issued pursuant to acquisition of an asset.

(12) If the shares are issued pursuant to acquisition of an asset, the value of the asset, as determined by the valuation report, shall be carried in the balance sheet as per the Accounting Standards and such amount of the accounting value of the sweat equity shares that is in excess of the value of the asset acquired, as per the valuation report, shall be treated as a form of compensation to the employee or the director in the financial statements of the company.

Explanation.- For the purposes of this sub-rule, it is hereby clarified that the Accounting value shall be the fair value of the sweat equity shares as determined by a registered valuer under sub-rule (6)

(13) The Board of Directors shall, *inter alia,* disclose in the Directors' Report for the year in which such shares are issued, the following details of issue of sweat equity shares namely:-

(a) the class of director or employee to whom sweat equity shares were issued;

(b) the class of shares issued as Sweat Equity Shares;

(c) the number of sweat equity shares issued to the directors, key managerial personnel or other employees showing separately the number of such shares issued to them , if any, for consideration other than cash and the individual names of allottees holding one percent or more of the issued share capital;

(d) the reasons or justification for the issue;

(e) the principal terms and conditions for issue of sweat equity shares, including pricing formula;

(f) the total number of shares arising as a result of issue of sweat equity shares;

(g) the percentage of the sweat equity shares of the total post issued and paid up share capital;

(h) the consideration (including consideration other than cash) received or benefit accrued to the company from the issue of sweat equity shares;

(i) the diluted Earnings Per Share (EPS) pursuant to issuance of sweat equity shares.

(14) (a) The company shall maintain a Register of Sweat Equity Shares in **Form No. SH.3** and shall forthwith enter therein the particulars of Sweat Equity Shares issued under section 54.

(b) The Register of Sweat Equity Shares shall be maintained at the registered office of the company or such other place as the Board may decide.
(c) The entries in the register shall be authenticated by the Company Secretary of the company or by any other person authorized by the Board for the purpose.

9. Issue and redemption of preference shares.-

(1) A company having a share capital may, if so authorised by its articles, issue preference shares subject to the following conditions, namely:-
(a) the issue of such shares has been authorized by passing a special resolution in the general meeting of the company
(b) the company, at the time of such issue of preference shares, has no subsisting default in the redemption of preference shares issued either before or after the commencement of this Act or in payment of dividend due on any preference shares.

(2) A company issuing preference shares shall set out in the resolution, particulars in respect of the following matters relating to such shares, namely:-
(a) the priority with respect to payment of dividend or repayment of capital vis-a-vis equity shares;
(b) the participation in surplus fund;
(c) the participation in surplus assets and profits, on winding-up which may remain after the entire capital has been repaid;
(d) the payment of dividend on cumulative or non-cumulative basis.
(e) the conversion of preference shares into equity shares.
(f) the voting rights;
(g) the redemption of preference shares.

(3) The explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 shall, *inter-alia,* provide the complete material facts concerned with and relevant to the issue of such shares, including-
(a) the size of the issue and number of preference shares to be issued and nominal value of each share;
(b) the nature of such shares i.e. cumulative or non - cumulative, participating or non - participating , convertible or non - convertible
(c) the objectives of the issue;
(d) the manner of issue of shares;
(e) the price at which such shares are proposed to be issued;
(f) the basis on which the price has been arrived at;
(g) the terms of issue, including terms and rate of dividend on each share, etc.;
(h) the terms of redemption, including the tenure of redemption, redemption of shares at premium and if the preference shares are convertible, the terms of conversion;
(i) the manner and modes of redemption;
(j) the current shareholding pattern of the company;
(k) the expected dilution in equity share capital upon conversion of preference shares.

(4) Where a company issues preference shares, the Register of Members maintained under section 88 shall contain the particulars in respect of such preference share holder(s).

(5) A company intending to list its preference shares on a recognized stock exchange shall issue such shares in accordance with the regulations made by the Securities and Exchange Board of India in this behalf.

(6) A company may redeem its preference shares only on the terms on which they were issued or as varied after due approval of preference shareholders under section 48 of the Act and the preference shares may be redeemed:-
(a) at a fixed time or on the happening of a particular event;
(b) any time at the company's option; or
(c) any time at the shareholder's option.

10. Issue and redemption of preference shares by company in infrastructural projects.-

A company engaged in the setting up and dealing with of infrastructural projects may issue preference shares for a period exceeding twenty years but not exceeding thirty years, subject to the redemption of a minimum ten percent of such preference shares per year from the twenty first year onwards or earlier, on proportionate basis, at the option of the preference shareholders.

11. Instrument of transfer.-

(1) An instrument of transfer of securities held in physical form shall be in Form **No.SH.4** and every instrument of transfer with the date of its execution specified thereon shall be delivered to the company within sixty days from the date of such execution.

(2) In the case of a company not having share capital, provisions of sub-rule (1) shall apply as if the references therein to securities were references instead to the interest of the member in the company.

(3) A company shall not register a transfer of partly paid shares, unless the company has given a notice in **Form No. SH.5** to the transferee and the transferee has given no objection to the transfer within two weeks from the date of receipt of notice.

12. Issue of employee stock options.-

A company, other than a listed company, which is not required to comply with Securities and Exchange Board of India Employee Stock Option Scheme Guidelines shall not offer shares to its employees under a scheme of employees' stock option (hereinafter referred to as "Employees Stock Option Scheme"), unless it complies with the following requirements, namely:-

(1) the issue of Employees Stock Option Scheme has been approved by the shareholders of the company by passing a special resolution.

Explanation: For the purposes of clause (b) of sub-section (1) of section 62 and this rule "Employee" means-

(a) a permanent employee of the company who has been working in India or outside India; or

(b) a director of the company, whether a whole time director or not but excluding an independent director; or

(c) an employee as defined in clauses (a) or (b) of a subsidiary, in India or outside India, or of a holding company of the company or of an associate company but does not include-

(i) an employee who is a promoter or a person belonging to the promoter group; or

(ii) a director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company.

(2) The company shall make the following disclosures in the explanatory statement annexed to the notice for passing of the resolution-

(a) the total number of stock options to be granted;

(b) identification of classes of employees entitled to participate in the Employees Stock Option Scheme;

(c) the appraisal process for determining the eligibility of employees to the Employees Stock Option Scheme;

(d) the requirements of vesting and period of vesting;

(e) the maximum period within which the options shall be vested;

(f) the exercise price or the formula for arriving at the same;

(g) the exercise period and process of exercise;

(h) the Lock-in period, if any ;

(i) the maximum number of options to be granted per employee and in aggregate;

(j) the method which the company shall use to value its options;

(k) the conditions under which option vested in employees may lapse e.g. in case of termination of employment for misconduct;

(l) the specified time period within which the employee shall exercise the vested options in the event of a proposed termination of employment or resignation of employee; and

(m) a statement to the effect that the company shall comply with the applicable accounting standards .

(3) The companies granting option to its employees pursuant to Employees Stock Option Scheme will have the freedom to determine the exercise price in conformity with the applicable accounting policies, if any.

(4) The approval of shareholders by way of separate resolution shall be obtained by the company in case of-

(a) grant of option to employees of subsidiary or holding company; or

(b) grant of option to identified employees, during any one year, equal to or exceeding one percent of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant of option.

(5)(a) The company may by special resolution, vary the terms of Employees Stock Option Scheme not yet exercised by the employees provided such variation is not prejudicial to the interests of the option holders.

(b) The notice for passing special resolution for variation of terms of Employees Stock Option Scheme shall disclose full of the variation, the rationale therefor, and the details of the employees who are beneficiaries of such variation.

(6)(a) There shall be a minimum period of one year between the grant of options and vesting of option:

Provided that in a case where options are granted by a company under its Employees Stock Option Scheme in lieu of options held by the same person under an Employees Stock Option Scheme in another company, which has merged or amalgamated with the first mentioned company, the period during which the options granted by the merging or amalgamating company were held by him shall be adjusted against the minimum vesting period required under this clause;

(b) The company shall have the freedom to specify the lock-in period for the shares issued pursuant to exercise of option.

(c) The Employees shall not have right to receive any dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of option granted to them, till shares are issued on exercise of option.

(7) The amount, if any, payable by the employees, at the time of grant of option-

(a) may be forfeited by the company if the option is not exercised by the employees within the exercise period; or

(b) the amount may be refunded to the employees if the options are not vested due to non-fulfillment of conditions relating to vesting of option as per the Employees Stock Option Scheme.

(8)(a) The option granted to employees shall not be transferable to any other person.

(b) The option granted to the employees shall not be pledged, hypothecated, mortgaged or otherwise encumbered or alienated in any other manner.

(c) Subject to clause (d), no person other than the employees to whom the option is granted shall be entitled to exercise the option.

(d) In the event of the death of employee while in employment, all the options granted to him till such date shall vest in the legal heirs or nominees of the deceased employee.

(e) In case the employee suffers a permanent incapacity while in employment, all the options granted to him as on the date of permanent incapacitation, shall vest in him on that day.

(f) In the event of resignation or termination of employment, all options not vested in the employee as on that day shall expire. However, the employee can exercise the options granted to him which are vested within the period specified in this behalf, subject to the terms and conditions under the scheme granting such options as approved by the Board.

(9) The Board of directors, shall, inter alia, disclose in the Directors' Report for the year, the following details of the Employees Stock Option Scheme:

(a) options granted;
(b) options vested;
(c) options exercised;
(d) the total number of shares arising as a result of exercise of option;
(e) options lapsed;
(f) the exercise price;
(g) variation of terms of options;
(h) money realized by exercise of options;
(i) total number of options in force;
(j) employee wise details of options granted to;-

(i) key managerial personnel;

(ii) any other employee who receives a grant of options in any one year of option amounting to five percent or more of options granted during that year.

(iii) identified employees who were granted option, during any one year, equal to or exceeding one percent of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant;

(10) (a) The company shall maintain a Register of Employee Stock Options in **Form No. SH.6** and shall forthwith enter therein the particulars of option granted under clause (b) of sub-section (1) of section 62.

(b) The Register of Employee Stock Options shall be maintained at the registered office of the company or such other place as the Board may decide.

(c) The entries in the register shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose.

(11) Where the equity shares of the company are listed on a recognized stock exchange, the Employees Stock Option Scheme shall be issued, in accordance with the regulations made by the Securities and Exchange Board of India in this behalf.

13. Issue of shares on preferential basis.-

(1) For the purposes of clause (c) of sub-section (1) of section 62, If authorized by a special resolution passed in a general meeting, shares may be issued by any company in any manner whatsoever including by way of a preferential offer, to any persons whether or not those persons include the persons referred to in clause (a) or clause (b) of sub-section (1) of section 62 and such issue on preferential basis should also comply with conditions laid down in section 42 of the Act:

Provided that the price of shares to be issued on a preferential basis by a listed company shall not be required to be determined by the valuation report of a registered valuer.

Explanation.- For the purposes of this rule, (i) the expression 'Preferential Offer' means an issue of shares or other securities, by a company to any select person or group of persons on a preferential basis and does not include shares or other securities offered through a public issue, rights issue, employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or bonus shares or depository receipts issued in a country outside India or foreign securities;

(ii) the expression, "shares or other securities" means equity shares, fully convertible debentures, partly convertible debentures or any other securities, which would be convertible into or exchanged with equity shares at a later date.

(2) Where the preferential offer of shares or other securities is made by a company whose share or other securities are listed on a recognized stock exchange, such preferential offer shall be made in accordance with the provisions of the Act and regulations made by the Securities and Exchange Board, and if they are not listed, the preferential offer shall be made in accordance with the provisions of the Act and rules made hereunder and subject to compliance with the following requirements, namely:-

(a) the issue is authorized by its articles of association;

(b) the issue has been authorized by a special resolution of the members;

(c) the securities allotted by way of preferential offer shall be made fully paid up at the time of their allotment.

(d) The company shall make the following disclosures in the explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 of the Act:

(i) the objects of the issue;

(ii) the total number of shares or other securities to be issued;

(iii) the price or price band at/within which the allotment is proposed;

(iv) basis on which the price has been arrived at along with report of the registered valuer;

(v) relevant date with reference to which the price has been arrived at;

(vi) the class or classes of persons to whom the allotment is proposed to be made;

(vii) intention of promoters, directors or key managerial personnel to subscribe to the offer;

(viii) the proposed time within which the allotment shall be completed;
(ix) the names of the proposed allottees and the percentage of post preferential offer capital that may be held by them;
(x) the change in control, if any, in the company that would occur consequent to the preferential offer;
(xi) the number of persons to whom allotment on preferential basis have already been made during the year, in terms of number of securities as well as price;
(xii) the justification for the allotment proposed to be made for consideration other than cash together with valuation report of the registered valuer.
(xiii) The pre issue and post issue shareholding pattern of the company in the following format-

S. No	Category	Pre Issue		Post Issue	
		No. of Shares Held	% of Share Holding	No. of Shares Held	% of Share Holding
A	Promoter's Holding:				
1.	Indian				
	Individual				
	Bodies Corporate				
	Sub Total				
2.	Foreign Promoters'				
	Sub Total (A)				
B	Non Promoter's Holding:				
1.	Institutional Investors				
2.	Non Institution				
	Private Corporate Bodies				
	Directors and Relatives				
	Indian Public				
	Others (Including NRIs)				
	Sub Total (B)				
	Grand Total				

(e) the allotment of securities on a preferential basis made pursuant to the special resolution passed pursuant to sub-rule (2)(b) shall be completed within a period of twelve months from the date of passing of the special resolution.
(f) if the allotment of securities is not completed within twelve months from the date of passing of the special resolution, another special resolution shall be passed for the company to complete such allotment thereafter.
(g) the price of the shares or other securities to be issued on a preferential basis, either for cash or for consideration other than cash, shall be determined on the basis of valuation report of a registered valuer;

(h) where convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares shall be determined beforehand on the basis of a valuation report of a registered valuer and also complied with the provisions of section 62 of the Act;

(i) where shares or other securities are to be allotted for consideration other than cash, the valuation of such consideration shall be done by a registered valuer who shall submit a valuation report to the company giving justification for the valuation;

(j) where the preferential offer of shares is made for a non-cash consideration, such non-cash consideration shall be treated in the following manner in the books of account of the company-

(i) where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the accounting standards; or

(ii) where clause (i) is not applicable, it shall be expensed as provided in the accounting standards.

14. Issue of Bonus Shares.-

The company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

15. Notice to Registrar for alteration of share capital.-

Where a company alters its share capital in any manner specified in sub-section (1) of section 61, or an order is passed by the Government increasing the authorized capital of the company in pursuance of sub-section (4) read with sub-section (6) of section 62 or a company redeems any redeemable preference shares, the notice of such alteration, increase or redemption shall be filed by the company with the Registrar in **Form No. SH.7** along with the fee.

16. Provision of money by company for purchase of its own shares by employees or by trustees for the benefit of employees.-

(1) The company shall not make a provision of money for the purchase of, or subscription for, shares in the company or its holding company, if the purchase of, or the subscription for, the shares by trustees is for the shares to be held by or for the benefit of the employees of the company, unless it complies with the following conditions, namely:-

(a) the scheme of provision of money for purchase of or subscription for the shares as aforesaid is approved by the members by passing special resolution in a general meeting;

(b) such purchase of shares shall be made only through a recognized stock exchange in case the shares of the company are listed and not by way of private offers or arrangements;

(c) where shares of a company are not listed on a recognized stock exchange, the valuation at which shares are to be purchased shall be made by a registered valuer;

(d) the value of shares to be purchased or subscribed in the aggregate together with the money provided by the company shall not exceed five per cent. of the aggregate of paid up capital and free reserves of the company;

(2) The explanatory statement to be annexed to the notice of the general meeting to be convened pursuant to section 102 shall, in addition to the particulars mentioned in sub-rule (1) of rule 18, contain the following particulars, namely:-

(a) the class of employees for whose benefit the scheme is being implemented and money is being provided for purchase of or subscription to shares;
(b) the particulars of the trustee or employees in whose favor such shares are to be registered;
(c) the particulars of trust and name, address, occupation and nationality of trustees and their relationship with the promoters, directors or key managerial personnel, if any;
(d) the any interest of key managerial personnel, directors or promoters in such scheme or trust and effect thereof;
(e) the detailed particulars of benefits which will accrue to the employees from the implementation of the scheme;
(f) the details about who would exercise and how the voting rights in respect of the shares to be purchased or subscribed under the scheme would be exercised;

(3) A person shall not be appointed as a trustee to hold such shares, if he-
(a) is a director, key managerial personnel or promoter of the company or its holding, subsidiary or associate company or any relative of such director, key managerial personnel or promoter; or
(b) beneficially holds ten percent or more of the paid-up share capital of the company.

(4) Where the voting rights are not exercised directly by the employees in respect of shares to which the scheme relates, the Board of Directors shall, *inter alia*, disclose in the Board's report for the relevant financial year the following details, namely:-
(a) the names of the employees who have not exercised the voting rights directly;
(b) the reasons for not voting directly;
(c) the name of the person who is exercising such voting rights;
(d) the number of shares held by or in favour of, such employees and the percentage of such shares to the total paid up share capital of the company;
(e) the date of the general meeting in which such voting power was exercised;
(f) the resolutions on which votes have been cast by persons holding such voting power;
(g) the percentage of such voting power to the total voting power on each resolution;
(h) whether the votes were cast in favour of or against the resolution.

17. Buy-back of shares or other securities.-

Unless stated otherwise, the following norms shall be complied with by the private companies and unlisted public companies for buy-back of their securities-

(1) The explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 shall contain the following disclosures, namely:-
(a) the date of the board meeting at which the proposal for buy-back was approved by the board of directors of the company;
(b) the objective of the buy-back;
(*c*) the class of shares or other securities intended to be purchased under the buy-back;
(d) the number of securities that the company proposes to buy-back;
(e) the method to be adopted for the buy-back;
(*f*) the price at which the buy-back of shares or other securities shall be made;
(g) the basis of arriving at the buy-back price;
(h) the maximum amount to be paid for the buy-back and the sources of funds from which the buy-back would be financed;
(*i*) the time-limit for the completion of buy-back;

(j) (i) the aggregate shareholding of the promoters and of the directors of the promoter, where the promoter is a company and of the directors and key managerial personnel as on the date of the notice convening the general meeting;

(ii) the aggregate number of equity shares purchased or sold by persons mentioned in sub-clause (i) during a period of twelve months preceding the date of the board meeting at which the buy-back was approved and from that date till the date of notice convening the general meeting;

(iii) the maximum and minimum price at which purchases and sales referred to in sub-clause (*ii*) were made along with the relevant date;

(*k*) if the persons mentioned in sub-clause (i) of clause (j) intend to tender their shares for buy-back –

(i) the quantum of shares proposed to be tendered;

(iii) the details of their transactions and their holdings for the last twelve months prior to the date of the board meeting at which the buy-back was approved including information of number of shares acquired, the price and the date of acquisition;

(*l*) a confirmation that there are no defaults subsisting in repayment of deposits, interest payment thereon, redemption of debentures or payment of interest thereon or redemption of preference shares or payment of dividend due to any shareholder, or repayment of any term loans or interest payable thereon to any financial institution or banking company;

(*m*) a confirmation that the Board of directors have made a full enquiry into the affairs and prospects of the company and that they have formed the opinion-

(*i*) that immediately following the date on which the general meeting is convened there shall be no grounds on which the company could be found unable to pay its debts;

(*ii*) as regards its prospects for the year immediately following that date, that, having regard to their intentions with respect to the management of the company's business during that year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company shall be able to meet its liabilities as and when they fall due and shall not be rendered insolvent within a period of one year from that date; and

(*iii*) the directors have taken into account the liabilities(including prospective and contingent liabilities), as if the company were being wound up under the provisions of the Companies Act, 2013

(*n*) a report addressed to the Board of directors by the company's auditors stating that-

(i) they have inquired into the company's state of affairs;

(ii) the amount of the permissible capital payment for the securities in question is in their view properly determined;

(iii) that the audited accounts on the basis of which calculation with reference to buy back is done is not more than six months old from the date of offer document; and

(*iv*) the Board of directors have formed the opinion as specified in clause (*m*) on reasonable grounds and that the company, having regard to its state of affairs, shall not be rendered insolvent within a period of one year from that date.

(2) The company which has been authorized by a special resolution shall, before the buy-back of shares, file with the Registrar of Companies a letter of offer in **Form No. SH.8**, along with the fee:

Provided that such letter of offer shall be dated and signed on behalf of the Board of directors of the company by not less than two directors of the company, one of whom shall be the managing director, where there is one.

(3) The company shall file with the Registrar, along with the letter of offer, and in case of a listed company with the Registrar and the Securities and Exchange Board, a declaration of solvency in **Form No. SH.9** along with the fee and signed by at least two directors of the company, one of whom shall be the managing director, if any, and verified by an affidavit as specified in the said Form.

(4) The letter of offer shall be dispatched to the shareholders or security holders immediately after filing the same with the Registrar of Companies but not later than twenty days from its filing with the Registrar of Companies.

(5) The offer for buy-back shall remain open for a period of not less than fifteen days and not exceeding thirty days from the date of dispatch of the letter of offer.

(6) In case the number of shares or other specified securities offered by the shareholders or security holders is more than the total number of shares or securities to be bought back by the company, the acceptance per shareholder shall be on proportionate basis out of the total shares offered for being bought back.

(7) The company shall complete the verifications of the offers received within fifteen days from the date of closure of the offer and the shares or other securities lodged shall be deemed to be accepted unless a communication of rejection is made within twenty one days from the date of closure of the offer.

(8) The company shall immediately after the date of closure of the offer, open a separate bank account and deposit therein, such sum, as would make up the entire sum due and payable as consideration for the shares tendered for buy-back in terms of these rules.

(9) The company shall within seven days of the time specified in sub-rule (7)-

(a) make payment of consideration in cash to those shareholders or security holders whose securities have been accepted; or

(b) return the share certificates to the shareholders or security holders whose securities have not been accepted at all or the balance of securities in case of part acceptance .

(10) The company shall ensure that—

(*a*) the letter of offer shall contain true, factual and material information and shall not contain any misleading information and must state that the directors of the company accept the responsibility for the information contained in such document;

(*b*) the company shall not issue any new shares including by way of bonus shares from the date of passing of special resolution authorizing the buy-back till the date of the closure of the offer under these rules, except those arising out of any outstanding convertible instruments;

(*c*) the company shall confirm in its offer the opening of a separate bank account adequately funded for this purpose and to pay the consideration only by way of cash;

(*d*) the company shall not withdraw the offer once it has announced the offer to the shareholders;

(*e*) the company shall not utilize any money borrowed from banks or financial institutions for the purpose of buying back its shares; and

(f) the company shall not utilize the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities for the buy-back.

(12)(a) The company, shall maintain a register of shares or other securities which have been bought-back in **Form No. SH.10.**

(b) The register of shares or securities bought-back shall be maintained at the registered office of the company and shall be kept in the custody of the secretary of the company or any other person authorized by the board in this behalf.

(c) The entries in the register shall be authenticated by the secretary of the company or by any other person authorized by the Board for the purpose.

(13) The company, after the completion of the buy-back under these rules, shall file with the Registrar, and in case of a listed company with the Registrar and the Securities and Exchange Board of India, a return in the **Form No. SH.11** along with the fee .

(14) There shall be annexed to the return filed with the Registrar in Form No. **SH.11**, a certificate in Form No. **SH.15** signed by two directors of the company including the managing director, if any, certifying that the buy-back of securities has been made in compliance with the provisions of the Act and the rules made thereunder.

18. Debentures.-

(1) The company shall not issue secured debentures, unless it complies with the following conditions, namely:-

(a) An issue of secured debentures may be made, provided the date of its redemption shall not exceed ten years from the date of issue.

Provided that a company engaged in the setting up of infrastructure projects may issue secured debentures for a period exceeding ten years but not exceeding thirty years;

(b) such an issue of debentures shall be secured by the creation of a charge, on the properties or assets of the company, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon;

(c) the company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than sixty days after the allotment of the debentures, execute a debenture trust deed to protect the interest of the debenture holders ; and

(d) the security for the debentures by way of a charge or mortgage shall be created in favour of the debenture trustee on-

(i) any specific movable property of the company (not being in the nature of pledge); or

(ii) any specific immovable property wherever situate, or any interest therein.

(2) The company shall appoint debenture trustees under sub-section (5) of section 71, after complying with the following conditions, namely:-

(a) the names of the debenture trustees shall be stated in letter of offer inviting subscription for debentures and also in all the subsequent notices or other communications sent to the debenture holders;

(b) before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures;

(c) A person shall not be appointed as a debenture trustee, if he-

(i) beneficially holds shares in the company;

(ii) is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;

(iii) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;

(iv) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;

(v) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;

(vi) has any pecuniary relationship with the company amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(vii) is relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel

(d) the Board may fill any casual vacancy in the office of the trustee but while any such vacancy continues, the remaining trustee or trustees, if any, may act:

Provided that where such vacancy is caused by the resignation of the debenture trustee, the vacancy shall only be filled with the written consent of the majority of the debenture holders.

(e) any debenture trustee may be removed from office before the expiry of his term only if it is approved by the holders of not less than three fourth in value of the debentures outstanding, at their meeting.

(3) It shall be the duty of every debenture trustee to-

(a) satisfy himself that the letter of offer does not contain any matter which is inconsistent with the terms of the issue of debentures or with the trust deed;

(b) satisfy himself that the covenants in the trust deed are not prejudicial to the interest of the debenture holders;

(c) call for periodical status or performance reports from the company;

(d) communicate promptly to the debenture holders defaults, if any, with regard to payment of interest or redemption of debentures and action taken by the trustee therefor;

(e) appoint a nominee director on the Board of the company in the event of-

(i) two consecutive defaults in payment of interest to the debenture holders; or

(ii) default in creation of security for debentures; or

(iii) default in redemption of debentures.

(f) ensure that the company does not commit any breach of the terms of issue of debentures or covenants of the trust deed and take such reasonable steps as may be necessary to remedy any such breach;

(g) inform the debenture holders immediately of any breach of the terms of issue of debentures or covenants of the trust deed;

(h) ensure the implementation of the conditions regarding creation of security for the debentures, if any, and debenture redemption reserve;

(i) ensure that the assets of the company issuing debentures and of the guarantors, if any, are sufficient to discharge the interest and principal amount at all times and that such assets are free from any other encumbrances except those which are specifically agreed to by the debenture holders;

(j) do such acts as are necessary in the event the security becomes enforceable;

(k) call for reports on the utilization of funds raised by the issue of debentures-

(l) take steps to convene a meeting of the holders of debentures as and when such meeting is required to be held;

(m) ensure that the debentures have been converted or redeemed in accordance with the terms of the issue of debentures;

(n) perform such acts as are necessary for the protection of the interest of the debenture holders and do all other acts as are necessary in order to resolve the grievances of the debenture holders.

(4) The meeting of all the debenture holders shall be convened by the debenture trustee on-

(a) requisition in writing signed by debenture holders holding at least one-tenth in value of the debentures for the time being outstanding;

(b) the happening of any event, which constitutes a breach, default or which in the opinion of the debenture trustees affects the interest of the debenture holders.

(5) For the purposes of sub-section (13) of section 71 and sub-rule (1) a trust deed in Form No.**SH.12** or as near thereto as possible shall be executed by the company issuing debentures in favour of the debenture trustees within sixty days of allotment of debentures.

(6) The provisions of sub-rules (2) to (5) of rule 18 shall not be applicable to the public offer of debentures.

(7) The company shall create a Debenture Redemption Reserve for the purpose of redemption of debentures, in accordance with the conditions given below-

(a) the Debenture Redemption Reserve shall be created out of the profits of the company available for payment of dividend;

(b) the company shall create Debenture Redemption Reserve (DRR) in accordance with following conditions:-

(i) No DRR is required for debentures issued by All India Financial Institutions (AIFIs) regulated by Reserve Bank of India and Banking Companies for both public as well as privately placed debentures. For other Financial Institutions (FIs) within the meaning of clause (72) of section 2 of the Companies Act, 2013, DRR will be as applicable to NBFCs registered with RBI.

(ii) For NBFCs registered with the RBI under Section 45-IA of the RBI (Amendment) Act, 1997, 'the adequacy' of DRR will be 25% of the value of debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities) Regulations, 2008, and no DRR is required in the case of privately placed debentures.

(iii) For other companies including manufacturing and infrastructure companies, the adequacy of DRR will be 25% of the value of debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities), Regulations 2008 and also 25% DRR is required in the case of privately placed debentures by listed companies. For unlisted companies issuing debentures on private placement basis, the DRR will be 25% of the value of debentures.

(c) every company required to create Debenture Redemption Reserve shall on or before the 30th day of April in each year, invest or deposit, as the case may be, a sum which shall not be less than fifteen percent, of the amount of its debentures maturing during the year ending on the 31st day of March of the next year, in any one or more of the following methods, namely:-

(i) in deposits with any scheduled bank, free from any charge or lien;

(ii) in unencumbered securities of the Central Government or of any State Government;

(iii) in unencumbered securities mentioned in sub-clauses (a) to (d) and (ee) of section 20 of the Indian Trusts Act, 1882;

(iv) in unencumbered bonds issued by any other company which is notified under sub-clause (f) of section 20 of the Indian Trusts Act, 1882;

(v) the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above: Provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below fifteen percent of the amount of the debentures maturing during the year ending on the 31st day of March of that year;

(d) in case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of non-convertible portion of debenture issue in accordance with this sub-rule.

(e) the amount credited to the Debenture Redemption Reserve shall not be utilised by the company except for the purpose of redemption of debentures.

(8) (a) A trust deed for securing any issue of debentures shall be open for inspection to any member or debenture holder of the company, in the same manner, to the same extent and on the payment of the same fees, as if it were the register of members of the company; and

(b) A copy of the trust deed shall be forwarded to any member or debenture holder of the company, at his request, within seven days of the making thereof, on payment of fee.

19. Nomination by securities holders.-

(1) Any holder of securities of a company may, at any time, nominate, in Form No. **SH.13**, any person as his nominee in whom the securities shall vest in the event of his death.

(2) On the receipt of the nomination form, a corresponding entry shall forthwith be made in the relevant register of securities holders, maintained under section 88.

(3) Where the nomination is made in respect of the securities held by more than one person jointly, all joint holders shall together nominate in Form No.**SH.13** any person as nominee.

(4) The request for nomination should be recorded by the Company within a period of two months from the date of receipt of the duly filled and signed nomination form.

(5) In the event of death of the holder of securities or where the securities are held by more than one person jointly, in the event of death of all the joint holders, the person nominated as the nominee may upon the production of such evidence as may be required by the Board, elect, either-

(a) to register himself as holder of the securities ; or

(b) to transfer the securities, as the deceased holder could have done.

(6) If the person being a nominee, so becoming entitled, elects to be registered as holder of the securities himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects and such notice shall be accompanied with the death certificate of the deceased share or debenture holder(s).

(7) All the limitations, restrictions and provisions of the Act relating to the right to transfer and the registration of transfers of securities shall be applicable to any such notice or transfer as aforesaid as if the death of the share or debenture holder had not occurred and the notice or transfer were a transfer signed by that shareholder or debenture holder, as the case may be.

(8) A person, being a nominee, becoming entitled to any securities by reason of the death of the holder shall be entitled to the same dividends or interests and other advantages to

which he would have been entitled to if he were the registered holder of the securities except that he shall not, before being registered as a holder in respect of such securities, be entitled in respect of these securities to exercise any right conferred by the membership in relation to meetings of the company:

Provided that the Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the securities, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends or interests, bonuses or other moneys payable in respect of the securities, as the case may be, until the requirements of the notice have been complied with.

(9) A nomination may be cancelled, or varied by nominating any other person in place of the present nominee, by the holder of securities who has made the nomination, by giving a notice of such cancellation or variation, to the company in Form No. **SH.14**.

(10) The cancellation or variation shall take effect from the date on which the notice of such variation or cancellation is received by the company.

(11) Where the nominee is a minor, the holder of the securities, making the nomination, may appoint a person in Form No. **SH.14** specified under sub-rule (1), who shall become entitled to the securities of the company, in the event of death of the nominee during his minority.

CHAPTER V

ACCEPTANCE OF DEPOSITS BY COMPANIES

73. Prohibition on acceptance of deposits from public.

(*1*) On and after the commencement of this Act, no company shall invite, accept or renew deposits under this Act from the public except in a manner provided under this Chapter:

Provided that nothing in this sub-section shall apply to a banking company and nonbanking financial company as defined in the Reserve Bank of India Act, 1934 and to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

(*2*) A company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfilment of the following conditions, namely:—

(*a*) issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;

(*b*) filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular;

(*c*) depositing such sum which shall not be less than fifteen per cent. of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account;

(*d*) providing such deposit insurance in such manner and to such extent as may be prescribed;

(*e*) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and

(*f*) providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company:

Provided that in case where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as "unsecured deposits" and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.

(*3*) Every deposit accepted by a company under sub-section (*2*) shall be repaid with interest in accordance with the terms and conditions of the agreement referred to in that sub-section.

(*4*) Where a company fails to repay the deposit or part thereof or any interest thereon under sub-section (*3*), the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

(*5*) The deposit repayment reserve account referred to in clause (*c*) of sub-section (*2*) shall not be used by the company for any purpose other than repayment of deposits.

74. Repayment of deposits, etc., accepted before commencement of this Act.

(*1*) Where in respect of any deposit accepted by a company before the commencement of this Act, the amount of such deposit or part thereof or any interest due thereon remains unpaid on such commencement or becomes due at any time thereafter, the company shall—

(*a*) file, within a period of three months from such commencement or from the date on which such payments, are due, with the Registrar a statement of all the deposits accepted by the company and sums remaining unpaid on such amount with the interest payable thereon along with the arrangements made for such repayment, notwithstanding anything contained in any other law for the time being in force or under the terms and conditions subject to which the deposit was accepted or any scheme framed under any law; and

(*b*) repay within one year from such commencement or from the date on which such payments are due, whichever is earlier.

(*2*) The Tribunal may on an application made by the company, after considering the financial condition of the company, the amount of deposit or part thereof and the interest payable thereon and such other matters, allow further time as considered reasonable to the company to repay the deposit.

(*3*) If a company fails to repay the deposit or part thereof or any interest thereon within the time specified in sub-section (*1*) or such further time as may be allowed by the Tribunal under sub-section (*2*), the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees and every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.

75. Damages for fraud.

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

(*2*) Any suit, proceedings or other action may be taken by any person, group of persons or any association of persons who had incurred any loss as a result of the failure of the company to repay the deposits or part thereof or any interest thereon.

76. Acceptance of deposits from public by certain companies.

(*1*) Notwithstanding anything contained in section 73, a public company, having such net worth or turnover as may be prescribed, may accept deposits from persons other than its members subject to compliance with the requirements provided in sub-section (*2*) of

section 73 and subject to such rules as the Central Government may, in consultation with the Reserve Bank of India, prescribe:

Provided that such a company shall be required to obtain the rating (including its networth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits:

Provided further that every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed.

(*2*) The provisions of this Chapter shall, *mutatis mutandis*, apply to the acceptance of deposits from public under this section.

Rules for Chapter V

Companies (Acceptance of Deposits) Rules, 2014

In exercise of the powers conferred by clause (31) of section 2, section 73 and section 76 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), and in supersession of the Companies (Acceptance of Deposits) Rules, 1975 or any other rules prescribed under the Companies Act, 1956 (1 of 1956) on matters covered under these rules except as respects things done or omitted to be done before such supersession, the Central Government, in consultation with the Reserve Bank of India, hereby makes the following rules, namely: -

1. Short title, commencement and application.- (1) These rules may be called the Companies (Acceptance of Deposits) Rules, 2014.

(2) They shall come into force on the 1st day of April, 2014.

(3) These rules shall apply to a company other than -

(i) a banking company;

(ii) a non-banking financial company as defined in the Reserve Bank of India Act, 1934 (2 of 1934) registered with the Reserve Bank of India;

(iii) a housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987 (53 of 1987); and

(iv) a company specified by the Central Government under the proviso to sub-section (1) of section 73 of the Act.

2. Definitions.- (1) In these rules, unless the context otherwise requires, ___

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "Annexure" means the Annexure attached to these rules;

(c) "deposit" includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include -

(i) any amount received from the Central Government or a State Government, or any amount received from any other source whose repayment is guaranteed by the Central Government or a State Government, or any amount received from a local authority, or any amount received from a statutory authority constituted under an Act of Parliament or a State Legislature ;

(ii) any amount received from foreign Governments, foreign or international banks, multilateral financial institutions (including, but not limited to, International Finance Corporation, Asian Development Bank, Commonwealth Development Corporation and International Bank for Industrial and Financial Reconstruction), foreign Governments owned development financial institutions, foreign export credit agencies, foreign collaborators, foreign bodies corporate and foreign citizens, foreign authorities or persons resident outside India subject to the provisions of Foreign Exchange Management Act, 1999 (42 of 1999) and rules and regulations made there under;

(iii) any amount received as a loan or facility from any banking company or from the State Bank of India or any of its subsidiary banks or from a banking institution notified by the Central Government under section 51 of the Banking Regulation Act, 1949 (10 of 1949), or a corresponding new bank as defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings)

Act, 1970 (5 of 1970) or in clause (b) of section (2) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980) , or from a co-operative bank as defined in clause (b-ii) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934) ;

(iv) any amount received as a loan or financial assistance from Public Financial Institutions notified by the Central Government in this behalf in consultation with the Reserve Bank of India or any regional financial institutions or Insurance Companies or Scheduled Banks as defined in the Reserve Bank of India Act, 1934 (2 of 1934);

(v) any amount received against issue of commercial paper or any other instruments issued in accordance with the guidelines or notification issued by the Reserve Bank of India;

(vi) any amount received by a company from any other company;

(vii) any amount received and held pursuant to an offer made in accordance with the provisions of the Act towards subscription to any securities, including share application money or advance towards allotment of securities pending allotment, so long as such amount is appropriated only against the amount due on allotment of the securities applied for;

Explanation.- For the purposes of this sub-clause, it is hereby clarified that -

(a) Without prejudice to any other liability or action, if the securities for which application money or advance for such securities was received cannot be allotted within sixty days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within fifteen days from the date of completion of sixty days, such amount shall be treated as a deposit under these rules.

(b) any adjustment of the amount for any other purpose shall not be treated as refund.

(viii) any amount received from a person who, at the time of the receipt of the amount, was a director of the company:

Provided that the director from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others;

(ix) any amount raised by the issue of bonds or debentures secured by a first charge or a charge ranking pari passu with the first charge on any assets referred to in Schedule III of the Act excluding intangible assets of the company or bonds or debentures compulsorily convertible into shares of the company within five years:

Provided that if such bonds or debentures are secured by the charge of any assets referred to in Schedule III of the Act, excluding intangible assets, the amount of such bonds or debentures shall not exceed the market value of such assets as assessed by a registered valuer;

(x) any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit;

(xi) any non-interest bearing amount received or held in trust;

(xii) any amount received in the course of, or for the purposes of, the business of the company,-

(a) as an advance for the supply of goods or provision of services accounted for in any manner whatsoever provided that such advance is appropriated against supply of goods or provision of services within a period of three hundred and sixty five days from the date of acceptance of such advance:

Provided that in case of any advance which is subject matter of any legal proceedings before any court of law, the said time limit of three hundred and sixty five days shall not apply:

(b) as advance, accounted for in any manner whatsoever, received in connection with consideration for property under an agreement or arrangement , provided that such advance is adjusted against the property in accordance with the terms of agreement or arrangement;

(c) as security deposit for the performance of the contract for supply of goods or provision of services;

(d) as advance received under long term projects for supply of capital goods except those covered under item (b) above:

Provided that if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules:

Explanation.- For the purposes of this sub-clause the amount referred to in the first proviso shall be deemed to be deposits on the expiry of fifteen days from the date they become due for refund.

(xiii) any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to fulfillment of the following conditions, namely:-

(a) the loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance;

(b) the loan is provided by the promoters themselves or by their relatives or by both; and

(c) the exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter;

(xiv) any amount accepted by a Nidhi company in accordance with the rules made under section 406 of the Act.

Explanation.- For the purposes of this clause, any amount.-

(a) received by the company, whether in the form of instalments or otherwise, from a person with promise or offer to give returns, in cash or in kind, on completion of the period specified in the promise or offer, or earlier, accounted for in any manner whatsoever, or

(b) any additional contributions, over and above the amount under item (a) above, made by the company as part of such promise or offer, shall be treated as a deposit;

(d) "depositor" means,-
(i) any member of the company who has made a deposit with the company in accordance with the provisions of sub-section (2) of section 73 of the Act, or
(ii) any person who has made a deposit with a public company in accordance with the provisions of section 76 of the Act;
(e) "eligible company" means a public company as referred to in sub-section (1) of section 76, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits:

Provided that an eligible company, which is accepting deposits within the limits specified under clause (c) of sub-section (1) of section 180, may accept deposits by means of an ordinary resolution;
(f) "fees" means fees as specified in the Companies (Registration Offices and Fees) Rules, 2014;
(g) "Form" or 'e-Form" means a form set forth in Annexure to these rules which shall be used for the matter to which it relates;
(h) "section" means section of the Act;
(i) "trustee" means the trustee as defined in section 3 of the Indian Trusts Act, 1882 (12 of 1882).

(2) Words and expressions used in these rules but not defined and defined in the Act or in the Reserve Bank of India Act, 1934 (2 of 1934) or in the Companies (Specification of definitions details) Rules, 2014, shall have the meanings respectively assigned to them in the said Acts or in the said rules.

3. Terms and conditions of acceptance of deposits by companies.- (1) On and from the commencement of these rules,—
(a) no company referred to in sub-section (2) of section 73 and no eligible company shall accept or renew any deposit, whether secured or unsecured, which is repayable on demand or upon receiving a notice within a period of less than six months or more than thirty-six months from the date of acceptance or renewal of such deposit:

Provided that a company may, for the purpose of meeting any of its short-term requirements of funds, accept or renew such deposits for repayment earlier than six months from the date of deposit or renewal, as the case may be, subject to the condition that-
(a) such deposits shall not exceed ten per cent. of the aggregate of the paid up share capital and free reserves of the company, and
(b) such deposits are repayable not earlier than three months from the date of such deposits or renewal thereof.

(2) Where depositors so desire, deposits may be accepted in joint names not exceeding three, with or without any of the clauses, namely, "Jointly", "Either or Survivor", "First named or Survivor", "Anyone or Survivor".

(3) No company referred to in sub-section (2) of section 73 shall accept or renew any deposit from its members, if the amount of such deposits together with the amount of other

deposits outstanding as on the date of acceptance or renewal of such deposits exceeds twenty five per cent. of the aggregate of the paid-up share capital and free reserves of the company.

(4) No eligible company shall accept or renew-

(a) any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds ten per cent. of the aggregate of the paid-up share capital and free reserves of the company;

(b) any other deposit, if the amount of such deposit together with the amount of such other deposits, other than the deposit referred to in clause (a), outstanding on the date of acceptance or renewal exceeds twenty-five per cent. of aggregate of the paid-up share capital and free reserves of the company.

(5) No Government company eligible to accept deposits under section 76 shall accept or renew any deposit, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty five per cent. of the aggregate of its paid up share capital and free reserves of the company.

(6) No company referred to in sub-section (2) of section 73 or any eligible company shall invite or accept or renew any deposit in any form, carrying a rate of interest or pay brokerage thereon at a rate exceeding the maximum rate of interest or brokerage prescribed by the Reserve Bank of India for acceptance of deposits by non-banking financial companies.

Explanation:- For the purposes of this sub-rule, it is hereby clarified that the person who is authorised, in writing, by a company to solicit deposits on its behalf and through whom deposits are actually procured shall only be entitled to the brokerage and payment of brokerage to any other person for procuring deposits shall be deemed to be in violation of these rules.

(7) The company shall not reserve to itself either directly or indirectly a right to alter, to the prejudice or disadvantage of the depositor, any of the terms and conditions of the deposit, deposit trust deed and deposit insurance contract after circular or circular in the form of advertisement is issued and deposits are accepted.

4. Form and particulars of advertisements or circulars.- (1) Every company referred to in sub-section (2) of section 73 intending to invite deposit from its members shall issue a circular to all its members by registered post with acknowledgement due or speed post or by electronic mode in Form **DPT-1**:

Provided that in addition to issue of such circular to all members in the manner specified above, the circular may be published in English language in an English newspaper and in vernacular language in a vernacular newspaper having wide circulation in the State in which the registered office of the company is situated.

(2) Every eligible company intending to invite deposits shall issue a circular in the form of an advertisement in Form **DPT-1** for the purpose in English language in an English newspaper and in vernacular language in one vernacular newspaper having wide circulation in the State in which the registered office of the company is situated.

(3) Every company inviting deposits from the public shall upload a copy of the circular on its website, if any.

(4) No company shall issue or allow any other person to issue or cause to be issued on its behalf, any circular or a circular in the form of advertisement inviting deposits, unless such circular or circular in the form of advertisement is issued on the authority and in the name of the Board of directors of the company.

(5) No circular or a circular in the form of advertisement shall be issued by or on behalf of a company unless, not less than thirty days before the date of such issue, there has been delivered to the Registrar for registration a copy thereof signed by a majority of the directors of the company as constituted at the time the Board approved the circular or circular in the form of advertisement, or their agents, duly authorised by them in writing.

(6) A circular or circular in the form of advertisement issued shall be valid until the expiry of six months from the date of closure of the financial year in which it is issued or until the date on which the financial statement is laid before the company in annual general meeting or, where the annual general meeting for any year has not been held, the latest day on which that meeting should have been held in accordance with the provisions of the Act, whichever is earlier, and a fresh circular or circular in the form of advertisement shall be issued, in each succeeding financial year, for inviting deposits during that financial year.

***Explanation*:** For the purpose of this rule, the date of the issue of the newspaper in which the advertisement appears shall be taken as the date of issue of the advertisement and the effective date of issue of circular shall be the date of dispatch of the circular.

5. Manner and extent of deposit insurance.- (1) Every company referred to in sub-section (2) of section 73 and every other eligible company inviting deposits shall enter into a contract for providing deposit insurance at least thirty days before the issue of circular or advertisement or at least thirty days before the date of renewal, as the case may be.
Explanation- For the purposes of this sub-rule, the amount as specified in the deposit insurance contract shall be deemed to be the amount in respect of both principal amount and interest due thereon.

(2) The deposit insurance contract shall specifically provide that in case the company defaults in repayment of principal amount and interest thereon, the depositor shall be entitled to the repayment of principal amount of deposits and the interest thereon by the insurer up to the aggregate monetary ceiling as specified in the contract:

Provided that in the case of any deposit and interest not exceeding twenty thousand rupees, the deposit insurance contract shall provide for payment of the full amount of the deposit and interest and in the case of any deposit and the interest thereon in excess of twenty thousand rupees, the deposit insurance contract shall provide for payment of an amount not less than twenty thousand rupees for each depositor.

(3) The amount of insurance premium paid on the insurance of such deposits shall be borne by the company itself and shall not be recovered from the depositors by deducting the same from the principal amount or interest payable thereon.

(4) If any default is made by the company in complying with the terms and conditions of the deposit insurance contract which makes the insurance cover ineffective, the company shall either rectify the default immediately or enter into a fresh contract within thirty days and in case of non-compliance, the amount of deposits covered under the deposit insurance contract and interest payable thereon shall be repaid within the next fifteen days and if such a company does not repay the amount of deposits within said fifteen days it shall

pay fifteen per cent. interest per annum for the period of delay and shall be treated as having defaulted and shall be liable to be punished in accordance with the provisions of the Act.

6. Creation of security.- (1) For the purposes of providing security, every company referred to in sub-section (2) of section 73 and every eligible company inviting secured deposits shall provide for security by way of a charge on its assets as referred to in Schedule III of the Act excluding intangible assets of the company for the due repayment of the amount of deposit and interest thereon for an amount which shall not be less than the amount remaining unsecured by the deposit insurance:

Provided that in the case of deposits which are secured by the charge on the assets referred to in Schedule III of the Act excluding intangible assets, the amount of such deposits and the interest payable thereon shall not exceed the market value of such assets as assessed by a registered valuer.

Explanation. I - For the purposes of this sub-rule it is clarified that the company shall ensure that the total value of the security either by way of deposit insurance or by way of charge or by both on company's assets shall not be less than the amount of deposits accepted and the interest payable thereon.

Explanation. II- For the purposes of proviso to sub-clause (ix) of clause (c) of sub-rule (1) of rule 2 and this sub-rule, it is hereby clarified that pending notification of sub-section (1) of section 247 of the Act and finalisation of qualifications and experience of valuers, valuation of stocks, shares, debentures, securities etc. shall be conducted by an independent merchant banker who is registered with the Securities and Exchange Board of India or an independent chartered accountant in practice having a minimum experience of ten years.

(2) The security (not being in the nature of a pledge) for deposits as specified in sub-rule (1) shall be created in favour of a trustee for the depositors on:
(a) specific movable property of the company, or
(b) specific immovable property of the company wherever situated, or any interest therein.

7. Appointment of trustee for depositors.- (1) No company referred to in sub-section (2) of section 73 or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more trustees for depositors for creating security for the deposits:

Provided that a written consent shall be obtained from the trustee for depositors before their appointment and a statement shall appear in the circular or circular in the form of advertisement with reasonable prominence to the effect that the trustees for depositors have given their consent to the company to be so appointed.

(2) The company shall execute a deposit trust deed in Form **DPT-2** at least seven days before issuing the circular or circular in the form of advertisement.

(3) No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, if the proposed trustee -

(a) is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;
(b) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
(c) has any material pecuniary relationship with the company;
(d) has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;
(e) is related to any person specified in clause (a) above.

(4) No trustee for depositors shall be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors present at a meeting of the board.

Provided that in case the company is required to have independent directors, at least one independent director shall be present in such meeting of the Board

8. Duties of trustees.- It shall be the duty of every trustee for depositors to-
(a) ensure that the assets of the company on which charge is created together with the amount of deposit insurance are sufficient to cover the repayment of the principal amount of secured deposits outstanding and interest accrued thereon;
(b) satisfy himself that the circular or advertisement inviting deposits does not contain any information which is inconsistent with the terms of the deposit scheme or with the trust deed and is in compliance with the rules and provisions of the Act;
(c) ensure that the company does not commit any breach of covenants and provisions of the trust deed;
(d) take such reasonable steps as may be necessary to procure a remedy for any breach of covenants of the trust deed or the terms of invitation of deposits;
(e) take steps to call a meeting of the holders of depositors as and when such meeting is required to be held;
(f) supervise the implementation of the conditions regarding creation of security for deposits and the terms of deposit insurance;
(g) do such acts as are necessary in the event the security becomes enforceable;
(h) carry out such acts as are necessary for the protection of the interest of depositors and to resolve their grievances.

9. Meeting of depositors.- The trustee for depositors shall call a meeting of all the depositors on-
(a) requisition in writing signed by at least one-tenth of the depositors in value for the time being outstanding;
(b) the happening of any event, which constitutes a default or which, in the opinion of the trustee for depositors, affects the interest of the depositors.

10. Form of application for deposits.-

(1) On and from the commencement of these rules, no company shall accept, or renew any deposit, whether secured or unsecured, unless an application, in such form as specified by the company, is submitted by the intending depositor for the acceptance of such deposit.

(2) The form of application referred to in sub-rule (1) shall contain a declaration by the intending depositor to the effect that the deposit is not being made out of any money borrowed by him from any other person.

11. Power to nominate.- Every depositor may, at any time, nominate any person to whom his deposits shall vest in the event of his death and the provisions of section 72 shall, as far as may be, apply to the nomination made under this rule.

12. Furnishing of deposit receipts to depositors.-

(1) Every company shall, on the acceptance or renewal of a deposit, furnish to the depositor or his agent a receipt for the amount received by the company, within a period of twenty one days from the date of receipt of money or realisation of cheque or date of renewal.

(2) The receipt referred to in sub-rule (1) shall be signed by an officer of the company duly authorised by the Board in this behalf and shall state the date of deposit, the name and address of the depositor, the amount received by the company as deposit, the rate of interest payable thereon and the date on which the deposit is repayable.

13. Maintenance of liquid assets and creation of deposit repayment reserve account.- Every company referred to in sub-section (2) of section 73 and every eligible company shall on or before the 30th day of April of each year deposit the sum as specified in clause (c) of the said sub-section with any scheduled bank and the amount so deposited shall not be utilised for any purpose other than for the repayment of deposits:

Provided that the amount remaining deposited shall not at any time fall below fifteen per cent. of the amount of deposits maturing, until the end of the current financial year and the next financial year.

14. Registers of deposits.-

(1) Every company accepting deposits shall maintain at its registered office one or more separate registers for deposits accepted or renewed, in which there shall be entered separately in the case of each depositor the following particulars, namely:-
(a) name, address and PAN of the depositor/s;
(b) particulars of guardian, in case of a minor;
(c) particulars of the nominee;
(d) deposit receipt number;
(e) date and the amount of each deposit;
(f) duration of the deposit and the date on which each deposit is repayable;
(g) rate of interest or such deposits to be payable to the depositor;
(h) due date for payment of interest;
(i) mandate and instructions for payment of interest and for non-deduction of tax at source, if any;
(j) date or dates on which the payment of interest shall be made;
(k) details of deposit insurance including extent of deposit insurance;
(l) particulars of security or charge created for repayment of deposits;
(m) any other relevant particulars;

(2) The entries specified in sub-rule (1) shall be made within seven days from the date of issuance of the receipt duly authenticated by a director or secretary of the company or by any other officer authorised by the Board for this purpose.

(3) The register referred to in sub-rule (1) shall be preserved in good order for a period of not less than eight years from the financial year in which the latest entry is made in the register.

15. General provisions regarding premature repayment of deposits.- Where a company makes a repayment of deposits, on the request of the depositor, after the expiry of a period of six months from the date of such deposit but before the expiry of the period for which such deposit was accepted, the rate of interest payable on such deposit shall be reduced by one per cent. from the rate which the company would have paid had the deposit been accepted for the period for which such deposit had actually run and the company shall not pay interest at any rate higher than the rate so reduced :

Provided that nothing contained in this rule shall apply to the repayment of any deposit before the expiry of the period for which such deposit was accepted by the company, if such repayment is made solely for the purpose of—

(a) complying with the provisions of rule 3; or

(b) providing war risk or other related benefits to the personnel of the naval, military or air forces or to their families, on an application made by the associations or societies formed by such personnel, during the period of emergency declared under article 352 of the Constitution :

Provided further that where a company referred to in under sub-section (2) of section 73 or any eligible company permits a depositor to renew his deposit, before the expiry of the period for which such deposit was accepted by the company, for availing of a higher rate of interest, the company shall pay interest to such depositor at the higher rate if such deposit is renewed in accordance with the other provisions of these rules and for a period longer than the unexpired period of the deposit.

Explanation: For the purposes of this rule, where the period for which the deposit had run contains any part of a year, then, if such part is less than six months, it shall be excluded and if such part is six months or more, it shall be reckoned as one year.

16. Return of deposits to be filed with the Registrar.- Every company to which these rules apply, shall on or before the 30th day of June, of every year, file with the Registrar, a return in Form **DPT-3** along with the fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and furnish the information contained therein as on the 31st day of March of that year duly audited by the auditor of the company.

17. Penal rate of interest.- Every company shall pay a penal rate of interest of eighteen per cent. per annum for the overdue period in case of deposits, whether secured or unsecured, matured and claimed but remaining unpaid.

18. Power of Central Government to decide certain questions.- If any question arises as to the applicability of these rules to a particular company, such question shall be decided by the Central Government in consultation with the Reserve Bank of India.

19. Applicability of sections 73 and 74 to eligible companies.- Pursuant to provisions of sub-section (2) of section 76 of the Act, the provisions of sections 73 and 74 shall, mutatis mutandis, apply to acceptance of deposits from public by eligible companies.

Explanation.- For the purposes of this rule, it is hereby clarified that in case of a company which had accepted or invited public deposits under the relevant provisions of the Companies Act, 1956 and rules made under that Act (hereinafter known as "Earlier

Deposits") and has been repaying such deposits and interest thereon in accordance with such provisions, the provisions of clause (b) of sub-section (1) of section 74 of the Act shall be deemed to have been complied with if the company complies with requirements under the Act and these rules and continues to repay such deposits and interest due thereon on due dates for the remaining period of such deposit in accordance with the terms and conditions and period of such Earlier Deposits and in compliance with the requirements under the Act and these rules;

Provided further that the fresh deposits by every eligible company shall have to be in accordance with the provisions of Chapter V of the Act and these rules;

20. **Statement regarding deposits existing as on the date of commencement of the Act.-** For the purposes of clause (a) of sub-section (1) of section 74, the statement shall be in Form **DPT-4.**

21. **Punishment for contravention.-** If any company referred to in sub-section (2) of section 73 or any eligible company inviting deposits or any other person contravenes any provision of these rules for which no punishment is provided in the Act, the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first day during which the contravention continues.

CHAPTER VI

REGISTRATION OF CHARGES

77. Duty to register charges, etc.

(*1*) It shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within thirty days of its creation:

Provided that the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed:

Provided further that if registration is not made within a period of three hundred days of such creation, the company shall seek extension of time in accordance with section 87:

Provided also that any subsequent registration of a charge shall not prejudice any right acquired in respect of any property before the charge is actually registered.

(*2*) Where a charge is registered with the Registrar under sub-section (*1*), he shall issue a certificate of registration of such charge in such form and in such manner as may be prescribed to the company and, as the case may be, to the person in whose favour the charge is created.

(*3*) Notwithstanding anything contained in any other law for the time being in force, no charge created by a company shall be taken into account by the liquidator or any other creditor unless it is duly registered under sub-section (*1*) and a certificate of registration of such charge is given by the Registrar under sub-section (*2*).

(*4*) Nothing in sub-section (*3*) shall prejudice any contract or obligation for the repayment of the money secured by a charge.

78. Application for registration of charge.

Where a company fails to register the charge within the period specified in section 77, without prejudice to its liability in respect of any offence under this Chapter, 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 the charge, within such time and in such form and manner as may be prescribed and the Registrar may, on such application, within a period of fourteen days after giving notice to the company, unless the company itself registers the charge or shows sufficient cause why such charge should not be registered, allow such registration on payment of such fees, as may be prescribed:

Provided that where registration is effected on application of the person in whose favour the charge is created, that person shall be entitled to recover from the company the amount of any fees or additional fees paid by him to the Registrar for the purpose of registration of charge.

79. Section 77 to apply in certain matters.

The provisions of section 77 relating to registration of charges shall, so far as may be, apply to—

(a) a company acquiring any property subject to a charge within the meaning of that section; or

(b) any modification in the terms or conditions or the extent or operation of any charge registered under that section.

80. Date of notice of charge.

Where any charge on any property or assets of a company or any of its undertakings is registered under section 77, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

81. Register of charges to be kept by Registrar.

(*1*) The Registrar shall, in respect of every company, keep a register containing particulars of the charges registered under this Chapter in such form and in such manner as may be prescribed.

(*2*) A register kept in pursuance of this section shall be open to inspection by any person on payment of such fees as may be prescribed for each inspection.

82. Company to report satisfaction of charge.

(*1*) A company shall give intimation to the Registrar in the prescribed form, of the payment or satisfaction in full of any charge registered under this Chapter within a period of thirty days from the date of such payment or satisfaction and the provisions of sub-section (*1*) of section 77 shall, as far as may be, apply to an intimation given under this section.

(*2*) The Registrar shall, on receipt of intimation under sub-section (*1*), cause a notice to be sent to the holder of the charge calling upon him to show cause within such time not exceeding fourteen days, as may be specified in such notice, as to why payment or satisfaction in full should not be recorded as intimated to the Registrar, and if no cause is shown, by such holder of the charge, the Registrar shall order that a memorandum of satisfaction shall be entered in the register of charges kept by him under section 81 and shall inform the company that he has done so:

Provided that the notice referred to in this sub-section shall not be required to be sent, in case the intimation to the Registrar in this regard is in the specified form and signed by the holder of charge.

(*3*) If any cause is shown, the Registrar shall record a note to that effect in the register of charges and shall inform the company.

(*4*) Nothing in this section shall be deemed to affect the powers of the Registrar to make an entry in the register of charges under section 83 or otherwise than on receipt of an intimation from the company.

83. Power of Registrar to make entries of satisfaction and release in absence of intimation from company.

(*1*) The Registrar may, on evidence being given to his satisfaction with respect to any registered charge,—

(*a*) that the debt for which the charge was given has been paid or satisfied in whole or in part; or

(*b*) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, enter in the register of charges a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, notwithstanding the fact that no intimation has been received by him from the company.

(*2*) The Registrar shall inform the affected parties within thirty days of making the entry in the register of charges kept under sub-section (*1*) of section 81.

84. Intimation of appointment of receiver or manager.

(*1*) If any person obtains an order for the appointment of a receiver of, or of a person to manage, the property, subject to a charge, of a company or if any person appoints such receiver or person under any power contained in any instrument, he shall, within a period of thirty days from the date of the passing of the order or of the making of the appointment, give notice of such appointment to the company and the Registrar along with a copy of the order or instrument and the Registrar shall, on payment of the prescribed fees, register particulars of the receiver, person or instrument in the register of charges.

(*2*) Any person appointed under sub-section (*1*) shall, on ceasing to hold such appointment, give to the company and the Registrar a notice to that effect and the Registrar shall register such notice.

85. Company's register of charges.

(*1*) Every company shall keep at its registered office a register of charges in such form and in such manner as may be prescribed, which shall include therein all charges and floating charges affecting any property or assets of the company or any of its undertakings, indicating in each case such particulars as may be prescribed:

Provided that a copy of the instrument creating the charge shall also be kept at the registered office of the company along with the register of charges.

(*2*) The register of charges and instrument of charges, kept under sub-section (*1*) shall be open for inspection during business hours—

(*a*) by any member or creditor without any payment of fees; or

(*b*) by any other person on payment of such fees as may be prescribed, subject to such reasonable restrictions as the company may, by its articles, impose.

86. Punishment for contravention.

If any company contravenes any provision of this Chapter, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to ten 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 twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

87. Rectification by Central Government in register of charges.

(*1*) The Central Government on being satisfied that—

(*i*) (*a*) the omission to file with the Registrar the particulars of any charge created by a company or any charge subject to which any property has been acquired by a company or any modification of such charge; or

(*b*) the omission to register any charge within the time required under this Chapter or the omission to give intimation to the Registrar of the payment or the satisfaction of a charge, within the time required under this Chapter; or

(*c*) the omission or mis-statement of any particular with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83, was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company; or

(*ii*) on any other grounds, it is just and equitable to grant relief, it may on the application of the company or any person interested and on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for the filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or mis-statement shall be rectified.

(*2*) Where the Central Government extends the time for the registration of a charge, the order shall not prejudice any rights acquired in respect of the property concerned before the charge is actually registered.

Chapter VI

Companies (Registration of Charges) Rules, 2014

In exercise of the powers conferred under sections 77, 78, 79, 81, 82, 83, 84, 85, 87 read with section 469 of the Companies Act, 2013 (18 of 2013) and in supersession of the Companies (Central Government's) General Rules and Forms, 1956 or any other relevant rules prescribed under the Companies Act, 1956 (1 of 1956) on matters covered under these rules, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely: -

1. Short title and commencement.- (1) These rules may be called the Companies (**Registration of Charges**) Rules, 2014.

(2) They shall come into force on the 1st day of April, 2014.

2. Definitions.- (1) In these rules, unless the context otherwise requires,-

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "Annexure" means the Annexure appended to these rules;

(c) "Fees" means the fees as specified in the Companies (Registration offices and fees) Rules, 2014;

(d) "Form" or "eforms" means form set forth in Annexure to these rules which shall be used for the matter to which it relates;

(e) "Regional Director" means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional 'Director;

(f) "section" means the section of the Act.

(2) Words and expressions used in these rules but not defined and defined in the Act or in Companies (Specification of definitions details) Rules, 2014 shall have the meanings respectively assigned to them in the Act and said rules.

3. Registration of creation or modification of charge. (1) For registration of charge as provided in sub-section (1) of section 77, section 78 and section 79, the particulars of the charge together with a copy of the instrument, if any, creating or modifying the charge in **Form No.CHG-1** (for other than Debentures) or **Form No.CHG-9** (for debentures), as the case may be, duly signed by the company and the charge holder and filed with the Registrar within a period of thirty days of the date of creation or modification of charge along with the fee.

(2) If the particulars of a charge are not filed within the aforesaid period, but filed within a period of three hundred days of the date of such creation or modification, the additional fee shall be levied.

(3) If the company fails to register the particulars of the charge with the Registrar within the period of thirty days of its creation or modification, the particulars of the charge together with a copy of the instrument, if any, creating or modifying such charge may be filed by the charge-holder, in **Form No.CHG-1** or **Form No.CHG-9,** as the case may be, duly signed along with fee.

(4) A copy of every instrument evidencing any creation or modification of charge and required to be filed with the Registrar in pursuance of section 77, 78 or 79 shall be verified as follows-

(a) where the instrument or deed relates solely to the property situated outside India, the copy shall be verified by a certificate issued either under the seal of the company, or under the hand of any director or company secretary of the company or an authorised officer of the charge holder or under the hand of some person other than the company who is interested in the mortgage or charge;

(b) where the instrument or deed relates, whether wholly or partly, to the property situated in India, the copy shall be verified by a certificate issued under the hand of any director or company secretary of the company or an authorised officer of the charge holder.

4. Condonation of delay by Registrar.-(1) The Registrar may, on being satisfied that the company had sufficient cause for not filing the particulars and instrument of charge, if any, within a period of thirty days of the date of creation of the charge, allow the registration of the same after thirty days but within a period of three hundred days of the date of such creation of charge or modification of charge on payment of additional fee.

(2) The application for delay shall be made in **Form No.CHG-1** and supported by a declaration from the company signed by its secretary or director that such belated filing shall not adversely affect rights of any other intervening creditors of the company.

5. Application of rules in certain matters.- The provisions of rule 4 shall apply, mutatis mutandis, to the registration of charge on any property acquired subject to such charge and modification of charge under section 79 of the Act.

6. Certificate of registration. -(1) Where a charge is registered with the Registrar under sub-section (1) of section 77 or section 78, he shall issue a certificate of registration of such charge in Form No.**CHG-2**

(2) Where the particulars of modification of charge is registered under section 79, the Registrar shall issue a certificate of modification of charge in Form No. **CHG-3**

(3) The certificate issued by the Registrar under sub-rule (1) and sub-rule (2) shall be conclusive evidence that the requirements of Chapter VI of the Act and the rules made thereunder as to registration of creation or modification of charge, as the case may be, have been complied with.

7. Register of charges to be kept by the Registrar.- (1) The particulars of charges maintained on the Ministry of Corporate Affairs portal (www.mca.gov.in/MCA21)shall be deemed to be the register of charges for the purposes of section 81 of the Act.

(2) The register shall be open to inspection by any person on payment of fee.

8. Satisfaction of charge.- (1) A company shall within a period of thirty days from the date of the payment or satisfaction in full of any charge registered under Chapter VI, give intimation of the same to the Registrar in Form No.**CHG-4** along with the fee.

(2) Where the Registrar enters a memorandum of satisfaction of charge in full in pursuance of section 82 or 83, he shall issue a certificate of registration of satisfaction of charge in Form No.**CHG-5**.

9. Intimation of appointment of Receiver or Manager.- The notice of appointment or cessation of a receiver of, or of a person to manage, the property, subject to charge, of a company shall be filed with the Registrar in Form No. **CHG.6** along with fee.

10. Company's register of charges.- (1) Every company shall keep at its registered office a register of charges in Form No. **CHG.7** and enter therein particulars of all the charges registered with the Registrar on any of the property, assets or undertaking of the company and the particulars of any property acquired subject to a charge as well as particulars of any modification of a charge and satisfaction of charge.

(2) The entries in the register of charges maintained by the company shall be made forthwith after the creation, modification or satisfaction of charge, as the case may be.

(3) Entries in the register shall be authenticated by a director or the secretary of the company or any other person authorised by the Board for the purpose.

(4) The register of charges shall be preserved permanently and the instrument creating a charge or modification thereon shall be preserved for a period of eight years from the date of satisfaction of charge by the company.

11. Register open for inspection.- The register of charges and the instrument of charges kept by the company shall be open for inspection-

(a) by any member or creditor of the company without fees;

(b) by any other person on payment of fee.

12. Condonation of delay and rectification of register of charges.-

(1) Where the instrument creating or modifying a charge is not filed within a period of three hundred days from the date of its creation (including acquisition of a property subject to a charge) or modification and where the satisfaction of the charge is not filed within thirty days from the date on which such payment of satisfaction, the Registrar shall not register the same unless the delay is condoned by the Central Government.

(2) The application for condonation of delay and for such other matters covered in sub-clause (a),(b) and (c) of clause (i) of sub-section (1) of section 87 of the Act shall be filed with the Central Government in Form No.**CHG-8** along with the fee.

(3) The order passed by the Central Government under sub-section (1) of section 87 of the Act shall be required to be filed with the Registrar in **Form No**.**INC.28** along with the fee as per the conditions stipulated in the said order.

CHAPTER VII

MANAGEMENT AND ADMINISTRATION

88. Register of members, etc.

(*1*) Every company shall keep and maintain the following registers in such form and in such manner as may be prescribed, namely:—
(*a*) register of members indicating separately for each class of equity and preference shares held by each member residing in or outside India;
(*b*) register of debenture-holders; and
(*c*) register of any other security holders.

(*2*) Every register maintained under sub-section (*1*) shall include an index of the names included therein.

(*3*) The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be the corresponding register and index for the purposes of this Act.

(*4*) A company may, if so authorised by its articles, keep in any country outside India, in such manner as may be prescribed, a part of the register referred to in sub-section (*1*), called "foreign register" containing the names and particulars of the members, debenture holders, other security holders or beneficial owners residing outside India.

(*5*) If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (*1*) or sub-section (*2*), the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day, after the first during which the failure continues.

89. Declaration in respect of beneficial interest in any share.

(*1*) Where the name of a person is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares, such person shall make a declaration within such time and in such form as may be prescribed to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares.

(*2*) Every person who holds or acquires a beneficial interest in share of a company shall make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.

(*3*) Where any change occurs in the beneficial interest in such shares, the person referred to in sub-section (*1*) and the beneficial owner specified in sub-section (*2*) shall, within a period of thirty days from the date of such change, make a declaration to the company in such form and containing such particulars as may be prescribed.

(*4*) The Central Government may make rules to provide for the manner of holding and disclosing beneficial interest and beneficial ownership under this section.

(*5*) If any person fails, to make a declaration as required under sub-section (*1*) or sub-section (*2*) or sub-section (*3*), without any reasonable cause, he shall be punishable with fine which may extend to fifty thousand rupees and where the failure is a continuing one, with

a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

(*6*) Where any declaration under this section is made to a company, the company shall make a note of such declaration in the register concerned and shall file, within thirty days from the date of receipt of declaration by it, a return in the prescribed form with the Registrar in respect of such declaration with such fees or additional fees as may be prescribed, within the time specified under section 403.

(*7*) If a company, required to file a return under sub-section (*6*), fails to do so before the expiry of the time specified under the first proviso to sub-section (*1*) of section 403, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than five hundred rupees but which may extend to one thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

(*8*) No right in relation to any share in respect of which a declaration is required to be made under this section but not made by the beneficial owner, shall be enforceable by him or by any person claiming through him.

(*9*) Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend to its members under this Act and the said obligation shall, on such payment, stand discharged.

90. Investigation of beneficial ownership of shares in certain cases.

Where it appears to the Central Government that there are reasons so to do, it may appoint one or more competent persons to investigate and report as to beneficial ownership with regard to any share or class of shares and the provisions of section 216 shall, as far as may be, apply to such investigation as if it were an investigation ordered under that section.

91. Power to close register of members or debenture holders or other security holders.

(*1*) A company may close the register of members or the register of debentureholders or the register of other security holders for any period or periods not exceeding in the aggregate forty-five days in each year, but not exceeding thirty days at any one time, subject to giving of previous notice of at least seven days or such lesser period as may be specified by Securities and Exchange Board for listed companies or the companies which intend to get their securities listed, in such manner as may be prescribed.

(*2*) If the register of members or of debenture-holders or of other security holders is closed without giving the notice as provided in sub-section (*1*), or after giving shorter notice than that so provided, or for a continuous or an aggregate period in excess of the limits specified in that sub-section, the company and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for every day subject to a maximum of one lakh rupees during which the register is kept closed.

92. Annual return.

(*1*) Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding—

(*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, and signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice:

Provided that in relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

(*2*) The annual return, filed by a listed company or, by a company having such paid-up capital and turnover as may be prescribed, shall be certified by a company secretary in practice in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.

(*3*) An extract of the annual return in such form as may be prescribed shall form part of the Board's report.

(*4*) Every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed, within the time as specified, under section 403.

(*5*) If a company fails to file its annual return under sub-section (*4*), before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs 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 fifty thousand rupees but which may extend to five lakh rupees, or with both.

(*6*) If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

93. Return to be filed with Registrar in case promoters' stake changes.

Every listed company shall file a return in the prescribed form with the Registrar with respect to change in the number of shares held by promoters and top ten shareholders of such company, within fifteen days of such change.

94. Place of keeping and inspection of registers, returns, etc.

(*1*) The registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company:

Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company and the Registrar has been given a copy of the proposed special resolution in advance:

Provided further that the period for which the registers, returns and records are required to be kept shall be such as may be prescribed.

(*2*) The registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by any member, debenture-holder, other security holder or beneficial owner, during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed.

(*3*) Any such member, debenture-holder, other security holder or beneficial owner or any other person may—

(*a*) take extracts from any register, or index or return without payment of any fee; or

(*b*) require a copy of any such register or entries therein or return on payment of such fees as may be prescribed.

(*4*) If any inspection or the making of any extract or copy required under this section is refused, the company and every officer of the company who is in default shall be liable, for each such default, to a penalty of one thousand rupees for every day subject to a maximum of one lakh rupees during which the refusal or default continues.

(*5*) The Central Government may also, by order, direct an immediate inspection of the document, or direct that the extract required shall forthwith be allowed to be taken by the person requiring it.

95. Registers, etc., to be evidence.

The registers, their indices and copies of annual returns maintained under sections 88 and 94 shall be *prima facie* evidence of any matter directed or authorised to be inserted therein by or under this Act.

96. Annual general meeting.

(*1*) Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that in case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year:

Provided further that if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation:

Provided also that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

(*2*) Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate:

Provided that the Central Government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose.

Explanation.—For the purposes of this sub-section, "National Holiday" means and includes a day declared as National Holiday by the Central Government.

97. Power of Tribunal to call annual general meeting.

(*1*) If any default is made in holding the annual general meeting of a company under section 96, the Tribunal may, notwithstanding anything contained in this Act or the articles of the company, on the application of any member of the company, call, or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient:

Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(*2*) A general meeting held in pursuance of sub-section (*1*) shall, subject to any directions of the Tribunal, be deemed to be an annual general meeting of the company under this Act.

98. Power of Tribunal to call meetings of members, etc.

(*1*) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles of the company, the Tribunal may, either *suo motu* or on the application of any director or member of the company who would be entitled to vote at the meeting,—

(*a*) order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and

(*b*) 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:

Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(*2*) Any meeting called, held and conducted in accordance with any order made under sub-section (*1*) shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

99. Punishment for default in complying with provisions of sections 96 to 98.

If any default is made in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.

100. Calling of extraordinary general meeting.

(*1*) The Board may, whenever it deems fit, call an extraordinary general meeting of the company.

(*2*) The Board shall, at the requisition made by,—

(*a*) in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting;

(*b*) in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote, call an extraordinary general meeting of the company within the period specified in subsection (*4*).

(*3*) The requisition made under sub-section (*2*) shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.

(*4*) If the Board does not, within twenty-one days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than forty-five days from the date of receipt of such requisition, the meeting may be called and held by the requisitonists themselves within a period of three months from the date of the requisition.

(*5*) A meeting under sub-section (*4*) by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board.

(*6*) Any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (*4*) shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting.

101. Notice of meeting.

(*1*) A general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed:

Provided that a general meeting may be called after giving a shorter notice if consent is given in writing or by electronic mode by not less than ninety-five per cent. of the members entitled to vote at such meeting.

(*2*) Every notice of a meeting shall specify the place, date, day and the hour of the meeting and shall contain a statement of the business to be transacted at such meeting.

(*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*) Any accidental omission to give notice to, or the non-receipt of such notice by, any member or other person who is entitled to such notice for any meeting shall not invalidate the proceedings of the meeting.

102. Statement to be annexed to notice.

(*1*) A statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:—
(*a*) the nature of concern or interest, financial or otherwise, if any, in respect of each items of—
(*i*) every director and the manager, if any;
(*ii*) every other key managerial personnel; and
(*iii*) relatives of the persons mentioned in sub-clauses (*i*) and (*ii*);
(*b*) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

(*2*) For the purposes of sub-section (*1*),—
(*a*) in the case of an annual general meeting, all business to be transacted thereat shall be deemed special, other than—
(*i*) the consideration of financial statements and the reports of the Board of Directors and auditors;
(*ii*) the declaration of any dividend;
(*iii*) the appointment of directors in place of those retiring;
(*iv*) the appointment of, and the fixing of the remuneration of, the auditors; and
(*b*) in the case of any other meeting, all business shall be deemed to be special:

Provided that where any item of special business to be transacted at a meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every promoter, director, manager, if any, and of every other key managerial personnel of the first mentioned company shall, if the extent of such shareholding is not less than two per cent. of the paid-up share capital of that company, also be set out in the statement.

(*3*) Where any item of business refers to any document, which is to be considered at the meeting, the time and place where such document can be inspected shall be specified in the statement under sub-section (*1*).

(*4*) Where as a result of the non-disclosure or insufficient disclosure in any statement referred to in sub-section (*1*), being made by a promoter, director, manager, if any, or other key managerial personnel, any benefit which accrues to such promoter, director, manager or other key managerial personnel or their relatives, either directly or indirectly, the promoter, director, manager or other key managerial personnel, as the case may be, shall hold such benefit in trust for the company, and shall, without prejudice to any other action being taken against him under this Act or under any other law for the time being in force, be liable to compensate the company to the extent of the benefit received by him.

(*5*) If any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel who is in default shall be punishable with fine which may extend to fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is more.

103. Quorum for meetings.

(*1*) Unless the articles of the company provide for a larger number,—

(*a*) in case of a public company,—

(*i*) five members personally present if the number of members as on the date of meeting is not more than one thousand;

(*ii*) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand;

(*iii*) thirty members personally present if the number of members as on the date of the meeting exceeds five thousand;

(*b*) in the case of a private company, two members personally present, shall be the quorum for a meeting of the company.

(*2*) If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company—

(*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:

Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under clause (*a*), the company shall give not less than three days notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

(*3*) 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.

104. Chairman of meetings.

(*1*) Unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the Chairman thereof on a show of hands.

(*2*) If a poll is demanded on the election of the Chairman, it shall be taken forthwith in accordance with the provisions of this Act and the Chairman elected on a show of hands under sub-section (*1*) shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of the poll, and such other person shall be the Chairman for the rest of the meeting.

105. Proxies.

(*1*) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf:

Provided that a proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll:

Provided further that, unless the articles of a company otherwise provide, this subsection shall not apply in the case of a company not having a share capital:

Provided also that the Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy:

Provided also that a person appointed as proxy shall act on behalf of such member or number of members not exceeding fifty and such number of shares as may be prescribed.

(*2*) In every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member.

(*3*) If default is made in complying with sub-section (*2*), every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees.

(*4*) Any provision contained in the articles of a company which specifies or requires a longer period than forty-eight hours before a meeting of the company, for depositing with the company or any other person any instrument appointing a proxy or any other document necessary to show the validity or otherwise relating to the appointment of a proxy in order that the appointment may be effective at such meeting, shall have effect as if a period of forty-eight hours had been specified in or required by such provision for such deposit.

(*5*) If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to one lakh rupees:

Provided that an officer shall not be punishable under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(*6*) The instrument appointing a proxy shall—

(*a*) be in writing; and

(*b*) be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.

(*7*) An instrument appointing a proxy, if in the form as may be prescribed, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company.

(*8*) Every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the

company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

106. Restriction on voting rights.

(*1*) Notwithstanding anything contained in this Act, the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.

(*2*) A company shall not, except on the grounds specified in sub-section (*1*), prohibit any member from exercising his voting right on any other ground.

(*3*) On a poll taken at a meeting of a company, a member entitled to more than one vote, or his proxy, where allowed, or other person entitled to vote for him, as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses.

107. Voting by show of hands.

(*1*) At any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 109 or the voting is carried out electronically, be decided on a show of hands.

(*2*) A declaration by the Chairman of the meeting of the passing of a resolution or otherwise by show of hands under sub-section (*1*) and an entry to that effect in the books containing the minutes of the meeting of the company shall be conclusive evidence of the fact of passing of such resolution or otherwise.

108. Voting through electronic means.

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

109. Demand for poll.

(*1*) Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf,—

(*a*) in the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and

(*b*) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power.

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

(*3*) A poll demanded for adjournment of the meeting or appointment of Chairman of the meeting shall be taken forthwith.

(*4*) A poll demanded on any question other than adjournment of the meeting or appointment of Chairman shall be taken at such time, not being later than forty-eight hours from the time when the demand was made, as the Chairman of the meeting may direct.

(*5*) Where a poll is to be taken, the Chairman of the meeting shall appoint such number of persons, as he deems necessary, to scrutinise the poll process and votes given on the poll and to report thereon to him in the manner as may be prescribed.

(*6*) Subject to the provisions of this section, the Chairman of the meeting shall have power to regulate the manner in which the poll shall be taken.

(*7*) The result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken.

110. Postal ballot.

(*1*) Notwithstanding anything contained in this Act, a company—

(*a*) shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot; and

(*b*) may, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot, in such manner as may be prescribed, instead of transacting such business at a general meeting.

(*2*) If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

111. Circulation of members' resolution.

(*1*) A company shall, on requisition in writing of such number of members, as required in section 100,—

(*a*) give notice to members of any resolution which may properly be moved and is intended to be moved at a meeting; and

(*b*) circulate to members any statement with respect to the matters referred to in proposed resolution or business to be dealt with at that meeting.

(*2*) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless—

(*a*) a copy of the requisition signed by the requisitionists (or two or more copies which, between them, contain the signatures of all the requisitionists) is deposited at the registered office of the company,—

(*i*) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting;

(*ii*) in the case of any other requisition, not less than two weeks before the meeting; and

(*b*) there is deposited or tendered with the requisition, a sum reasonably sufficient to meet the company's expenses in giving effect thereto:

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called on a date within six weeks after the copy has been deposited, the copy, although not deposited within the time required by this sub-section, shall be deemed to have been properly deposited for the purposes thereof.

(*3*) The company shall not be bound to circulate any statement as required by clause (*b*) of sub-section (*1*), if on the application either of the company or of any other person who claims to be aggrieved, the Central Government, by order, declares that the rights conferred by this section are being abused to secure needless publicity for defamatory matter.

(*4*) An order made under sub-section (*3*) may also direct that the cost incurred by the company by virtue of this section shall be paid to the company by the requisitionists, notwithstanding that they are not parties to the application.

(*5*) If any default is made in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees.

112. Representation of President and Governors in meetings.

(*1*) The President of India or the Governor of a State, if he is a member of a company, may appoint such person as he thinks fit to act as his representative at any meeting of the company or at any meeting of any class of members of the company.

(*2*) A person appointed to act under sub-section (*1*) shall, for the purposes of this Act, be deemed to be a member of such a company and shall be entitled to exercise the same rights and powers, including the right to vote by proxy and postal ballot, as the President or, as the case may be, the Governor could exercise as a member of the company.

113. Representation of corporations at meeting of companies and of creditors.

(*1*) A body corporate, whether a company within the meaning of this Act or not, may, —

(*a*) if it is a member of a company within the meaning of this Act, by resolution of its Board of Directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the company, or at any meeting of any class of members of the company;

(*b*) if it is a creditor, including a holder of debentures, of a company within the meaning of this Act, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(*2*) A person authorised by resolution under sub-section (*1*) shall be entitled to exercise the same rights and powers, including the right to vote by proxy and by postal ballot, on behalf of the body corporate which he represents as that body could exercise if it were an individual member, creditor or holder of debentures of the company.

114. Ordinary and special resolutions.

(*1*) A resolution shall be an ordinary resolution if the notice required under this Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote, if any, of the Chairman, by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any, cast against the resolution by members, so entitled and voting.

(*2*) A resolution shall be a special resolution when—

(*a*) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;

(*b*) the notice required under this Act has been duly given; and

(*c*) the votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than

three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

115. Resolutions requiring special notice.

Where, by any provision contained in this Act or in the articles of a company, special notice is required of any resolution, notice of the intention to move such resolution shall be given to the company by such number of members holding not less than one per cent. of total voting power or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up and the company shall give its members notice of the resolution in such manner as may be prescribed.

116. Resolutions 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 all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

117. Resolutions and agreements to be filed.

(*1*) A copy of every resolution or any agreement, in respect of matters specified in sub-section (*3*) together with the explanatory statement under section 102, if any, annexed to the notice calling the meeting in which the resolution is proposed, shall be filed with the Registrar within thirty days of the passing or making thereof in such manner and with such fees as may be prescribed within the time specified under section 403:

Provided that the copy of every resolution which has the effect of altering the articles and the copy of every agreement referred to in sub-section (*3*) shall be embodied in or annexed to every copy of the articles issued after passing of the resolution or making of the agreement.

(*2*) If a company fails to file the resolution or the agreement under sub-section (*1*) before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default, including liquidator of the company, if any, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(*3*) The provisions of this section shall apply to—

(*a*) special resolutions;

(*b*) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;

(*c*) any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director;

(*d*) resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and

all resolutions or agreements which effectively bind such class of members though not agreed to by all those members;

(*e*) resolutions passed by a company according consent to the exercise by its Board of Directors of any of the powers under clause (*a*) and clause (*c*) of sub-section (*1*) of section 180;

(*f*) resolutions requiring a company to be wound up voluntarily passed in pursuance of section 304;

(*g*) resolutions passed in pursuance of sub-section (*3*) of section 179; and (*h*) any other resolution or agreement as may be prescribed and placed in the public domain.

118. Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot.

(*1*) Every company shall cause minutes of the proceedings of every general meeting of any class of shareholders or creditors, and every resolution passed by postal ballot and every meeting of its Board of Directors or of every committee of the Board, to be prepared and signed in such manner as may be prescribed and kept within thirty days of the conclusion of every such meeting concerned, or passing of resolution by postal ballot in books kept for that purpose with their pages consecutively numbered.

(*2*) The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat.

(*3*) All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting.

(*4*) In the case of a meeting of the Board of Directors or of a committee of the Board, 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 shall not be included in the minutes, 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 Chairman shall exercise absolute discretion in regard to the inclusion or noninclusion of any matter in the minutes on the grounds specified in sub-section (*5*).

(*7*) The minutes kept in accordance with the provisions of this section shall be evidence of the proceedings recorded therein.

(*8*) Where the minutes have been kept in accordance with sub-section (*1*) then, until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and the resolutions passed by postal ballot to have been duly passed and in particular, all appointments of directors, key managerial personnel, auditors or company secretary in practice, shall be deemed to be valid.

(*9*) No document purporting to be a report of the proceedings of any general meeting of a company shall be circulated or advertised at the expense of the company, unless it includes the matters required by this section to be contained in the minutes of the proceedings of such meeting.

(*10*) Every company shall observe secretarial standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980, and approved as such by the Central Government.

(*11*) If any default is made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.

(*12*) If a person is found guilty of tampering with the minutes of the proceedings of meeting, he shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

119. Inspection of minute-books of general meeting.

(*1*) The books containing the minutes of the proceedings of any general meeting of a company or of a resolution passed by postal ballot, shall—

(*a*) be kept at the registered office of the company; and

(*b*) be open, during business hours, to the inspection by any member without charge, subject to such reasonable restrictions as the company may, by its articles or in general meeting, impose, so, however, that not less than two hours in each business day are allowed for inspection.

(*2*) Any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, and on payment of such fees as may be prescribed, with a copy of any minutes referred to in sub-section (*1*).

(*3*) If any inspection under sub-section (*1*) is refused, or if any copy required under sub-section (*2*) is not furnished within the time specified therein, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for each such refusal or default, as the case may be.

(*4*) In the case of any such refusal or default, the Tribunal may, without prejudice to any action being taken under sub-section (*3*), by order, direct an immediate inspection of the minute-books or direct that the copy required shall forthwith be sent to the person requiring it.

120. Maintenance and inspection of documents in electronic form.

Without prejudice to any other provisions of this Act, any document, record, register, minutes, etc.,—

(*a*) required to be kept by a company; or

(*b*) allowed to be inspected or copies to be given to any person by a company under this Act, may be kept or inspected or copies given, as the case may be, in electronic form in such form and manner as may be prescribed.

121. Report on annual general meeting.

(*1*) Every listed public company shall prepare in the prescribed manner a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of this Act and the rules made thereunder.

(*2*) The company shall file with the Registrar a copy of the report referred to in subsection (*1*) within thirty days of the conclusion of the annual general meeting with such fees as may be prescribed, or with such additional fees as may be prescribed, within the time as specified, under section 403.

(*3*) If the company fails to file the report under sub-section (*2*) before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

122. Applicability of this Chapter to One Person Company

(*1*) The provisions of section 98 and sections 100 to 111 (both inclusive) shall not apply to a One Person Company.

(*2*) The ordinary businesses as mentioned under clause (*a*) of sub-section (*2*) of section 102 which a company, other than a One Person Company, is required to transact at its annual general meeting, shall be transacted, in case of One Person Company, as provided in sub-section (*3*).

(*3*) For the purposes of section 114, any business which is required to be transacted at an annual general meeting or other general meeting of a company by means of an ordinary or special resolution, it shall be sufficient if, in case of One Person Company, the resolution is communicated by the member to the company and entered in the minutes-book required to be maintained under section 118 and signed and dated by the member and such date shall be deemed to be the date of the meeting for all the purposes under this Act.

(*4*) Notwithstanding anything in this Act, where there is only one director on the Board of Director of a One Person Company, any business which is required to be transacted at the meeting of the Board of Directors of a company, it shall be sufficient if, in case of such One Person Company, the resolution by such director is entered in the minutes-book required to be maintained under section 118 and signed and dated by such director and such date shall be deemed to be the date of the meeting of the Board of Directors for all the purposes under this Act.

Rules for Chapter VII

Companies (Management and Administration) Rules, 2014

In exercise of the powers conferred under sub-section (1) of section 88, sub-section (4) of section 88, sub-section (1) of section 89, sub-section (2) section 89, sub-section (6) of section 89, sub-section (1) of section 91, sub-section (2) of section 92, sub-section (3) of section 92, sub-section (2) of section 92, section 93, sub-section (1) of section 94, sub-section (4) of section 100, sub-section (2) of section 114, sections 102, 101, 105, 108, sub-section (5) of section 109, sections 112, 113, 110, sub-section (3) of section 186, section 115, sub-section (1) of section 117, sub-section (1) of section 118, sub-section (2) of section 119, section 120 and sub-section (1) of section 121, read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013) and in supersession of Companies (Central Government's) General Rules and Forms, 1956 or any other relevant rules prescribed under the Companies Act, 1956 (1 of 1956) on matters covered under these rules, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely: -

1. Short title and commencement.-

(1) These rules may be called the Companies (Management and Administration) Rules, 2014.

(2) They shall come into force on the 1st day of April, 2014.

2. Definitions.-

(1) In these rules, unless the context otherwise requires,

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "Annexure" means the Annexure to these Rules;

(c) "Fees" means the fees as specified in the Companies (Registration offices and fees) Rules, 2014;

(d) "Form" or an e-form means an form set forth in Annexure to these rules which shall be used for the matter to which it relates;

(e) "Regional Director" means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director;

(f) "section" means section of the Act;

(2) Words and expressions used in these rules but not defined and defined in the Act or in Companies (Specification of definitions details) Rules, 2014 shall have the meanings respectively assigned to them in the Act and of in the rules.

3. Register of members.-

(1) Every company limited by shares shall, from the date of its registration, maintain a register of its members in **Form No. MGT.1:**

Provided that in the case of existing companies, registered under the Companies Act, 1956, particulars shall be compiled within six months from the date of commencement of these rules.

(2) In the case of a company not having share capital, the register of members shall contain the following particulars, in respect of each member, namely:-

(a) name of the member; address (registered office address in case the member is a body corporate); e-mail address; Permanent Account Number or CIN; Unique Identification

Number, if any; Father's/Mother's/Spouse's name; Occupation; Status; Nationality; in case member is a minor, name of the guardian and the date of birth of the member; name and address of nominee;

(b) date of becoming member;
(c) date of cessation;
(d) amount of guarantee, if any;
(e) any other interest if any; and
(f) instructions, if any, given by the member with regard to sending of notices etc:

Provided that in the case of existing companies, registered under the Companies Act, 1956, particulars shall be compiled within six months from the date of commencement of these rules.

4. Register of debenture holders or any other security holders.-

Every company which issues or allots debentures or any other security shall maintain a separate register of debenture holders or security holders, as the case may be, for each type of debentures or other securities in **Form No.MGT.2.**

5. Maintenance of the Register of members etc. under section 88.-

Every company shall maintain the registers under clauses (a), (b) and (c) of sub-section (1) of section 88 in the following manner namely:-

(1) The entries in the registers maintained under section 88 shall be made within seven days after the Board of Directors or its duly constituted committee approves the allotment or transfer of shares, debentures or any other securities, as the case may be.

(2) The registers shall be maintained at the registered office of the company unless a special resolution is passed in a general meeting authorising the keeping of the register at any other place within the city, town or village in which the registered office is situated or any other place in India in which more than one-tenth of the total members entered in the register of members reside.

(3) Consequent upon any forfeiture, buy-back, reduction, sub-division, consolidation or cancellation of shares, issue of sweat equity shares, transmission of shares, shares issued under any scheme of arrangements, mergers, reconstitution or employees stock option scheme or any of such scheme provided under this Act or by issue of duplicate or new share certificates or new debenture or other security certificates, entry shall be made within seven days after approval by the Board or committee, in the register of members or in the respective registers, as the case may be.

(4) If any change occurs in the status of a member or debenture holder or any other security holder whether due to death or insolvency or change of name or due to transfer to Investor Education Protection Fund or due to any other reason, entries thereof explaining the change shall be made in the respective register.

(5) If any rectification is made in the register maintained under section 88 by the company pursuant to any order passed by the competent authority under the Act, the necessary reference of such order shall be indicated in the respective register.

(6) If any order is passed by any judicial or revenue authority or by Security and Exchange Board of India (SEBI) or Tribunal attaching the shares, debentures or other securities and giving directions for remittance of dividend or interest, the necessary reference of such order shall be indicated in the respective register.

(7) In case of companies whose securities are listed on a stock exchange in or outside India, the particulars of any pledge, charge, lien or hypothecation created by the promoters in respect of any securities of the company held by the promoter including the names of pledgee/pawnee and any revocation therein shall be entered in the register within fifteen days from such an event.

(8) If promoters of any listed company, which has formed a joint venture company with another company have pledged or hypthoticated or created charge or lien in respect of any security of the listed company in connection with such joint venture company, the particulars of such pledge, hypothecation, charge and lien shall be entered in the register members of the listed company within fifteen days from such an event.

6. Index of names to be included in Register.-

(1) Every register maintained under sub-section (1) of section 88 shall include an index of the names entered in the respective registers and the index shall, in respect of each folio, contain sufficient indication to enable the entries relating to that folio in the register to be readily found:
Provided that the maintenance of index is not necessary in case the number of members is less than fifty.

(2) The company shall make the necessary entries in the index simultaneously with the entry for allotment or transfer of any security in such Register.

7. Foreign register of members, debenture holders, other security holders or beneficial owners residing outside India.-

(1) A company which has share capital or which has issued debentures or any other security may, if so authorised by its articles, keep in any country outside India, a part of the register of members or as the case may be, of debenture holders or of any other security holders or of beneficial owners, resident in that country (hereafter in this rule referred to as the "foreign register").

(2) The company shall, within thirty days from the date of the opening of any foreign register, file with the Registrar notice of the situation of the office in Form No.**MGT.3** along with the fee where such register is kept; and in the event of any change in the situation of such office or of its discontinuance, shall, within thirty days from the date of such change or discontinuance, as the case may be, file notice in **Form No.MGT.3** with the Registrar of such change or discontinuance.

(3) A foreign register shall be deemed to be part of the company's register (hereafter in this rule referred to as the "principal register") of members or of debenture holders or of any other security holders or beneficial owners, as the case may be.

(4) The foreign register shall be maintained in the same format as the principal register.

(5) A foreign register shall be open to inspection and may be closed, and extracts may be taken there from and copies thereof may be required, in the same manner, *mutatis mutandis*, as is applicable to the principal register, except that the advertisement before closing the register shall be inserted in at least two newspapers circulating in the place wherein the foreign register is kept.

(6) If a foreign register is kept by a company in any country outside India, the decision of the appropriate competent authority in regard to the rectification of the register shall be binding.

(7) Entries in the foreign register maintained under sub-section (4) of section 88 shall be made simultaneously after the Board of Directors or its duly constituted committee approves the allotment or transfer of shares, debentures or any other securities, as the case may be.

(8) The company shall—

(a) transmit to its registered office in India a copy of every entry in any foreign register within fifteen days after the entry is made; and

(b) keep at such office a duplicate register of every foreign register duly entered up from time to time.

(9) Every such duplicate register shall, for all the purposes of this Act, be deemed to be part of the principal register.

(10) Subject to the provisions of section 88 and the rules made thereunder, with respect to duplicate registers, the shares or as the case may be, debentures or any other security, registered in any foreign register shall be distinguished from the shares or as the case may be, debentures or any other security, registered in the principal register and in every other foreign register; and no transaction with respect to any shares or as the case may be, debentures or any other security, registered in a foreign register shall, during the continuance of that registration, be registered in any other register.

(11) The company may discontinue the keeping of any foreign register; and thereupon all entries in that register shall be transferred to some other foreign register kept by the company outside India or to the principal register.

8. Authentication.-

(1) The entries in the registers maintained under section 88 and index included therein shall be authenticated by the company secretary of the company or by any other person authorised by the Board for the purpose, and the date of the board resolution authorising the same shall be mentioned.

(2) The entries in the foreign register shall be authenticated by the company secretary of the company or person authorised by the Board by appending his signature to each entry.

9. Declaration in respect of beneficial interest in any shares.-

(1) A person whose name is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares (hereinafter referred to as "the registered owner"), shall file with the company, a declaration to that effect in **Form No.MGT.4** in duplicate, within a period of thirty days from the date on which his name is entered in the register of members of such company:

Provided that where any change occurs in the beneficial interest in such shares, the registered owner shall, within a period of thirty days from the date of such change, make a declaration of such change to the company in **Form No.MGT.4** in duplicate.

(2) Every person holding and exempted from furnishing declaration or acquiring a beneficial interest in shares of a company not registered in his name (hereinafter referred to as "the beneficial owner") shall file with the company, a declaration disclosing such interest in **Form No. MGT.5** in duplicate, within thirty days after acquiring such beneficial interest in the shares of the company:

Provided that where any change occurs in the beneficial interest in such shares, the beneficial owner shall, within a period of thirty days from the date of such change, make a declaration of such change to the company in **Form No.MGT.5** in duplicate.

(3) Where any declaration under section 89 is received by the company, the company shall make a note of such declaration in the register of members and shall file, within a period of thirty days from the date of receipt of declaration by it, a return in **Form No.MGT.6** with the Registrar in respect of such declaration with fee.

10. Closure of register of members or debenture holders or other security holders.-

(1) A company closing the register of members or the register of debenture holders or the register of other security holders shall give at least seven days previous notice and in such manner, as may be specified by Securities and Exchange Board of India, if such company is a listed company or intends to get its securities listed, by advertisement at least once in a vernacular newspaper in the principal vernacular language of the district and having a wide circulation in the place where the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district and having wide circulation in the place where the registered office of the company is situated and publish the notice on the website as may be notified by the Central Government and on the website, if any, of the Company.

(2) The provisions contained in sub-rule (1) shall not be applicable to a private company provided that the notice has been served on all members of the private company not less than seven days prior to closure of the register of members or debenture holders or other security holders.

11. Annual Return-.

(1) Every company shall prepare its annual return in **Form No. MGT.7**.

(2) The annual return, filed by a listed company or a company having paid-up share capital of ten crore rupees or more or turnover of fifty crore rupees or more, shall be certified by a Company Secretary in practice and the certificate shall be in **Form No. MGT.8.**

12. Extract of annual return.-

(1) The extract of the annual return to be attached with the Board's Report shall be in **Form No. MGT.9.**

(2) A copy of the annual return shall be filed with the Registrar with such fee as may be specified for the purpose.

13. Return of changes in shareholding position of promoters and top ten shareholders.-

Every listed company shall file with the Registrar, a return in **Form No.MGT.10** along with the fee with respect to changes relating to either increase or decrease of two percent, or more in the shareholding position of promoters and top ten shareholders of the company in each case, either value or volume of the shares, within fifteen days of such change.

Explanation.- For the purpose of this sub-rule, the expression "change" means increase or decrease by two percent or more in the shareholding of each of the promoters and each of the top ten shareholders of the company.

14. Inspection of registers, returns etc.-

(1) The registers and indices maintained pursuant to section 88 and copies of returns prepared pursuant to section 92, shall be open for inspection during business hours, at such reasonable time on every working day as the board may decide, by any member, debenture holder, other security holder or beneficial owner without payment of fee and by any other person on payment of such fee as may be specified in the articles of association of the company but not exceeding fifty rupees for each inspection.

Explanation.- For the purposes of this sub-rule, reasonable time of not less than two hours on every working day shall be considered by the company.

(2) Any such member, debenture holder, security holder or beneficial owner or any other person may require a copy of any such register or entries therein or return on payment of such fee as may be specified in the articles of association of the company but not exceeding ten rupees for each page. Such copy or entries or return shall be supplied within seven days of deposit of such fee.

15. Preservation of register of members etc. and annual return.

(1) The register of members along with the index shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for such purpose; and

(2) The register of debenture holders or any other security holders along with the index shall be preserved for a period of eight years from the date of redemption of debentures or securities, as the case may be, and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for such purpose.

(3) Copies of all annual returns prepared under section 92 and copies of all certificates and documents required to be annexed thereto shall be preserved for a period of eight years from the date of filing with the Registrar.

(4) The foreign register of members shall be preserved permanently, unless it is discontinued and all the entries are transferred to any other foreign register or to the principal register. Foreign register of debenture holders or any other security holders shall be preserved for a period of eight years from the date of redemption of such debentures or securities.

(5) The foreign register shall be kept in the custody of the company secretary or person authorised by the Board.

(6) A copy of the proposed special resolution in advance to be filed with the registrar as required in accordance with first proviso of sub-section (1) of section 94, shall be filed with the Registrar, at least one day before the date of general meeting of the company in **Form No.MGT.14.**

16. Copies of the registers and annual return.-

Copies of the registers maintained under section 88 or entries therein and annual return filed under section 92 shall be furnished to any member, debenture-holder, other security holder or beneficial owner of the company or any other person on payment of such fee as may be specified in the Articles of Association of the company but not exceeding rupees ten for each page and such copy shall be supplied by the company within a period of seven days from the date of deposit of fee to the company.

17. Calling of Extraordinary general meeting by requistionists.-

(1) The members may requisition convening of an extraordinary general meeting in accordance with sub-section (4) of section 100, by providing such requisition in writing or through electronic mode at least clear twenty-one days prior to the proposed date of such extraordinary general meeting.

(2) The notice shall specify the place, date, day and hour of the meeting and shall contain the business to be transacted at the meeting.-

Explanation.- For the purposes of this sub-rule, it is here by clarified that requistionists should convene meeting at Registered office or in the same city or town where Registered office is situated and such meeting should be convened on working day.

(3) If the resolution is to be proposed as a special resolution, the notice shall be given as required by sub-section (2) of section 114.

(4) The notice shall be signed by all the requistionists or by a requistionists duly authorised in writing by all other requistionists on their behalf or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition.

(5) No explanatory statement as required under section 102 need be annexed to the notice of an extraordinary general meeting convened by the requistionists and the requistionists may disclose the reasons for the resolution(s) which they propose to move at the meeting.

(6) The notice of the meeting shall be given to those members whose names appear in the Register of members of the company within three days on which the requistionists deposit with the Company a valid requisition for calling an extraordinary general meeting.

(7) Where the meeting is not convened, the requistionists shall have a right to receive list of members together with their registered address and number of shares held and the company concerned is bound to give a list of members together with their registered address made as on twenty first day from the date of receipt of valid requisition together with such changes, if any, before the expiry of the forty-five days from the date of receipt of a valid requisition.

(8) The notice of the meeting shall be given by speed post or registered post or through electronic mode. Any accidental omission to give notice to, or the non-receipt of such notice by, any member shall not invalidate the proceedings of the meeting.

18. Notice of the meeting.-

(1) A company may give notice through electronic mode.
Explanation: For the purpose of this rule, the expression "electronic mode" shall mean any communication sent by a company through its authorized and secured computer programme which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the member.

(2) A notice may be sent through e-mail as a text or as an attachment to e-mail or as a notification providing electronic link or Uniform Resource Locator for accessing such notice.

(3) (i) The e-mail shall be addressed to the person entitled to receive such e-mail as per the records of the company or as provided by the depository:
Provided that the company shall provide an advance opportunity atleast once in a financial year, to the member to register his e-mail address and changes therein and such

request may be made by only those members who have not got their email id recorded or to update a fresh email id and not from the members whose e-mail ids are already registered.

(ii) The subject line in e-mail shall state the name of the company, notice of the type of meeting, place and the date on which the meeting is scheduled.

(iii) If notice is sent in the form of a non-editable attachment to e-mail, such attachment shall be in the Portable Document Format or in a non-editable format together with a 'link or instructions' for recipient for downloading relevant version of the software.

(iv) When notice or notifications of availability of notice are sent by e-mail, the company should ensure that it uses a system which produces confirmation of the total number of recipients e-mailed and a record of each recipient to whom the notice has been sent and copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained by or on behalf of the company as "proof of sending".

(v) The company's obligation shall be satisfied when it transmits the e-mail and the company shall not be held responsible for a failure in transmission beyond its control:

(vi) If a member entitled to receive notice fails to provide or update relevant e-mail address to the company, or to the depository participant as the case may be, the company shall not be in default for not delivering notice via e-mail.

(vii) The company may send e-mail through in-house facility or its registrar and transfer agent or authorise any third party agency providing bulk e-mail facility.

(viii) The notice made available on the electronic link or Uniform Resource Locator has to be readable, and the recipient should be able to obtain and retain copies and the company shall give the complete Uniform Resource Locator or address of the website and full details of how to access the document or information.

(ix) The notice of the general meeting of the company shall be simultaneously placed on the website of the company if any and on the website as may be notified by the Central Government.

Explanation.- For the purpose of this rule, it is hereby declared that the extra ordinary general meeting shall be held at a place within India.

19. Proxies.-

(1) A member of a company registered under section 8 shall not be entitled to appoint any other person as his proxy unless such other person is also a member of such company.

(2) A person can act as proxy on behalf of members not exceeding fifty and holding in the aggregate not more than ten percent of the total share capital of the company carrying voting rights:

Provided that a member holding more than ten percent, of the total share capital of the Company carrying voting rights may appoint a single person as proxy and such person shall not act as proxy for any other person or shareholder.

(3) The appointment of proxy shall be in the **Form No. MGT.11**.

20. Voting through electronic means.-

(1) Every listed company or a company having not less than one thousand shareholders, shall provide to its members facility to exercise their right to vote at general meetings by electronic means.

(2) A member may exercise his right to vote at any general meeting by electronic means and company may pass any resolution by electronic voting system in accordance with the provisions of this rule.

Explanation.- For the purposes of this rule.- (i) the expressions "voting by electronic means" or "electronic voting system" means a 'secured system' based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, such that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate 'cyber security';

(ii) the expression "secured system" means computer hardware, software, and procedure that –

(a) are reasonably secure from unauthorized access and misuse;

(b) provide a reasonable level of reliability and correct operation;

(c) are reasonably suited to performing the intended functions; and

(d) adhere to generally accepted security procedures.

(iii) the expression "Cyber security" means protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorised access, use, disclosures, disruption, modification or destruction.

(3) A company which opts to provide the facility to its members to exercise their votes at any general meeting by electronic voting system shall follow the following procedure, namely;

(i) the notices of the meeting shall be sent to all the members, auditors of the company, or directors either -

(a) by registered post or speed post ; or

(b) through electronic means like registered e-mail id;

(c) through courier service;

(ii) the notice shall also be placed on the website of the company, if any and of the agency forthwith after it is sent to the members;

(iii) the notice of the meeting shall clearly mention that the business may be transacted through electronic voting system and the company is providing facility for voting by electronic means;

(iv) the notice shall clearly indicate the process and manner for voting by electronic means and the time schedule including the time period during which the votes may be cast and shall also provide the login ID and create a facility for generating password and for keeping security and casting of vote in a secure manner;

(v) the company shall cause an advertisement to be published, not less than five days before the date of beginning of the voting period, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having sent the notice of the meeting and specifying therein, *inter alia*, the following matters, namely:-

(a) statement that the business may be transacted by electronic voting;

(b) the date of completion of sending of notices;

(c) the date and time of commencement of voting through electronic means;

(d) the date and time of end of voting through electronic means;

(e) the statement that voting shall not be allowed beyond the said date and time;

(f) website address of the company and agency, if any, where notice of the meeting is displayed; and

(g) contact details of the person responsible to address the grievances connected with the electronic voting;

(vi) the e-voting shall remain open for not less than one day and not more than three days:

Provided that in all such cases, such voting period shall be completed three days prior to the date of the general meeting;

(vii) during the e-voting period, shareholders of the company, holding shares either in physical form or in dematerialized form, as on the record date, may cast their vote electronically:
Provided that once the vote on a resolution is cast by the shareholder, he shall not be allowed to change it subsequently.

(viii) at the end of the voting period, the portal where votes are cast shall forthwith be blocked.

(ix) the Board of directors shall appoint one scrutinizer, who may be chartered Accountant in practice, Cost Accountant in practice, or Company Secretary in practice or an advocate, but not in employment of the company and is a person of repute who, in the opinion of the Board can scrutinize the e-voting process in a fair and transparent manner:

Provided that the scrutinizer so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the e-voting system;

(x) the scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority;

(xi) the scrutinizer shall, within a period of not exceeding three working days from the date of conclusion of e-voting period, unblock the votes in the presence of at least two witnesses not in the employment of the company and make a scrutinizer's report of the votes cast in favour or against, if any, forthwith to the Chairman;

(xii) the scrutinizer shall maintain a register either manually or electronically to record the assent or dissent, received, mentioning the particulars of name, address, folio number or client ID of the shareholders, number of shares held by them, nominal value of such shares and whether the shares have differential voting rights;

(xiii) the register and all other papers relating to electronic voting shall remain in the safe custody of the scrutinizer until the chairman considers, approves and signs the minutes and thereafter, the scrutinizer shall return the register and other related papers to the company.

(xiv) the results declared along with the scrutinizer's report shall be placed on the website of the company and on the website of the agency within two days of passing of the resolution at the relevant general meeting of members;

(xv) subject to receipt of sufficient votes, the resolution shall be deemed to be passed on the date of the relevant general meeting of members.

21. Manner in which the Chairman of meeting shall get the poll process scrutinised and report thereon.-

(1) The Chairman of a meeting shall ensure that-

(a) The Scrutinizers are provided with the Register of Members, specimen signatures of the members, Attendance Register and Register of Proxies.

(b) The Scrutinizers are provided with all the documents received by the Company pursuant to sections 105, 112 and section 113.
(c) The Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting; in case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio and the Polling paper shall be in **Form No. MGT.12.**
(d) The Scrutinizers shall keep a record of the polling papers received in response to poll, by initialing it.
(e) The Scrutinizers shall lock and seal an empty polling box in the presence of the members and proxies.
(f) The Scrutinizers shall open the Polling box in the presence of two persons as witnesses after the voting process is over.
(g) In case of ambiguity about the validity of a proxy, the Scrutinizers shall decide the validity in consultation with the Chairman.
(h) The Scrutinizers shall ensure that if a member who has appointed a proxy has voted in person, the proxy's vote shall be disregarded.
(i) The Scrutinizers shall count the votes cast on poll and prepare a report thereon addressed to the Chairman.
(j) Where voting is conducted by electronic means under the provisions of section 108 and rules made thereunder, the company shall provide all the necessary support, technical and otherwise, to the Scrutinizers in orderly conduct of the voting and counting the result thereof.
(k) The Scrutinizers' report shall state total votes cast, valid votes, votes in favour and against the resolution including the details of invalid polling papers and votes comprised therein.
(l) The Scrutinizers shall submit the Report to the Chairman who shall counter-sign the same.
(m) The Chairman shall declare the result of Voting on poll. The result may either be announced by him or a person authorized by him in writing.

(2) The scrutinizers appointed for the poll, shall submit a report to the Chairman of the meeting in **Form No. MGT.13** and the report shall be signed by the scrutinizer and, in case there is more than one scrutinizer by all the scrutinizer, and the same shall be submitted by them to the Chairman of the meeting within seven days from the date the poll is taken.

22. Procedure to be followed for conducting business through postal ballot.-

(1) Where a company is required or decides to pass any resolution by way of postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons therefor and requesting them to send their assent or dissent in writing on a postal ballot because postal ballot means voting by post or through electronic means within a period of thirty days from the date of dispatch of the notice.

(2) The notice shall be sent either (a) by Registered Post or speed post, or (b) through electronic means like registered e-mail id or (c) through courier service for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period of thirty days.

(3) An advertisement shall be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company

is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having dispatched the ballot papers and specifying therein, *inter alia*, the following matters, namely:-

(a) a statement to the effect that the business is to be transacted by postal ballot which includes voting by electronic means;
(b) the date of completion of dispatch of notices;
(c) the date of commencement of voting;
(d) the date of end of voting;
(e) the statement that any postal ballot received from the member beyond the said date will not be valid and voting whether by post or by electronic means shall not be allowed beyond the said date;
(f) a statement to the effect that members, who have not received postal ballot forms may apply to the company and obtain a duplicate thereof; and
(g) contact details of the person responsible to address the grievances connected with the voting by postal ballot including voting by electronic means.

(4) The notice of the postal ballot shall also be placed on the website of the company forthwith after the notice is sent to the members and such notice shall remain on such website till the last date for receipt of the postal ballots from the members.
(5) The Board of directors shall appoint one scrutinizer, who is not in employment of the company and who, in the opinion of the Board can conduct the postal ballot voting process in a fair and transparent manner.
(6) The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority.
(7) If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot including voting by electronic means, it shall be deemed to have been duly passed at a general meeting convened in that behalf.
(8) Postal ballot received back from the shareholders shall be kept in the safe custody of the scrutinizer and after the receipt of assent or dissent of the shareholder in writing on a postal ballot, no person shall deface or destroy the ballot paper or declare the identity of the shareholder.
(9) The scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots but not later than seven days thereof;
(10) The scrutinizer shall maintain a register either manually or electronically to record their assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the shareholder, number of shares held by them, nominal value of such shares, whether the shares have differential voting rights, if any, details of postal ballots which are received in defaced or mutilated form and postal ballot forms which are invalid.
(11) The postal ballot and all other papers relating to postal ballot including voting by electronic means, shall be under the safe custody of the scrutinizer till the chairman considers, approves and signs the minutes and thereafter, the scrutinizer shall return the ballot papers and other related papers or register to the company who shall preserve such ballot papers and other related papers or register safely.
(12) The assent or dissent received after thirty days from the date of issue of notice shall be treated as if reply from the member has not been received.
(13) The results shall be declared by placing it, along with the scrutinizer's report, on the website of the company.

(14) The resolution shall be deemed to be passed on the date of at a meeting convened in that behalf.

(15) The provisions of rule 20 regarding voting by electronic means shall apply, as far as applicable, *mutatis mutandis* to this rule in respect of the voting by electronic means.

(16) pursuant to clause (a) of sub-section (1) of section 110, the following items of business shall be transacted only by means of voting through a postal ballot-

(a) alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum;

(b) alteration of articles of association in relation to insertion or removal of provisions which, under sub-section (68) of section 2, are required to be included in the articles of a company in order to constitute it a private company;

(c) change in place of registered office outside the local limits of any city, town or village as specified in sub-section (5) of section 12;

(d) change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised under sub-section (8) of section 13;

(e) issue of shares with differential rights as to voting or dividend or otherwise under sub-clause (ii) of clause (a) of section 43;

(f) variation in the rights attached to a class of shares or debentures or other securities as specified under section 48;

(g) buy-back of shares by a company under sub-section (1) of section 68;

(h) election of a director under section 151 of the Act;

(i) sale of the whole or substantially the whole of an undertaking of a company as specified under sub-clause (a) of sub-section (1) of section 180;

(j) giving loans or extending guarantee or providing security in excess of the limit specified under sub-section (3) of section 186:

Provided that One Person Company and other companies having members upto two hundred are not required to transact any business through postal ballot.

23. Special Notice.-

(1) A special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than five lakh rupees has been paid up on the date of the notice.

(2) The notice referred to in sub-rule (1) shall be sent by members to the company not earlier than three months but at least fourteen days before the date of the meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.

(3) The company shall immediately after receipt of the notice, give its members notice of the resolution at least seven days before the meeting , exclusive of the day of dispatch of notice and day of the meeting , in the same manner as it gives notice of any general meetings.

(3) Where it is not practicable to give the notice in the same manner as it gives notice of any general meetings, the notice shall be published in English language in English newspaper and in vernacular language in a vernacular newspaper, both having wide circulation in the

State where the registered office of the Company is situated and such notice shall also be posted on the website, if any, of the Company.

(4) The notice shall be published at least seven days before the meeting, exclusive of the day of publication of the notice and day of the meeting.

24. Resolutions and agreements to be filed.-

A copy of every resolution or any agreement required to be filed, together with the explanatory statement under section 102, if any, shall be filed with the Registrar in **Form No. MGT.14** along with the fee.

25. Minutes of proceedings of general meeting, meeting of Board of Directors and other meetings and resolutions passed by postal ballot.-

(1) (a) A distinct minute book shall be maintained for each type of meeting namely:-

(i) general meetings of the members;

(ii) meetings of the creditors

(iii) meetings of the Board; and

(iv) meetings of each of the committees of the Board.

Explanation.- For the proposes of this sub-rule, resolutions passed by postal ballot shall be recorded in the minute book of general meetings as if it has been deemed to be passed in the general meeting.

(b) (i) The minutes of proceedings of each meeting shall be entered in the books maintained for that purpose along with the date of such entry within thirty days of the conclusion of the meeting.

(ii) In case of every resolution passed by postal ballot, a brief report on the postal ballot conducted including the resolution proposed, the result of the voting thereon and the summary of the scrutinizer's report shall be entered in the minutes book of general meetings along with the date of such entry within thirty days from the date of passing of resolution.

(d) Each page of every such book shall be initialed or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed –

(i) in the case of minutes of proceedings of a meeting of the Board or of a committee thereof, by the chairman of the said meeting or the chairman of the next succeeding meeting;

(ii) in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorised by the Board for the purpose;

(iii) In case of every resolution passed by postal ballot, by the chairman of the Board within the aforesaid period of thirty days or in the event of there being no chairman of the Board or the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

(e) The minute books of general meetings, shall be kept at the registered office of the company and shall be preserved permanently and kept in the custody of the company secretary or any director duly authorised by the board or at such other place as may be approved by the Board.

(f) The minutes books of the Board and committee meetings shall be preserved permanently and kept in the custody of the company secretary of the company or any director duly authorized by the Board for the purpose and shall be kept in the registered office or such place as Board may decide.

26. Copy of minute book of general meeting.-

Any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, with a copy of any minutes of any general meeting, on payment of such sum as may be specified in the articles of association of the company, but not exceeding a sum of ten rupees for each page or part of any page:

Provided that a member who has made a request for provision of soft copy in respect of minutes of any previous general meetings held during a period immediately preceding three financial years shall be entitled to be furnished, with the same free of cost.

27. Maintenance and inspection of document in electronic form.-

(1) Every listed company or a company having not less than one thousand shareholders, debenture holders and other security holders, shall maintain its records, as required to be maintained under the Act or rules made there under, in electronic form.

Explanation.- For the purposes of this sub-rule, it is hereby clarified that in case of existing companies, data shall be converted from physical mode to electronic mode within six months from the date of notification of provisions of section 120 of the Act.

(2) The records in electronic form shall be maintained in such manner as the Board of directors of the company may think fit,

Provided that -

(a) the records are maintained in the same formats and in accordance with all other requirements as provided in the Act or the rules made there under;

(b) the information as required under the provisions of the Act or the rules made there under should be adequately recorded for future reference;

(c) the records must be capable of being readable, retrievable and reproducible in printed form;

(d) the records are capable of being dated and signed digitally wherever it is required under the provisions of the Act or the rules made there under;

(e) the records, once dated and signed digitally, shall not be capable of being edited or altered;

(f) the records shall be capable of being updated, according to the provisions of the Act or the rules made there under, and the date of updating shall be capable of being recorded on every updating.

Explanation: - For the purpose of this rule, the term "records" means any register, index, agreement, memorandum, minutes or any other document required by the Act or the rules made there under to be kept by a company.

28. Security of records maintained in electronic form.- (1) The Managing Director, Company Secretary or any other director or officer of the company as the Board may decide shall be responsible for the maintenance and security of electronic records.

(2) The person who is responsible for the maintenance and security of electronic records shall-

(a) provide adequate protection against unauthorized access, alteration or tampering of records;

(b) ensure against loss of the records as a result of damage to, or failure of the media on which the records are maintained;

(c) ensure that the signatory of electronic records does not repudiate the signed record as not genuine;

(d) ensure that computer systems, software and hardware are adequately secured and validated to ensure their accuracy, reliability and consistent intended performance;

(e) ensure that the computer systems can discern invalid and altered records;

(f) ensure that records are accurate, accessible, and capable of being reproduced for reference later;

(g) ensure that the records are at all times capable of being retrieved to a readable and printable form;

(h) ensure that records are kept in a non-rewriteable and non-erasable format like pdf. version or some other version which cannot be altered or tampered;

(i) ensure that at least one backup, taken at a periodicity of not exceeding one day, are kept of the updated records kept in electronic form, every backup is authenticated and dated and such backups shall be securely kept at such places as may be decided by the Board;

(j) limit the access to the records to the managing director, company secretary or any other director or officer or persons performing work of the company as may be authorized by the Board in this behalf;

(k) ensure that any reproduction of non-electronic original records in electronic form is complete, authentic, true and legible when retrieved;

(l) arrange and index the records in a way that permits easy location, access and retrieval of any particular record; and

(m) take necessary steps to ensure security, integrity and confidentiality of records.

29. Inspection and copies of records maintained in electronic form.-

Where a company maintains its records in electronic form, any duty imposed by the Act or rules made there under to make those records available for inspection or to provide copies of the whole or a part of those records, shall be construed as a duty to make the records available for inspection in electronic form or to provide copies of those records containing a clear reproduction of the whole or part thereof, as the case may be on payment of not exceeding ten rupees per page.

30. Penalty

If any default is made in compliance with any of the provisions of this rule, the company and every officers or such other person who is in default shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues.

31. Report on Annual General Meeting.-

(1) The report in pursuance of the provisions of sub-section (1) of section 121 shall be prepared in the following manner, namely:-

(a) the report under this section shall be prepared in addition to the minutes of the general meeting;
(b) the report shall be signed and dated by the Chairman of the meeting or in case of his inability to sign, by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company;
(c) the report shall contain the details in respect of the following, namely:-
(i) the day, date, hour and venue of the annual general meeting;
(ii) confirmation with respect to appointment of Chairman of the meeting;
(iii) number of members attending the meeting;
(iv) confirmation of quorum;
(v) confirmation with respect to compliance of the Act and the Rules, secretarial standards made there under with respect to calling, convening and conducting the meeting;
(vi) business transacted at the meeting and result thereof;
(vii) particulars with respect to any adjournment, postponement of meeting, change in venue; and
(viii) any other points relevant for inclusion in the report.

(d) the Report shall contain fair and correct summary of the proceedings of the meeting.

(2) The copy of the report prepared in pursuance of sub-section (1) of section 121 and sub-rule (1), shall be filed with the Registrar in Form No. MGT.15 within thirty days of the conclusion of the annual general meeting along with the fee.

CHAPTER VIII

DECLARATION AND PAYMENT OF DIVIDEND

123. Declaration of dividend.

(*1*) No dividend shall be declared or paid by a company for any financial year except—

(*a*) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (*2*), or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or out of both; or

(*b*) out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government:

Provided that a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company:

Provided further that where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf:

Provided also that no dividend shall be declared or paid by a company from its reserves other than free reserves.

(*2*) For the purposes of clause (*a*) of sub-section (*1*), depreciation shall be provided in accordance with the provisions of Schedule II.

(*3*) The Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared:

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

(*4*) The amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within five days from the date of declaration of such dividend.

(*5*) No dividend shall be paid by a company in respect of any share therein except to the registered shareholder of such share or to his order or to his banker and shall not be payable except in cash:

Provided that nothing in this sub-section shall be deemed to prohibit the capitalization of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or

paying up any amount for the time being unpaid on any shares held by the members of the company:

Provided further that any dividend payable in cash may be paid by cheque or warrant or in any electronic mode to the shareholder entitled to the payment of the dividend.

(*6*) A company which fails to comply with the provisions of sections 73 and 74 shall not, so long as such failure continues, declare any dividend on its equity shares.

124. Unpaid Dividend Account.

(*1*) Where a dividend has been declared by a company but has not been paid or claimed within thirty days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.

(*2*) The company shall, within a period of ninety days of making any transfer of an amount under sub-section (*1*) to the Unpaid Dividend Account, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the website of the company, if any, and also on any other website approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.

(*3*) If any default is made in transferring the total amount referred to in sub-section (*1*) or any part thereof to the Unpaid Dividend Account of the company, it shall pay, from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of twelve per cent. per annum and the interest accruing on such amount shall enure to the benefit of the members of the company in proportion to the amount remaining unpaid to them.

(*4*) Any person claiming to be entitled to any money transferred under sub-section (*1*) to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed.

(*5*) Any money transferred to the Unpaid Dividend Account of a company in pursuance of this section which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company along with interest accrued, if any, thereon to the Fund established under sub-section (*1*) of section 125 and the company shall send a statement in the prescribed form of the details of such transfer to the authority which administers the said Fund and that authority shall issue a receipt to the company as evidence of such transfer.

(*6*) All shares in respect of which unpaid or unclaimed dividend has been transferred under sub-section (*5*) shall also be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed:

Provided that any claimant of shares transferred above shall be entitled to claim the transfer of shares from Investor Education and Protection Fund in accordance with such procedure and on submission of such documents as may be prescribed.

(*7*) If a company fails to comply with any of the requirements of this section, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall

be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

125. Investor Education and Protection Fund.

(*1*) The Central Government shall establish a Fund to be called the Investor Education and Protection Fund (herein referred to as the Fund).

(*2*) There shall be credited to the Fund—

(*a*) the amount given by the Central Government by way of grants after due appropriation made by Parliament by law in this behalf for being utilised for the purposes of the Fund;

(*b*) donations given to the Fund by the Central Government, State Governments, companies or any other institution for the purposes of the Fund;

(*c*) the amount in the Unpaid Dividend Account of companies transferred to the Fund under sub-section (*5*) of section 124;

(*d*) the amount in the general revenue account of the Central Government which had been transferred to that account under sub-section (*5*) of section 205A of the Companies Act, 1956, as it stood immediately before the commencement of the Companies (Amendment) Act, 1999, and remaining unpaid or unclaimed on the commencement of this Act;

(*e*) the amount lying in the Investor Education and Protection Fund under section 205C of the 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:

Provided that no such amount referred to in clauses (*h*) to (*j*) shall form part of the Fund unless such amount has remained unclaimed and unpaid for a period of seven years from the date it became due for payment.

(*3*) The Fund shall be utilised for—

(*a*) the refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;

(*b*) promotion of investors' education, awareness and protection;

(*c*) distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement;

(*d*) reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and

(*e*) any other purpose incidental thereto, in accordance with such rules as may be prescribed:

Provided that the person whose amounts referred to in clauses (*a*) to (*d*) of sub-section (*2*) of section 205C transferred to Investor Education and Protection Fund, after the expiry of the period of seven years as per provisions of the Companies Act, 1956, shall be entitled to get refund out of the Fund in respect of such claims in accordance with rules made under this section.

Explanation.—The disgorged amount refers to the amount received through disgorgement or disposal of securities.

(*4*) Any person claiming to be entitled to the amount referred in sub-section (*2*) may apply to the authority constituted under sub-section (*5*) for the payment of the money claimed.

(*5*) The Central Government shall constitute, by notification, an authority for administration of the Fund consisting of a chairperson and such other members, not exceeding seven and a chief executive officer, as the Central Government may appoint.

(*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 may provide to the authority such offices, officers, employees and other resources in accordance with such rules as may be prescribed.

(*8*) The authority shall administer the Fund and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed after consultation with the Comptroller and Auditor-General of India.

(*9*) It shall be competent for the authority constituted under sub-section (*5*) to spend money out of the Fund for carrying out the objects specified in sub-section (*3*).

(*10*) The accounts of the Fund shall be audited by the Comptroller and Auditor- General of India at such intervals as may be specified by him and such audited accounts together with the audit report thereon shall be forwarded annually by the authority to the Central Government.

(*11*) The authority shall prepare in such form and at such time for each financial year as may be prescribed its annual report giving a full account of its activities during the financial year and forward a copy thereof to the Central Government and the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament.

126. Right to dividend, rights shares and bonus shares to be held in abeyance pending registration of transfer of shares.

Where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, it shall, notwithstanding anything contained in any other provision of this Act,—

(*a*) transfer the dividend in relation to such shares to the Unpaid Dividend Account referred to in section 124 unless the company is authorised by the registered holder of such shares in writing to pay such dividend to the transferee specified in such instrument of transfer; and

(*b*) keep in abeyance in relation to such shares, any offer of rights shares under clause (*a*) of sub-section (*1*) of section 62 and any issue of fully paid-up bonus shares in pursuance of first proviso to sub-section (*5*) of section 123.

127. Punishment for failure to distribute dividends.

Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent. per annum during the period for which such default continues:

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.

Rules for Chapter VIII

Companies (Declaration and Payment of Dividend) Rules, 2014

In exercise of the powers conferred under sub-section (1) of section 123 read with section 469 of the Companies Act, 2013 (18 of 2013) and in supersession of the Companies (Central Government's) General Rules and Forms, 1959 and other Rules prescribed under Companies Act, 1956 on matters covered under these rules, except as respects things done or omitted to be done before such suppression, the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.- (1) These rules may be called the Companies (Declaration and Payment of Dividend) Rules, 2014.

(2) They shall come into force on the 1st day of April, 2014.

2. Definitions.- (1) In these rules, unless the context otherwise requires, -

(a) "Act" means the Companies Act, 2013;

(b) "section" means section of the Act.

(2) Words and expressions used in these rules but not defined and defined in the Act or in the Companies (Specification of Definitions Details) Rules, 2014, shall have the same meanings respectively assigned to them in the Act or in the said Rules.

3. Declaration of dividend out of reserves.- In the event of inadequacy or absence of profits in any year, a company may declare dividend out of surplus subject to the fulfillment of the following conditions, namely:-

(1) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the three years immediately preceding that year:

Provided that this sub-rule shall not apply to a company, which has not declared any dividend in each of the three preceding financial year.

(2) The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

(3) The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.

(4) The balance of reserves after such withdrawal shall not fall below fifteen per cent of its paid up share capital as appearing in the latest audited financial statement.

(5) No company shall declare dividend unless carried over previous losses and depreciation not provided in previous year are set off against profit of the company of the current year the loss or depreciation, whichever is less, in previous years is set off against the profit of the company for the year for which dividend is declared or paid.

CHAPTER IX

ACCOUNTS OF COMPANIES

128. Books of account, etc., to be kept by company.

(*1*) Every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting:

Provided that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing giving the full address of that other place:

Provided further that the company may keep such books of account or other relevant papers in electronic mode in such manner as may be prescribed.

(*2*) Where a company has a branch office in India or outside India, it shall be deemed to have complied with the provisions of sub-section (*1*), if proper books of account relating to the transactions effected at the branch office are kept at that office and proper summarized returns periodically are sent by the branch office to the company at its registered office or the other place referred to in sub-section (*1*).

(*3*) The books of account and other books and papers maintained by the company within India shall be open for inspection at the registered office of the company or at such other place in India by any director during business hours, and in the case of financial information, if any, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director subject to such conditions as may be prescribed:

Provided that the inspection in respect of any subsidiary of the company shall be done only by the person authorised in this behalf by a resolution of the Board of Directors.

(*4*) Where an inspection is made under sub-section (*3*), the officers and other employees of the company shall give to the person making such inspection all assistance in connection with the inspection which the company may reasonably be expected to give.

(*5*) The books of account of every company relating to a period of not less than eight financial years immediately preceding a financial year, or where the company had been in existence for a period less than eight years, in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order:

Provided that where an investigation has been ordered in respect of the company under Chapter XIV, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.

(*6*) If the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of this section, contravenes such provisions, such managing director, whole-time director in charge of finance, Chief Financial officer or such other person of the company shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.

129. Financial statement.

(*1*) The financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III:

Provided that the items contained in such financial statements shall be in accordance with the accounting standards:

Provided further that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company:

Provided also that the financial statements shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose—-

(*a*) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938, or the Insurance Regulatory and Development Authority Act, 1999;

(*b*) in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949;

(*c*) in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 2003;

(*d*) in the case of a company governed by any other law for the time being in force, any matters which are not required to be disclosed by that law.

(*2*) At every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year.

(*3*) Where a company has one or more subsidiaries, it shall, in addition to financial statements provided under sub-section (*2*), prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (*2*):
Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in such form as may be prescribed:

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed.

Explanation.—For the purposes of this sub-section, the word "subsidiary" shall include associate company and joint venture.

(*4*) The provisions of this Act applicable to the preparation, adoption and audit of the financial statements of a holding company shall, *mutatis mutandis,* apply to the consolidated financial statements referred to in sub-section (*3*).

(*5*) Without prejudice to sub-section (*1*), where the financial statements of a company do not comply with the accounting standards referred to in sub-section (*1*), the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation.

(*6*) The Central Government may, on its own or on an application by a class or classes of companies, by notification, exempt any class or classes of companies from complying with any of the requirements of this section or the rules made thereunder, if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.

(*7*) If a company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Explanation.—For the purposes of this section, except where the context otherwise requires, any reference to the financial statement shall include any notes annexed to or forming part of such financial statement, giving information required to be given and allowed to be given in the form of such notes under this Act.

130. Re-opening of accounts on court's or Tribunal's orders.

(*1*) A company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory regulatory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—

(*i*) the relevant earlier accounts were prepared in a fraudulent manner; or

(*ii*) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:

Provided that the court or the Tribunal, as the case may be, shall give notice to the Central Government, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned and shall take into consideration the representations, if any, made by that Government or the authorities, Securities and Exchange Board or the body or authority concerned before passing any order under this section.

(*2*) Without prejudice to the provisions contained in this Act the accounts so revised or re-cast under sub-section (*1*) shall be final.

131. Voluntary revision of financial statements or Board's report.

(*1*) If it appears to the directors of a company that—

(*a*) the financial statement of the company; or

(*b*) the report of the Board, do not comply with the provisions of section 129 or section 134 they may prepare revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining approval of the Tribunal on an application made by the company in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar:

Provided that the Tribunal shall give notice to the Central Government and the Income tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section:

Provided further that such revised financial statement or report shall not be prepared or filed more than once in a financial year:

Provided also that the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.

(*2*) Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to—

(*a*) the correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and

(*b*) the making of any necessary consequential alternation.

(*3*) The Central Government may make rules as to the application of the provisions of this Act in relation to revised financial statement or a revised director's report and such rules may, in particular—

(*a*) make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made;

(*b*) make provisions with respect to the functions of the company's auditor in relation to the revised financial statement or report;

(*c*) require the directors to take such steps as may be prescribed.

132. Constitution of National Financial Reporting Authority.

(*1*) The Central Government may, by notification, constitute a National Financial Reporting Authority to provide for matters relating to accounting and auditing standards under this Act.

(*2*) Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall—

(*a*) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;

(*b*) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;

(*c*) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and

(*d*) perform such other functions relating to clauses (*a*), (*b*) and (*c*) as may be prescribed.

(*3*) The National Financial Reporting Authority shall consist of a chairperson, who shall be a person of eminence and having expertise in accountancy, auditing, finance or law to be appointed by the Central Government and such other members not exceeding fifteen consisting of part-time and full-time members as may be prescribed:

Provided that the terms and conditions and the manner of appointment of the chairperson and members shall be such as may be prescribed:

Provided further that the chairperson and members shall make a declaration to the Central Government in the prescribed form regarding no conflict of interest or lack of independence in respect of his or their appointment:

Provided also that the chairperson and members, who are in full-time employment with National Financial Reporting Authority shall not be associated with any audit firm (including related consultancy firms) during the course of their appointment and two years after ceasing to hold such appointment.

(*4*) Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall—

(*a*) have the power to investigate, either *suo motu* or on a reference made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949:

Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section;

(*b*) have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

(*i*) discovery and production of books of account and other documents, at such place and at such time as may be specified by the National Financial Reporting Authority;

(*ii*) summoning and enforcing the attendance of persons and examining them on oath;

(*iii*) inspection of any books, registers and other documents of any person referred to in clause (*b*) at any place;

(*iv*) issuing commissions for examination of witnesses or documents;

(*c*) where professional or other misconduct is proved, have the power to make order for—

(*A*) imposing penalty of—

(*I*) not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and

(*II*) not less than ten lakh rupees, but which may extend to ten times of the fees received, in case of firms;

(*B*) debarring the member or the firm from engaging himself or itself from practice as member of the Institute of Chartered Accountant of India referred to in clause (*e*) of

sub-section (*1*) of section 2 of the Chartered Accountants Act, 1949 for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the National Financial Reporting Authority.

Explanation.—For the purposes of his sub-section, the expression "professional or other misconduct" shall have the same meaning assigned to it under section 22 of the Chartered Accountants Act, 1949.

(*5*) Any person aggrieved by any order of the National Financial Reporting Authority issued under clause (*c*) of sub-section (*4*), may prefer an appeal before the Appellate Authority constituted under sub-section (*6*) in such manner as may be prescribed.

(*6*) The Central Government may, by notification, constitute, with effect from such date as may be specified therein, an Appellate Authority consisting of a chairperson and not more then two other members, to be appointed by the Central Government, for hearing appeals arising out of the orders of the National Financial Reporting Authority.

(*7*) The qualifications for appointment of the chairperson and members of the Appellate Authority, the manner of selection, the terms and conditions of their service and the requirement of the supporting staff and procedure (including places of hearing the appeals, form and manner in which the appeals shall be filed) to be followed by the Appellate Authority shall be such as may be prescribed.

(*8*) The fee for filing the appeal shall be such as may be prescribed.

(*9*) The officer authorised by the Appellate Authority shall prepare in such form and at such time as may be prescribed its annual report giving a full account of its activities and forward a copy thereof to the Central Government and the Central Government shall cause the annual report to be laid before each House of Parliament.

(*10*) The National Financial Reporting Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings in such manner as may be prescribed.

(*11*) The Central Government may appoint a secretary and such other employees as it may consider necessary for the efficient performance of functions by the National Financial Reporting Authority under this Act and the terms and conditions of service of the secretary and employees shall be such as may be prescribed.

(*12*) The head office of the National Financial Reporting Authority shall be at New Delhi and the National Financial Reporting Authority may, meet at such other places in India as it deems fit.

(*13*) The National Financial Reporting Authority shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as the Central Government may, in consultation with the Comptroller and Auditor-General of India prescribe.

(*14*) The accounts of the National Financial Reporting Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and such accounts as certified by the Comptroller and Auditor-General of India together with the audit report thereon shall be forwarded annually to the Central Government by the National Financial Reporting Authority.

(*15*) The National Financial Reporting Authority shall prepare in such form and at such time for each financial year as may be prescribed its annual report giving a full account of its activities during the financial year and forward a copy thereof to the Central Government and the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament.

133. Central Government to prescribe accounting standards.

The Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.

134. Financial Statement, Board's report, etc.

(*1*) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.

(*2*) The auditors' report shall be attached to every financial statement.

(*3*) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—

(*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;

(*e*) in case of a company covered under sub-section (*1*) of section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (*3*) of section 178;

(*f*) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made—

(*i*) by the auditor in his report; and

(*ii*) by the company secretary in practice in his secretarial audit report;

(*g*) particulars of loans, guarantees or investments under section 186;

(*h*) particulars of contracts or arrangements with related parties referred to in sub-section (*1*) of section 188 in the prescribed form;

(*i*) the state of the company's affairs;

(*j*) the amounts, if any, which it proposes to carry to any reserves;

(*k*) the amount, if any, which it recommends should be paid by way of dividend;

(*l*) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;

(*m*) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed;

(*n*) a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;

(*o*) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;

(*p*) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal

annual evaluation has been made by the Board of its own performance and that of its committees and individual directors;

(*q*) such other matters as may be prescribed.

(*4*) The report of the Board of Directors to be attached to the financial statement under this section shall, in case of a One Person Company, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

(*5*) The Directors' Responsibility Statement referred to in clause (*c*) of sub-section (*3*) shall state that—

(*a*) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;

(*b*) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;

(*c*) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;

(*d*) the directors had prepared the annual accounts on a going concern basis; and

(*e*) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Explanation.—For the purposes of this clause, the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

(*f*) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

(*6*) The Board's report and any annexures thereto under sub-section (*3*) shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.

(*7*) A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of—

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

(*b*) the auditor's report; and

(*c*) the Board's report referred to in sub-section (*3*).

(*8*) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

135. Corporate Social Responsibility.

(*1*) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

(*2*) The Board's report under sub-section (*3*) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

(*3*) The Corporate Social Responsibility Committee shall,—

(*a*) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;

(*b*) recommend the amount of expenditure to be incurred on the activities referred to in clause (*a*); and

(*c*) monitor the Corporate Social Responsibility Policy of the company from time to time.

(*4*) The Board of every company referred to in sub-section (*1*) shall,—

(*a*) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and

(*b*) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

(*5*) The Board of every company referred to in sub-section (*1*), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (*o*) of sub-section (*3*) of section 134, specify the reasons for not spending the amount.

Explanation.—For the purposes of this section "average net profit" shall be calculated in accordance with the provisions of section 198.

136. Right of member to copies of audited financial statement.

(*1*) Without prejudice to the provisions of section 101, a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled, not less than twenty-one days before the date of the meeting:

Provided that in the case of a listed company, the provisions of this sub-section shall be deemed to be complied with, if the copies of the documents are made available for inspection at its registered office during working hours for a period of twenty-one days before the date of the meeting and a statement containing the salient features of such documents in the prescribed form or copies of the documents, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than twenty-one days before the date of the meeting unless the shareholders ask for full financial statements:

Provided further that the Central Government may prescribe the manner of circulation of financial statements of companies having such net worth and turnover as may be prescribed:

Provided also that a listed company shall also place its financial statements including consolidated financial statements, if any, and all other documents required to be attached thereto, on its website, which is maintained by or on behalf of the company:
Provided also that every company having a subsidiary or subsidiaries shall,—

(*a*) place separate audited accounts in respect of each of its subsidiary on its website, if any;

(*b*) provide a copy of separate audited financial statements in respect of each of its subsidiary, to any shareholder of the company who asks for it.

(*2*) A company shall allow every member or trustee of the holder of any debentures issued by the company to inspect the documents stated under sub-section (*1*) at its registered office during business hours.

(*3*) If any default is made in complying with the provisions of this section, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.

137. Copy of financial statement to be filed with Registrar.

(*1*) A copy of the financial statements**,** including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting in such manner, with such fees or additional fees as may be prescribed within the time specified under section 403:

Provided that where the financial statements under sub-section (*1*) are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents under sub-section (*1*) shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose:

Provided further that financial statements adopted in the adjourned annual general meeting shall be filed with the Registrar within thirty days of the date of such adjourned annual general meeting with such fees or such additional fees as may be prescribed within the time specified under section 403:

Provided also that a One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within one hundred eighty days from the closure of the financial year:

Provided also that a company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.

(*2*) Where the annual general meeting of a company for any year has not been held, the financial statements along with the documents required to be attached under sub-section (*1*), duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held and in such manner, with such fees or additional fees as may be prescribed within the time specified, under section 403.

(*3*) If a company fails to file the copy of the financial statements under sub-section (*1*) or sub-section (*2*), as the case may be, before the expiry of the period specified in section 403, the company shall be punishable with fine of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

138. Internal Audit.

(*1*) Such class or classes of companies as may be prescribed shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

(*2*) The Central Government may, by rules, prescribe the manner and the intervals in which the internal audit shall be conducted and reported to the Board.

Rules for Chapter IX

Companies (Accounts) Rules, 2014

In exercise of the powers conferred under sub-sections (1) and (3) of section 128, sub-section (3) of section 129, section 133, section 134, sub-section (4) of section 135, sub-section (1) of section 136, section 137 and section 138 read with section 469 of the Companies Act, 2013, and in supersession of the Companies (Central Government's) General Rules and Forms, 1956 or any other rules prescribed under the Companies Act, 1956 (1 of 1956) on matters covered under these rules, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:-

1. Short title and commencement. -

(1) These rules may be called the Companies (Accounts) Rules, 2014.

(2) They shall come into force on the 1st day of April, 2014.

2. Definitions.- (1) In these rules, unless the context otherwise requires,-

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "Annexure" means the Annexure to these rules;

(c) "Fees" means the fees as specified in the Companies (Registration Offices and Fees) Rules, 2014;

(d) "Form" or 'e-Form" means a form set forth in Annexure to these rules which shall be used for the matter to which it relates;

(e) "Schedule" means the Schedule to the Act;

(f) "section" means the section of the Act;

(2) The words and expressions used in these rules but not defined and defined in the Act or in the Companies (Specification of definitions details) Rules, 2014, shall have the meanings respectively assigned to them in the Act or in the said Rules.

3. Manner of books of account to be kept in electronic mode.- (1) The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference.

(2) The books of account and other relevant books and papers referred to in sub-rule (1) shall be retained completely in the format in which they were originally generated, sent or received, or in a format which shall present accurately the information generated, sent or received and the information contained in the electronic records shall remain complete and unaltered.

(3) The information received from branch offices shall not be altered and shall be kept in a manner where it shall depict what was originally received from the branches.

(4) The information in the electronic record of the document shall be capable of being displayed in a legible form.

(5) There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law:

Provided that the back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis.

(6) The company shall intimate to the Registrar on an annual basis at the time of filing of financial statement-

(a) the name of the service provider;

(b) the internet protocol address of service provider;

(c) the location of the service provider (wherever applicable);

(d) where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider.

Explanation.- For the purposes of this rule, the expression "electronic mode" includes "electronic form" as defined in clause (r) of sub-section (1) of section 2 of Information Technology Act, 2000 (21 of 2000) and also includes an electronic record as defined in clause (*t*) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000) and "books of account " shall have the meaning assigned to it under the Act.

4. Conditions regarding maintenance and inspection of certain financial information by directors.- (1) The summarised returns of the books of account of the company kept and maintained outside India shall be sent to the registered office at quarterly intervals, which shall be kept and maintained at the registered office of the company and kept open to directors for inspection.

(2) Where any other financial information maintained outside the country is required by a director, the director shall furnish a request to the company setting out the full details of the financial information sought, the period for which such information is sought.

(3) The company shall produce such financial information to the director within fifteen days of the date of receipt of the written request.

(4) The financial information required under sub-rules (2) and (3) shall be sought for by the director himself and not by or through his power of attorney holder or agent or representative.

5. Form of Statement containing salient features of financial statements of subsidiaries.- The statement containing the salient feature of the financial statement of a company's subsidiary or subsidiaries, associate company or companies and joint venture or ventures under the first proviso to sub-section (3) of section 129 shall be in Form **AOC-1**.

6. Manner of consolidation of accounts.- The consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III of the Act and the applicable accounting standards:

Provided that in case of a company covered under sub-section (3) of section 129 which is not required to prepare consolidated financial statements under the Accounting Standards, it shall be sufficient if the company complies with provisions on consolidated financial statements provided in Schedule III of the Act.

7. Transitional provisions with respect to Accounting Standards.- (1) The standards of accounting as specified under the Companies Act, 1956 (1 of 1956) shall be deemed to be the accounting standards until accounting standards are specified by the Central Government under section 133.

(2) Till the National Financial Reporting Authority is constituted under section 132 of the Act, the Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India in consultation with and after examination of the recommendations made by the National

Advisory Committee on Accounting Standards constituted under section 210A of the Companies Act, 1956 (1 of 1956).

8. Matters to be included in Board's report.- (1) The Board's Report shall be prepared based on the stand alone financial statements of the company and the report shall contain a separate section wherein a report on the performance and financial position of each of the subsidiaries, associates and joint venture companies included in the consolidated financial statement is presented.

(2) The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form **AOC-2.**

(3) The report of the Board shall contain the following information and details, namely:-

(A) Conservation of energy-

(i) the steps taken or impact on conservation of energy;

(ii) the steps taken by the company for utilising alternate sources of energy;

(iii) the capital investment on energy conservation equipments;

(B) Technology absorption-

(i) the efforts made towards technology absorption;

(ii) the benefits derived like product improvement, cost reduction, product development or import substitution;

(iii) in case of imported technology (imported during the last three years reckoned from the beginning of the financial year)-

(a) the details of technology imported;

(b) the year of import;

(c) whether the technology been fully absorbed;

(d) if not fully absorbed, areas where absorption has not taken place, and the reasons thereof; and

(iv) the expenditure incurred on Research and Development.

(C) Foreign exchange earnings and Outgo-

The Foreign Exchange earned in terms of actual inflows during the year and the Foreign Exchange outgo during the year in terms of actual outflows.

(4) Every listed company and every other public company having a paid up share capital of twenty five crore rupees or more calculated at the end of the preceding financial year shall include, in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

(5) In addition to the information and details specified in sub-rule (4), the report of the Board shall also contain -

(i) the financial summary or highlights;

(ii) the change in the nature of business, if any;

(iii) the details of directors or key managerial personnel who were appointed or have resigned during the year;

(iv) the names of companies which have become or ceased to be its Subsidiaries, joint ventures or associate companies during the year;

(v) the details relating to deposits, covered under Chapter V of the Act,-

(a) accepted during the year;

(b) remained unpaid or unclaimed as at the end of the year;

(c) whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved-
(i) at the beginning of the year;
(ii) maximum during the year;
(iii) at the end of the year;

(vi) the details of deposits which are not in compliance with the requirements of Chapter V of the Act;

(vii) the details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future;

(viii) the details in respect of adequacy of internal financial controls with reference to the Financial Statements.

9. Disclosures about CSR Policy.- The disclosure of contents of Corporate Social Responsibility Policy in the Board's report and on the company's website, if any, shall be as per annexure attached to the Companies (Corporate Social Responsibility Policy) Rules, 2014.

10. Statement containing salient features of financial statements.- The statement containing features of documents referred to in first proviso to sub-section (1) of section 136 shall be in Form **AOC-3.**

11. Manner of circulation of financial statements in certain cases.- In case of all listed companies and such public companies which have a net worth of more than one crore rupees and turnover of more than ten crore rupees, the financial statements may be sent-

(a) by electronic mode to such members whose shareholding is in dematerialised format and whose email Ids are registered with Depository for communication purposes;

(b) where Shareholding is held otherwise than by dematerialised format, to such members who have positively consented in writing for receiving by electronic mode; and

(c) by despatch of physical copies through any recognised mode of delivery as specified under section 20 of the Act, in all other cases.

12. Filing of financial statements and fees to be paid thereon.-

(1) Every company shall file the financial statements with Registrar together with Form **AOC-4**.

(2) The class of companies as may be notified by the Central Government from time to time, shall mandatorily file their financial statement in Extensible Business Reporting Language (XBRL) format and the Central Government may specify the manner of such filing under such notification for such class of companies.

Explanation.- For the purposes of this sub-rule, the term "Extensible Business Reporting Language" means a standardised language for communication in electronic form to express, report or file financial information by companies under this rule.

(3) The fees or additional fees referred to in sub-section (1) of section 137 and in the second proviso to the said sub-section and in sub-section (2) of the said section shall be as specified in the Companies (Registration Offices and Fees) Rules, 2014.

13. Companies required to appoint internal auditor.-

(1) The following class of companies shall be required to appoint an internal auditor or a firm of internal auditors, namely:-

(a) every listed company;

(b) every unlisted public company having-

(i) paid up share capital of fifty crore rupees or more during the preceding financial year; or

(ii) turnover of two hundred crore rupees or more during the preceding financial year; or

(iii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or

(iv) outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year; and

(c) every private company having-

(i) turnover of two hundred crore rupees or more during the preceding financial year; or

(ii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year:

Provided that an existing company covered under any of the above criteria shall comply with the requirements of section 138 and this rule within six months of commencement of such section.

Explanation.- For the purposes of this rule –

(i) the internal auditor may or may not be an employee of the company;

(ii) the term "Chartered Accountant" shall mean a Chartered Accountant whether engaged in practice or not.

(2) The Audit Committee of the company or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.

Rules for CSR under Section 135
Companies (Corporate Social Responsibility) Policy Rules. 2014

In exercise of the powers conferred under section 135 and sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules. namely: -

1. **Short title and commencement. –**
   (1) These rules may be called the Companies (Corporate Social Responsibility Policy Rules. 2014.
   (2) They shall come into force on the 1st day of April, 2014

2. **Definitions.**-
(1) In these rules, unless the context otherwise requires' -
   (a) "Act" means the Companies Act, 2013;
   (b) "Annexure" means the Annexure appended to these rules;
   (c) "Corporate Social Responsibility (CSR)" means and includes but is not limited to:
      (i) Projects or programs relating to activities specified in Schedule VII to the Act or
      (ii) Projects or programs relating to activities undertaken by the board of directors of a company (Board) in pursuance of recommendations of the CSR Committee of the Board as per declared CSR Policy of the company subject to the condition that such policy will cover subjects enumerated in Schedule Vll of the Act
   (d) "CSR Committee" means the Corporate Social Responsibility Committee of the Board referred to in section 135 of the Act
   (e) "CSR Policy" relates to the activities to be undertaken by the company as specified in Schedule VII to the Act and the expenditure thereon, excluding activities undertaken in pursuance of normal course of business of a company):
   (f) "Net profit" means the net profit of a company as Per its financial statement prepared in accordance with the applicable Provisions of the Act, but shall not include the following, namely :-
      (i) any profit arising from any overseas branch or branches of the company' whether operated as a separate company or otherwise; and
      (ii) any dividend received from other companies in India, which are covered under and complying with the Provisions of section 135 of the Act:

   Provided that net profit in respect of a financial year for which the relevant financial statements were prepared in accordance with the provisions of the Companies Act, 1956, (1 of 1956) shall not be required to be re-calculated in accordance with the provisions of the Act:

   Provided further that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (l) of section 381 read with section 198 of the Act.

(2) Words and expressions used and not defined in these rules but defined in the Act shall have the same meanings respectively assigned to them in the Act.

3. Corporate Social Responsibility. -

(1) Every company including its holding or subsidiary, and a foreign company defined under clause (42) of section 2 of the Act having its branch office or project office in Indi4 which fulfills the criteria specified in sub-section (l) of section 135 of the Act shall comply with the provisions of section 135 of the Act and these rules:

Provided that net worth, turnover or net profit of a foreign company of the Act shall be computed in accordance with balance sheet and profit and loss account of such company prepared in accordance with the provisions of clause (a) of sub-section (1) of section 381 and section 198 of the Act.

(2) Every company which ceases to be a company covered under sub-section (1) of section 135 of the Act for three consecutive financial years shall not be required to -
(a) constitute a CSR Committee; and
(b) comply with the provisions contained in sub-section (2) to (5) of the said section'

till such time it meets the criteria specified in sub-section (1) of section 135

4. CSR Activities.-

(1) The CSR activities shall be undertaken by the company, as per its stated CSR Policy, as projects or programs or activities (either new or ongoing), excluding activities undertaken in pursuance of its normal course of business.

(2) The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through a registered trust or a registered society or a company established by the company or its holding or subsidiary or associate company under section 8 of the Act or otherwise:

Provided that-
(i) if such trust, society or company is not established by the company or its holding or subsidiary or associate company, it shall have an established track record of three years in undertaking similar programs or projects;
(ii) the company has specified the project or programs to be undertaken through these entities, the modalities of utilization of funds on such projects and programs and the monitoring and reporting mechanism.

(3) A company may also collaborate with other companies for undertaking projects or programs or CSR activities in such a manner that the CSR committees of respective companies are in a position to report separately on such projects or programs in accordance with these rules

(4) Subject to the provisions of sub-section (5) of section 135 of the Act the CSR projects or programs or activities undertaken in India only (hall amount lo CSR expenditure

(5) The CSR projects or programs or activities that benefit only the employees of the company and their Families shall not be considered as CSR activities in accordance with section 135 of the Act'

(6) Companies may build CSR capacities of their own personnel as well as those of their Implementing agencies through Institutions with established track records of at least three financial years but such expenditure shall not exceed five percent. of total CSR expenditure of the company in one financial year.

(7) Contribution of any amount directly or indirectly to any political party under section 182 of the Act, shall not be considered as CSR activity.

5. CSR Committees,-

1. The companies mentioned in the rule 3 shall constitute CSR Committee as under.-
   (i) an unlisted public company or a private company covered under sub-section (I) of section I 35 which is not required to appoint an independent director pursuant to sub-section (4) of section 149 of the Act, shall have its CSR Committee without such director;
   (ii) a private company having only two directors on its Board shall constitute its CSR Committee with two such directors:
   (iii) with respect to a foreign company covered under these rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (d) of sub-section (1) of section 3 80 of the Act and another person shall be nominated by the foreign company.

(2) The CSR Committee shall institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.

6. CSR Policy.-

(1) The CSR Policy of the company shall, inter-alia, include the following, namely -
   (a) a list of CSR projects or programs which a company plans to undertake falling within the purview of the Schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedules for the same; and
   (b) monitoring process of such projects or programs:

   Provided that the CSR activities does not include the activities undertaken in pursuance of normal course of business of a company.

   Provided further that the Board of Directors shall ensure that activities included by a company in its Corporate Social Responsibility Policy are related to the activities included in Schedule VII of the Act.

(2) The CSR Policy of the company shall special that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company.

7. CSR Expenditure- CSR expenditure shall include all expenditure including contribution to corpus, for projects or programs relating to CSR activities approved by the Board on the recommendation of its CSR Committee, but does not include any expenditure on alt item not in conformity or not in line with activities which fall within the purview of Schedule VII of the Act.

8. CSR Reporting-

(1) The Board's Report of a company covered under these rules pertaining to a financial year commencing on or after the 1st day of April, 2014 shall include an annual report on CSR containing particulars specified in Annexure.

(2) In case of a foreign company, the balance sheet filed under sub-clause (b) of sub-section (1) of section 381 shall contain an Annexure regarding report on CSR.

9. Display of CSR activities on its website -

The Board of Directors of the company shall, after taking into account the recommendations of CSR Committee, approve the CSR Policy for the company and

disclose contents of such policy in its report and the same shall be displayed on the company's website, if any, as per the particulars specified in the Annexure.

FORMAT FOR THE ANNUAL REPORT ON CSR ACTIVITIES TO BE INCLUDED IN THE BOARD'S REPORT

1. A brief outline of the company's CSR policy, including overview of projects or programs proposed to be undertaken and a reference to the web-link to the CSR policy and projects or programs.
2. The Composition of the CSR Committee.
3. Average net profit of the company for last three financial years
4. Prescribed CSR Expenditure (two per cent. Of the amount as in item 3 above)
5. Details of CSR spent during the financial year.
   (a) Total amount to be spent for the financial year;
   (b) Amount unspent , if any;
   (c) Manner in which the amount spent during the financial year is detailed below.

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
S. No.	**CSR project or activity undertaken**	**Sector in which the Project is covered**	**Projects or programs (1) Local area or other (Specify the State or district where the Projects or programs was undertaken)**	**Amount outlay (budget) Project or programs wise**	**Amount spent on the Project or programs Sub heads (1) Direct expenditure on the projects or programs (2) Overheads**	**Cumulative expenditure upto the reporting period**	**Amount spent: Direct or through implementing Agency***
1							
2							
3							
	TOTAL						

*Give details of implementing agency:

6. In case the company has failed to spend the two per cent of the average net profit of the last three financial years or any part thereof, the company shall provide the reasons for not spending the amount in its Board report.
7. A responsibility statement of the CSR Committee that the implementation and monitoring of CSR Policy, is in compliance with CSR objectives and Policy of the company.

FORMS for Chapter IX

FORM AOC- 4 [See Section 137 of the Companies Act 2013 and Rule 12 (1) of Companies (Accounts) Rules, 2014	Form for filing financial statement and other documents with the Registrar

Note-

- **All fields marked in *are to be mandatorily filled.**
- **Figures appearing in the e-Form should be entered in Absolute Rupees only. Figures should not be rounded off in any other unit like hundreds, thousands, lakhs, millions or crores.**

Authorised capital of the company as on the date of filing (in Rs.) _____
Number of members of the company as on the date of filing (in Rs.) _____

SEGMENT- I: INFORMATION AND PARTICULARS IN RESPECT OF BALANCE SHEET

Part A

I. General information of the company

1. (a) Corporate identity number (CIN) of company _____ (Pre-fill)
   (b) Global Location number (GLN) of company _____
2. Name of the company _____
3. (a) Address of the registered office of the company _____
   (b) *e-mail ID of the company _____
4. (a) * Financial year to which balance sheet relates
   From _____ (DD/MM/YYYY) To _____ (DD/MM/YYYY)
   (b) *Date of Board of directors' meeting in which balance sheet was approved _____ (DD/MM/YYYY)
   (c) Details of director (s), Managing Director, manager, secretary of the company who have signed the balance sheet

Following details are to be entered in case date of balance sheet is on or after 1st July, 2007
Provide Director Identification number (DIN) in case of director, Managing Director and Income-tax permanent number (Income-tax PAN) in case of manager, Secretary

DIN or Income-tax PAN_____ (Pre fill) Designation _____ Name _____ Date of signing of balance sheet _____(DD/MM/YYYY)

[Information to be provided for each person]

5. (a) * Date of Board of directors' meeting in which Board's report referred to under section 134 was approved _____ (DD/MM/YYY)
   (b) Details of director (s), Managing Director who have signed the Board's Report

Following details are to be entered in case date of Board of directors' meeting is on or after 1st July, 2007

DIN _____ (Pre fill) Designation_____
Name _____
Date of signing of Board's report _____(DD/MM/YYYY)

[Information to be provided for each person]

6. * Date of signing of reports on the balance sheet by the auditors _____ (DD/MM/YYYY)
7. (a) * Whether annual general meeting (AGM) held _____ Yes _____ No
   (b) if yes, date of AGM _____ (DD/MM/YYYY)
   (c) *Due date of AGM _____ (DD/MM/YYYY)
   (d) date of AGM in which accounts are adopted by shareholders _____ (DD/MM/YYYY)
   (e) * Whether any extension for financial year or AGM granted _____ Yes _____ No
   (f) if yes, due date of AGM after grant of extension _____ (DD/MM/YYYY)
8. (a) * Whether the company is a subsidiary company as defined under section 2 (87) ____ Yes ____ No
   (b) CIN of the holding company, if applicable _____ (Pre fill)
   (c) Name of the holding company _____
   (d) Provision pursuant to which the company has become a subsidiary _____
9. (a) * Whether the company has a subsidiary company as defined under section 2 (87) ___ Yes ___ No
   (b) If yes, then indicate number of subsidiary company (s) _____

CIN of subsidiary company _____
Name of subsidiary company _____
Section under which the company has become a subsidiary _____

10. * Number of auditors _____
    (I) (a) Category of auditor _____ individual _____ Auditor's firm
    (b) * Income-tax PAN of auditor or auditor's firm _____
    (c) * Name of the auditor or auditor's firm _____
    (d) * Membership number of auditor or auditor's firm's registration number _____
    (e) Address of the auditor or auditor's firm
    Line I _____
    Line II _____
    *City _____ *State _____ Country _____ *Pin code _____
    (f) Details of the member representing the above firm
    Name _____
    Membership No _____

    (g) *SRN of Form relating to appointment of auditors _____
    [Information to be provided for each person]

11. (a) In case of a government company, whether Comptroller and Auditor- General of India (CAG of India) has commented upon or supplemented the audit report under section 143 of the Companies Act 2013 _____ Yes _____ No

(b) Provide details of comment (s) or supplement (s) received from CAG of India

(b) Director's reply (s) on comments received from CAG of India

(d) Whether CAG of India has conducted supplementary or test audit under section 143 ___ Yes __ No

12 (a) * Whether Schedule III of the Companies Act, 2013 is applicable _____ Yes _____ No
(b) * Type of Industry _____

Note: In case the type of industry is other than Banking or Power or Insurance or NBFC, then select Commercial and Industrial (C&I)

Part –B I. BALANCE SHEET (As per Schedule III of the Companies Act 2013 applicable for the financial year commencing on or after 1.4.2011)

	Particulars	**Figures as at the end of (Current reporting period) (in Rs.) _____ (DD/MM/YYYY)**	**Figures as at the end of (Previous reporting period) (in Rs.) _____ (DD/MM/YYYY)**
I.	**EQUITY AND LIABILITIES** **Shareholders' funds** (*a*) Share capital (*b*) Reserves and surplus		
	(*c*) Money received against share warrants		
(2)	**Share application money pending allotment**		
(3)	**Non-current liabilities**		
	(*a*) Long-term borrowings		
	(*b*) Deferred tax liabilities (Net)		
	(*b*) Deferred tax liabilities (Net)		
	(*d*) Long-term provisions		
(4)	**Current liabilities**		

	(*a*) Short-term borrowings		
	(*b*) Trade payables		
	(*c*) Other current liabilities		
	(*d*) Short-term provisions		
	TOTAL		
II.	**ASSETS**		
(1)	**Non Current Assets**		
	(*a*) Fixed assets		
	(*i*) Tangible assets (*ii*) Intangible assets		
	(*iii*) Capital work-in-progress		
	(*iv*) Intangible assets under development		
	(*b*) Non-current investments		
	(*c*) Deferred tax assets (net)		
	(*d*) Long-term loans and advances		
	(*e*) Other non-current assets		
(2)	**Current assets**		
	(*a*) Current investments		
	(*b*) Inventories		
	(*c*) Trade receivables		
	(*d*) Cash and cash equivalents		
	(*e*) Short-term loans and advances		
	(*f*) Other current assets		
	TOTAL		

Part I. BALANCE SHEET (Applicable for financial year commencing before 01.04.2011)

Particulars	**Figures as at the end of (Current reporting period) (in Rs.) _____ (DD/MM/YYYY)**	**Figures as at the end of (Previous reporting period) (in Rs.) _____ (DD/MM/YYYY)**
Sources of funds		
Paid-up Capital		
Share application money (pending allotment)		
Reserves and Surplus		
Secured Loans		
Unsecured Loans		
Deferred tax liabilities (Net)		
Others (Please specify)		
TOTAL		
Application of Funds		
Gross Fixed Assets (including intangible assets		
Less: Depreciation and amortization		

Net Fixed assets		
Capital work-in-progress		
Investments		
Deferred tax assets (net)		
Current assets, loans and advances		
(*a*) Inventories		
(*b*) Sundry Debtors		
(c) Cash and bank balances		
(d) Other current assets		
(*e*) Loans and advances		
Less: Current liabilities and provisions		
(a) Liabilities		
(b) Provisions		
Net Current assets		
Miscellaneous expenditure to the extent not written off or adjusted		
Profit and Loss account		
Other (Please specify)		
TOTAL		

II. Detailed Balance sheet items (Amount in Rs.) as on balance sheet date (Applicable in case of financial year commencing on or after 1.4.2011)

A. Details of long term borrowings (unsecured)

Particulars	**Current reporting period**	**Previous reporting period**
Bonds/debentures		
Term Loans		
- from banks		
- from other parties		
Deferred payment liabilities		
Deposits		
Loans and advances from related parties		
Long term maturities of finance lease obligations		
Other loans and advances		
Total Long Term borrowings (unsecured)		
Out of above total, aggregate amount guaranteed by directors		

B. Details of short term borrowings (unsecured)

Particulars	Current reporting period	Previous reporting period
Loans repayable on demand		
Term Loans		
- from banks		
- from other parties		
Loans and advances from related parties		
Deposits		
Other loans and advances		
Total short term borrowings (unsecured)		
Out of above total, aggregate amount guaranteed by directors		

C. Details of long term loans and advances (unsecured, considered good)

Particulars	Current reporting period	Previous reporting period
Capital Advances		
Security Deposits		
Loans and advances to other related parties		
Other loans and advances		
Total Long term loan and advances		
Less: Provisions/ Allowances for bad and doubtful loans and advances		
- From related parties		
- From others		
Net long term loan and advances (unsecured, considered good)		
Loans and advances due by directors/ other officers of the company (refer note 6. L (iv) of Schedule III)		

D. Details of long term loans and advances (doubtful)

Particulars	Current reporting period	Previous reporting period
Capital Advances		
Security Deposits		
Loans and advances to other		

related parties		
Other loans and advances		
Total Long term loan and advances		
Less: Provisions/ Allowances for bad and doubtful loans and advances		
- From related parties		
- From others		
Net long term loan and advances (doubtful)		
Loans and advances due by directors/ other officers of the company (refer note 6. L (iv) of Schedule III)		

E. Details of trade receivables

Particulars	**Current reporting period**		**Previous reporting period**	
	Exceeding six months	**Within six months**	**Exceeding six months**	**Within six months**
Secured, Considered good				
Unsecured, Considered good				
Doubtful				
Total Trade receivables				
Less: Provisions/ Allowances for bad and doubtful debts				
Net Trade receivables				
Debt due by (directors/ other officers of the company (refer note 6. M (iii) of Schedule III)				

III. Financial parameters – Balance sheet items (Amount in Rs.) as on balance sheet date (unless specified otherwise)

1. *Amount of issue for contracts without payment received in cash during reporting period _____
2. *Share application money given _____
3. *Share application money given during the reporting period _____
4. *Share application money received during the reporting period _____
5. *Paid-up capital held by foreign company _____ per cent
6. *Paid-up capital held by foreign holding and/ or through its subsidiaries_____ per cent

7. *Number of shares bought back during the reporting period _____
8. *Deposits accepted or renewed during the reporting period _____
9. *Deposits matured and claimed but not paid during reporting period _____
10. *Deposits matured and claimed but not paid _____
11. *Deposits matured, but not claimed _____
12. *Unclaimed matured debentures _____
13. *Debentures claimed but not paid _____
14. *Interest on deposits accrued and due but not paid _____
15. *Unpaid dividend _____
16. *Investment in subsidiary companies _____
17. *Investment in government companies _____
18. *Capital reserve _____
19. *Amount due for transfer to Investor Education and Protection Fund (IEPF) _____
20. *Inter-corporate deposits _____
21. *Gross value of transaction as per AS- 18 (if applicable) _____
22. *Capital subsidies or grants received from government authority(s) _____
23. *Calls unpaid by directors _____
24. *Calls unpaid by others _____
25. *Forfeited shares (amount originally paid-up) _____
26. *Forfeited shares reissued _____
27. *Borrowing from foreign institutional agencies _____
28. *Borrowing from foreign companies _____
29. *Inter-corporate borrowings -secured _____
30. *Inter-corporate borrowings –unsecured _____
31. *Commercial Paper _____
32. *Conversion of warrants into equity shares during the reporting period _____
33. *Conversion of warrants into preference shares during the reporting period _____
34. *Conversion of warrants into debentures during the reporting period _____
35. *Warrants issued during the reporting period (In foreign currency) _____
36. *Warrants issued during the reporting period (In Rs.) _____
37. *Default in payment of short term borrowings and interest thereon _____
38. *Default in payment of long term borrowings and interest thereon _____
39. *Whether any operating lease has been converted to financial lease or vise-a-versa__ Yes ___ No

Provides details of such conversions

40. Net Worth of the company _____
41. Number of shareholders to whom shares allotted under private placement _____ during the reporting period
42. *Secured Loan _____
43. *Gross fixed assets (including intangible assets) _____
44. *Depreciation and amortization _____
45. *Miscellaneous expenditure to the extent not written off or adjusted _____

IV. Shares capital raised during the reporting period (Amount in Rs.)

	Equity Shares	Preference Shares	Total
(a) Public Issue			
(b) Bonus Issue			
(c) Rights Issue			
(d) Private placement arising out of conversion of debentures/ preference			
(e) Other Private Placement			
(f) Preferential allotment arising out of conversion of debentures/ preference			
(g) Other Preferential allotment			
(h) Employee Stock Option Plan (ESOP)			
(i) Other			
(j) Total amount of shares capital raised during the reporting period			

V .Details of qualification(s), reservation(s) or adverse remark(s) made by auditors

1. *Whether auditors' report has been qualified or has any reservations or contains adverse remarks ___ Yes ___ No

2. (a) Auditor's qualification(s), reservation(s) or adverse remark(s) in the auditors' report

(b) Director's comments on qualification(s), reservation(s) or adverse remark(s) of the auditors as per Board's report

VI. Details w.r.t Companies (Auditor's Report) Order, 2003 (CARO)

1. Whether Companies (Auditor's Report) Order, 2003 (CARO) applicable _____ Yes ___ NO
2. Auditor's comment on the items specified under Companies (Auditor's Report) Order, 2003 (CARO)

Particulars	Auditor's comments of report
Fixed Assets	
Inventories	
Loans given or taken by the company	
Related Party Transactions/ Section 188	
Acceptance of deposits	
Maintenance of Cost records	
Statutory dues	
End use of borrowed funds	
Special Stature- Chit fund companies	
Nidhi/mutual benefit fund – special aspects	
Term Loans	
Preferential Allotments	
Disclosure of end use of funds	
Others	

VII. Details related to cost records and cost audit

1. *Whether maintenance of cost records by the company has been mandated under Cost Accounting Record Rules __ Yes ___No

2. *Whether audit of cost records of the company has been mandated by Central Government __ Yes __ No
3. If yes, names of the product of activity groups under cost audit

SEGMENT II: INFORMATION AND PARTICULARS IN RESPECT OF PROFIT AND LOSS ACCOUNT

Part- A

I. STATEMENT OF PROFIT AND LOSS (As per Schedule III to the Companies Act, 2013 applicable for the financial year commencing on or after 1.4.2011)

	Particulars	Figures for the current reporting period (in) From _____ (DD/MM/YYYY)	Figures for the previous reporting period (in) From_____ (DD/MM/YYYY) To_____

		To _____ (DD/MM/YYYY)	(DD/MM/YYYY)
I.	Revenue from operations	xxx	Xxx
	Domestic Turnover		
	(i) Sale of goods manufactured		
	(ii) Sale of goods traded		
	(iii) Sale or supply of services		
	Export Turnover		
	(i) Sale of goods manufactured		
	(ii)Sale of goods traded		
	(iii) Sale or supply of services		
II.	Other income		
III.	Total Revenue (I + II)		
IV.	Expenses		
	Cost of materials consumed		
	Purchases of Stock-in-Trade		
	Changes in inventories of finished goods		
	Work-in-progress and Stock-in-Trade		
	Employee benefits expense		
	Managerial Remuneration		
	Payment to auditors		
	Insurance expenses		
	Power and Fuel		
	Finance costs		
	Depreciation and amortization expense		
	Other expenses		
	Total expenses		
V	Profit before exceptional and extraordinary items and tax (III-IV)		
VI	Exceptional items		
VII	Profit before extraordinary items and tax (V - VI)		
VIII	Extraordinary Items		
IX	Profit before tax (VII- VIII)		
X	Tax expense:		
	(1) Current tax		
	(2) Deferred tax		
XI	Profit (Loss) for the period from continuing operations (VII-VIII)		
XII	Profit/(loss) from discontinuing operations		
XIII	Tax expense of discontinuing operations		
XIV	Profit/(loss) from Discontinuing operations (after tax) (XII-XIII)		
XV	Profit/ (Loss) (XI + XIV)		

XVI	Earnings per equity share		
	(1) Basic		
	(2) Diluted		

Part A

I. STATEMENT OF PROFIT AND LOSS (Applicable for financial year commencing before 01.4.2011)

Particulars	**Figures for the period (Current financial year) (in) From _____ (DD/MM/YYYY) To _____ (DD/MM/YYYY)**	**Figures for the period (previous financial year) (in) From_____ (DD/MM/YYYY) To_____ (DD/MM/YYYY)**
Domestic Turnover		
(iv) Sale of goods manufactured		
(v) Sale of goods traded		
(vi) Sale or supply of services		
Export Turnover		
(iv) Sale of goods manufactured		
(v)Sale of goods traded		
(vi) Sale or supply of services		
Other income		
Total Income		
Raw material consumed (see Note 1)		
Purchase made for resale (See Note 2)		
Consumption of Stores and Spare Parts (See Note 3)		
(Increase) or decrease in finished goods, work-in-progress		
Salaries, Wages and Bonus		
Managerial Remuneration		
Payment to auditors		
Interest		
Insurance expenses		
Power and Fuel		
Depreciation and amortization expense		
Other expenditure		
Total expenditure		
Net Profit or Net Loss (before tax and appropriation)		
Income Tax including deferred tax		

Note 1: Raw material consumed is to be given as per following calculation-
Opening stock of raw materials+ purchase of raw materials- closing stock of raw materials

Not 2: Purchase made for re—sale is to be given as per following calculation-
Opening stock of goods traded + purchases of goods traded- closing stock of goods traded

Note 3: Consumption of stores and spare parts to be given as per following calculation-
Opening stock of stores and spares + purchases of stores and spares – closing stock of store and spare

II. Detailed Profit and Loss items (Amount in) (applicable in case of financial year commencing on or after 01.04.2011)

A. Details of earning in foreign exchange

Particulars	**Current reporting period**	**Previous reporting period**
Exports of goods calculated in F.O.B. basis		
Interest and dividend		
Royalty		
Know-how		
Professional and Consultation fees		
Other Income		
Total Earning in Foreign Exchange		

B. Details of expenditure in foreign exchange

Particulars	**Current reporting period**	**Previous reporting period**
Imports of goods calculated in CIF basis		
(i) Raw Material		
(ii) Component and spare parts		
(iii) Capital goods		
Expenditure on account of		
Royalty		
Know-how		
Interest		
Other matters		
Dividend paid		
Total Expenditure in Foreign Exchange		

III. Financial parameters – Profit and loss account items (amount in) during the reporting period

1.*Proposed Dividend _____ per cent
2. *Earning per share (in Rs) Basic _____ Diluted _____
3. *Income in foreign currency _____
4. *Expenditure in foreign currency _____
5. *Revenue subsidies or grants received from government authority(s) _____
6. *Rent paid _____
7. *Consumption of stores and spare parts _____
8. * Gross value of the transaction with the related parties as per AS-18 (if applicable) _____
9. *Bad debts of related parties as per AS-18 (if applicable) _____

IV. Details related to principal products or services of the company

Total number of product/ services category(s) _____

Product or service category code (ITC/ NPCS 4 digit code) _____
Description of the product or service category _____
Turnover of the product or service category (in Rs.) _____
Highest Turnover contributing product or service code **(ITC/ NPCS 8 digit code)** _____
Description of the product or service _____
Turnover of the highest contributing product or service (in Rs.) _____

Note – Please refer to 'Indian Trade Classification' based on harmonized commodity description and coding system issues by the ministry of Commerce & Industry for Product Codes and National Product Classification for Services (NPCS) for Services codes issued by Ministry of Statistics & Programme Implementation, Government of India.

V. Details of qualification(s), reservation(s) or adverse remark(s) made by auditors.

1. *Whether auditors' report has been qualified or has any reservations or contains adverse remarks ____ Yes ____ No
2. (a) Auditor's qualification(s), reservation(s) or adverse remark(s) in the auditors' report

(b) Director's comments on qualification(s), reservation(s) or adverse remark of the auditors as per Board's report

Segment C: Reporting of Corporate Social Responsibility (CSR)

1. *Period for which CSR is being reported From _____ (DD/MM/YYYY)
To _____ (DD/MM/YYYY)
2. (a) *Whether information includes information about subsidiary company(s) ___ Yes ___ No
(b) If yeas, then indicate number of such subsidiary company(s) _____

3. (a) *Whether information includes information about any other entity(s) ____ Yes ___ No (e.g. supplies, value chain etc.)
   (b) If yes, then indicate number of such entity(s) _____
4. (a) *Does the company have a written CSR policy ____ Yes _____ No If yes, attach a copy
(b) Brief contents of the CSR policy _____
   ___ Overview of projects or preforms proposed to be undertaken
   ____ We-link of company at which CSR policy is places
   ____ Web link projects or performs undertaken
   _____ Others
5. The Composition of the CSR Committee
6. Average net profit of the company for last three financial years.
7. Prescribed CSR Expenditure (two per cent. off the amount as in item 6 above)
8. Details of CSR spent during the financial year.
   (a) Total amount to be spent for the financial year.
   (b) Amount unspent, if any;
   (c) Manner in which the amount spent during the financial year is detailed below.

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
S. No.	**CSR project or activity undertaken**	**Sector in which the Project is covered**	**Projects or programs (1) Local area or other (Specify the State or district where the Projects or programs was undertaken)**	**Amount outlay (budget) Project or programs wise**	**Amount spent on the Project or programs Sub heads (1) Direct expenditure on the projects or programs (2) Overheads**	**Cumulative expenditure upto the reporting period**	**Amount spent: Direct or through implementing Agency***
1							
2							
3							
	TOTAL						

*Give details of implementing agency:
9. In case the company has failed to spend the two per cent. of the average net profit of the last three financial years or any part thereof, the reasons for not spending the amount in its Board report.

10. A responsibility statement of the CSR Committee that the implementation and monitoring of CSR Policy, is in compliance with CSR objectives and Policy of the company.

Segment D: DISCLOSURE ABOUT RELATED PARTY TRANSACTIONS

Disclosure of particulars of contracts/arrangements entered into by the company with related parties referred to in sub-section (1) of section 188 of the Companies Act, 2013 including certain arm's length transactions under third proviso thereto

1. Details of contracts or arrangements or transactions not at arm's length basis
   (a) Name(s) of the related party and nature of relationship
   (b) Nature of contracts/arrangements/transactions
   (c) Duration of the contracts / arrangements/transactions
   (d) Salient terms of the contracts or arrangements or transactions including the value, if any
   (e) Justification for entering into such contracts or arrangements or transactions
   (f) Date(s) of approval by the Board
   (g) Amount paid as advances, if any:
   (h) Date on which the special resolution was passed in general meeting as required under first proviso to section 188

2. Details of material contracts or arrangement or transactions at arm's length basis
   (a) Name(s) of the related party and nature of relationship
   (b) Nature of contracts/arrangements/transactions
   (c) Duration of the contracts / arrangements/transactions
   (d) Salient terms of the contracts or arrangements or transactions including the value, if any:
   (e) Date(s) of approval by the Board, if any:
   (f) Amount paid as advances, if any:

Attachments

1.*Copy of balance sheet duly authenticated as per section 134 (including Board's report, auditors' report and other documents)	Attach
2. Statement of subsidiaries as per section 129	Attach
3. Statement of the fact and reasons for not adopting balance sheet in The annual general meeting (AGM)	Attach
4. Statement of the fact and reasons for not holding the AGM	Attach
5 Approval letter of extension of financial year or AGM	Attach
6. Supplementary or test audit report under section 143	Attach
7. **Copy of Profit and Loss Account duly authenticated as per section 134	Attach
8. Company CSR policy	Attach
9. Company CSR report	Attach
10. Details of subsidiary(s)	Attach
11. Details of other entity(s)	Attach
12. Optional attachment(s)	Attach

Verification

I confirm that all the particulars mentioned above are as per the attached balance sheet and profit and loss account and other related documents, all of which are duly signed and authenticated as required under the Companies Act, 2013.

I also confirm that to the best of my knowledge and belief, the information given in the form and its attachments is correct and complete.
I have been authorised by the Board of directors' resolution number * _____ dated___ (DD/MM/YYYY)

To sign and submit this form.

To be digitally signed by

Managing Director or manager or secretary of the company _____
*Designation _____
*Din of the director or Managing Director; or
Income- tax PAN of the manager; or _____
Membership number, if applicable or income-tax PAN of the secretary _____
(Secretary of a company who is not a member of ICSI, may quote his/her income-tax PAN)

Annexure
Form AOC-I

(Pursuant to first proviso to sub-section (3) of section 129 read with rule 5 of Companies (Accounts) Rules, 2014)

Statement containing salient features of the financial statement of subsidiaries/ associate companies/ joint ventures

Part "A": Subsidiaries

(Information in respect of each subsidiary to be presented with amounts in Rs)

1. Sl. No.
2. Name of the subsidiary
3. Reporting period for the subsidiary concerned, if different from the holding company's reporting period
4. Reporting currency and Exchange rate as on the last date of the relevant Financial year in the case of foreign subsidiaries.
5. Share capital
6. Reserves & surplus
7. Total assets
8. Total Liabilities
9. Investments
10. Turnover
11. Profit before taxation
12. Provision for taxation
13. Profit after taxation
14. Proposed Dividend
15. % of shareholding

Notes: The following information shall be furnished at the end of the statement:

1. Names of subsidiaries which are yet to commence operations

2. Names of subsidiaries which have been liquidated or sold during the year.

Part "B": Associates and Joint Ventures

Statement pursuant to Section 129 (3) of the Companies Act, 2013 related to Associate Companies and Joint Ventures

Name of Associates/ Joint ventures	Name 1	Name 2	Name 3
1. Latest audited Balance Sheet Date			
2. Shares of associates/ Joint Ventures held by the company on the year end			
No.			
Amount of investment in Associates/ Joint Ventures			
3. Description of how there is significant influence			
4. Reason why the associate/ joint			

venture is not consolidated			
5. Networth attributable to Shareholding as per latest Audited Balance Sheet			
6. Profit/ Loss for the year			
i. Considered in Consolidation			
ii. Not Considered in Consolidation			

1. Names of associates or joint ventures which are yet to commence operations
2. Names of associates or joint ventures which have been liquidated or sold during the year.

Note : This Form is to be certified in the same manner in which the Balance Sheet is to be certified.

Form No. AOC-2

(Pursuant to *clause (h) of sub-section (3)of section 134 of the Act and* Rule 8(2) of the Companies (Accounts) Rules, 2014)

Form for disclosure of particulars of contracts/arrangements entered into by the company with related parties referred to in sub-section (1) of section 188 of the Companies Act, 2013 including certain arms length transactions under third proviso thereto

1. Details of contracts or arrangements or transactions not at arm's length basis
   (a) Name(s) of the related party and nature of relationship
   (b) Nature of contracts/arrangements/transactions
   (c) Duration of the contracts / arrangements/transactions
   (d) Salient terms of the contracts or arrangements or transactions including the value, if any
   (e) Justification for entering into such contracts or arrangements or transactions
   (f) date(s) of approval by the Board
   (g) Amount paid as advances, if any:
   (h) Date on which the special resolution was passed in general meeting as required under first proviso to section 188
2. Details of material contract, arrangement or transaction at arm's length basis

   (a) Name (s) of the related party and nature of relationship
   (b) Nature of contracts/ arrangements/ transactions
   (c) Duration of the contracts/ arrangements/ transactions
   (d) Salient terms of the contracts or arrangements or transactions including the value, if any:
   (e) Date (s) of approval by the Board, if any:
   (f) Amount paid as advances, if any:

   Form shall be signed by the persons who have signed the Board's report

FORM AOC-3

(Pursuant to first proviso to sub-section (1) of section 136 of the Act and Rule 10 of Companies (Accounts) Rules, 2014)

Statement containing salient features of Balance Sheet and Profit and Loss Account

Form of Abridged Financial Statements

Name of the Company ……
Abridged Balance Sheet as at …… (Rupees in …….)
Figures at the end of

S. No	**Particulars**	**Figures as at the end of (Current reporting period) (in Rs.) _____ (DD/MM/YYYY)**	**Figures as at the end of (Previous reporting period) (in Rs.) _____ (DD/MM/YYYY)**
I.	**EQUITY AND LIABILITIES** **Shareholders' funds** (*a*) Paid up Share capital (i) Equity (ii) Preference		
	(*b*) Reserves and surplus (i) Capital Reserve (including Revaluation Reserve, if any) (ii) Revenue Reserves (iii) Surplus		
	(*c*) Money received against share warrants		
(2)	**Share application money pending allotment**		
(3)	**Non-current liabilities**		
	(*a*) Long-term borrowings		
	(*b*) Deferred tax liabilities (Net)		
	(*b*) Deferred tax liabilities (Net)		
	(*d*) Long-term provisions		
(4)	**Current liabilities**		
	(*a*) Short-term borrowings		
	(*b*) Trade payables		
	(*c*) Other current liabilities		
	(*d*) Short-term provisions		
	TOTAL of (1) to (4)		
II.	**ASSETS**		
(1)	**Non Current Assets**		
	(*a*) Fixed assets		
	(*i*) Tangible assets (original cost less		

	depreciation) (*ii*) Intangible assets (original cost less depreciation)		
	(*iii*) Capital work-in-progress		
	(*iv*) Intangible assets under development		
	(*b*) Non-current investments		
	(*c*) Deferred tax assets (net)		
	(*d*) Long-term loans and advances		
	(*e*) Other non-current assets		
(2)	**Current assets**		
	(*a*) Current investments		
	(*b*) Inventories		
	(*c*) Trade receivables		
	(*d*) Cash and cash equivalents		
	(*e*) Short-term loans and advances		
	(*f*) Other current assets		
	TOTAL of (5) to (6)		

NOTE: Complete Balance Sheet, Statement of Profit and Loss, other statements and notes thereto prepared as per the requirements of Schedule III to the Act are available at the Company's website at link _____

Abridged Profit and Loss Account for the ended on _____

(Rupees in .....)

	Particulars	**Figures for the current reporting period (in) (DD/MM/YYYY)**	**Figures for the previous reporting period (DD/MM/YYYY)**
I.	Income		
	Revenue from operations (details t be given as per *)		
II.	Other income		
III.	Total Revenue (I + II)		
IV.	Expenditure		
	(a) Cost of materials consumed		
	(b) Purchases of Stock-in-Trade		
	(c) Changes in inventories of finished goods work-in-progress and Stock-in-Trade		
	(d) Employee benefits expense		
	(e) Finance Costs		
	(f) Depreciation and amortization		

	expense		
	(g) Other expenses		
	Total Expenditure		
V	Profit before exceptional and extraordinary items and tax (III-IV)		
VI	Exceptional items		
VII	Profit before extraordinary items and tax (V - VI)		
VIII	Extraordinary Items		
IX	Profit / (Loss) before tax (VII- VIII)		
X	(1)Tax expense (2) Deferred tax		
XI	Profit (Loss) for the period from continuing operations (VII-VIII)		
XII	Profit/(loss) from discontinued operations		
XIII	Tax expense of discontinuing operations		
XIV	Profit/(loss) from Discontinued operations (after tax) (XII-XIII)		
XV	Profit/ (Loss) for the year (XI + XIV)		
XVI	Earnings per equity share		
	(1) Basic		
	(2) Diluted		

***** Details of Revenue from Operations:

a) In respect of a company other than a finance company, revenue from operations shall be disclosed as under:

(Rupees in …….)

S. No	**Particulars**	**Figures for the current reporting period (in) (DD/MM/YYYY)**	**Figures for the previous reporting period (DD/MM/YYYY)**
I	Sale of products manufactured		
II	Sale of goods traded		
III	Revenue from services provided		
IV	Other operation al Revenue		

b) In respect of a finance company, revenue from operations shall be disclosed as under:

(a) Revenue from interest; and

(b) Revenue from Other financial services

NOTES TO THE ABRIDGED BALANCE SHEET AND THE ABRIDGED PROFIT AND LOSS ACCOUNT

1. The amounts to be shown here should be the same as shown in the corresponding aggregated heads in the financial statements as per Schedule III or as near thereto as possible.
2. The total amount of contingent liabilities and that of commitments should be shown separately.
3. All notes forming part of the financial statements as per Schedule III to which specific attention has been drawn by the auditors or which form a subject matter of qualification by the auditor should be reproduced.
4. If fixed assets are revalued, the amount of revaluation to be shown separately for the first five years subsequent to the date of revaluation.
5. Any item which constitutes 20% or more of the total income or expenditure(including provisions) should be shown separately.
6. Amount, if material, by which any item shown in the profit and loss account are affected by any change in the accounting policy, should be disclosed separately.
7. Notes shall include the notes, if any, contained in the complete financial statements pertaining to the following:
   (a) Period and amount of defaults on the balance sheet date in repayment of loans and interest
   (b) Amalgamations, acquisitions, restructurings and demergers during the reporting period.
   (c) Material events affecting the going concern assumption.
   (d) Investigation and inspection conducted or ordered under the provisions of Companies Act, 2013.
   (e) Non-compliance with any law during the reporting period.
   (f) Any other note considered significant by the management.
8. Book value and Market value of quoted Investments (both for current year as well as previous year) be mentioned.
9. Notes in the abridged balance sheet should be given the same number as in the main balance sheet.
10. Disclosure of Related Party Transaction shall be made in terms of the requirements of Accounting Standards.
11. Details of cash and cash equivalents shall be disclosed as follows:
    (a) Balances with banks;
    (b) Cheques, drafts on hand;
    (c) Cash in hand;
    (d) Others(specify nature)
12. In terms of Accounting Standard (AS)3, Cash Flow Statement, wherever required and notified, the following abridged Cash Flow Statement shall be included:

Abridged Cash Flow Statement

S. No	Particulars	Figures for the current reporting period (in) (DD/MM/YYYY)	Figures for the previous reporting period (DD/MM/YYYY)

	Cash flows from operating activities		
	Cash flows from operating activities		
	Cash flows from financing activities		
	Net increase and decrease in Cash and cash equivalents		
	Cash and cash equivalents at the beginning of period		
	Cash and cash equivalents at the end of period		

13. Segment revenue, segment capital employed(segment assets minus segment liabilities) and segment result for business segments or geographical segments, whichever is the enterprise's primary basis of segment reporting(disclosure of segment information shall be presented) only if the company is required, in terms of Accounting Standards.
14. Level of rounding off should be the same as in the main balance sheet and the profit and loss account.
15. Where compliance with the requirements of the Act including Accounting Standards as applicable to the companies require any change in treatment or disclosure including addition, amendment, substitution or deletion in the head/subhead or any changes *inter se* in the financial statements or statements forming part thereof, the same shall be made.

    The above stated salient features of the Balance Sheet and the Profit and Loss Account should be authenticated in the same manner as the Main financial statements.

AUDITOR'S REPORT

Auditor's Report shall be submitted by the statutory auditors in accordance with the Auditing Standards. Auditor's report on unabridged financial statements shall also be given.

DIRECTOR'S REPORT

Salient features of Director's Report shall be disclosed.

CONSOLIDATED FINANCIAL STATEMENTS

1. Where a company is required to prepare Consolidated Financial Statements, *i.e.* consolidated balance sheet and consolidated statement of profit and loss, the company shall *mutatis mutandis* follow the requirements of Schedule III of the Act, as applicable to a company in the preparation of balance sheet and statement of profit and loss. In addition, the consolidated financial statements shall disclose the information as per the requirements specified in the applicable Accounting Standards including the items specified at Serial numbers (1) and (2) under the heading "general instructions for the preparation of consolidated financial statements" contained in the said Schedule.

Note : To be certified in the same manner in which the Balance Sheet is to be certified.

CHAPTER X

AUDIT AND AUDITORS

139. Appointment of auditors.

(*1*) Subject to the provisions of this Chapter, every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such as may be prescribed:

Provided that the company shall place the matter relating to such appointment for ratification by members at every annual general meeting:

Provided further that before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained from the auditor:

Provided also that the certificate shall also indicate whether the auditor satisfies the criteria provided in section 141:

Provided also that the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within fifteen days of the meeting in which the auditor is appointed.

Explanation.—For the purposes of this Chapter, "appointment" includes reappointment.

(*2*) No listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint—

(*a*) an individual as auditor for more than one term of five consecutive years; and

(*b*) an audit firm as auditor for more than two terms of five consecutive years:

Provided that—

(*i*) an individual auditor who has completed his term under clause (*a*) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;

(*ii*) an audit firm which has completed its term under clause (*b*), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term:

Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years:

Provided also that every company, existing on or before the commencement of this Act which is required to comply with provisions of this sub-section, shall comply with the requirements of this sub-section within three years from the date of commencement of this Act:

Provided also that, nothing contained in this sub-section shall prejudice the right of the company to remove an auditor or the right of the auditor to resign from such office of the company.

(*3*) Subject to the provisions of this Act, members of a company may resolve to provide that—
(*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 the companies shall rotate their auditors in pursuance of sub-section (*2*).
Explanation.—For the purposes of this Chapter, the word "firm" shall include a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008.

(*5*) Notwithstanding anything contained in sub-section (*1*), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

(*6*) Notwithstanding anything contained in sub-section (*1*), the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within ninety days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

(*7*) Notwithstanding anything contained in sub-section (*1*) or sub-section (*5*), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor-General of India within sixty days from the date of registration of the company and in case the Comptroller and Auditor-General of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next thirty days; and in the case of failure of the Board to appoint such auditor within the next thirty days, it shall inform the members of the company who shall appoint such auditor within the sixty days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting.

(*8*) Any casual vacancy in the office of an auditor shall—
(*i*) in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors within thirty days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the

company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting;

(*ii*) in the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Comptroller and Auditor-General of India within thirty days:

Provided that in case the Comptroller and Auditor-General of India does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next thirty days.

(*9*) Subject to the provisions of sub-section (*1*) and the rules made thereunder, a retiring auditor may be re-appointed at an annual general meeting, if—

(*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.

(*10*) Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

(*11*) Where a company is required to constitute an Audit Committee under section 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.

140. Removal, resignation of auditor and giving of special notice.

(*1*) The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner:

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

(*2*) The auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed form with the company and the Registrar, and in case of companies referred to in sub-section (*5*) of section 139, the auditor shall also file such statement with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation.

(*3*) If the auditor does not comply with sub-section (*2*), he or it shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

(*4*) (*i*) Special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-appointed, except where the retiring auditor has completed a consecutive tenure of five years or, as the case may be, ten years, as provided under sub-section (*2*) of section 139.

(*ii*) On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor.

(*iii*) Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so,—

(*a*) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(*b*) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company, and if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting:

Provided that if a copy of representation is not sent as aforesaid, a copy thereof shall be filed with the Registrar:

Provided further that if the Tribunal is satisfied on an application either of the company or of any other aggrieved person that the rights conferred by this sub-section are being abused by the auditor, then, the copy of the representation may not be sent and the representation need not be read out at the meeting.

(*5*) Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal either *suo motu* or on an application made to it by the Central Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors:

Provided that if the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place:

Provided further that an auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under section 447.

Explanation I.—It is hereby clarified that the case of a firm, the liability shall be of the firm and that of every partner or partners who acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its director or officers.

Explanation II.—For the purposes of this Chapter the word "auditor" includes a firm of auditors.

141. Eligibility, qualifications and disqualifications of auditors

(*1*) A person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant:

Provided that a firm whereof majority of partners practising in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company.

(*2*) Where a firm including a limited liability partnership is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm.

(*3*) The following persons shall not be eligible for appointment as an auditor of a company, namely:—

(*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, or his relative or partner—

(*i*) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:

Provided that the relative may hold security or interest in the company of face value not exceeding one thousand rupees or such sum as may be prescribed;

(*ii*) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; or

(*iii*) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed;

(*e*) a person or a firm who, 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 or associate company of such nature as may be prescribed;

(*f*) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel;

(*g*) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies;

(*h*) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;

(*i*) any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialised services as provided in section 144.

(*4*) Where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in sub-section (*3*) after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.

142. Remuneration of auditors.

(*1*) The remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein:

Provided that the Board may fix remuneration of the first auditor appointed by it.

(*2*) The remuneration under sub-section (*1*) shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

143. Powers and duties of auditors and auditing standards.

(*1*) Every auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place and shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor and amongst other matters inquire into the following matters, namely:—

(*a*) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members;

(*b*) whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;

(*c*) where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;

(*d*) whether loans and advances made by the company have been shown as deposits;

(*e*) whether personal expenses have been charged to revenue account;

(*f*) where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading:

Provided that the auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries in so far as it relates to the consolidation of its financial statements with that of its subsidiaries.

(*2*) The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statements which are required by or under this Act to be laid before the company in general meeting and the report shall after taking into account the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made thereunder or under any order made under sub-section (*11*) and to the best of his information and knowledge, the said accounts, financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.

(*3*) The auditor's report shall also state—

(*a*) whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements;

(*b*) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;

(*c*) whether the report on the accounts of any branch office of the company audited under sub-section (*8*) by a person other than the company's auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;

(*d*) whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;

(*e*) whether, in his opinion, the financial statements comply with the accounting standards;

(*f*) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;

(*g*) whether any director is disqualified from being appointed as a director under sub-section (*2*) of section 164;

(*h*) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;

(*i*) whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls;

(*j*) such other matters as may be prescribed.

(*4*) Where any of the matters required to be included in the audit report under this section is answered in the negative or with a qualification, the report shall state the reasons therefor.

(*5*) In the case of a Government company, the Comptroller and Auditor-General of India shall appoint the auditor under sub-section (*5*) or sub-section (*7*) of section 139 and direct such auditor the manner in which the accounts of the Government company are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor-General of India which, among other things, include the directions, if any, issued by the Comptroller and Auditor-General of India, the action taken thereon and its impact on the accounts and financial statement of the company.

(*6*) The Comptroller and Auditor-General of India shall within sixty days from the date of receipt of the audit report under sub-section (*5*) have a right to,—

(*a*) conduct a supplementary audit of the financial statement of the company by such person or persons as he may authorise in this behalf; and for the purposes of such audit, require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor-General of India may direct; and

(*b*) comment upon or supplement such audit report:

Provided that any comments given by the Comptroller and Auditor-General of India upon, or supplement to, the audit report shall be sent by the company to every person entitled to copies of audited financial statements under sub section (*1*) of section 136 and also be

placed before the annual general meeting of the company at the same time and in the same manner as the audit report.

(*7*) Without prejudice to the provisions of this Chapter, the Comptroller and Auditor- General of India may, in case of any company covered under sub-section (*5*) or sub-section (*7*) of section 139, if he considers necessary, by an order, cause test audit to be conducted of the accounts of such company and the provisions of section 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit.

(*8*) Where a company has a branch office, the accounts of that office shall be audited either by the auditor appointed for the company (herein referred to as the company's auditor) under this Act or by any other person qualified for appointment as an auditor of the company under this Act and appointed as such under section 139, or where the branch office is situated in a country outside India, the accounts of the branch office shall be audited either by the company's auditor or by an accountant or by any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country and the duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be such as may be prescribed:

Provided that the branch auditor shall prepare a report on the accounts of the branch examined by him and send it to the auditor of the company who shall deal with it in his report in such manner as he considers necessary.

(*9*) Every auditor shall comply with the auditing standards.

(*10*) The Central Government may prescribe the standards of auditing or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority:

Provided that until any auditing standards are notified, any standard or standards of auditing specified by the Institute of Chartered Accountants of India shall be deemed to be the auditing standards.

(*11*) The Central Government may, in consultation with the National Financial Reporting Authority, by general or special order, direct, in respect of such class or description of companies, as may be specified in the order, that the auditor's report shall also include a statement on such matters as may be specified therein.

(*12*) Notwithstanding anything contained in this section, if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed.

(*13*) No duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter referred to in sub-section (*12*) if it is done in good faith.

(*14*) The provisions of this section shall *mutatis mutandis* apply to—

(*a*) the cost accountant in practice conducting cost audit under section 148; or

(*b*) the company secretary in practice conducting secretarial audit under section 204.

(*15*) If any auditor, cost accountant or company secretary in practice do not comply with the provisions of sub-section (*12*), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

144. **Auditor not to render certain services.**
An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, but which shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company, namely:—
(*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:

Provided that an auditor or audit firm who or which has been performing any non-audit services on or before the commencement of this Act shall comply with the provisions of this section before the closure of the first financial year after the date of such commencement.

Explanation.—For the purposes of this sub-section, the term "directly or indirectly" shall include rendering of services by the auditor,—

(*i*) in case of auditor being an individual, either himself or through his relative or any other person connected or associated with such individual or through any other entity, whatsoever, in which such individual has significant influence or control, or whose name or trade mark or brand is used by such individual;
(*ii*) in case of auditor being a firm, either itself or through any of its partners or through its parent, subsidiary or associate entity or through any other entity, whatsoever, in which the firm or any partner of the firm has significant influence or control, or whose name or trade mark or brand is used by the firm or any of its partners.

145. Auditors to sign audit reports, etc.
The person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company in accordance with the provisions of sub-section (*2*) of section 141, and the qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

146. Auditors to attend general meeting.
All notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company, and the auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorised representative, who shall also be qualified to

be an auditor, any general meeting and shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

147. Punishment for contravention.

(*1*) If any of the provisions of sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both.

(*2*) If an auditor of a company contravenes any of the provisions of section 139, section 143, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees:

Provided that if an auditor has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

(*3*) Where an auditor has been convicted under sub-section (*2*), he shall be liable to—

(i) refund the remuneration received by him to the company; and

(*ii*) pay for damages to the company, statutory bodies or authorities or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his audit report.

(*4*) The Central Government shall, by notification, specify any statutory body or authority or an officer for ensuring prompt payment of damages to the company or the persons under clause (*ii*) of sub-section (*3*) and such body, authority or officer shall after payment of damages to such company or persons file a report with the Central Government in respect of making such damages in such manner as may be specified in the said notification.

(*5*) Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in this Act or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.

148. Central Government to specify audit of items of cost in respect of certain companies.

(*1*) Notwithstanding anything contained in this Chapter, the Central Government may, by order, in respect of such class of companies engaged in the production of such goods or providing such services as may be prescribed, direct that particulars relating to the utilisation of material or labour or to other items of cost as may be prescribed shall also be included in the books of account kept by that class of companies:

Provided that the Central Government shall, before issuing such order in respect of any class of companies regulated under a special Act, consult the regulatory body constituted or established under such special Act.

(*2*) If the Central Government is of the opinion, that it is necessary to do so, it may, by order, direct that the audit of cost records of class of companies, which are covered under sub-section (*1*) and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.

(*3*) The audit under sub-section (*2*) shall be conducted by a Cost Accountant in practice who shall be appointed by the Board on such remuneration as may be determined by the members in such manner as may be prescribed:

Provided that no person appointed under section 139 as an auditor of the company shall be appointed for conducting the audit of cost records:

Provided further that the auditor conducting the cost audit shall comply with the cost auditing standards.

Explanation.—For the purposes of this sub-section, the expression "cost auditing standards" mean such standards as are issued by the Institute of Cost and Works Accountants of India, constituted under the Cost and Works Accountants Act, 1959, with the approval of the Central Government.

(*4*) An audit conducted under this section shall be in addition to the audit conducted under section 143.

(*5*) The qualifications, disqualifications, rights, duties and obligations applicable to auditors under this Chapter shall, so far as may be applicable, apply to a cost auditor appointed under this section and it shall be the duty of the company to give all assistance and facilities to the cost auditor appointed under this section for auditing the cost records of the company:

Provided that the report on the audit of cost records shall be submitted by the cost accountant in practice to the Board of Directors of the company.

(*6*) A company shall within thirty days from the date of receipt of a copy of the cost audit report prepared in pursuance of a direction under sub-section (*2*) furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein.

(*7*) If, after considering the cost audit report referred to under this section and the information and explanation furnished by the company under sub-section (*6*), the Central Government is of the opinion that any further information or explanation is necessary, it may call for such further information and explanation and the company shall furnish the same within such time as may be specified by that Government.

(*8*) If any default is made in complying with the provisions of this section,—

(*a*) the company and every officer of the company who is in default shall be punishable in the manner as provided in sub-section (*1*) of section 147;

(*b*) the cost auditor of the company who is in default shall be punishable in the manner as provided in sub-sections (*2*) to (*4*) of section 147.

Rules for Chapter X

Companies (Audit and Auditors) Rules, 2014

In exercise of powers conferred by sub-sections (1), (2) and (4) of section 139, sub-sections (1) and (2) of section 140, sub-section (3) of section 141, sub-sections (2), (3), (8) and (12) of section 143, sub-section (3) of section 148 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013) and in supersession of the Companies (Central Government's) General Rules and Forms, 1956 in so far as they relate to matters covered under these rules, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.- (1) These rules may be called as the Companies (Audit and Auditors) Rules, 2014.

(2) They shall come into force on the 1st day of April, 2014.

2. Definitions.- (1) In these rules, unless the context otherwise requires,-

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "Annexure" means the Annexure enclosed to these rules;

(c) "fees" means fees specified in the Companies (Registration Offices and Fees) Rules, 2014.

(d) "Form" or "e-Form" means a form set forth under these rules which shall be used for the matter to which it relates;

(e) "section" means section of the Act.

(2) The words and expressions used in these rules but not defined and defined in the Act or in the Companies (Specification of definitions details) Rules, 2014 shall have the meanings respectively assigned to them in the Act or in the said rules.

3. Manner and procedure of selection and appointment of auditors.- (1) In case of a company that is required to constitute an Audit Committee under section 177, the committee, and, in cases where such a committee is not required to be constituted, the Board, shall take into consideration the qualifications and experience of the individual or the firm proposed to be considered for appointment as auditor and whether such qualifications and experience are commensurate with the size and requirements of the company:

Provided that while considering the appointment, the Audit Committee or the Board, as the case may be, shall have regard to any order or pending proceeding relating to professional matters of conduct against the proposed auditor before the Institute of Chartered Accountants of India or any competent authority or any Court.

(2) The Audit Committee or the Board, as the case may be, may call for such other information from the proposed auditor as it may deem fit.

(3) Subject to the provisions of sub-rule (1), where a company is required to constitute the Audit Committee, the committee shall recommend the name of an individual or a firm as auditor to the Board for consideration and in other cases, the Board shall consider and recommend an individual or a firm as auditor to the members in the annual general meeting for appointment.

(4) If the Board agrees with the recommendation of the Audit Committee, it shall further recommend the appointment of an individual or a firm as auditor to the members in the annual general meeting.

(5) If the Board disagrees with the recommendation of the Audit Committee, it shall refer back the recommendation to the committee for reconsideration citing reasons for such disagreement.

(6) If the Audit Committee, after considering the reasons given by the Board, decides not to reconsider its original recommendation, the Board shall record reasons for its disagreement with the committee and send its own recommendation for consideration of the members in the annual general meeting; and if the Board agrees with the recommendations of the Audit Committee, it shall place the matter for consideration by members in the annual general meeting.

(7) The auditor appointed in the annual general meeting shall hold office from the conclusion of that meeting till the conclusion of the sixth annual general meeting, with the meeting wherein such appointment has been made being counted as the first meeting:

Provided that such appointment shall be subject to ratification in every annual general meeting till the sixth such meeting by way of passing of an ordinary resolution.

Explanation.- For the purposes of this rule, it is hereby clarified that, if the appointment is not ratified by the members of the company, the Board of Directors shall appoint another individual or firm as its auditor or auditors after following the procedure laid down in this behalf under the Act.

4. Conditions for appointment and notice to Registrar.- (1) The auditor appointed under rule 3 shall submit a certificate that -

(a) the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;

(b) the proposed appointment is as per the term provided under the Act;

(c) the proposed appointment is within the limits laid down by or under the authority of the Act;

(d) the list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.

(2) The notice to Registrar about appointment of auditor under fourth proviso to sub-section (1) of section 139 shall be in Form **ADT-1.**

5. Class of Companies.- For the purposes of sub-section (2) of section 139, the class of companies shall mean the following classes of companies excluding one person companies and small companies:-

(a) all unlisted public companies having paid up share capital of rupees ten crore or more;

(b) all private limited companies having paid up share capital of rupees twenty crore or more;

(c) all companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees fifty crores or more.

6. Manner of rotation of auditors by the companies on expiry of their term.- (1) The Audit Committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent.

(2) Where a company is required to constitute an Audit Committee, the Board shall consider the recommendation of such committee, and in other cases, the Board shall itself consider the matter of rotation of auditors and make its recommendation for appointment of the next auditor by the members in annual general meeting.

(3) For the purpose of the rotation of auditors-

(i) in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of five consecutive years or ten consecutive years, as the case may be;

(ii) the incoming auditor or audit firm shall not be eligible if such auditor or audit firm is associated with the outgoing auditor or audit firm under the same network of audit firms.

Explanation. I - For the purposes of these rules the term "same network" includes the firms operating or functioning, hitherto or in future, under the same brand name, trade name or common control.

Explanation. II - For the purpose of rotation of auditors,-

(a) a break in the term for a continuous period of five years shall be considered as fulfilling the requirement of rotation;

(b) if a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

Illustration explaining rotation in case of individual auditor

Illustration 1:-

Number of consecutive years for which an individual auditor has been functioning as auditor in the same company [in the first AGM held after the commencement of provisions of section 139(2)]	Maximum number of consecutive years for which he may be appointed in the same company (including transitional period)	Aggregate period which the auditor would complete in the same company in view of column I and II
I	II	III
5 years (or more than 5 years)	3 years	8 years or more
4 years	3 years	7 years
3 years	3 years	6 years
2 years	3 years	5 years
1 years	4 years	5 years

Note: 1. Individual auditor shall include other individuals or firms whose name or trade mark or brand is used by such individual, if any.
2. Consecutive years shall mean all the preceding financial years for which the individual auditor has been the auditor until there has been a break by five years or more.

Illustration explaining rotation in case of audit firm
Illustration 2:

Number of consecutive years for which an audit firm has been functioning as auditor in the same company [in the first AGM held after the commencement of provisions of section 139(2)]	Maximum number of consecutive years for which the firm may be appointed in the same company (including transitional period)	Aggregate period which the firm would complete in the same company in view of column I and II
I	II	III
10 years (or more than 10 years)	3 years	13 years or more
9 years	3 years	12 years
8 years	3 years	11 years
7 years	3 years	10 years
6 years	4 years	10 years
5 years	5 years	10 years
4 years	6 years	10 years
3 years	7 years	10 years
2 years	8 years	10 years
1 years	9 years	10 years

Note:1. Audit Firm shall include other firms whose name or trade mark or brand is used by the firm or any of its partners.
2. Consecutive years shall mean all the preceding financial years for which the firm has been the auditor until there has been a break by five years or more.

(4) Where a company has appointed two or more individuals or firms or a combination thereof as joint auditors, the company may follow the rotation of auditors in such a manner that both or all of the joint auditors, as the case may be, do not complete their term in the same year.

7. Removal of the auditor before expiry of his term.- (1) The application to the Central Government for removal of auditor shall be made in Form **ADT-2** and shall be accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.
(2) The application shall be made to the Central Government within thirty days of the resolution passed by the Board.
(3) The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

8. Resignation of auditor.- For the purposes of sub-section (2) of section 140, when an auditor has resigned from the company, he shall file a statement in Form **ADT-3**.

9. Liability to devolve on concerned partners only.- In case of criminal liability of any audit firm, the liability other than fine, shall devolve only on the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud.

10. Disqualifications of auditor.-

(1) For the purpose of proviso to sub-clause (i) of clause (d) of sub-section (3) of section 141, a relative of an auditor may hold securities in the company of face value not exceeding rupees one lakh:

Provided that the condition under this sub-rule shall, wherever relevant, be also applicable in the case of a company not having share capital or other securities:

Provided further that in the event of acquiring any security or interest by a relative, above the threshold prescribed, the corrective action to maintain the limits as specified above shall be taken by the auditor within sixty days of such acquisition or interest.

(2) For the purpose of sub-clause (ii) of clause (d) of sub-section (3) of section 141, a person who or whose relative or partner is indebted to the company or its subsidiary or its holding or associate company or a subsidiary of such holding company, in excess of rupees five lakh shall not be eligible for appointment.

(3) For the purpose of sub-clause (iii) of clause (d) of sub-section (3) of section 141, a person who or whose relative or partner has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of one lakh rupees shall not be eligible for appointment.

(4) For the purpose of clause (e) of sub-section (3) of section 141, the term "business relationship" shall be construed as any transaction entered into for a commercial purpose, except -

(i) commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the regulations made under those Acts;

(ii) commercial transactions which are in the ordinary course of business of the company at arm's length price - like sale of products or services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.

11. Other matters to be included in auditors report.- The auditor's report shall also include their views and comments on the following matters, namely:-

(a) whether the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statement;

(b) whether the company has made provision, as required under any law or accounting standards, for material foreseeable losses, if any, on long term contracts including derivative contracts;

(c) whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the company.

12. Duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor.-

(1) For the purposes of sub-section (8) of section 143, the duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be as contained in sub-sections (1) to (4) of section 143.

(2) The branch auditor shall submit his report to the company's auditor.

(3) The provisions of sub-section (12) of section 143 read with rule 12 hereunder regarding reporting of fraud by the auditor shall also extend to such branch auditor to the extent it relates to the concerned branch.

13. Reporting of frauds by auditor.-

(1) For the purpose of sub-section (12) of section 143, in case the auditor has sufficient reason to believe that an offence involving fraud, is being or has been committed against the company by officers or employees of the company, he shall report the matter to the Central Government immediately but not later than sixty days of his knowledge and after following the procedure indicated herein below:

(i) auditor shall forward his report to the Board or the Audit Committee, as the case may be, immediately after he comes to knowledge of the fraud, seeking their reply or observations within forty-five days;

(ii) on receipt of such reply or observations the auditor shall forward his report and the reply or observations of the Board or the Audit Committee alongwith his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within fifteen days of receipt of such reply or observations;

(iii) in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of forty-five days, he shall forward his report to the Central Government alongwith a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he failed to receive any reply or observations within the stipulated time.

(2) The report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed post followed by an e-mail in confirmation of the same.

(3) The report shall be on the letter-head of the auditor containing postal address, e-mail address and contact number and be signed by the auditor with his seal and shall indicate his Membership Number.

(4) The report shall be in the form of a statement as specified in Form **ADT-4.**

(5) The provision of this rule shall also apply, mutatis mutandis, to a cost auditor and a secretarial auditor during the performance of his duties under section 148 and section 204 respectively.

14. Remuneration of the Cost Auditor.- For the purpose of sub-section (3) of section 148,-

(a) in the case of companies which are required to constitute an audit committee-

(i) the Board shall appoint an individual, who is a cost accountant in practice, or a firm of cost accountants in practice, as cost auditor on the recommendations of the Audit committee, which shall also recommend remuneration for such cost auditor;

(ii) the remuneration recommended by the Audit Committee under (i) shall be considered and approved by the Board of Directors and ratified subsequently by the shareholders;

(b) in the case of other companies which are not required to constitute an audit committee, the Board shall appoint an individual who is a cost accountant in practice or a firm of cost accountants in practice as cost auditor and the remuneration of such cost auditor shall be ratified by shareholders subsequently.

Forms for Chapter X

FORM NO. ADT-1
[See rule 4(2) of the Companies (Audit and Auditors) Rules, 2014]

Notice of appointment of auditor by the company

1. (a) Corporate identity number (CIN) or foreign company registration number (FCRN) of the company

(b) Global Location Number (GLN) of company

2. (a) Name of the company:
(b) Address of the registered office or of the principal place of business in India of the company:
(c) E-mail ID of the company
3. Date of meeting at which the auditor appointed _____

4. Category of Auditor _____ Individual Firm _____

5. (a) Income Tax PAN of Auditor or auditor's firm
(b) Name of the Auditor or Auditor's firm
(c) Membership Number of Auditor or auditor's firm's registration number
(d) Address of the Auditor or auditor's firm
(e) City
(f) State
(g) Pin code
(h) E-mail id of the auditor or auditor's firm

Place:

Date:

Verification

I am authorised by the Board of Directors of the Company vide resolution no……. dated…… to sign this form and declare that all the requirements of Companies Act, 2013 (18 of 2013) and the rules made thereunder in respect of the subject matter of this form and matters incidental thereto have been complied with. I also declare that all the information given herein above is true, correct and complete including the attachments to this form and nothing material has been suppressed.

To be digitally signed by

Designation (to be given)

DIN of the person signing the form.

Note:
This eform has been taken on file maintained by the Registrar of companies through electronic mode and on the basis of statement of correctness given by the filing company. Attention is also drawn to provisions of section 448 of the Act which provide for punishment for false statement.

FORM NO. ADT-2
Application for removal of auditor(s) from his/their office before expiry of term

[See rule 7(1) of Companies (Audit and Auditors) Rules, 2014]

1. (a) Corporate identity number (CIN) or foreign company registration number (FCRN) of the company:
(b) Global Location Number (GLN) of company:
2. (a) Name of the company:
(b) Address of the registered office or of the principal place of business in India of the company:
(c) E-mail ID of the company:

3.(a) Service request number of relevant special resolution
(b) date of filing the form
(c) date of passing the special resolution
(d) date of the annual/extraordinary general meeting
4. Details of the application clearly indicating the grounds for seeking removal of auditor
5. Whether the accounts have been qualified during last three years (if yes, give details)
6. Details of opportunity given to auditor concerned for being heard
7. Whether any civil or criminal proceedings are pending between the company and the concerned officers. ___ Yes ____ No. If yes, give complete details.
8. Date of appointment of the concerned auditor and SRN of notice of his appointment and period for which the auditor was appointed.
9. Whether any special notice has been received for removal of auditors. Yes or No. If yes, the date of receipt of notice and the percentage of capital held by the members giving such notice or percentage of the number of members in case of company limited by members.
10. Whether all due audit fee has been paid to the concerned auditors. If no mention the amount of arrears.
11. Details of other services been rendered by such auditors to the company.
12. Pendency of Audit i.e, number of financial years for which audit is pending.
13. Stage of accounts of the company for each of such financial year i.e, yet to be approved by the Board or approved by the Board but yet to be handed over to auditors or approved by the Board, handed over to auditors but audit not yet completed or audit completed, draft report not yet given by the auditors.
14. Whether there is any dispute with regard to the Books of Accounts in the possession of auditors but not delivered back to the company. Yes or No.

Verification

I am authorized by the Board of Directors of the Company vide resolution no……. dated…… to sign this form and declare that all the requirements of Companies Act, 2013

and the rules made thereunder in respect of the subject matter of this form and matters incidental thereto have been complied with. I also declare that all the information given herein above is true, correct and complete including the attachments to this form and nothing material has been suppressed.

To be digitally signed by
Designation (to be given)
DIN of the person signing the form

Attachments:

1. Copy of the special resolution
2. Details of the grounds for seeking removal of auditor
3. Minutes of the annual general meeting or extraordinary general meeting
4. Optional attachments, if any
5. _____

Note:
Attention is also drawn to provisions of Section 448 and 449 which provide for punishment for false statement and punishment for false evidence respectively.

_____

For office use only: E-form Service Request Number (SRN)…… E-form filing date….

Digital signature of the authorizing officer
This e-form is hereby approved/rejected _____

Date of signing

FORM NO. ADT-3
[See rule 8 of Companies (Audit and Auditors) Rules, 2014]
Notice of Resignation by the Auditor

1. (a) Corporate identity number (CIN) or foreign company registration number (FCRN) of the company:
(b) Global Location Number (GLN) of company:

2. (a) Name of the company:
(b) Address of the registered office or of the principal place of business in India of the company:
(c) E-mail ID of the company:

3. Category of Auditor _____ Individual _____ Firm

4. (a) Income Tax PAN of auditor or auditor's firm
(b) Name of the auditor or auditor's firm
(c) Membership Number of auditor or auditor's firm's registration number
(d) Address of the auditor or auditor's firm

(e) City
(f) State
(g) Pin code
(h) Email id of the auditor or auditor's firm

5. Reasons for resignation
6. Whether letter of resignation is attached Yes/No
7. Any other facts relevant to the resignation

Verification

I hereby confirm that the information given in this form and its attachments is correct and complete.

I am duly authorised to sign and submit this form.

To be digitally signed by

Auditor / Partner of the audit firm

Whether Associate or Fellow:
____ Associate _____ Fellow

Membership Number:

Attachments:
1. Resignation letter, if attached
2. optional attachments, if any.

Form No.ADT-4
REPORT TO THE CENTRAL GOVERNMENT
[See rule 13(4) of the Companies (Audit and Auditors) Rules, 2014]

Date:

Subject: Report under sub- section (12) of section 143 of the Companies Act, 2013 on suspected offence involving fraud being committed or having been committed

1) (a) Name of the Company
   (b) CIN:
   (c) Address of the Registered Office:

2) (a) Name of the auditor or auditor's Firm
   (b) Membership Number
   (c) Address

3) Date of the annual general meeting when the Auditor was appointed or reappointed

4) SRN and date of filing

5) Address of the office or location where the suspected offence is believed to have been or is being committed

6) Full details of the suspected offence involving fraud (attach documents in support)

7) Particulars of the officers or employees who are suspected to be involved in the commission of the offence, if any:
   a) Name(s) :
   b) Designation
   c) If Director, his DIN
   d) PAN
8) Basis on which fraud is suspected:
9) Period during which the suspected fraud has occurred
10) Date of sending report to the Board or Audit committee as per rule 13(1)
11) Date of reply received from Board or Audit committee, if any and if so received, attach copy thereof and give gist of the reply
12) Whether the auditor is satisfied with the reply of the Board or Audit committee. Yes _____ No _____.
13) Estimated amount involved in the suspected fraud;
14) Details of steps , if any, taken by the company in this regard; (Furnish full details with references)
15) Any other relevant information.

VERIFICATION

I, ……., Proprietor/Partner of ……., Chartered Accountants do hereby declare that the information furnished above is true, correct and complete in all respects including the attachments to this form.

(Name, Signature and

Seal of Auditor

Attachments:
1 Optional attachments _____

Note : The report on this form along with attachments thereto is to be given in a sealed cover to the Secretary, Ministry of Corporate Affairs in the manner provided in Rule 13.

CHAPTER XI

APPOINTMENT AND QUALIFICATIONS OF DIRECTORS

149. Company to have Board of Directors.

(*1*) Every company shall have a Board of Directors consisting of individuals as directors and shall have—

(*a*) a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and

(*b*) a maximum of fifteen directors:

Provided that a company may appoint more than fifteen directors after passing a special resolution:

Provided further that such class or classes of companies as may be prescribed, shall have at least one woman director.

(*2*) Every company existing on or before the date of commencement of this Act shall within one year from such commencement comply with the requirements of the provisions of sub-section (*1*).

(*3*) Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year.

(*4*) Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.

Explanation.—For the purposes of this sub-section, any fraction contained in such one-third number shall be rounded off as one.

(*5*) Every company existing on or before the date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules in this regard as may be applicable, comply with the requirements of the provisions of sub-section (*4*).

(*6*) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—

(*a*) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

(*b*) (*i*) who is or was not a promoter of the company or its holding, subsidiary or associate company;

(*ii*) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

(*c*) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

(*d*) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(*e*) who, neither himself nor any of his relatives—

(*i*) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

(*ii*) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—

(*A*) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(*B*) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;

(*iii*) holds together with his relatives two per cent. or more of the total voting power of the company; or

(*iv*) is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or

(*f*) who possesses such other qualifications as may be prescribed.

(*7*) Every independent 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 circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence as provided in sub-section (*6*).

Explanation.—For the purposes of this section, "nominee director" means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or (*8*) The company and independent directors shall abide by the provisions specified in Schedule IV.

(*9*) Notwithstanding anything contained in any other provision of this Act, but subject to the provisions of sections 197 and 198, an independent director shall not be entitled to any stock option and may receive remuneration by way of fee provided under sub-section (*5*) of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.

(*10*) Subject to the provisions of section 152, an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.

(*11*) Notwithstanding anything contained in sub-section (*10*), no independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director:

Provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.

Explanation.—For the purposes of sub-sections (*10*) and (*11*), any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under those sub-sections.

(*12*) Notwithstanding anything contained in this Act,—

(*i*) an independent director;

(*ii*) a non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

(*13*) The provisions of sub-sections (*6*) and (*7*) of section 152 in respect of retirement of directors by rotation shall not be applicable to appointment of independent directors.

150. Manner of selection of independent directors and maintenance of data bank of independent directors.

(*1*) Subject to the provisions contained in sub-section (*5*) of section 149, an independent director may be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by any body, institute or association, as may by notified by the Central Government, having expertise in creation and maintenance of such data bank and put on their website for the use by the company making the appointment of such directors:

Provided that responsibility of exercising due diligence before selecting a person from the data bank referred to above, as an independent director shall lie with the company making such appointment.

(*2*) The appointment of independent director shall be approved by the company in general meeting as provided in sub-section (*2*) of section 152 and the explanatory statement annexed to the notice of the general meeting called to consider the said appointment shall indicate the justification for choosing the appointee for appointment as independent director.

(*3*) The data bank referred to in sub-section (*1*), shall create and maintain data of persons willing to act as independent director in accordance with such rules as may be prescribed.

(*4*) The Central Government may prescribe the manner and procedure of selection of independent directors who fulfil the qualifications and requirements specified under section 149.

151. Appointment of director elected by small shareholders.

A listed company may have one director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed.

Explanation.—For the purposes of this section "small shareholders" means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

152. Appointment of directors.

(*1*) Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed and in case of a One Person Company an individual being member shall be deemed to be its first director

until the director or directors are duly appointed by the member in accordance with the provisions of this section.

(*2*) Save as otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting.

(*3*) No person shall be appointed as a director of a company unless he has been allotted the Director Identification Number under section 154.

(*4*) Every person proposed to be appointed as a director by the company in general meeting or otherwise, shall furnish his Director Identification Number and a declaration that he is not disqualified to become a director under this Act.

(*5*) A person appointed as a director shall not act as a director unless he gives his consent to hold the office as director and such consent has been filed with the Registrar within thirty days of his appointment in such manner as may be prescribed:

Provided that in the case of appointment of an independent director in the general meeting, an explanatory statement for such appointment, annexed to the notice for the general meeting, shall include a statement that in the opinion of the Board, he fulfils the conditions specified in this Act for such an appointment.

(*6*) (*a*) Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall—

(*i*) be persons whose period of office is liable to determination by retirement of directors by rotation; and

(*ii*) save as otherwise expressly provided in this Act, be appointed by the company in general meeting.

(*b*) The remaining directors in the case of any such company shall, in default of, and subject to any regulations in the articles of the company, also be appointed by the company in general meeting.

(*c*) At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed in accordance with clauses (*a*) and (*b*) and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.

(*d*) The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.

(*e*) At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.

Explanation.—For the purposes of this sub-section, "total number of directors" shall not include independent directors, whether appointed under this Act or any other law for the time being in force, on the Board of a company.

(*7*)(*a*)If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national

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

(*b*) If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, 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.

Explanation.—For the purposes of this section and section 160, the expression "retiring director" means a director retiring by rotation.

153. Application for allotment of Director Identification Number.

Every individual intending to be appointed as director of a company shall make an application for allotment of Director Identification Number to the Central Government in such form and manner and along with such fees as may be prescribed.

154. Allotment of Director Identification Number.

The Central Government shall, within one month from the receipt of the application under section 153, allot a Director Identification Number to an applicant in such manner as may be prescribed.

155. Prohibition to obtain more than one Director Identification Number.

No individual, who has already been allotted a Director Identification Number under section 154, shall apply for, obtain or possess another Director Identification Number.

156. Director to intimate Director Identification Number.

Every existing director shall, within one month of the receipt of Director Identification Number from the Central Government, intimate his Director Identification Number to the company or all companies wherein he is a director.

157. Company to inform Director Identification Number to Registrar.

(*1*) Every company shall, within fifteen days of the receipt of intimation under section 156, furnish the Director Identification Number of all its directors to the Registrar or any other officer or authority as may be specified by the Central Government with such fees as may be prescribed or with such additional fees as may be prescribed within the time specified under section 403 and every such intimation shall be furnished in such form and manner as may be prescribed.

(*2*) If a company fails to furnish Director Identification Number under sub-section (*1*), before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees and every officer of the company who is in default

shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

158. Obligation to indicate Director Identification Number.
Every person or company, while furnishing any return, information or particulars as are required to be furnished under this Act, shall mention the Director Identification Number in such return, information or particulars in case such return, information or particulars relate to the director or contain any reference of any director.

159. Punishment for contravention.
If any individual or director of a company, contravenes any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues.

160. Right of persons other than retiring directors to stand for directorship.
(*1*) A person who is not a retiring director in terms of section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of one lakh rupees or such higher amount as may be prescribed which shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than twenty-five per cent. of total valid votes cast either on show of hands or on poll on such resolution.
(*2*) The company shall inform its members of the candidature of a person for the office of director under sub-section (*1*) in such manner as may be prescribed.

161. Appointment of additional director, alternate director and nominee director.
(*1*) The articles of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time who shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.
(*2*) The Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company, to act as an alternate director for a director during his absence for a period of not less than three months from India:

Provided that no person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act:

Provided further that an alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India:

Provided also that if the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

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

(*4*) In the case of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board:

Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

162. Appointment of directors to be voted individually.

(*1*) At a general meeting of a company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.

(*2*) A resolution moved in contravention of sub-section (*1*) shall be void, whether or not any objection was taken when it was moved.

(*3*) A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as a motion for his appointment.

163. Option to adopt principle of proportional representation for appointment of directors.

Notwithstanding anything contained in this Act, the articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a company in accordance with the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise and such appointments may be made once in every three years and casual vacancies of such directors shall be filled as provided in sub-section (*4*) of section 161.

164. Disqualifications for appointment of director.

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

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

months and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;

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

(*f*) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;

(*g*) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or

(*h*) he has not complied with sub-section (*3*) of section 152.

(*2*) No person who is or has been a director of a company which—

(*a*) has not filed financial statements or annual returns for any continuous period of three financial years; or

(*b*) 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 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.

(*3*) 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*):

Provided that the disqualifications referred to in clauses (*d*), (*e*) and (*g*) of sub-section (*1*) shall not take effect—

(*i*) for thirty days from the date of conviction or order of disqualification;

(*ii*) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed off; or

(*iii*) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed off.

165. Number of directorships

(*1*) No person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time**:**

Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

Explanation.— For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included.

(*2*) Subject to the provisions of sub-section (*1*), the members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors.

(*3*) Any person holding office as director in companies more than the limits as specified in sub-section (*1*), immediately before the commencement of this Act shall, within a period of one year from such commencement,—

(*a*) choose not more than the specified limit of those companies, as companies in which he wishes to continue to hold the office of director;

(*b*) resign his office as director in the other remaining companies; and

(*c*) intimate the choice made by him under clause (*a*), to each of the companies in which he was holding the office of director before such commencement and to the Registrar having jurisdiction in respect of each such company.

(*4*) Any resignation made in pursuance of clause (*b*) of sub-section (*3*) shall become effective immediately on the despatch thereof to the company concerned.

(*5*) No such person shall act as director in more than the specified number of companies,—

(*a*) after despatching the resignation of his office as director or non-executive director thereof, in pursuance of clause (*b*) of sub-section (*3*); or

(*b*) after the expiry of one year from the commencement of this Act, whichever is earlier.

(*6*) If a person accepts an appointment as a director in contravention of sub-section (*1*), he shall be punishable with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees for every day after the first during which the contravention continues.

166. Duties of directors.

(*1*) Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company.

(*2*) A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.

(*3*) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

(*4*) A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

(*5*) A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and 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.

(*6*) A director of a company shall not assign his office and any assignment so made shall be void.

(*7*) If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

167. Vacation of office of director.

(*1*) The office of a director shall become vacant in case—

(*a*) he incurs any of the disqualifications specified in section 164;

(*b*) he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;
(*c*) he acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;
(*d*) he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184;
(*e*) he becomes disqualified by an order of a court or the Tribunal;
(*f*) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months:

Provided that the office shall be vacated by the director even if he has filed an appeal against the order of such court;

(*g*) he is removed in pursuance of the provisions of this Act;
(*h*) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

(*2*) If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in subsection (*1*), he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

(*3*) Where all the directors of a company vacate their offices under any of the disqualifications specified in sub-section (*1*), the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.

(*4*) A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified in sub-section (*1*).

168. Resignation of director.

(*1*) A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company:

Provided that a director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.

(*2*) The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later:

Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

(*3*) Where all the directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting.

169. Removal of directors.

(*1*) A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard:

Provided that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two thirds of the total number of directors according to the principle of proportional representation.

(*2*) A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.

(*3*) On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

(*4*) Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,—

(*a*) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(*b*) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company), and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting:

Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

(*5*) A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place at the meeting at which he is removed, provided special notice of the intended appointment has been given under sub-section (*2*).

(*6*) A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed.

(*7*) If the vacancy is not filled under sub-section (*5*), it may be filled as a casual vacancy in accordance with the provisions of this Act:

Provided that the director who was removed from office shall not be re-appointed as a director by the Board of Directors.

(*8*) Nothing in this section shall be taken—

(*a*) as depriving a person removed under this section of any compensation or damages payable to him in respect of the termination of his appointment as director as per the terms of contract or terms of his appointment as director, or of any other appointment terminating with that as director; or

(*b*) as derogating from any power to remove a director under other provisions of this Act.

170. Register of directors and key managerial personnel and their shareholding.

(*1*) Every company shall keep at its registered office a register containing such particulars of its directors and key managerial personnel as may be prescribed, which shall include the details of securities held by each of them in the company or its holding, subsidiary, subsidiary of company's holding company or associate companies.

(*2*) A return containing such particulars and documents as may be prescribed, of the directors and the key managerial personnel shall be filed with the Registrar within thirty days from the appointment of every director and key managerial personnel, as the case may be, and within thirty days of any change taking place.

171. Members' right to inspect.

(*1*) The register kept under sub-section (*1*) of section 170,—

(*a*) shall be open for inspection during business hours and the members shall have a right to take extracts therefrom and copies thereof, on a request by the members, be provided to them free of cost within thirty days; and

(*b*) shall also be kept open for inspection at every annual general meeting of the company and shall be made accessible to any person attending the meeting.

(*2*) If any inspection as provided in clause (*a*) of sub-section (*1*) is refused, or if any copy required under that clause is not sent within thirty days from the date of receipt of such request, the Registrar shall on an application made to him order immediate inspection and supply of copies required thereunder.

172. Punishment.

If a company contravenes any of the provisions of this Chapter and for which no specific punishment is provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Rules for Chapter XI

Companies (Appointment and Qualification of Directors) Rules, 2014

In exercise of the powers conferred under second proviso to sub-section (1), sub-section (4), clause (f) of sub-section (6) of section 149, sub-sections (3) and (4) of section 150, section 151, sub-section (5) of section 152, section 153, section 154, section 157, section 160, sub-section (1) of section 168 and section 170 read with section 469 of the Companies Act, 2013, and in supersession of the Companies (Central Government's) General Rules and Forms, 1956 or any other rules prescribed under the Companies Act, 1956 (1 of 1956) on matters covered under these rules, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:-

1. Short title and commencement. –

(1) These rules may be called the Companies Appointment and Qualification of Directors) Rules, 2014.

(2) They shall come into force on the 1st day of April, 2014.

2. Definitions.- (1) In these rules, unless the context otherwise requires, -

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "Annexure" means the Annexure to these rules;

(c) "digital signature" means the digital signature as defined under clause (p) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(d) "Director Identification Number" (DIN) means an identification number allotted by the Central Government to any individual, intending to be appointed as director or to any existing director of a company, for the purpose of his identification as a director of a company:

Provided that the Director Identification Number (DIN) obtained by the individuals prior to the notification of these rules shall be the DIN for the purpose of the Companies Act, 2013:

Provided further that "Director Identification Number" (DIN) includes the Designated Partnership Identification Number (DPIN) issued under section 7 of the Limited Liability Partnership Act, 2008 (6 of 2009) and rules made thereunder;

(e) "electronic record" means the electronic record as defined under clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(f) "electronic Registry" means an electronic repository or storage system of the Central Government in which the information or documents are received, stored, protected and preserved in electronic form;

(g) "Fees" means the fees as specified in the Companies (Registration Offices and Fees) Rules, 2014;

(h) "Form" or "e-Form" means a form set forth in Annexure to these rules which shall be used for the matter to which it relates;

(i) "Regional Director" means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director;

(j) "section" means section of the Act;

(k) For the purposes of clause (d) of sub-section (1) of section 164 and clause (f) of sub-section (1) of section 167 of the Act, "or otherwise" means any offence in respect of which he has been convicted by a Court under the Act or under the Companies Act, 1956.

(2) Words and expressions used in these rules and not defined but defined under the Act or under the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or the Depositories Act, 1996 (22 of 1996) or the Information Technology Act, 2000 (21 of 2000) or the Companies (Specification of definitions details) Rules, 2014 shall have the meanings respectively assigned to them in the Act or in those Acts or such rules.

3. Woman director on the Board.- The following class of companies shall appoint at least one woman director-

(i) every listed company;

(ii) every other public company having -

(a) paid–up share capital of one hundred crore rupees or more; or

(b) turnover of three hundred crore rupees or more:

Provided that a company, which has been incorporated under the Act and is covered under provisions of second proviso to sub-section (1) of section 149 shall comply with such provisions within a period of six months from the date of its incorporation:

Provided further that any intermittent vacancy of a woman director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is later.

Explanation.- For the purposes of this rule, it is hereby clarified that the paid up share capital or turnover, as the case may be, as on the last date of latest audited financial statements shall be taken into account.

4. Number of independent directors.- The following class or classes of companies shall have at least two directors as independent directors -

(i) the Public Companies having paid up share capital of ten crore rupees or more; or

(ii) the Public Companies having turnover of one hundred crore rupees or more; or

(iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees:

Provided that in case a company covered under this rule is required to appoint a higher number of independent directors due to composition of its audit committee, such higher number of independent directors shall be applicable to it:

Provided further that any intermittent vacancy of an independent director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later:

Provided also that where a company ceases to fulfil any of three conditions laid down in sub-rule (1) for three consecutive years, it shall not be required to comply with these provisions until such time as it meets any of such conditions;

Explanation. - For the purposes of this rule, it is here by clarified that, the paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account:

Provided that a company belonging to any class of companies for which a higher number of independent directors has been specified in the law for the time being in force shall comply with the requirements specified in such law.

5. Qualifications of independent director.- An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.

6. Creation and maintenance of databank of persons offering to become independent directors. - (1) Any body, institute or association (hereinafter to be referred as "the agency"), which has been authorised in this behalf by the Central Government shall create and maintain a data bank of persons willing and eligible to be appointed as independent director and such data bank shall be placed on the website of the Ministry of Corporate Affairs or on any other website as may be approved or notified by the Central Government.

(2) The data bank referred to in sub-rule (1) shall contain the following details in respect of each person included in the data bank to be eligible and willing to be appointed as independent director-

(a) DIN (Director Identification Number);
(b) the name and surname in full;
(c) income-tax PAN ;
(d) the father's name and mother's name and Spouse's name (if married) ;
(e) the date of Birth;
(f) gender;
(g) the nationality;
(h) the occupation;
(i) full Address with PIN Code (present and permanent);
(j) phone number;
(k) e-mail id;
(l) the educational and professional qualifications;
(m) experience or expertise, if any;
(n) any legal proceedings initiated or pending against such person;
(o) the list of limited liability partnerships in which he is or was a designated partner along with –
  (i) the name of the limited liability partnership;
  (ii) the nature of industry; and
  (iii) the duration- with dates;
(p) the list of companies in which he is or was director along with -
  (i) the name of the company;
  (ii) the nature of industry;
  (iii) the nature of directorship – Executive or Non-executive or Managing Director or Independent Director or Nominee Director; and
  (iv) duration – with dates.

(3) A disclaimer shall be conspicuously displayed on the website hosting the databank that a company must carry out its own due diligence before appointment of any person as an independent director and "the agency" maintaining the databank or the Central

Government shall not be held responsible for the accuracy of information or lack of suitability of the person whose particulars form part of the databank.

(4) Any person who desires to get his name included in the data bank of independent directors shall make an application to "the agency" in Form **DIR-1**.

(5) The agency may charge a reasonable fee from the applicant for inclusion of his name in the data bank of independent directors.

(6) Any person who has applied for inclusion of his name in the data bank of independent directors or any person whose name appears in the data bank , shall intimate to the agency about any changes in his particulars within fifteen days of such change.

(7) The databank posted on the website shall -
(a) be accessible at the specified website;
(b) be substantially identical to the physical version of the data bank;
(c) be searchable on the parameters specified in sub-rule (2);
(d) be presented in a format or formats convenient for both printing and viewing online; and
(e) contain a link to obtain the software required to view or print the particulars free of charge.

7. Small shareholders' director.- (1) A listed company, may upon notice of not less than one thousand small shareholders or one-tenth of the total number of such shareholders, whichever is lower, have a small shareholders' director elected by the small shareholders:

Provided that nothing in this sub-rule shall prevent a listed company to opt to have a director representing small shareholders suo motu and in such a case the provisions of sub-rule (2) shall not apply for appointment of such director.

(2) The small shareholders intending to propose a person as a candidate for the post of small shareholders' director shall leave a notice of their intention with the company at least fourteen days before the meeting under their signatures specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director:

Provided that if the person being proposed does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice:

(3) The notice shall be accompanied by a statement signed by the person whose name is being proposed for the post of small shareholders' director stating -
(a) his Director Identification Number;
(b) that he is not disqualified to become a director under the Act; and
(c) his consent to act as a director of the company

(4) Such director shall be considered as an independent director subject to , his being eligible under sub-section (6) of section 149 and his giving a declaration of his independence in accordance with sub-section (7) of section 149 of the Act.

(5) The appointment of small shareholders' director shall be subject to the provisions of section 152 except that-
(a) such director shall not be liable to retire by rotation;

(b) such director's tenure as small shareholders' director shall not exceed a period of three consecutive years; and
(c) on the expiry of the tenure, such director shall not be eligible for re-appointment.

(6) A person shall not be appointed as small shareholders' director of a company, if the person is not eligible for appointment in terms of section 164.

(7) A person appointed as small shareholders' director shall vacate the office if -
(a) the director incurs any of the disqualifications specified in section 164;
(b) the office of the director becomes vacant in pursuance of section 167;
(c) the director ceases to meet the criteria of independence as provided in sub-section (6) of section 149.

(8) No person shall hold the position of small shareholders' director in more than two companies at the same time:

Provided that the second company in which he has been appointed shall not be in a business which is competing or is in conflict with the business of the first company.

(9) A small shareholders' director shall not, for a period of three years from the date on which he ceases to hold office as a small shareholders' director in a company, be appointed in or be associated with such company in any other capacity, either directly or indirectly.

8. Consent to act as director.- Every person who has been appointed to hold the office of a director shall on or before the appointment furnish to the company a consent in writing to act as such in Form **DIR-2:**

Provided that the company shall, within thirty days of the appointment of a director, file such consent with the Registrar in Form **DIR-12** along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

9. Application for allotment of Director Identification Number.-(1) Every individual, who is to be appointed as director of a company shall make an application electronically in Form **DIR-3**, to the Central Government for the allotment of a Director Identification Number (DIN) along with such fees as provided in the Companies (Registration Offices and Fees) Rules, 2014.

(2) The Central Government shall provide an electronic system to facilitate submission of application for the allotment of DIN through the portal on the website of the Ministry of Corporate Affairs.

(3) (a) The applicant shall download Form **DIR-3** from the portal, fill in the required particulars sought therein and sign the form and after attaching copies of the following documents, scan and file the entire set of documents electronically-
(i) photograph;
(ii) proof of identity;
(iii) proof of residence;
(iv) verification by the applicant for applying for allotment of DIN in Form **DIR-4;** and
(v) specimen signature duly verified.

(b) Form **DIR-3** shall be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate and shall be verified digitally by -
(i) a chartered accountant in practice or a company secretary in practice or a cost accountant in practice; or

(ii) a company secretary in full time employment of the company or by the managing director or director of the company in which the applicant is to be appointed as director.

10. Allotment of DIN.- (1) On the submission of the Form **DIR-3** on the portal and payment of the requisite amount of fees through online mode the provisional DIN shall be generated by the system automatically which shall not be utilized till the DIN is confirmed by the Central Government.

(2) After generation of the provisional DIN, the Central Government shall process the applications received for allotment of DIN under sub-rule (2) of rule 9, decide on the approval or rejection thereof and communicate the same to the applicant along with the DIN allotted in case of approval by way of a letter by post or electronically or in any other mode, within a period of one month from the receipt of such application.

(3) If the Central Government, on examination, finds such application to be defective or incomplete in any respect, it shall give intimation of such defect or incompleteness, by placing it on the website and by email to the applicant who has filed such application, directing the applicant to rectify such defects or incompleteness by resubmitting the application within a period of fifteen days of such placing on the website and email:

Provided that the Central Government shall -

(a) reject the application and direct the applicant to file fresh application with complete and correct information, where the defect has been rectified partially or the information given is still found to be defective;

(b) treat and label such application as invalid in the electronic record in case the defects are not removed within the given time; and

(c) inform the applicant either by way of letter by post or electronically or in any other mode.

(4) In case of rejection or invalidation of application, the provisional DIN so allotted by the system shall get lapsed automatically and the fee so paid with the application shall neither be refunded nor adjusted with any other application.

(5) All Director Identification Numbers allotted to individual(s) by the Central Government before the commencement of these rules shall be deemed to have been allotted to them under these rules.

(6) The Director Identification Number so allotted under these rules is valid for the life-time of the applicant and shall not be allotted to any other person.

11. Cancellation or surrender or Deactivation of DIN.- The Central Government or Regional Director (Northern Region), Noida or any officer authorised by the Regional Director may, upon being satisfied on verification of particulars or documentary proof attached with the application received from any person, cancel or deactivate the DIN in case -

(a) the DIN is found to be duplicated in respect of the same person provided the data related to both the DIN shall be merged with the validly retained number;

(b) the DIN was obtained in a wrongful manner or by fraudulent means;

(c) of the death of the concerned individual;

(d) the concerned individual has been declared as a person of unsound mind by a competent Court;

(e) if the concerned individual has been adjudicated an insolvent:

Provided that before cancellation or deactivation of DIN pursuant to clause (b), an opportunity of being heard shall be given to the concerned individual;

(f) on an application made in Form **DIR-5** by the DIN holder to surrender his or her DIN along with declaration that he has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority, the Central Government may deactivate such DIN:

Provided that before deactivation of any DIN in such case, the Central Government shall verify e-records.

Explanation.- For the purposes of clause (b) -

(i) the term "wrongful manner" means if the DIN is obtained on the strength of documents which are not legally valid or incomplete documents are furnished or on suppression of material information or on the basis of wrong certification or by making misleading or false information or by misrepresentation;

(ii) the term "fraudulent means" means if the DIN is obtained with an intent to deceive any other person or any authority including the Central Government.

12. Intimation of changes in particulars specified in DIN application. - (1) Every individual who has been allotted a Director Identification Number under these rules shall, in the event of any change in his particulars as stated in Form **DIR-3**, intimate such change(s) to the Central Government within a period of thirty days of such change(s) in Form **DIR-6** in the following manner, namely;-

(i) the applicant shall download Form **DIR-6** from the portal and fill in the relevant changes, attach copy of the proof of the changed particulars and verification in the Form **DIR-7** all of which shall be scanned and submitted electronically;

(ii) the form shall be digitally signed by a chartered accountant in practice or a company secretary in practice or a cost accountant in practice;

(iii) the applicant shall submit the Form **DIR-6;**

(2) The Central Government, upon being satisfied, after verification of such changed particulars from the enclosed proofs, shall incorporate the said changes and inform the applicant by way of a letter by post or electronically or in any other mode confirming the effect of such change in the electronic database maintained by the Ministry.

(3) The DIN cell of the Ministry shall also intimate the change(s) in the particulars of the director submitted to it in Form **DIR-6** to the concerned Registrar(s) under whose jurisdiction the registered office of the company(s) in which such individual is a director is situated.

(4) The concerned individual shall also intimate the change(s) in his particulars to the company or companies in which he is a director within fifteen days of such change.

13. Notice of candidature of a person for directorship.- The company shall, at least seven days before the general meeting, inform its members of the candidature of a person for the office of a director or the intention of a member to propose such person as a candidate for that office-

(1) by serving individual notices, on the members through electronic mode to such members who have provided their email addresses to the company for communication purposes, and in writing to all other members; and

(2) by placing notice of such candidature or intention on the website of the company, if any:

Provided that it shall not be necessary for the company to serve individual notices upon the members as aforesaid, if the company advertises such candidature or intention, not less than seven days before the meeting at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district.

14. Disqualification of directors sub-section (2) of section 164.-

(1) Every director shall inform to the company concerned about his disqualification under sub-section (2) of section 164, if any, in Form **DIR-8** before he is appointed or re-appointed.

(2) Whenever a company fails to file the financial statements or annual returns, or fails to repay any deposit, interest, dividend, or fails to redeem its debentures, as specified in sub-section (2) of section 164, the company shall immediately file Form **DIR-9**, to the Registrar furnishing therein the names and addresses of all the directors of the company during the relevant financial years.

(3) When a company fails to file the Form **DIR-9** within a period of thirty days of the failure that would attract the disqualification under sub-section (2) of section 164, officers of the company specified in clause (60) of section 2 of the Act shall be the officers in default.

(4) Upon receipt of the Form **DIR-9** under sub-rule (2), the Registrar shall immediately register the document and place it in the document file for public inspection.

(5) Any application for removal of disqualification of directors shall be made in Form **DIR-10**.

15. Notice of resignation of director.- The company shall within thirty days from the date of receipt of notice of resignation from a director, intimate the Registrar in Form **DIR-12** and post the information on its website, if any.

16. Copy of resignation of director to be forwarded by him.- Where a director resigns from his office, he shall within a period of thirty days from the date of resignation, forward to the Registrar a copy of his resignation along with reasons for the resignation in Form **DIR-11** along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

17. Register of directors and key managerial personnel.- (1) Every company shall keep at its registered office a register of its directors and key managerial personnel containing the following particulars, namely:-

(a) Director Identification Number (optional for key managerial personnel);
(b) present name and surname in full;
(c) any former name or surname in full;
(d) father's name, mother's name and spouse's name(if married) and surnames in full;
(e) date of birth;
(f) residential address (present as well as permanent);
(g) nationality (including the nationality of origin, if different);
(h) occupation;
(i) date of the board resolution in which the appointment was made;
(j) date of appointment and reappointment in the company;
(k) date of cessation of office and reasons therefor;

(l) office of director or key managerial personnel held or relinquished in any other body corporate;
(m) membership number of the Institute of Company Secretaries of India in case of Company Secretary, if applicable; and
(n) Permanent Account Number (mandatory for key managerial personnel if not having DIN);

(2) In addition to the details of the directors or key managerial personnel, the company shall also include in the aforesaid Register the details of securities held by them in the company, its holding company, subsidiaries, subsidiaries of the company's holding company and associate companies relating to-
(a) the number, description and nominal value of securities;
(b) the date of acquisition and the price or other consideration paid;
(c) date of disposal and price and other consideration received;
(d) cumulative balance and number of securities held after each transaction;
(e) mode of acquisition of securities ;
(f) mode of holding – physical or in dematerialized form; and
(g) whether securities have been pledged or any encumbrance has been created on the securities.

18. Return containing the particulars of directors and the key managerial personnel. A return containing the particulars of appointment of director or key managerial personnel and changes therein, shall be filed with the Registrar in Form **DIR-12** along with such fee as may be provided in the Companies (Registration Offices and Fees) Rules, 2014 within thirty days of such appointment or change, as the case may be.

CHAPTER XII

MEETINGS OF BOARD AND ITS POWERS

173. Meetings of Board.

(*1*) Every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board:

Provided that the Central Government may, by notification, direct that the provisions of this sub-section shall not apply in relation to any class or description of companies or shall apply subject to such exceptions, modifications or conditions as may be specified in the notification.

(*2*) The participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time:

Provided that the Central Government may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means.

(*3*) A meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means:

Provided that a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting:

Provided further that in case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

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

(5) A One Person Company, small company and dormant company shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days:

Provided that nothing contained in this sub-section and in section 174 shall apply to One Person Company in which there is only one director on its Board of Directors

174. Quorum for meetings of Board.

(*1*) The quorum for a meeting of the Board of Directors of a company shall be onethird of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.

(*2*) The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company and for no other purpose.

(*3*) Where at any time the number of interested directors exceeds or is equal to twothirds of the total strength of the Board of Directors, 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.

Explanation.—For the purposes of this sub-section, "interested director" means a director within the meaning of sub-section (*2*) of section 184.

(*4*) Where a meeting of the Board could not be held for want of quorum, then, 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 or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place.

Explanation.—For the purposes of this section,—
(*i*) any fraction of a number shall be rounded off as one;
(*ii*) "total strength" shall not include directors whose places are vacant.

175. Passing of resolution by circulation.

(*1*) No resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or members of the committee, as the case may be, at their addresses registered with the company in India by hand delivery or by post or by courier, or through such electronic means as may be prescribed and has been approved by a majority of the directors or members, who are entitled to vote on the resolution:

Provided that, where not less than one-third of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board.

(*2*) A resolution under sub-section (*1*) shall be noted at a subsequent meeting of the Board or the committee thereof, as the case may be, and made part of the minutes of such meeting.

176. Defects in appointment of directors not to invalidate actions taken.

No act done by a person as a director shall be deemed to be invalid, notwithstanding that it was subsequently noticed that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles of the company:

Provided that nothing in this section shall be deemed to give validity to any act done by the director after his appointment has been noticed by the company to be invalid or to have terminated.

177. Audit committee.

(*1*) The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee.

(*2*) The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority:

Provided that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.

(*3*) Every Audit Committee of a company existing immediately before the commencement of this Act shall, within one year of such commencement, be reconstituted in accordance with sub-section (*2*).

(*4*) Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, *inter alia,* include,—

(*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.

(*5*) The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.

(*6*) The Audit Committee shall have authority to investigate into any matter in relation to the items specified in sub-section (*4*) or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.

(*7*) The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.

(*8*) The Board's report under sub-section (*3*) of section 134 shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefor.

(*9*) Every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed.

(*10*) The vigil mechanism under sub-section (*9*) shall provide for adequate safeguards against victimisation of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases:

Provided that the details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board's report.

178. Nomination and remuneration committee and stakeholders relationship committee.

(1) The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one-half shall be independent directors:

Provided that the chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.

(*2*) The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance.

(*3*) The Nomination and Remuneration Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees.

(*4*) The Nomination and Remuneration Committee shall, while formulating the policy under sub-section (*3*) ensure that—

(*a*) 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;

(*b*) relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and

(*c*) remuneration to directors, key managerial personnel 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:

Provided that such policy shall be disclosed in the Board's report.

(*5*) The Board of Directors of a company which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee

consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.

(*6*) The Stakeholders Relationship Committee shall consider and resolve the grievances of security holders of the company.

(*7*) The chairperson of each of the committees constituted under this section or, in his absence, any other member of the committee authorised by him in this behalf shall attend the general meetings of the company.

(*8*) In case of any contravention of the provisions of section 177 and this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both:

Provided that non-consideration of resolution of any grievance by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of this section.

Explanation.—The expression "senior management" means personnel of the company who are members of its core management team excluding Board of Directors comprising all members of management one level below the executive directors, including the functional heads.

179. Powers of Board.

(*1*) The Board of Directors 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:

Provided that in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting:

Provided further that 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.

(*2*) No regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.

(*3*) The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:—

(*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:

Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (*d*) to (*f*) on such conditions as it may specify:

Provided further that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, or the placing of monies on deposit by a banking company with another banking company on such conditions as the Board may prescribe, shall not be deemed to be a borrowing of monies or, as the case may be, a making of loans by a banking company within the meaning of this section.

Explanation I.—Nothing in clause (*d*) shall apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State Bank of India or any other banks established by or under any Act.

Explanation II.—In respect of dealings between a company and its bankers, the exercise by the company of the power specified in clause (*d*) shall mean the arrangement made by the company with its bankers for the borrowing of money by way of overdraft or cash credit or otherwise and not the actual day-to-day operation on overdraft, cash credit or other accounts by means of which the arrangement so made is actually availed of.

(*4*) Nothing in this section shall be deemed to affect the right of the company in general meeting to impose restrictions and conditions on the exercise by the Board of any of the powers specified in this section.

180. Restrictions on powers of Board.

(*1*) The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely:—
(*a*) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.
Explanation.—For the purposes of this clause,—
(*i*) "undertaking" shall mean an undertaking in which the investment of the company exceeds twenty per cent. of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates twenty per cent. of the total income of the company during the previous financial year;
(*ii*) the expression "substantially the whole of the undertaking" in any financial year shall mean twenty per cent. or more of the value of the undertaking as per the audited balance sheet of the preceding financial year;
(*b*) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;

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

Provided that the acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of monies by the banking company within the meaning of this clause.

Explanation.—For the purposes of this clause, the expression "temporary loans" means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature;

(*d*) to remit, or give time for the repayment of, any debt due from a director.

(*2*) Every special resolution passed by the company in general meeting in relation to the exercise of the powers referred to in clause (*c*) of sub-section (*1*) shall specify the total amount up to which monies may be borrowed by the Board of Directors.

(*3*) Nothing contained in clause (*a*) of sub-section (*1*) shall affect—

(*a*) the title of a buyer or other person who buys or takes on lease any property, investment or undertaking as is referred to in that clause, in good faith; or

(*b*) the sale or lease of any property of the company where the ordinary business of the company consists of, or comprises, such selling or leasing.

(*4*) Any special resolution passed by the company consenting to the transaction as is referred to in clause (*a*) of sub-section (*1*) may stipulate such conditions as may be specified in such resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transactions:

Provided that this sub-section shall not be deemed to authorise the company to effect any reduction in its capital except in accordance with the provisions contained in this Act.

(*5*) No debt incurred by the company in excess of the limit imposed by clause (*c*) of sub-section (*1*) shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause had been exceeded.

181. Company to contribute to bona fide and charitable funds, etc.

The Board of Directors of a company may contribute to *bona fide* charitable and other funds:

Provided that prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceed five per cent. of its average net profits for the three immediately preceding financial years.

182. **Prohibitions and restrictions regarding political contributions.**

(*1*) Notwithstanding anything contained in any other provision of this Act, 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:

Provided that the amount referred to in sub-section (*1*) or, as the case may be, the aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half per cent. of its average net profits during the three immediately preceding financial years:

Provided further that no such contribution shall be made by a company 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 and the acceptance of the contribution authorised by it.

(*2*) Without prejudice to the generality of the provisions of sub-section (*1*),—

(*a*) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to affect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;

(*b*) the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed,—

(*i*) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and

(*ii*) where such publication is not by or on behalf of, but for the advantage of a political party, to be a contribution for a political purpose.

(*3*) Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party to which such amount has been contributed.

(*4*) If a company makes any contribution in contravention of the provisions of this section, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.

Explanation.—For the purposes of this section, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951.

183. Power of Board and other persons to make contributions to national defence fund, etc.

(*1*) The Board of Directors of any company or any person or authority exercising the powers of the Board of Directors of a company, or of the company in general meeting, may, notwithstanding anything contained in sections 180, 181 and section 182 or any other provision of this Act or in the memorandum, articles or any other instrument relating to

the company, contribute such amount as it thinks fit to the National Defence Fund or any other Fund approved by the Central Government for the purpose of national defence.

(*2*) Every company shall disclose in its profits and loss account the total amount or amounts contributed by it to the Fund referred to in sub-section (*1*) during the financial year to which the amount relates.

184. Disclosure of interest by director.

(*1*) 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, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed.

(*2*) Every 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—

(*a*) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or

(*b*) with a firm or other entity in which, such director is a partner, owner or member, as the case may be, 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:

Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

(*3*) A contract or arrangement entered into by the company without disclosure under sub-section (*2*) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.

(*4*) If a director of the company contravenes the provisions of sub-section (*1*) or subsection (*2*), such director shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees, or with both.

(*5*) Nothing in this section—

(*a*) shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company;

(*b*) shall apply to any contract or arrangement entered into or to be entered into between two companies where any of the directors of the one company or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company.

185. Loan to directors, etc.

(*1*) Save as otherwise provided in this Act, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person:

Provided that nothing contained in this sub-section shall apply to—

(*a*) the giving of any loan to a managing or whole-time director—

(*i*) as a part of the conditions of service extended by the company to all its employees; or

(*ii*) pursuant to any scheme approved by the members by a special resolution; or

(*b*) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.

Explanation.—For the purposes of this section, the expression "to any other person in whom director is interested" means—

(*a*) any director of the lending company, or of a company which is its holding company or any partner or relative of any such director;

(*b*) any firm in which any such director or relative is a partner;

(*c*) any private company of which any such director is a director or member;

(*d*) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or

(*e*) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

(*2*) If any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of sub-section (*1*), the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.

186. Loan and investment by company.

(*1*) Without prejudice to the provisions contained in this Act, a company shall unless otherwise prescribed, make investment through not more than two layers of investment companies:

Provided that the provisions of this sub-section shall not affect,—

(*i*) 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;

(*ii*) a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.

(*2*) 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, exceeding sixty per cent. of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more.

(*3*) Where the giving of any loan or guarantee or providing any security or the acquisition under sub-section (*2*) exceeds the limits specified in that sub-section, prior approval by means of a special resolution passed at a general meeting shall be necessary.

(*4*) The company shall disclose to the members in the financial statement the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security.

(*5*) No investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained:

Provided that prior approval of a public financial institution shall not be required where the aggregate of the loans and investments so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate, along with the investments, loans, guarantee or security proposed to be made or given does not exceed the limit as specified in sub-section (*2*), and there is no default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution.

(*6*) No company, which is registered under section 12 of the Securities and Exchange Board of India Act, 1992 and covered under such class or classes of companies as may be prescribed, shall take inter-corporate loan or deposits exceeding the prescribed limit and such company shall furnish in its financial statement the details of the loan or deposits.

(*7*) No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.

(*8*) No company which is in default in the repayment of any deposits accepted before or after the commencement of this Act or 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.

(*9*) Every company giving loan or giving a guarantee or providing security or making an acquisition under this section shall keep a register which shall contain such particulars and shall be maintained in such manner as may be prescribed.

(*10*) The register referred to in sub-section (*9*) shall be kept at the registered office of the company and —

(*a*) shall be open to inspection at such office; and

(*b*) extracts may be taken therefrom by any member, and copies thereof may be furnished to any member of the company on payment of such fees as may be prescribed.

(*11*) Nothing contained in this section, except sub-section (*1*), shall apply—

(*a*) to a loan made, guarantee given or security provided by a banking company or an insurance company or a housing finance company in the ordinary course of its business or a company engaged in the business of financing of companies or of providing infrastructural facilities;

(*b*) to any acquisition—

(*i*) made by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities:

Provided that exemption to non-banking financial company shall be in respect of its investment and lending activities;

(*ii*) made by a company whose principal business is the acquisition of securities;

(*iii*) of shares allotted in pursuance of clause (*a*) of sub-section (*1*) of section 62.

(*12*) The Central Government may make rules for the purposes of this section.

(*13*) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Explanation.—For the purposes of this section,—

(*a*) the expression "investment company" means a company whose principal business is the acquisition of shares, debentures or other securities;

(*b*) the expression "infrastructure facilities" means the facilities specified in Schedule VI.

187. Investments of company to be held in its own name.

(*1*) All investments made or held by a company in any property, security or other asset shall be made and held by it in its own name:

Provided that 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.

(*2*) Nothing in this section shall be deemed to prevent a company—

(*a*) from depositing with a bank, being the bankers of the company, any shares or securities for the collection of any dividend or interest payable thereon; or

(*b*) from depositing with, or transferring to, or holding in the name of, the State Bank of India or a scheduled bank, being the bankers of the company, shares or securities, in order to facilitate the transfer thereof:

Provided that if within a period of six months from the date on which the shares or securities are transferred by the company to, or are first held by the company in the name of, the State Bank of India or a scheduled bank as aforesaid, no transfer of such shares or securities takes place, the company shall, as soon as practicable after the expiry of that period, have the shares or securities re-transferred to it from the State Bank of India or the scheduled bank or, as the case may be, again hold the shares or securities in its own name; or

(*c*) from depositing with, or transferring to, any person any shares or securities, by way of security for the repayment of any loan advanced to the company or the performance of any obligation undertaken by it;

(*d*) from holding investments in the name of a depository when such investments are in the form of securities held by the company as a beneficial owner.

(*3*) Where in pursuance of clause (*d*) of sub-section (*2*), any shares or securities in which investments have been made by a company are not held by it in its own name, the company shall maintain a register which shall contain such particulars as may be prescribed and such register shall be open to inspection by any member or debenture-holder of the company without any charge during business hours subject to such reasonable restrictions as the company may by its articles or in general meeting impose.

(*4*) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five 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 twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

188. **Related party transactions.**

(*1*) Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to—

(*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:

Provided that 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 may be prescribed, shall be entered into except with the prior approval of the company by a special resolution:

Provided further that no member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party:

Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis.

Explanation.— In this sub-section,—

(*a*) the expression "office or place of profit" means any office or place—

(i) where such office or place is held by a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

(ii) where such office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

(b) the expression "arm's length transaction" means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

(*2*) Every contract or arrangement entered into under sub-section (*1*) shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement.

(*3*) Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a special resolution in the general meeting under sub-section (*1*) and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the Board and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

(*4*) Without prejudice to anything contained in sub-section (*3*), it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement.

(*5*) 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,—

(*i*) in case of listed company, be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both; and

(*ii*) in case of any other company, be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

189. Register of contracts or arrangements in which directors are interested.

(*1*) Every company shall keep one or more registers giving separately the particulars of all contracts or arrangements to which sub-section (*2*) of section 184 or section 188 applies, in such manner and containing such particulars as may be prescribed and after entering the particulars, such register or registers shall be placed before the next meeting of the Board and signed by all the directors present at the meeting.

(*2*) Every director or key managerial personnel shall, within a period of thirty days of his appointment, or relinquishment of his office, as the case may be, disclose to the company the particulars specified in sub-section (*1*) of section 184 relating to his concern or interest in the other associations which are required to be included in the register under that sub-section or such other information relating to himself as may be prescribed.

(*3*) The register referred to in sub-section (*1*) shall be kept at the registered office of the company and it shall be open for inspection at such office during business hours and

extracts may be taken therefrom, and copies thereof as may be required by any member of the company shall be furnished by the company to such extent, in such manner, and on payment of such fees as may be prescribed.

(*4*) The register to be kept under this section shall also be produced at the commencement of every annual general meeting of the company and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting.

(*5*) Nothing contained in sub-section (*1*) shall apply to any contract or arrangement—

(*a*) for the sale, purchase or supply of any goods, materials or services if the value of such goods and materials or the cost of such services does not exceed five lakh rupees in the aggregate in any year; or

(*b*) by a banking company for the collection of bills in the ordinary course of its business.

(*6*) Every director who fails to comply with the provisions of this section and the rules made thereunder shall be liable to a penalty of twenty-five thousand rupees.

190. Contract of employment with managing or whole-time directors.

(*1*) Every company shall keep at its registered office,—

(*a*) where a contract of service with a managing or whole-time director is in writing, a copy of the contract; or

(*b*) where such a contract is not in writing, a written memorandum setting out its terms.

(*2*) The copies of the contract or the memorandum kept under sub-section (*1*) shall be open to inspection by any member of the company without payment of fee.

(*3*) If any default is made in complying with the provisions of sub-section (*1*) or sub-section (*2*), the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for each default.

(*4*) The provisions of this section shall not apply to a private company.

191. Payment to director for loss of office, etc., in connection with transfer of undertaking, property or shares.

(*1*) No director of a company shall, in connection with—

(*a*) the transfer of the whole or any part of any undertaking or property of the company; or

(*b*) the transfer to any person of all or any of the shares in a company being a transfer resulting from—

(*i*) an offer made to the general body of shareholders;

(*ii*) an offer made by or on behalf of some other body corporate with a view to a company becoming a subsidiary company of such body corporate or a subsidiary company of its holding company;

(*iii*) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise, or control the exercise of, not less than one-third of the total voting power at any general meeting of the company; or

(*iv*) any other offer which is conditional on acceptance to a given extent, receive any payment by way of compensation for loss of office or as consideration for retirement from office, or in connection with such loss or retirement from such company or from the transferee of such undertaking or property, or from the transferees of shares or from any other person, not being such company, unless particulars as may be

prescribed with respect to the payment proposed to be made by such transferee or person, including the amount thereof, have been disclosed to the members of the company and the proposal has been approved by the company in general meeting.

(*2*) Nothing in sub-section (*1*) shall affect any payment made by a company to a managing director or whole-time director or manager of the company by way of compensation for loss of office or as consideration for retirement from office or in connection with such loss or retirement subject to limits or priorities, as may be prescribed.

(*3*) If the payment under sub-section (*1*) or sub-section (*2*) is not approved for want of quorum either in a meeting or an adjourned meeting, the proposal shall not be deemed to have been approved.

(*4*) Where a director of a company receives payment of any amount in contravention of sub-section (*1*) or the proposed payment is made before it is approved in the meeting, the amount so received by the director shall be deemed to have been received by him in trust for the company.

(*5*) If a director of the company contravenes the provisions of this section, such director shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

(*6*) Nothing in this section shall be taken to prejudice the operation of any law requiring disclosure to be made with respect to any payment received under this section or such other like payments made to a director.

192. Restriction on non-cash transactions involving directors.

(*1*) No company shall enter into an arrangement by which—

(*a*) a director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or

(*b*) the company acquires or is to acquire assets for consideration other than cash, from such director or person so connected, unless prior approval for such arrangement is accorded by a resolution of the company in general meeting and if the director or connected person is a director of its holding company, approval under this sub-section shall also be required to be obtained by passing a resolution in general meeting of the holding company.

(*2*) The notice for approval of the resolution by the company or holding company in general meeting under sub-section (*1*) shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.

(*3*) Any arrangement entered into by a company or its holding company in contravention of the provisions of this section shall be voidable at the instance of the company unless—

(*a*) the restitution of any money or other consideration which is the subject matter of the arrangement is no longer possible and the company has been indemnified by any other person for any loss or damage caused to it; or

(*b*) any rights are acquired *bona fide* for value and without notice of the contravention of the provisions of this section by any other person.

193. Contract by One Person Company.

(*1*) Where One Person Company limited by shares or by guarantee enters into a contract with the sole member of the company who is also the director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract or offer are

contained in a memorandum or are recorded in the minutes of the first meeting of the Board of Directors of the company held next after entering into contract:

Provided that nothing in this sub-section shall apply to contracts entered into by the company in the ordinary course of its business.

(*2*) The company shall inform the Registrar about every contract entered into by the company and recorded in the minutes of the meeting of its Board of Directors under sub-section (*1*) within a period of fifteen days of the date of approval by the Board of Directors.

194. Prohibition on forward dealings in securities of company by director or key managerial personnel.

(*1*) No director of a company or any of its key managerial personnel shall buy in the company, or in its holding, subsidiary or associate company—

(*a*) a right to call for delivery or a right to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures; or

(*b*) a right, as he may elect, to call for delivery or to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures.

(*2*) If a director or any key managerial personnel of the company contravenes the provisions of sub-section (*1*), such director or key managerial personnel shall be punishable with imprisonment for a term which may extend to two years or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

(*3*) Where a director or other key managerial personnel acquires any securities in contravention of sub-section (*1*), he shall, subject to the provisions contained in sub-section (*2*), be liable to surrender the same to the company and the company shall not register the securities so acquired in his name in the register, and if they are in dematerialised form, it shall inform the depository not to record such acquisition and such securities, in both the cases, shall continue to remain in the names of the transferors.

Explanation.—For the purposes of this section, "relevant shares" and "relevant debentures" mean shares and debentures of the company in which the concerned person is a whole-time director or other key managerial personnel or shares and debentures of its holding and subsidiary companies.

195. Prohibition on insider trading of securities.

(*1*) No person including any director or key managerial personnel of a company shall enter into insider trading:

Provided that nothing contained in this sub-section shall apply to any communication required in the ordinary course of business or profession or employment or under any law.

Explanation.—For the purposes of this section,—

(*a*) "insider trading" means—

(*i*) an act of subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities by any director or key managerial personnel or any other officer of a company either as principal or agent if such director or key managerial

personnel or any other officer of the company is reasonably expected to have access to any non-public price sensitive information in respect of securities of company; or

(*ii*) an act of counselling about procuring or communicating directly or indirectly any non-public price-sensitive information to any person;

(*b*) "price-sensitive information" means any information which relates, directly or indirectly, to a company and which if published is likely to materially affect the price of securities of the company.

(*2*) If any person contravenes the provisions of this section, he shall be punishable with imprisonment for a term which may extend to five years or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher, or with both.

Rules for Chapter XII

Companies (Meetings of Board and its Powers) Rules, 2014

In exercise of powers conferred under sections 173, 175, 177, 178, 179, 184, 185, 186, 187, 188, 189 and section 191 read with section 469 of the Companies Act, 2013 and in supersession of the Companies (Central Government General) Rules and Forms 1956 or any other Rules prescribed under the Companies Act, 1956 on matters covered under these rules, except as respects things done or omitted to be done before such suppression, the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.-

(1) These rules may be called the Companies (Meetings of Board and its Powers) Rules, 2014.

(2) They shall come into force on the 1st day of April, 2014.

2. Definitions.- (1) In these rules, unless the context otherwise requires, -

(a) "Act" means the Companies Act, 2013;
(b) "Annexure" means the Annexure appended to these rules;
(c) "Fees" means the fees as specified in the Companies (Registration Offices and Fees) Rules, 2014;
(d) "Form" or "e-Form" means a form set forth in Annexure to these rules which shall be used for the matter to which it relates;
(e) "section" means the section of the Act.

(2) Words and expressions used in these rules but not defined and defined in the Act or in the Companies (Specification of Definitions Details) Rules, 2014, shall have the same meanings respectively assigned to them in the Act or in the said Rules.

3. Meetings of Board through video conferencing or other audio visual means.- A company shall comply with the following procedure, for convening and conducting the Board meetings through video conferencing or other audio visual means.

(1) Every Company shall make necessary arrangements to avoid failure of video or audio visual connection.
(2) The Chairperson of the meeting and the company secretary, if any, shall take due and reasonable care -
   (a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;
   (b) to ensure availability of proper video conferencing or other audio visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting;
   (c) to record proceedings and prepare the minutes of the meeting;
   (d) to store for safekeeping and marking the tape recording(s) or other electronic recording mechanism as part of the records of the company at least before the time of completion of audit of that particular year.
   (e) to ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means; and

(f) to ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting:

Provided that the persons, who are differently abled, may make request to the Board to allow a person to accompany him.

(3) (a) The notice of the meeting shall be sent to all the directors in accordance with the provisions of sub-section (3) of section 173 of the Act.

(b) The 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.

(c) 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.

(d) If the director intends to participate through video conferencing or other audio visual means, he shall give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangements in this behalf.

(e) The director, who desire, to participate may intimate his intention of participation through the electronic mode at the beginning of the calendar year and such declaration shall be valid for one calendar year.

(f) In the absence of any intimation under clause (c), it shall be assumed that the director shall attend the meeting in person.

(4) At the commencement of the meeting, a roll call shall be taken by the Chairperson when every director participating through video conferencing or other audio visual means shall state, for the record, the following namely:-

(a) name;

(b) the location from where he is participating;

(c) that he has received the agenda and all the relevant material for the meeting; and

(d) that no one other than the concerned director is attending or having access to the proceedings of the meeting at the location mentioned in clause (b);

(5) (a) After the roll call, the Chairperson or the Company Secretary shall inform the Board about the names of persons other than the directors who are present for the said meeting at the request or with the permission of the Chairperson and confirm that the required quorum is complete.

Explanation.- A director participating in a meeting through video conferencing or other audio visual means shall be counted for the purpose of quorum, unless he is to be excluded for any items of business under any provisions of the Act or the rules.

(b) The Chairperson shall ensure that the required quorum is present throughout the meeting.

(6) With respect to every meeting conducted through video conferencing or other audio visual means authorised under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting, which shall be in India, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

(7) The statutory registers which are required to be placed in the Board meeting as per the provisions of the Act shall be placed at the scheduled venue of the meeting and where

such registers are required to be signed by the directors, the same shall be deemed to have been signed by the directors participating through electronic mode, if they have given their consent to this effect and it is so recorded in the minutes of the meeting.

(8) (a) Every participant shall identify himself for the record before speaking on any item of business on the agenda.

(b) If a statement of a director in the meeting through video conferencing or other audio visual means is interrupted or garbled, the Chairperson or Company Secretary shall request for a repeat or reiteration by the Director.

(9) If a motion is objected to and there is a need to put it to vote, the Chairperson shall call the roll and note the vote of each director who shall identify himself while casting his vote.

(10) From the commencement of the meeting and until the conclusion of such meeting, no person other than the Chairperson, Directors, Company Secretary and any other person whose presence is required by the Board shall be allowed access to the place where any director is attending the meeting either physically or through video conferencing without the permission of the Board.

(11) (a) At the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decision taken on such item along with names of the directors, if any, who dissented from the decision taken by majority.

(b) The minutes shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio visual means.

(12) (a) The draft minutes of the meeting shall be circulated among all the directors within fifteen days of the meeting either in writing or in electronic mode as may be decided by the Board.

(b) Every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give his comments in writing, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed.

(c) After completion of the meeting, the minutes shall be entered in the minute book as specified under section 118 of the Act and signed by the Chairperson.

Explanation.- For the purposes of this rule, "video conferencing or other audio visual means" means audio- visual electronic communication facility employed which enables all the persons participating in a meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting.

4. Matters not to be dealt with in a meeting through video conferencing or other audio visual means.- (1) The following matters shall not be dealt with in any meeting held through video conferencing or other audio visual means.-

(i) the approval of the annual financial statements;

(ii) the approval of the Board's report;

(iii) the approval of the prospectus;

(iv) the Audit Committee Meetings for consideration of accounts; and

(v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

5. Passing of resolution by circulation.- A resolution in draft form may be circulated to the directors together with the necessary papers for seeking their approval, by electronic means which may include E-mail or fax.

6. Committees of the Board.- The Board of directors of every listed companies and the following classes of companies shall constitute an Audit Committee and a Nomination and Remuneration Committee of the Board-

(i) all public companies with a paid up capital of ten crore rupees or more;
(ii) all public companies having turnover of one hundred crore rupees or more;
(iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

Explanation.- 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.

7. Establishment of vigil mechanism.- (1) Every listed company and the companies belonging to the following class or classes shall establish a vigil mechanism for their directors and employees to report their genuine concerns or grievances-

(a) the Companies which accept deposits from the public;
(b) the Companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees.

(2) The companies which are required to constitute an audit committee shall oversee the vigil mechanism through the committee and if any of the members of the committee have a conflict of interest in a given case, they should recuse themselves and the others on the committee would deal with the matter on hand.

(3) In case of other companies, the Board of directors shall nominate a director to play the role of audit committee for the purpose of vigil mechanism to whom other directors and employees may report their concerns.

(4) The vigil mechanism shall provide for adequate safeguards against victimisation of employees and directors who avail of the vigil mechanism and also provide for direct access to the Chairperson of the Audit Committee or the director nominated to play the role of Audit Committee, as the case may be, in exceptional cases.

(5) 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.

8. Powers of Board.- In addition to the powers specified under sub-section (3) of section 179 of the Act, the following powers shall also be exercised by the Board of Directors only by means of resolutions passed at meetings of the Board.-

(1) to make political contributions;
(2) to appoint or remove key managerial personnel (KMP);
(3) to take note of appointment(s) or removal(s) of one level below the Key Management Personnel;
(4) to appoint internal auditors and secretarial auditor;
(5) to take note of the disclosure of director's interest and shareholding;
(6) to buy, sell investments held by the company (other than trade investments), constituting five percent or more of the paid up share capital and free reserves of the investee company;
(7) to invite or accept or renew public deposits and related matters;
(8) to review or change the terms and conditions of public deposit;

(9) to approve quarterly, half yearly and annual financial statements or financial results as the case may be.

9. Disclosures by a director of his interest.- (1) Every director shall disclose his concern or interest in any company or companies or bodies corporate (including shareholding interest), firms or other association of individuals, by giving a notice in writing in Form MBP 1.

(2) It shall be the duty of the director giving notice of interest to cause it to be disclosed at the meeting held immediately after the date of the notice.

(3) All notices shall be kept at the registered office and such notices shall be preserved for a period of eight years from the end of the financial year to which it relates and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for the purpose.

10. Loans to Director etc. under section 185.- (1) Any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company is exempted from the requirements under this section; and

(2) Any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company is exempted from the requirements under this section:

Provided that such loans made under sub-rule (1) and (2) are utilised by the subsidiary company for its principle business activities.

11. Loan and investment by a company under section 186 of the Act.- (1) Where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of sub-section (3) of section 186 shall not apply:

Provided that the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement as provided under sub-section (4) of section 186.

(2) For the purposes of clause (a) of sub-section (11) of section 186, the expression "business of financing of companies" shall include, with regard to a Non-Banking Financial Company registered with Reserve Bank of India, "business of giving of any loan to a person or providing any guaranty or security for due repayment of any loan availed by any person in the ordinary course of its business".

(3) No company registered under section 12 of the Securities and Exchange Board of India Act, 1992 and also covered under such class or classes of companies which may be notified by the Central Government in consultation with the Securities and Exchange Board, shall take any inter-corporate loan or deposits, in excess of the limits specified under the regulations applicable to such company, pursuant to which it has obtained certificate of registration from the Securities and Exchange Board of India.

12. Register.- (1) Every company giving loan or giving guarantee or providing security or making an acquisition of securities shall, from the date of its incorporation, maintain a register in Form MBP 2 and enter therein separately, the particulars of loans and guarantees given, securities provided and acquisitions made as aforesaid.

(2) The entries in the register shall be made chronologically in respect of each such transaction within seven days of making such loan or giving guarantee or providing security or making acquisition.

(3) The register shall be kept at the registered office of the company and the register shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any other person authorised by the Board for the purpose.

(4) The entries in the register (either manual or electronic) shall be authenticated by the company secretary of the company or by any other person authorised by the Board for the purpose.

(5) For the purpose of sub-rule (4), the register can be maintained either manually or in electronic mode.

(6) The extracts from the register maintained under sub-section (9) of section 186 may be furnished to any member of the company on payment of such fee as may be prescribed in the Articles of the company which shall not exceed ten rupees for each page.

13. Special Resolution.- (1) Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under section 186 no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting.

*Explanation.***-** For the purpose of this sub-rule, it is clarified that it would sufficient compliance if such special resolution is passed within one year from the date of notification of this section.

(2) A resolution passed at a general meeting in terms of sub-section (3) of section 186 to give any loan or guarantee or investment or providing any security or the acquisition under sub section (2) of section 186 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:

Provided, that the company shall disclose to the members in the financial statement the full particulars in accordance with the provision of sub-section (4) of section 186.

14. Investments of company to be held in its own name.- (1) Every company shall, from the date of its registration, maintain a register in Form MBP 3 and enter therein, chronologically, the particulars of investments in shares or other securities beneficially held by the company but which are not held in its own name and the company shall also record the reasons for not holding the investments in its own name and the relationship or contract under which the investment is held in the name of any other person.

(2) The company shall also record whether such investments are held in a third party's name for the time being or otherwise.

(3) The register shall be maintained at the registered office of the company. The register shall be preserved permanently and shall be kept in the custody of the company secretary of

the company or if there is no company secretary, any director or any other officer authorised by the Board for the purpose.

(4) The entries in the register shall be authenticated by the company secretary of the company or by any other person authorised by the Board for the purpose.

15. Contract or arrangement with a related party.- A company shall enter into any contract or arrangement with a related party subject to the following conditions, namely:-

(1) The agenda of the Board meeting at which the resolution is proposed to be moved shall disclose-
   (a) the name of the related party and nature of relationship;
   (b) the nature, duration of the contract and particulars of the contract or arrangement;
   (c) the material terms of the contract or arrangement including the value, if any;
   (d) any advance paid or received for the contract or arrangement, if any;
   (e) the manner of determining the pricing and other commercial terms, both included as part of contract and not considered as part of the contract;
   (f) whether all factors relevant to the contract have been considered, if not, the details of factors not considered with the rationale for not considering those factors; and
   (g) any other information relevant or important for the Board to take a decision on the proposed transaction.

(2) Where any director is interested in any contract or 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-

(3) For the purposes of first proviso to sub-section (1) of section 188, except with the prior approval of the company by a special resolution-
   (i) a company having a paid-up share capital of ten crore rupees or more shall not enter into a contract or arrangement with any related party; or
   (ii) a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into -
      (a) as contracts or arrangements with respect to clauses (a) to (e) of sub-section (1) of section 188 with criteria, as mentioned below -
         (i) sale, purchase or supply of any goods or materials directly or through appointment of agents exceeding twenty five percent. of the annual turnover as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188;
         (ii) selling or otherwise disposing of, or buying, property of any kind directly or through appointment of agents exceeding ten percent. of net worth as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;
         (iii) leasing of property of any kind exceeding ten percent. of the net worth or exceeding ten percent. of turnover as mentioned in clause (c) of sub-section (1) of section 188;
         (iv) availing or rendering of any services directly or through appointment of agents exceeding ten percent. of the net worth as mentioned in clause (d) and clause (e) of sub-section (1) of section 188;
      (b) appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding two and half lakh rupees as mentioned in clause (f) of sub-section (1) of section 188; or

(c) remuneration for underwriting the subscription of any securities or derivatives thereof of the company exceeding one percent. of the net worth as mentioned in clause (g) of sub-section (1) of section 188.

Explanation.- (1) The Turnover or Net Worth referred in the above sub-rules shall be on the basis of the Audited Financial Statement of the preceding Financial year.

(2) In case of wholly owned subsidiary, the special resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between wholly owned subsidiary and holding company.

(3) The explanatory statement to be annexed to the notice of a general meeting convened pursuant to section 101 shall contain the following particulars namely:-

(a) name of the related party ;

(b) name of the director or key managerial personnel who is related, if any;

(c) nature of relationship;

(d) nature, material terms, monetary value and particulars of the contract or arrangement;

(e) any other information relevant or important for the members to take a decision on the proposed resolution.

16. Register of contracts or arrangements in which directors are interested.-

(1) Every company shall maintain one or more registers in Form MBP 4, and shall enter therein the particulars of-

(a) company or companies or bodies corporate, firms or other association of individuals, in which any director has any concern or interest, as mentioned under sub-section (1) of section 184:

Provided that the particulars of the company or companies or bodies corporate in which a director himself together with any other director holds two percent. or less of the paid-up share capital would not be required to be entered in the register;

(b) contracts or arrangements with a body corporate or firm or other entity as mentioned under sub-section (2) of section 184, in which any director is, directly or indirectly, concerned or interested; and

(c) contracts or arrangements with a related party with respect to transactions to which section 188 applies.

(2) The entries in the register shall be made at once, whenever there is a cause to make entry, in chronological order and shall be authenticated by the company secretary of the company or by any other person authorised by the Board for the purpose.

(3) The register shall be kept at the registered office of the company and the register shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any other person authorised by the Board for the purpose.

(4) The company shall provide extracts from such register to a member of the company on his request, within seven days from the date on which such request is made upon the payment of such fee as may be specified in the articles of the company but not exceeding ten rupees per page.

17. Payment to director for loss of office, etc. in connection with transfer of undertaking, property or shares.- (1) No director of a company shall receive any payment by way of compensation in connection with any event mentioned in sub-section (1) of Section 191 unless the following particulars are disclosed to the members of the company and they pass a resolution at a general meeting approving the payment of such amount -

(a) name of the director;
(b) amount proposed to be paid;
(c) event due to which compensation become payable;
(d) date of Board meeting recommending such payment;
(e) basis for the amount determined;
(f) reason or justification for the payment;
(g) manner of payment - whether payable in cash or otherwise and how;
(h) sources of payment; and
(i) any other relevant particulars as the Board may think fit.

(2) Any payment made by a company by way of compensation for the loss of office or as a consideration for retirement from office or in connection with such loss or retirement, to a managing director or whole time director or manager of the company shall not exceed the limit as set out under section 202.

(3) No payment shall be made to the managing director or whole time director or manager of the company by way of compensation for the loss of office or as consideration for retirement from office (other than notice pay and statutory payments in accordance with the terms of appointment of such director or manager, as applicable) or in connection with such loss or retirement if -

(a) the company is in default in repayment of public deposits or payment of interest thereon;
(b) the company is in default in redemption of debentures or payment of interest thereon;
(c) the company is in default in repayment of any liability, secured or unsecured, payable to any bank, public financial institution or any other financial institution;

CHAPTER XIII

APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

196. Appointment of managing director, whole-time director or manager.

(*1*) No company shall appoint or employ at the same time a managing director and a manager.

(*2*) No company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding five years at a time:

Provided that no re-appointment shall be made earlier than one year before the expiry of his term.

(*3*) No company shall appoint or continue the employment of any person as managing director, whole-time director or manager who —

(*a*) is below the age of twenty-one years or has attained the age of seventy years:

Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person;

(*b*) is an undischarged insolvent or has at any time been adjudged as an insolvent;

(*c*) has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or

(*d*) has at any time been convicted by a court of an offence and sentenced for a period of more than six months.

(*4*) Subject to the provisions of section 197 and Schedule V, a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in that Schedule:

Provided that a notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any:

Provided further that a return in the prescribed form shall be filed within sixty days of such appointment with the Registrar.

(*5*) Subject to the provisions of this Act, where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid.

197. Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.

(*1*) The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial

year shall not exceed eleven per cent. of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits:

Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V:

Provided further that, except with the approval of the company in general meeting,—

(*i*) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five per cent. of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together;

(*ii*) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—

(*A*) one per cent. of the net profits of the company, if there is a managing or whole-time director or manager;

(*B*) three per cent. of the net profits in any other case.

(*2*) The percentages aforesaid shall be exclusive of any fees payable to directors under sub-section (*5*).

(*3*) Notwithstanding anything contained in sub-sections (*1*) and (*2*), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or wholetime director or manager, by way of remuneration any sum exclusive of any fees payable to directors under sub-section (*5*) hereunder except in accordance with the provisions of Schedule V and if it is not able to comply with such provisions, with the previous approval of the Central Government.

(*4*) The remuneration payable to the directors of a company, including any managing or whole-time director or manager, shall be determined, in accordance with and subject to the provisions of this section, either by the articles of the company, or by a resolution or, if the articles so require, by a special resolution, passed by the company in general meeting and the remuneration payable to a director determined aforesaid shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity:

Provided that any remuneration for services rendered by any such director in other capacity shall not be so included if—

(*a*) the services rendered are of a professional nature; and

(*b*) in the opinion of the Nomination and Remuneration Committee, if the company is covered under sub-section (*1*) of section 178, or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

(*5*) A director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board:

Provided that the amount of such fees shall not exceed the amount as may be prescribed:

Provided further that different fees for different classes of companies and fees in respect of independent director may be such as may be prescribed.

(*6*) A director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other.

(*7*) Notwithstanding anything contained in any other provision of this Act but subject to the provisions of this section, an independent director shall not be entitled to any stock option and may receive remuneration by way of fees provided under sub-section (*5*), reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.

(*8*) The net profits for the purposes of this section shall be computed in the manner referred to in section 198.

(*9*) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company.

(*10*) The company shall not waive the recovery of any sum refundable to it under sub-section (*9*) unless permitted by the Central Government.

(*11*) In cases where Schedule V is applicable on grounds of no profits or inadequate profits, any provision relating to the remuneration of any director which purports to increase or has the effect of increasing the amount thereof, whether the provision be contained in the company's memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or its Board, shall not have any effect unless such increase is in accordance with the conditions specified in that Schedule and if such conditions are not being complied, the approval of the Central Government had been obtained.

(*12*) Every listed company shall disclose in the Board's report, the ratio of the remuneration of each director to the median employee's remuneration and such other details as may be prescribed.

(*13*) Where any insurance is taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel:

Provided that if such person is proved to be guilty, the premium paid on such insurance shall be treated as part of the remuneration.

(*14*) Subject to the provisions of this section, any director who is in receipt of any commission from the company and who is a managing or whole-time director of the company shall not be disqualified from receiving any remuneration or commission from any holding company or subsidiary company of such company subject to its disclosure by the company in the Board's report.

(*15*) If any person contravenes the provisions of this section, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

198. Calculation of profits.

(*1*) In computing the net profits of a company in any financial year for the purpose of section 197,—

(*a*) credit shall be given for the sums specified in sub-section (*2*), and credit shall not be given for those specified in sub-section (*3*); and

(*b*) the sums specified in sub-section (*4*) shall be deducted, and those specified in sub-section (*5*) shall not be deducted.

(*2*) In making the computation aforesaid, credit shall be given for the bounties and subsidies received from any Government, or any public authority constituted or authorised in this behalf, by any Government, unless and except in so far as the Central Government otherwise directs.

(*3*) In making the computation aforesaid, credit shall not be given for the following sums, namely:—

(*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*) profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets:

Provided that where the amount for which any fixed asset is sold exceeds the written-down value thereof, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written down value;

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

(*4*) In making the computation aforesaid, the following sums shall 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*) outgoings inclusive of contributions made under section 181;

(*k*) depreciation to the extent specified in section 123;

(*l*) the excess of expenditure over income, which had arisen in computing the net profits in accordance with this section in any year which begins at or after the commencement of this Act, in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be 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 such as is referred to in clause (*m*);

(*o*) debts considered bad and written off or adjusted during the year of account.

(*5*) In making the computation aforesaid, the following sums shall not be deducted, namely:—

(*a*) income-tax and super-tax payable by the company under the Income-tax Act, 1961, or any other tax on the income of the company not falling under clauses (*d*) and (*e*) of sub-section (*4*);

(*b*) any compensation, damages or payments made voluntarily, that is to say, otherwise than in virtue of a liability such as is referred to in clause (*m*) of sub-section (*4*);

(*c*) loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company or of any part thereof not including any excess of the written-down value of any asset which is sold, discarded, demolished or destroyed over its sale proceeds or its scrap value;

(*d*) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.

199. Recovery of remuneration in certain cases.

Without prejudice to any liability incurred under the provisions of this Act or any other law for the time being in force, where a company is required to re-state its financial statements due to fraud or non-compliance with any requirement under this Act and the rules made thereunder, the company shall recover from any past or present managing director or whole-time director or manager or Chief Executive Officer (by whatever name called) who, during the period for which the financial statements are required to be re-stated, received the remuneration (including stock option) in excess of what would have been payable to him as per restatement of financial statements.

200. Central Government or company to fix limit with regard to remuneration.

Notwithstanding anything contained in this Chapter, the Central Government or a company may, while according its approval under section 196, to any appointment or to any remuneration under section 197 in respect of cases where the company has inadequate or no profits, fix the remuneration within the limits specified in this Act, at such amount or percentage of profits of the company, as it may deem fit and while fixing the remuneration, the Central Government or the company shall have regard to—

(*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 prescribed.

201. Forms of, and procedure in relation to, certain applications.

(*1*) Every application made to the Central Government under this Chapter shall be in such form as may be prescribed.

(*2*) (*a*) Before any application is made by a company to the Central Government under any of the sections aforesaid, there shall be issued by or on behalf of the company a general notice to the members thereof, indicating the nature of the application proposed to be made.

(*b*) Such notice shall be published at least once in a newspaper in the principal language of the district in which the registered office of the company is situate and circulating in that district, and at least once in English in an English newspaper circulating in that district.

(*c*) The copies of the notices, together with a certificate by the company as to the due publication thereof, shall be attached to the application.

202. Compensation for loss of office of managing or whole-time director or manager.

(*1*) A company may make payment to a managing or whole-time director or manager, but not to any other director, by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement.

(*2*) No payment shall be made under sub-section (*1*) in the following cases, namely:—

(*a*) where the director resigns from his office as a result of the reconstruction of the company, or of its amalgamation with any other body corporate or bodies corporate, and is appointed as the managing or whole-time director, manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation;

(*b*) where the director resigns from his office otherwise than on the reconstruction of the company or its amalgamation as aforesaid;

(*c*) where the office of the director is vacated under sub-section (*1*) of section 167;

(*d*) where the company is being wound up, whether by an order of the Tribunal or voluntarily, provided the winding up was due to the negligence or default of the director;

(*e*) where the director has been guilty of fraud or breach of trust in relation to, or of gross negligence in or gross mismanagement of, the conduct of the affairs of the company or any subsidiary company or holding company thereof; and

(*f*) where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office.

(*3*) Any payment made to a managing or whole-time director or manager in pursuance of sub-section (*1*) shall not exceed the remuneration which he would have earned if he had been in office for the remainder of his term or for three years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which he ceased to hold office, or where he held the office for a lesser period than three years, during such period:

Provided that no such payment shall be made to the director in the event of the commencement of the winding up of the company, whether before or at any time within twelve months after, the date on which he ceased to hold office, if the assets of the company on the winding up, after deducting the expenses thereof, are not sufficient to repay to the shareholders the share capital, including the premiums, if any, contributed by them.

(*4*) Nothing in this section shall be deemed to prohibit the payment to a managing or whole-time director, or manager, of any remuneration for services rendered by him to the company in any other capacity.

203. Appointment of key managerial personnel.

(*1*) Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,—

(*i*) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;

(*ii*) company secretary; and

(*iii*) Chief Financial Officer :

Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,—

(*a*) the articles of such a company provide otherwise; or

(*b*) the company does not carry multiple businesses:

Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government.

(*2*) Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

(*3*) A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time:

Provided that nothing contained in this sub-section shall disentitle a key managerial personnel from being a director of any company with the permission of the Board:

Provided further that whole-time key managerial personnel holding office in more than one company at the same time on the date of commencement of this Act, shall, within a period of six months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel:

Provided also that a company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

(*4*) If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

(*5*) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every director and key managerial personnel of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

204. Secretarial audit for bigger companies.

(*1*) Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report made in terms of sub-section (*3*) of section 134, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed.

(*2*) It shall be the duty of the company to give all assistance and facilities to the company secretary in practice, for auditing the secretarial and related records of the company.

(*3*) The Board of Directors, in their report made in terms of sub-section (*3*) of section 134, shall explain in full any qualification or observation or other remarks made by the company secretary in practice in his report under sub-section (*1*).

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

205. Functions of company secretary.

(*1*) The functions of the company secretary shall include,—

(*a*) to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;

(*b*) to ensure that the company complies with the applicable secretarial standards;

(*c*) to discharge such other duties as may be prescribed.

Explanation.—For the purpose of this section, the expression "secretarial standards" means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government.

(*2*) The provisions contained in section 204 and section 205 shall not affect the duties and functions of the Board of Directors, chairperson of the company, managing director or whole-time director under this Act, or any other law for the time being.

Rules for Chapter XIII

Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

In exercise of the powers conferred under sub-section (4) of section 196**,** sub-section (5) of section 197, sub-section (12) of section 197, section 200, sub-section (1) of section 198, sub-section (1) of section 203, sub-section (1) of section 204 and sub-section (1) of section 205 of the Companies Act, 2013, read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013) and in supersession of the Companies (Central Government's) General Rules and Forms, 1956 or any other relevant rules prescribed under the Companies Act, 1956 (1 of 1956) on matters covered under these rules, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely: -

1. Short title and commencement.-

(1) These rules may be called the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

(2) They shall come into force on the 1st day of April, 2014.

2. Definitions.- (1) In these rules, unless the context otherwise requires,-

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "Annexure" means the Annexure to these rules;

(c) "Fees" means the fees as specified in the Companies (Registration offices and fees) Rules, 2014;

(d) "Form" or **"**e form" means a form set forth in Annexure to these rules which shall be used for the matter to which it relates;

(e) "Regional Director" means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director;

(f) "section" means section of the Act.

(2) Words and expressions used in these rules but not defined and defined in the Act or in Companies (Specification of definitions details) Rules, 2014 shall have the meanings respectively assigned to them in the Act and said rules**.**

3. Filing of return of appointment.- A company shall file a return of appointment of a Managing Director, Whole Time Director or Manager, Chief Executive Officer (CEO), Company Secretary and Chief Financial Officer (CFO) within sixty days of the appointment**,** with the Registrar in Form No. **MR.1** along with such fee as may be specified for this purpose.

4. Sitting fees.- A company may pay a sitting fee to a director for attending meetings of the Board or committees thereof, such sum as may be decided by the Board of directors thereof which shall not exceed one lakh rupees per meeting of the Board or committee thereof:

Provided that for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other directors.

5. Disclosure in Board's report.-(1) Every listed company shall disclose in the Board's report-

(i) the ratio of the remuneration of each director to the median remuneration of the employees of the company for the financial year;
(ii) the percentage increase in remuneration of each director, Chief Financial Officer, Chief Executive Officer, Company Secretary or Manager, if any, in the financial year;
(iii) the percentage increase in the median remuneration of employees in the financial year;
(iv) the number of permanent employees on the rolls of company;
(v) the explanation on the relationship between average increase in remuneration and company performance;
(vi) comparison of the remuneration of the Key Managerial Personnel against the performance of the company;
(vii) variations in the market capitalisation of the company, price earnings ratio as at the closing date of the current financial year and previous financial year and percentage increase over decrease in the market quotations of the shares of the company in comparison to the rate at which the company came out with the last public offer in case of listed companies, and in case of unlisted companies, the variations in the net worth of the company as at the close of the current financial year and previous financial year;
(viii) average percentile increase already made in the salaries of employees other than the managerial personnel in the last financial year and its comparison with the percentile increase in the managerial remuneration and justification thereof and point out if there are any exceptional circumstances for increase in the managerial remuneration;
(ix) comparison of the each remuneration of the Key Managerial Personnel against the performance of the company;
(x) the key parameters for any variable component of remuneration availed by the directors;
(xi) the ratio of the remuneration of the highest paid director to that of the employees who are not directors but receive remuneration in excess of the highest paid director during the year; and
(xii) affirmation that the remuneration is as per the remuneration policy of the company.

Explanation.- For the purposes of this rule.- (i) the expression "median" means the numerical value separating the higher half of a population from the lower half and the median of a finite list of numbers may be found by arranging all the observations from lowest value to highest value and picking the middle one;
(ii) if there is an even number of observations, the median shall be the average of the two middle values.

(2) The board's report shall include a statement showing the name of every employee of the company, who-
(i) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than sixty lakh rupees;
(ii) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than five lakh rupees per month;
(iii) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-

time director or manager and holds by himself or along with his spouse and dependent children, not less than two percent of the equity shares of the company.

(3) The statement referred to in sub-rule (2) shall also indicate -
(i) designation of the employee;
(ii) remuneration received;
(iii) nature of employment, whether contractual or otherwise;
(iv) qualifications and experience of the employee;
(v) date of commencement of employment;
(vi) the age of such employee;
(vii) the last employment held by such employee before joining the company;
(viii) the percentage of equity shares held by the employee in the company within the meaning of clause (iii) of sub-rule (2) above; and
(ix) whether any such employee is a relative of any director or manager of the company and if so, name of such director or manager:

Provided that the particulars of employees posted and working in a country outside India, not being directors or their relatives, drawing more than sixty lakh rupees per financial year or five lakh rupees per month, as the case may be, as may be decided by the Board, shall not be circulated to the members in the Board's report, but such particulars shall be filed with the Registrar of Companies while filing the financial statement and Board Reports:

Provided further that such particulars shall be made available to any shareholder on a specific request made by him in writing before the date of such Annual General Meeting wherein financial statements for the relevant financial year are proposed to be adopted by shareholders and such particulars shall be made available by the company within three days from the date of receipt of such request from shareholders:

Provided also that in case of request received even after the date of completion of Annual General Meeting, such particulars shall be made available to the shareholders within seven days from the date of receipt of such request.

6. Applications to the Central Government.-

The Central Government or the company shall have regard to the following matters, namely:-

(1) the Financial and operating performance of the company during the three preceding financial years.
(2) the relationship between remuneration and performance.
(3) the principle of proportionality of remuneration within the company, ideally by a rating methodology which compares the remuneration of directors to that of other directors on the board who receives remuneration and employees or executives of the company.
(4) whether remuneration policy for directors differs from remuneration policy for other employees and if so, an explanation for the difference.
(5) the securities held by the director, including options and details of the shares pledged as at the end of the preceding financial year.

7. Fees.-

(1) Every application made to the Central Government under the provisions of Chapter XIII shall be made in Form No. **MR.2** and shall be accompanied by fee as may be specified for the purpose.

(2) The companies other than listed companies and subsidiary of a listed company may without Central Government approval pay remuneration to its managerial personnel**,** in the event of no profit or inadequate profit beyond ceiling specified in Section II, Part II of Schedule V, subject to complying with the following conditions namely:-

(i) payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under sub-section (1) of section 178 also by the Nomination and Remuneration Committee, if any, and while doing so record in writing the clear reason and justification for payment of remuneration beyond the said limit;

(ii) the company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon preference shares and dividend on preference shares for a continuous period of thirty days in the preceding financial year before the date of payment to such managerial personnel;

(iii) the approval of shareholders by way of a special resolution at a general meeting of the company for payment of remuneration for a period not exceeding three years;

(iv) a statement along-with a notice calling the general meeting referred to clause (iii) of sub-rule (2) above, shall contain the information as per sub clause (iv) of second proviso to clause (B) of section II of part-II of Schedule V of the Act including reasons and justification for payment of remuneration beyond the said limit;

(v) the company has filed Balance Sheet and Annual Return which are **due to be** filed with the Registrar of Companies.

(3) Every such application seeking approval shall be made to the Central Government within a period of ninety days from the date of such appointment.

8. Appointment of Key Managerial Personnel.-

Every listed company and every other public company having a paid-up share capital of ten crore rupees or more shall have whole-time key managerial personnel.

9. Secretarial Audit Report.-

(1) For the purposes of sub-section (1) of section 204, the other class of companies shall be as under-

(a) every public company having a paid-up share capital of fifty crore rupees or more; or

(b) every public company having a turnover of two hundred fifty crore rupees or more.

(2) The format of the Secretarial Audit Report shall be in Form No.**MR.3.**

10. Duties of Company Secretary.-

The duties of Company Secretary shall also discharge, the following duties, namely:-

(1) to provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;

(2) to facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings;

(3) to obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act;

(4) to represent before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act;

(5) to assist the Board in the conduct of the affairs of the company;

(6) to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and
(7) to discharge such other duties as have been specified under the Act or rules; and
(8) such other duties as may be assigned by the Board from time to time.

CHAPTER XIV

INSPECTION, INQUIRY AND INVESTIGATION

206. Power to call for information, inspect books and conduct inquiries.

(*1*) Where 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 or explanation or 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, within such reasonable time, as may be specified in the notice.

(*2*) On the receipt of a notice under sub-section (*1*), it shall be the duty of the company and of its officers concerned to furnish such information or explanation to the best of their knowledge and power and to produce the documents to the Registrar within the time specified or extended by the Registrar:

Provided that where such information or explanation relates to any past period, the officers who had been in the employment of the company for such period, if so called upon by the Registrar through a notice served on them in writing, shall also furnish such information or explanation to the best of their knowledge.

(*3*) If no information or explanation is furnished to the Registrar within the time specified under sub-section (*1*) or if the Registrar on an examination of the documents furnished is of the opinion that the information or explanation furnished is inadequate or if the Registrar is satisfied on a scrutiny of the documents furnished that an unsatisfactory state of affairs exists in the company and does 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 require at such place and at such time as he may specify in the notice:

Provided that before any notice is served under this sub-section, the Registrar shall record his reasons in writing for issuing such notice.

(*4*) If the Registrar is satisfied on the basis of information available with or furnished to him or 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 if the grievances of investors are not being addressed, the Registrar may, after informing the company of the allegations made against it by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order within such time as he may specify therein and carry out such inquiry as he deems fit after providing the company a reasonable opportunity of being heard:

Provided that the Central Government may, if it is satisfied that the circumstances so warrant, direct the Registrar or an inspector appointed by it for the purpose to carry out the inquiry under this sub-section:

Provided further that where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in section 447.

(*5*) Without prejudice to the foregoing provisions of this section, the Central Government may, if it is satisfied that the circumstances so warrant, direct inspection of books and papers of a company by an inspector appointed by it for the purpose.

(*6*) The Central Government may, 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.

(*7*) If a company fails to furnish any information or explanation or produce any document required under this section, the company and every officer of the company, who is in default shall be punishable with a fine which may extend to one lakh rupees and in the case of a continuing failure, with an additional fine which may extend to five hundred rupees for every day after the first during which the failure continues.

207. Conduct of inspection and inquiry.

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

(*2*) The Registrar or inspector, making an inspection or inquiry under section 206 may, during the course of such inspection or inquiry, as the case may be,—

(*a*) make or cause to be made copies of books of account and other books and papers; or

(*b*) place or cause to be placed any marks of identification in such books in token of the inspection having been made.

(*3*) Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the Registrar or inspector making an inspection or inquiry shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

(*a*) the discovery and production of books of account and other documents, at such place and time as may be specified by such Registrar or inspector making the inspection or inquiry;

(b) summoning and enforcing the attendance of persons and examining them on oath; and

(c) inspection of any books, registers and other documents of the company at any place.

(*4*) (*i*) If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

(*ii*) If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.

208. Report on inspection made.

The Registrar or inspector shall, after the inspection of the books of account or an inquiry under section 206 and other books and papers of the company under section 207, submit a report in writing to the Central Government along with such documents, if any, and such report may, if necessary, include a recommendation that further investigation into the affairs of the company is necessary giving his reasons in support.

209. Search and seizure.

(*1*) Where, upon information in his possession or otherwise, the Registrar or inspector has reasonable ground to believe that the books and papers of a company, or relating to the key managerial personnel or any director or auditor or company secretary in practice if the company has not appointed a company secretary, are likely to be destroyed, mutilated, altered, falsified or secreted, he may, after obtaining an order from the Special Court for the seizure of such books and papers,—

(*a*) enter, with such assistance as may be required, and search, the place or places where such books or papers are kept; and

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

(*2*) The Registrar or inspector shall return the books and papers seized under subsection (*1*), as soon as may be, and in any case not later than one hundred and eightieth day after such seizure, to the company from whose custody or power such books or papers were seized:

Provided that the books and papers may be called for by the Registrar or inspector for a further period of one hundred and eighty days by an order in writing if they are needed again:

Provided further that the Registrar or inspector may, before returning such books and papers as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof or deal with the same in such other manner as he considers necessary.

(*3*) The provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures shall apply, *mutatis mutandis,* to every search and seizure made under this section.

210. Investigation into affairs of company.

(*1*) Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company,—

(*a*) on the receipt of a report of the Registrar or inspector under section 208;

(*b*) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or

(*c*) in public interest, it may order an investigation into the affairs of the company.

(*2*) Where an order is passed by a court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government shall order an investigation into the affairs of that company.

(*3*) For the purposes of this section, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.

211. Establishment of Serious Fraud Investigation Office.

(*1*) The Central Government shall, by notification, establish an office to be called the Serious Fraud Investigation Office to investigate frauds relating to a company:

Provided that until the Serious Fraud Investigation Office is established under subsection (*1*), the Serious Fraud Investigation Office set-up by the Central Government in terms of the Government of India Resolution No. 45011/16/2003-Adm-I, dated the 2nd July, 2003 shall be deemed to be the Serious Fraud Investigation Office for the purpose of this section.

(*2*) The Serious Fraud Investigation Office shall be headed by a Director and consist of such number of experts from the following fields to be appointed by the Central Government from amongst persons of ability, integrity and experience in,—
(*i*) banking;
(*ii*) corporate affairs;
(*iii*) taxation;
(*iv*) forensic audit;
(*v*) capital market;
(*vi*) information technology;
(*vii*) law; or
(*viii*) such other fields as may be prescribed.

(*3*) The Central Government shall, by notification, appoint a Director in the Serious Fraud Investigation Office, who shall be an officer not below the rank of a Joint Secretary to the Government of India having knowledge and experience in dealing with matters relating to corporate affairs.

(*4*) The Central Government may appoint such experts and other officers and employees in the Serious Fraud Investigation Office as it considers necessary for the efficient discharge of its functions under this Act.

(*5*) The terms and conditions of service of Director, experts, and other officers and employees of the Serious Fraud Investigation Office shall be such as may be prescribed.

212. Investigation into affairs of company by Serious Fraud Investigation Office.

(*1*) Without prejudice to the provisions of section 210, where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office—
(*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, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.

(*2*) Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such

case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office.

(*3*) Where the investigation into the affairs of a company has been assigned by the Central Government to Serious Fraud Investigation Office, it shall conduct the investigation in the manner and follow the procedure provided in this Chapter; and submit its report to the Central Government within such period as may be specified in the order.

(*4*) The Director, Serious Fraud Investigation Office shall cause the affairs of the company to be investigated by an Investigating Officer who shall have the power of the inspector under section 217.

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

(*6*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the 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:

Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by—

(*i*) the Director, Serious Fraud Investigation Office; or

(*ii*) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.

(*7*) The limitation on granting of bail specified in sub-section (*6*) is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.

(*8*) If the Director, Additional Director or Assistant Director of Serious Fraud Investigation Office authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (*6*), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(*9*) The Director, Additional Director or Assistant Director of Serious Fraud Investigation Office shall, immediately after arrest of such person under sub-section (*8*), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the

Serious Fraud Investigation Office in a sealed envelope, in such manner as may be prescribed and the Serious Fraud Investigation Office shall keep such order and material for such period as may be prescribed.

(*10*) Every person arrested under sub-section (*8*) shall within twenty-four hours, be taken to a Judical Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's court.

(*11*) The Central Government if so directs, the Serious Fraud Investigation Office shall submit an interim report to the Central Government.

(*12*) On completion of the investigation, the Serious Fraud Investigation Office shall submit the investigation report to the Central Government.

(*13*) Notwithstanding anything contained in this Act or in any other law for the time being in force, a copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court.

(*14*) On receipt of the investigation report, the Central Government may, after examination of the report (and after taking such legal advice, as it may think fit), direct the Serious Fraud Investigation Office to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company.

(*15*) Notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973.

(*16*) Notwithstanding anything contained in this Act, any investigation or other action taken or initiated by Serious Fraud Investigation Office under the provisions of the Companies Act, 1956 shall continue to be proceeded with under that Act as if this Act had not been passed.

(*17*) (*a*) In case Serious Fraud Investigation Office has been investigating any offence under this Act, any other investigating agency, State Government, police authority, income-tax authorities having any information or documents in respect of such offence shall provide all such information or documents available with it to the Serious Fraud Investigation Office;

(*b*) The Serious Fraud Investigation Office shall share any information or documents available with it, with any investigating agency, State Government, police authority or income tax authorities, which may be relevant or useful for such investigating agency, State Government, police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law.

213. Investigation into company's affairs in other cases.

The Tribunal may,—

(*a*) on an application made by—

(*i*) not less than one hundred members or members holding not less than one-tenth of the total voting power, in the case of a company having a share capital; or

(*ii*) not less than one-fifth of the persons on the company’s register of members, in the case of a company having no share capital, and supported by such evidence as may

be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company; or

(*b*) on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that—

(*i*) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose;

(*ii*) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or

(*iii*) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company, order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct:

Provided that if after investigation it is proved that—

(*i*) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or

(*ii*) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447.

214. Security for payment of costs and expenses of investigation.

Where an investigation is ordered by the Central Government in pursuance of clause (*b*) of sub-section (*1*) of section 210, or in pursuance of an order made by the Tribunal under section 213, the Central Government may before appointing an inspector under subsection (*3*) of section 210 or clause (*b*) of section 213, require the applicant to give such security not exceeding twenty-five thousand rupees as may be prescribed, as it may think fit, for payment of the costs and expenses of the investigation and such security shall be refunded to the applicant if the investigation results in prosecution.

215. Firm, body corporate or association not to be appointed as inspector.

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

216. Investigation of ownership of company.

(*1*) Where it appears to the Central Government that there is a reason so to do, it may appoint one or more inspectors to investigate and report on matters relating to the company, and its membership for the purpose of determining the true persons—

(*a*) who are or have been financially interested in the success or failure, whether real or apparent, of the company; or

(*b*) who are or have been able to control or to materially influence the policy of the company.

(*2*) Without prejudice to its powers under sub-section (*1*), the Central Government shall appoint one or more inspectors under that sub-section, if the Tribunal, in the course of any proceeding before it, directs by an order that the affairs of the company ought to be investigated as regards the membership of the company and other matters relating to the company, for the purposes specified in sub-section (*1*).

(*3*) While appointing an inspector under sub-section (*1*), the Central Government may define the scope of the investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular, may limit the investigation to matters connected with particular shares or debentures.

(*4*) Subject to the terms of appointment of an inspector, his powers shall extend to the investigation of any circumstances suggesting the existence of any arrangement or understanding which, though not legally binding, is or was observed or is likely to be observed in practice and which is relevant for the purposes of his investigation.

217. Procedure, powers, etc., of inspectors.

(*1*) It shall be the duty of all officers and other employees and agents including the former officers, employees and agents of a company which is under investigation in accordance with the provisions contained in this Chapter, and where the affairs of any other body corporate or a person are investigated under section 219, of all officers and other employees and agents including former officers, employees and agents of such body corporate or a person—

(*a*) to preserve and to produce to an inspector or any person authorised by him in this behalf all books and papers of, or relating to, the company or, as the case may be, relating to the other body corporate or the person, which are in their custody or power; and

(*b*) otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

(*2*) The inspector may require any body corporate, other than a body corporate referred to in sub-section (*1*), to furnish such information to, or produce such books and papers before him or any person authorised by him in this behalf as he may consider necessary, if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation.

(*3*) The inspector shall not keep in his custody any books and papers produced under sub-section (*1*) or sub-section (*2*) for more than one hundred and eighty days and return the same to the company, body corporate, firm or individual by whom or on whose behalf the books and papers were produced:

Provided that the books and papers may be called for by the inspector if they are needed again for a further period of one hundred and eighty days by an order in writing.

(*4*) An inspector may examine on oath—

(*a*) any of the persons referred to in sub-section (*1*); and

(*b*) with the prior approval of the Central Government, any other person, in relation to the affairs of the company, or other body corporate or person, as the case may be, and for that purpose may require any of those persons to appear before him personally:

Provided that in case of an investigation under section 212, the prior approval of Director, Serious Fraud Investigation Office shall be sufficient under clause (*b*).

(*5*) Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the inspector, being an officer of the Central Government, making an investigation under this Chapter shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

(*a*) the discovery and production of books of account and other documents, at such place and time as may be specified by such person;

(*b*) summoning and enforcing the attendance of persons and examining them on oath; and

(*c*) inspection of any books, registers and other documents of the company at any place.

(*6*) (*i*) If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

(*ii*) If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.

(*7*) The notes of any examination under sub-section (*4*) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

(*8*) If any person fails without reasonable cause or refuses—

(*a*) to produce to an inspector or any person authorised by him in this behalf any book or paper which is his duty under sub-section (*1*) or sub-section (*2*) to produce;

(*b*) to furnish any information which is his duty under sub-section (*2*) to furnish;

(*c*) to appear before the inspector personally when required to do so under subsection (*4*) or to answer any question which is put to him by the inspector in pursuance of that sub-section; or

(*d*) to sign the notes of any examination referred to in sub-section (*7*), he shall be punishable with imprisonment for a term which may extend to six months and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, and also with a further fine which may extend to two thousand rupees for every day after the first during which the failure or refusal continues.

(*9*) The officers of the Central Government, State Government, police or statutory authority shall provide assistance to the inspector for the purpose of inspection, inquiry or investigation, which the inspector may, with the prior approval of the Central Government, require.

(*10*) The Central Government may enter into an agreement with the Government of a foreign State for reciprocal arrangements to assist in any inspection, inquiry or investigation under this Act or under the corresponding law in force in that State and may, by notification, render the application of this Chapter in relation to a foreign State with which reciprocal

arrangements have been made subject to such modifications, exceptions, conditions and qualifications as may be deemed expedient for implementing the agreement with that State.

(*11*) Notwithstanding anything contained in this Act or in the Code of Criminal Procedure, 1973 if, in the course of an investigation into the affairs of the company, an application is made to the competent court in India by the inspector stating that evidence is, or may be, available in a country or place outside India, such court may issue a letter of request to a court or an authority in such country or place, competent to deal with such request, to examine orally, or otherwise, any person, supposed to be acquainted with the facts and circumstances of the case, to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing, which may be in his possession pertaining to the case, and to forward all the evidence so taken or collected or the authenticated copies thereof or the things so collected to the court in India which had issued such letter of request:

Provided that the letter of request shall be transmitted in such manner as the Central Government may specify in this behalf:

Provided further that every statement recorded or document or thing received under this sub-section shall be deemed to be the evidence collected during the course of investigation.

(*12*) Upon receipt of a letter of request from a court or an authority in a country or place outside India, competent to issue such letter in that country or place for the examination of any person or production of any document or thing in relation to affairs of a company under investigation in that country or place, the Central Government may, if it thinks fit, forward such letter of request to the court concerned, which shall thereupon summon the person before it and record his statement or cause any document or thing to be produced, or send the letter to any inspector for investigation, who shall thereupon investigate into the affairs of company in the same manner as the affairs of a company are investigated under this Act and the inspector shall submit the report to such court within thirty days or such extended time as the court may allow for further action:

Provided that the evidence taken or collected under this sub-section or authenticated copies thereof or the things so collected shall be forwarded by the court, to the Central Government for transmission, in such manner as the Central Government may deem fit, to the court or the authority in country or place outside India which had issued the letter of request.

218. Protection of employees during investigation.

(*1*) Notwithstanding anything contained in any other law for the time being in force, if—

(*a*) during the course of any investigation of the affairs and other matters of or relating to a company, other body corporate or person under section 210, section 212, section 213 or section 219 or of the membership and other matters of or relating to a company, or the ownership of shares in or debentures of a company or body corporate, or the affairs and other matters of or relating to a company, other body corporate or person, under section 216; or

(*b*) during the pendency of any proceeding against any person concerned in the conduct and management of the affairs of a company under Chapter XVI, such company, other body corporate or person proposes—

(*i*) to discharge or suspend any employee; or

(*ii*) to punish him, whether by dismissal, removal, reduction in rank or otherwise; or

(*iii*) to change the terms of employment to his disadvantage, the company, other body corporate or person, as the case may be, shall obtain approval of the Tribunal of the action proposed against the employee and if the Tribunal has any objection to the action proposed, it shall send by post notice thereof in writing to the company, other body corporate or person concerned.

(*2*) If the company, other body corporate or person concerned does not receive within thirty days of making of application under sub-section (*1*), the approval of the Tribunal, then and only then, the company, other body corporate or person concerned may proceed to take against the employee, the action proposed.

(*3*) If the company, other body corporate or person concerned is dissatisfied with the objection raised by the Tribunal, it may, within a period of thirty days of the receipt of the notice of the objection, prefer an appeal to the Appellate Tribunal in such manner and on payment of such fees as may be prescribed.

(*4*) The decision of the Appellate Tribunal on such appeal shall be final and binding on the Tribunal and on the company, other body corporate or person concerned.

(*5*) For the removal of doubts, it is hereby declared that the provisions of this section shall have effect without prejudice to the provisions of any other law for the time being in force.

219. Power of inspector to conduct investigation into affairs of related companies, etc.

If an inspector appointed under section 210 or section 212 or section 213 to investigate into the affairs of a company considers it necessary for the purposes of the investigation, to investigate also the affairs of—

(*a*) any other body corporate which is, or has at any relevant time been the company's subsidiary company or holding company, or a subsidiary company of its holding company;

(*b*) any other body corporate which is, or has at any relevant time been managed by any person as managing director or as manager, who is, or was, at the relevant time, the managing director or the manager of the company;

(*c*) any other body corporate whose Board of Directors comprises nominees of the company or is accustomed to act in accordance with the directions or instructions of the company or any of its directors; or

(*d*) any person who is or has at any relevant time been the company's managing director or manager or employee, he shall, subject to the prior approval of the Central Government, investigate into and report on the affairs of the other body corporate or of the managing director or manager, in so far as he considers that the results of his investigation are relevant to the investigation of the affairs of the company for which he is appointed.

220. Seizure of documents by inspector.

(*1*) Where in the course of an investigation under this Chapter, the inspector has reasonable grounds to believe that the books and papers of, or relating to, any company or other body corporate or managing director or manager of such company are likely to be destroyed, mutilated, altered, falsified or secreted, the inspector may—

(*a*) enter, with such assistance as may be required, the place or places where such books and papers are kept in such manner as may be required; and

(*b*) seize books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books and papers at its cost for the purposes of his investigation.

(*2*) The inspector shall keep in his custody the books and papers seized under this section for such a period not later than the conclusion of the investigation as he considers necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person from whose custody or power they were seized:

Provided that the inspector may, before returning such books and papers as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof or deal with the same in such manner as he considers necessary.

(*3*) The provisions of the Code of Criminal Procedure, 1973, relating to searches or seizures shall apply *mutatis mutandis* to every search or seizure made under this section.

221. Freezing of assets of company on inquiry and investigation.

(*1*) Where it appears to the Tribunal, on a reference made to it by the Central Government or in connection with any inquiry or investigation into the affairs of a company under this Chapter or on any complaint made by such number of members as specified under sub-section (*1*) of section 244 or a creditor having one lakh amount outstanding against the company or any other person having a reasonable ground to believe that the removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of the company or its shareholders or creditors or in public interest, it may by order direct that such transfer, removal or disposal shall not take place during such period not exceeding three years as may be specified in the order or may take place subject to such conditions and restrictions as the Tribunal may deem fit.

(*2*) In case of any removal, transfer or disposal of funds, assets, or properties of the company in contravention of the order of the Tribunal under sub-section (*1*), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

222. Imposition of restrictions upon securities.

(*1*) Where it appears to the Tribunal, in connection with any investigation under section 216 or on a complaint made by any person in this behalf, that there is good reason to find out the relevant facts about any securities issued or to be issued by a company and the Tribunal is of the opinion that such facts cannot be found out unless certain restrictions, as it may deem fit, are imposed, the Tribunal may, by order, direct that the securities shall be subject to such restrictions as it may deem fit for such period not exceeding three years as may be specified in the order.

(*2*) Where securities in any company are issued or transferred or acted upon in contravention of an order of the Tribunal under sub-section (*1*), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five

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 twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

223. Inspector's report.

(*1*) An inspector appointed under this Chapter may, and if so directed by the Central Government shall, submit interim reports to that Government, and on the conclusion of the investigation, shall submit a final report to the Central Government.

(*2*) Every report made under sub-section (*1*) shall be in writing or printed as the Central Government may direct.

(*3*) A copy of the report made under sub-section (*1*) may be obtained by making an application in this regard to the Central Government.

(*4*) The report of any inspector appointed under this Chapter shall be authenticated either—

(*a*) by the seal of the company whose affairs have been investigated; or

(*b*) by a certificate of a public officer having the custody of the report, as provided under section 76 of the Indian Evidence Act, 1872, and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.

(*5*) Nothing in this section shall apply to the report referred to in section 212.

224. Actions to be taken in pursuance of inspector's report.

(*1*) If, from an inspector's report, made under section 223, it appears to the Central Government that any person has, in relation to the company or in relation to any other body corporate or other person whose affairs have been investigated under this Chapter been guilty of any offence for which he is criminally liable, the Central Government may prosecute such person for the offence and it shall be the duty of all officers and other employees of the company or body corporate to give the Central Government the necessary assistance in connection with the prosecution.

(*2*) If any company or other body corporate is liable to be wound up under this Act and it appears to the Central Government from any such report made under section 223 that it is expedient so to do by reason of any such circumstances as are referred to in section 213, the Central Government may, unless the company or body corporate is already being wound up by the Tribunal, cause to be presented to the Tribunal by any person authorised by the Central Government in this behalf—

(*a*) a petition for the winding up of the company or body corporate on the ground that it is just and equitable that it should be wound up;

(*b*) an application under section 241; or

(*c*) both.

(*3*) If from any such report as aforesaid, it appears to the Central Government that proceedings ought, in the public interest, to be brought by the company or any body corporate whose affairs have been investigated under this Chapter—

(*a*) for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs, of such company or body corporate; or

(*b*) for the recovery of any property of such company or body corporate which has been misapplied or wrongfully retained, the Central Government may itself bring proceedings for winding up in the name of such company or body corporate.

(*4*) The Central Government, shall be indemnified by such company or body corporate against any costs or expenses incurred by it in, or in connection with, any proceedings brought by virtue of sub-section (*3*).

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

225. Expenses of investigation.

(*1*) The expenses of, and incidental to, an investigation by an inspector appointed by the Central Government under this Chapter other than expenses of inspection under section 214 shall be defrayed in the first instance by the Central Government, but shall be reimbursed by the following persons to the extent mentioned below, namely:—

(*a*) any person who is convicted on a prosecution instituted, or who is ordered to pay damages or restore any property in proceedings brought, under section 224, to the extent that he may in the same proceedings be ordered to pay the said expenses as may be specified by the court convicting such person, or ordering him to pay such damages or restore such property, as the case may be;

(*b*) any company or body corporate in whose name proceedings are brought as aforesaid, to the extent of the amount or value of any sums or property recovered by it as a result of such proceedings;

(*c*) unless, as a result of the investigation, a prosecution is instituted under section 224,—

(*i*) any company, body corporate, managing director or manager dealt with by the report of the inspector; and

(*ii*) the applicants for the investigation, where the inspector was appointed under section 213, to such extent as the Central Government may direct.

(*2*) Any amount for which a company or body corporate is liable under clause (*b*) of sub-section (*1*) shall be a first charge on the sums or property mentioned in that clause.

226. Voluntary winding up of company, etc., not to stop investigation proceedings.

An investigation under this Chapter may be initiated notwithstanding, and no such investigation shall be stopped or suspended by reason only of, the fact that—

(*a*) an application has been made under section 241;

(*b*) the company has passed a special resolution for voluntary winding up; or

(*c*) any other proceeding for the winding up of the company is pending before the Tribunal:

Provided that where a winding up order is passed by the Tribunal in a proceeding referred to in clause (*c*), the inspector shall inform the Tribunal about the pendency of the investigation proceedings before him and the Tribunal shall pass such order as it may deem fit:

Provided further that nothing in the winding up order shall absolve any director or other employee of the company from participating in the proceedings before the inspector or any liability as a result of the finding by the inspector.

227. Legal advisers and bankers not to disclose certain information.

Nothing in this Chapter shall require the disclosure to the Tribunal or to the Central Government or to the Registrar or to an inspector appointed by the Central Government—

(*a*) by a legal adviser, of any privileged communication made to him in that capacity, except as respects the name and address of his client; or

(*b*) by the bankers of any company, body corporate, or other person, of any information as to the affairs of any of their customers, other than such company, body corporate, or person.

228. Investigation, etc., of foreign companies.

The provisions of this Chapter shall apply *mutatis mutandis* to inspection, inquiry or investigation in relation to foreign companies.

229. Penalty for furnishing false statement, mutilation, destruction of documents.

Where a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation,—

(*a*) destroys, mutilates or falsifies, or conceals or tampers or unauthorisedly removes, or is a party to the destruction, mutilation or falsification or concealment or tampering or unauthorised removal of, documents relating to the property, assets or affairs of the company or the body corporate;

(*b*) makes, or is a party to the making of, a false entry in any document concerning the company or body corporate; or

(*c*) provides an explanation which is false or which he knows to be false, he shall be punishable for fraud in the manner as provided in section 447.

Rules for Chapter XIV

Companies (Inspection, Investigation and Inquiry) Rules, 2014

In exercise of the powers conferred under sub-section (2) of section 211, sub-section (5) of section 211, section 214, sub-section (3) of section 210, and sub-section(11) of section 217, read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013) and in supersession of the Companies (Central Government's) General Rules and Forms, 1956 or any other relevant rules prescribed under the Companies Act, 1956 (1 of 1956) on matters covered under these rules, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely: -

1. Short title and commencement.-

(1) These rules may be called the Companies (Inspection, Investigation and Inquiry) Rules, 2014.

(2) They shall come into force on the 1st day of April, 2014.

2. Definitions.- (1) In these rules, unless the context otherwise requires,-

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "Annexure" means the Annexure to these rules;

(c) "Fees" means the fees as specified in the Companies (Registration offices and fees) Rules, 2014;

(d) "Form" or "e form" means a form set forth in Annexure to these rules which shall be used for the matter to which it relates;

(e) "Regional Director" means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director;

(f) "section" means the section of the Act;

(2) Words and expressions used in these rules but not defined and defined in the Act or in Companies (Specification of definitions details) Rules, 2014 shall have the meanings respectively assigned to them in the Act and said rules.

3. Appointment of persons having expertise in various fields.-

The Central Government may appoint persons having expertise in the fields of investigations, cyber forensics, financial accounting, management accounting, cost accounting and any other fields as may be necessary for the efficient discharge of Serious Fraud Investigation Office (SFIO) functions under the Act.

4. Terms and Condition of service.- The terms and conditions of service of Director, experts and other officers and employees of the Serious Fraud Investigation Office under sub-section (5) of section 211 shall be as under-

(a) the terms and conditions of appointment of Director shall be governed by the deputation rules under the Central Staffing Scheme of Government of India;

(b) the terms and conditions of service of experts from the Central Government or the State Government or Union territory Government, Public Sector Undertaking, Autonomous Bodies and such other organizations shall be as per the recruitment rules

which may be duly notified by the Central Government under article 309 of the Constitution of India;

(c) the terms and conditions of service of other officers and employees from the Central Government or the State Government or Union territory Government, Public Sector Undertaking, Autonomous Bodies and such other organizations shall be as per the recruitment rules which may be duly notified by the Central Government under article 309 of the Constitution of India;

(d) the Central Government may appoint experts or consultants or other professionals or professional firms on contractual basis as per the scheme of engagement of experts or consultants which may be duly approved by the Central Government.

5. Security.-

(1) The Central Government may before appointing an inspector under sub-section (3) of section 210, require the applicant to give a security not exceeding twenty-five thousand rupees for payment of the costs and expenses of investigation as per the criteria given below-

S. No	Turnover as per previous year balance sheet (Rs.)	Amount of Security (Rs)
1	Turnover upto Rs. 50 crore	Rs. 10000
2	Turnover more than Rs. 50 crore and upto Rs. 200 crore	Rs. 15000
3	Turnover more than Rs. 200 crore	Rs. 25000

(2) The security shall be refunded to the applicant if the investigation results in prosecution.

6. Letter of Request, as per section 217.- The letter of request shall be transmitted in such manner as specified by the Ministry of Corporate Affairs.

CHAPTER XV

COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

230. Power to compromise or make arrangements with creditors and members.

(*1*) Where a compromise or arrangement is proposed—

(*a*) between a company and its creditors or any class of them; or

(*b*) between a company and its members or any class of them, the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, 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.

Explanation.—For the purposes of this sub-section, arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

(*2*) The company or any other person, by whom an application is made under subsection (*1*), shall disclose to the Tribunal by affidavit—

(*a*) all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company and the pendency of any investigation or proceedings against the company;

(*b*) reduction of share capital of the company, if any, included in the compromise or arrangement;

(*c*) any scheme of corporate debt restructuring consented to by not less than seventy-five per cent. of the secured creditors in value, including—

(*i*) a creditor's responsibility statement in the prescribed form;

(*ii*) safeguards for the protection of other secured and unsecured creditors;

(*iii*) report by the auditor that the fund requirements of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board;

(*iv*) where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect; and

(*v*) a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.

(*3*) Where a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (*1*), 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, individually at the address registered with the company which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed:

Provided that such notice and other documents shall also be placed on the website of the company, if any, and in case of a listed company, these documents shall be sent to the

Securities and Exchange Board and stock exchange where the securities of the companies are listed, for placing on their website and shall also be published in newspapers in such manner as may be prescribed:

Provided further that where the notice for the meeting is also issued by way of an advertisement, it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned persons free of charge from the registered office of the company.

(*4*) A notice under sub-section (*3*) shall provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the adoption of the compromise or arrangement within one month from the date of receipt of such notice:

Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent. of the shareholding or having outstanding debt amounting to not less than five per cent. of the total outstanding debt as per the latest audited financial statement.

(*5*) A notice under sub-section (*3*) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India established under sub-section (*1*) of section 7 of the Competition Act, 2002, if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.

(*6*) Where, at a meeting held in pursuance of sub-section (*1*), majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, 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 on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator and the contributories of the company.

(*7*) An order made by the Tribunal under sub-section (*6*) shall provide for all or any of the following matters, namely:—

(*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, if any, as are in the opinion of the Tribunal necessary to effectively implement the terms of the compromise or arrangement:

Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.

(*8*) The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order.

(*9*) The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent. value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.

(*10*) No compromise or arrangement in respect of any buy-back of securities under this section shall be sanctioned by the Tribunal unless such buy-back is in accordance with the provisions of section 68.

(*11*) Any compromise or arrangement may include takeover offer made in such manner as may be prescribed:

Provided that in case of listed companies, takeover offer shall be as per the regulations framed by the Securities and Exchange Board.

(*12*) An aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of companies other than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit.

Explanation.—For the removal of doubts, it is hereby declared that the provisions of section 66 shall not apply to the reduction of share capital effected in pursuance of the order of the Tribunal under this section.

231. Power of Tribunal to enforce compromise or arrangement.

(*1*) Where the Tribunal makes an order under section 230 sanctioning a compromise or an arrangement in respect of a company, it—

(*a*) shall have power to supervise the implementation of the compromise or arrangement; and

(*b*) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper implementation of the compromise or arrangement.

(*2*) If the Tribunal is satisfied that the compromise or arrangement sanctioned under section 230 cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the scheme, it may make an order for winding up the company and such an order shall be deemed to be an order made under section 273.

(*3*) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act sanctioning a compromise or an arrangement.

232. Merger and amalgamation of companies.

(*1*) Where an application is made to the Tribunal under section 230 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal—

(*a*) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies; and

(*b*) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies, the Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and the provisions of sub-sections (*3*) to (*6*) of section 230 shall apply *mutatis mutandis.*

(*2*) Where an order has been made by the Tribunal under sub-section (*1*), merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Tribunal, namely:—

(*a*) the draft of the proposed terms of the scheme drawn up and adopted by the directors of the merging company;

(*b*) confirmation that a copy of the draft scheme has been filed with the Registrar;

(*c*) a report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders, key managerial personnel, promotors and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties;

(*d*) the report of the expert with regard to valuation, if any;

(*e*) a 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.

(*3*) The Tribunal, after satisfying itself that the procedure specified in sub-sections (*1*) and (*2*) has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:—

(*a*) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of the transferor company from a date to be determined by the parties unless the Tribunal, for reasons to be recorded by it in writing, decides otherwise;

(*b*) the allotment or appropriation by the transferee company of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person:

Provided that a transferee company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished;

(*c*) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company on the date of transfer;
(*d*) dissolution, without winding-up, of any transferor company;
(*e*) 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;
(*f*) 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;
(*g*) the transfer of the employees of the transferor company to the transferee company;
(*h*) where the transferor company is a listed company and the transferee company is an unlisted company,—
(*A*) the transferee company shall remain an unlisted company until it becomes a listed company;
(*B*) if shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal:

Provided that the amount of payment or valuation under this clause for any share shall not be less than what has been specified by the Securities and Exchange Board under any regulations framed by it;

(*i*) where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation; and
(*j*) such incidental, consequential and supplemental matters as are deemed necessary to secure that the merger or amalgamation is fully and effectively carried out:

Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.

(*4*) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to the transferee company and the liabilities shall be transferred to and become the liabilities of the transferee company and any property may, if the order so directs, be freed from any charge which shall by virtue of the compromise or arrangement, cease to have effect.
(*5*) Every company in relation to which the order is made shall cause a certified copy of the order to be filed with the Registrar for registration within thirty days of the receipt of certified copy of the order.
(*6*) The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.
(*7*) Every company in relation to which the order is made shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed with the

Registrar every year duly certified by a chartered accountant or a cost accountant or a company secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not.

(*8*) If a transferor company or a transferee company contravenes the provisions of this section, the transferor company or the transferee company, as the case may be, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of such transferor or transferee company who is in default, shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

Explanation.—For the purposes of this section,—

(*i*) in a scheme involving a merger, where under the scheme the undertaking, property and liabilities of one or more companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to another existing company, it is a merger by absorption, or where the undertaking, property and liabilities of two or more companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to a new company, whether or not a public company, it is a merger by formation of a new company;

(*ii*) references to merging companies are in relation to a merger by absorption, to the transferor and transferee companies, and, in relation to a merger by formation of a new company, to the transferor companies;

(*iii*) a scheme involves a division, where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement is proposed are to be divided among and transferred to two or more companies each of which is either an existing company or a new company; and

(*iv*) property includes assets, rights and interests of every description and liabilities include debts and obligations of every description.

233. Merger or amalgamation of certain companies.

(*1*) Notwithstanding the provisions of section 230 and section 232, a scheme of merger or amalgamation may be entered into between two or more small companies or between a holding company and its wholly-owned subsidiary company or such other class or classes of companies as may be prescribed, subject to the following, namely:—

(*a*) a notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme within thirty days is issued by the transferor company or companies and the transferee company;

(*b*) the objections and suggestions received are considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least ninety per cent. Of the total number of shares;

(*c*) each of the companies involved in the merger files a declaration of solvency, in the prescribed form, with the Registrar of the place where the registered office of the company is situated; and

(*d*) the scheme is approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the

company by giving a notice of twenty-one days along with the scheme to its creditors for the purpose or otherwise approved in writing.

(*2*) The transferee company shall file a copy of the scheme so approved in the manner as may be prescribed, with the Central Government, Registrar and the Official Liquidator where the registered office of the company is situated.

(*3*) On the receipt of the scheme, if the Registrar or the Official Liquidator has no objections or suggestions to the scheme, the Central Government shall register the same and issue a confirmation thereof to the companies.

(*4*) If the Registrar or Official Liquidator has any objections or suggestions, he may communicate the same in writing to the Central Government within a period of thirty days:

Provided that if no such communication is made, it shall be presumed that he has no objection to the scheme.

(*5*) If the Central Government after receiving the objections or suggestions or for any reason is of the opinion that such a scheme is not in public interest or in the interest of the creditors, it may file an application before the Tribunal within a period of sixty days of the receipt of the scheme under sub-section (*2*) stating its objections and requesting that the Tribunal may consider the scheme under section 232.

(*6*) On receipt of an application from the Central Government or from any person, if the Tribunal, for reasons to be recorded in writing, is of the opinion that the scheme should be considered as per the procedure laid down in section 232, the Tribunal may direct accordingly or it may confirm the scheme by passing such order as it deems fit:
Provided that if the Central Government does not have any objection to the scheme or it does not file any application under this section before the Tribunal, it shall be deemed that it has no objection to the scheme.

(*7*) A copy of the order under sub-section (*6*) confirming the scheme shall be communicated to the Registrar having jurisdiction over the transferee company and the persons concerned and the Registrar shall register the scheme and issue a confirmation thereof to the companies and such confirmation shall be communicated to the Registrars where transferor company or companies were situated.

(*8*) The registration of the scheme under sub-section (*3*) or sub-section (*7*) shall be deemed to have the effect of dissolution of the transferor company without process of winding-up.

(*9*) The registration of the scheme shall have the following effects, namely:—

(*a*) transfer of property or liabilities of the transferor company to the transferee company so that the property becomes the property of the transferee company and the liabilities become the liabilities of the transferee company;

(*b*) the charges, if any, on the property of the transferor company shall be applicable and enforceable as if the charges were on the property of the transferee company;

(*c*) legal proceedings by or against the transferor company pending before any court of law shall be continued by or against the transferee company; and

(*d*) where the scheme provides for purchase of shares held by the dissenting shareholders or settlement of debt due to dissenting creditors, such amount, to the extent it is unpaid, shall become the liability of the transferee company.

(*10*) A transferee company shall not on merger or amalgamation, hold any shares in its own name or in the name of any trust either on its behalf or on behalf of any of its subsidiary

or associate company and all such shares shall be cancelled or extinguished on the merger or amalgamation.

(*11*) The transferee company shall file an application with the Registrar along with the scheme registered, indicating the revised authorised capital and pay the prescribed fees due on revised capital:

Provided that the fee, if any, paid by the transferor company on its authorised capital prior to its merger or amalgamation with the transferee company shall be set-off against the fees payable by the transferee company on its authorised capital enhanced by the merger or amalgamation.

(*12*) The provisions of this section shall *mutatis mutandis* apply to a company or companies specified in sub-section (*1*) in respect of a scheme of compromise or arrangement referred to in section 230 or division or transfer of a company referred to clause (*b*) of subsection (*1*) of section 232.

(*13*) The Central Government may provide for the merger or amalgamation of companies in such manner as may be prescribed.

(*14*) A company covered under this section may use the provisions of section 232 for the approval of any scheme for merger or amalgamation.

234. Merger or amalgamation of company with foreign company.

(*1*) The provisions of this Chapter unless otherwise provided under any other law for the time being in force, shall apply *mutatis mutandis* to schemes of mergers and amalgamations between companies registered under this Act and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government:

Provided that the Central Government may make rules, in consultation with the Reserve Bank of India, in connection with mergers and amalgamations provided under this section.

(*2*) Subject to the provisions of any other law for the time being in force, a foreign company, may with the prior approval of the Reserve Bank of India, merge into a company registered under this Act or *vice versa* and the terms and conditions of the scheme of merger may provide, among other things, for the payment of consideration to the shareholders of the merging company in cash, or in Depository Receipts, or partly in cash and partly in Depository Receipts, as the case may be, as per the scheme to be drawn up for the purpose.

Explanation.—For the purposes of sub-section (*2*), the expression "foreign company" means any company or body corporate incorporated outside India whether having a place of business in India or not.

235. Power to acquire shares of shareholders dissenting from scheme or contract approved by majority.

(*1*) Where a scheme or contract involving the transfer of shares or any class of shares in a company (the transferor company) to another company (the transferee company) has, within four months after making of an offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose

transfer is involved, other than shares already held at the date of the offer by, or by a nominee of the transferee company or its subsidiary companies, the transferee company may, at any time within two months after the expiry of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.

(*2*) Where a notice under sub-section (*1*) is given, the transferee company shall, unless on an application made by the dissenting shareholder to the Tribunal, within one month from the date on which the notice was given and the Tribunal thinks fit to order otherwise, be entitled to and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company.

(*3*) Where a notice has been given by the transferee company under sub-section (*1*) and the Tribunal has not, on an application made by the dissenting shareholder, made an order to the contrary, the transferee company shall, on the expiry of one month from the date on which the notice has been given, or, if an application to the Tribunal by the dissenting shareholder is then pending, after that application has been disposed of, send a copy of the notice to the transferor company together with an instrument of transfer, to be executed on behalf of the shareholder by any person appointed by the transferor company and on its own behalf by the transferee company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which, by virtue of this section, that company is entitled to acquire, and the transferor company shall—

(*a*) thereupon register the transferee company as the holder of those shares; and

(*b*) within one month of the date of such registration, inform the dissenting shareholders of the fact of such registration and of the receipt of the amount or other consideration representing the price payable to them by the transferee company.

(*4*) Any sum received by the transferor company under this section shall be paid into a separate bank account, and any such sum and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the said sum or other consideration were respectively received and shall be disbursed to the entitled shareholders within sixty days.

(*5*) In relation to an offer made by a transferee company to shareholders of a transferor company before the commencement of this Act, this section shall have effect with the following modifications, namely:—

(*a*) in sub-section (*1*), for the words "the shares whose transfer is involved other than shares already held at the date of the offer by, or by a nominee of, the transferee company or its subsidiaries,", the words "the shares affected" shall be substituted; and

(*b*) in sub-section (*3*), the words "together with an instrument of transfer, to be executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferor company" shall be omitted.

Explanation.—For the purposes of this section, "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

236. Purchase of minority shareholding.

(*1*) In the event of an acquirer, or a person acting in concert with such acquirer, becoming registered holder of ninety per cent. or more of the issued equity share capital of a company, or in the event of any person or group of persons becoming ninety per cent. majority or holding ninety per cent. of the issued equity share capital of a company, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, such acquirer, person or group of persons, as the case may be, shall notify the company of their intention to buy the remaining equity shares.

(*2*) The acquirer, person or group of persons under sub-section (*1*) shall offer to the minority shareholders of the company for buying the equity shares held by such shareholders at a price determined on the basis of valuation by a registered valuer in accordance with such rules as may be prescribed.

(*3*) Without prejudice to the provisions of sub-sections (*1*) and (*2*), the minority shareholders of the company may offer to the majority shareholders to purchase the minority equity shareholding of the company at the price determined in accordance with such rules as may be prescribed under sub-section (*2*).

(*4*) The majority shareholders shall deposit an amount equal to the value of shares to be acquired by them under sub-section (*2*) or sub-section (*3*), as the case may be, in a separate bank account to be operated by the transferor company for at least one year for payment to the minority shareholders and such amount shall be disbursed to the entitled shareholders within sixty days:

Provided that such disbursement shall continue to be made to the entitled shareholders for a period of one year, who for any reason had not been made disbursement within the said period of sixty days or if the disbursement have been made within the aforesaid period of sixty days, fail to receive or claim payment arising out of such disbursement.

(*5*) In the event of a purchase under this section, the transferor company shall act as a transfer agent for receiving and paying the price to the minority shareholders and for taking delivery of the shares and delivering such shares to the majority, as the case may be.

(*6*) In the absence of a physical delivery of shares by the shareholders within the time specified by the company, the share certificates shall be deemed to be cancelled, and the transferor company shall be authorised to issue shares in lieu of the cancelled shares and complete the transfer in accordance with law and make payment of the price out of deposit made under sub-section (*4*) by the majority in advance to the minority by despatch of such payment.

(*7*) In the event of a majority shareholder or shareholders requiring a full purchase and making payment of price by deposit with the company for any shareholder or shareholders who have died or ceased to exist, or whose heirs, successors, administrators or assignees have not been brought on record by transmission, the right of such shareholders to make an offer for sale of minority equity shareholding shall continue and be available for a period of three years from the date of majority acquisition or majority shareholding.

(*8*) Where the shares of minority shareholders have been acquired in pursuance of this section and as on or prior to the date of transfer following such acquisition, the shareholders holding seventy-five per cent. or more minority equity shareholding negotiate or reach an understanding on a higher price for any transfer, proposed or

agreed upon, of the shares held by them without disclosing the fact or likelihood of transfer taking place on the basis of such negotiation, understanding or agreement, the majority shareholders shall share the additional compensation so received by them with such minority shareholders on a *pro rata* basis.

Explanation.—For the purposes of this section, the expressions "acquirer" and "person acting in concert" shall have the meanings respectively assigned to them in clause (*b*) and clause (*e*) of sub-regulation (*1*) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

(*9*) When a shareholder or the majority equity shareholder fails to acquire full purchase of the shares of the minority equity shareholders, then, the provisions of this section shall continue to apply to the residual minority equity shareholders, even though,—

(*a*) the shares of the company of the residual minority equity shareholder had been delisted; and

(*b*) the period of one year or the period specified in the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, had elapsed.

237. Power of Central Government to provide for amalgamation of companies in public interest.

(*1*) Where the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company with such constitution, with such property, powers, rights, interests, authorities and privileges, and with such liabilities, duties and obligations, as may be specified in the order.

(*2*) The order under sub-section (*1*) may also provide for the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company and such consequential, incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to give effect to the amalgamation.

(*3*) Every member or creditor, including a debenture holder, of each of the transferor companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the transferee company as he had in the company of which he was originally a member or creditor, and in case the interest or rights of such member or creditor in or against the transferee company are less than his interest in or rights against the original company, he shall be entitled to compensation to that extent, which shall be assessed by such authority as may be prescribed and every such assessment shall be published in the Official Gazette, and the compensation so assessed shall be paid to the member or creditor concerned by the transferee company.

(*4*) Any person aggrieved by any assessment of compensation made by the prescribed authority under sub-section (*3*) may, within a period of thirty days from the date of publication of such assessment in the Official Gazette, prefer an appeal to the Tribunal and thereupon the assessment of the compensation shall be made by the Tribunal.

(*5*) No order shall be made under this section unless—

(*a*) a copy of the proposed order has been sent in draft to each of the companies concerned;

(*b*) the time for preferring an appeal under sub-section (*4*) has expired, or where any such appeal has been preferred, the appeal has been finally disposed off; and

(*c*) the Central Government has considered, and made such modifications, if any, in the draft order as it may deem fit in the light of suggestions and objections which may be received by it from any such company within such period as the Central Government may fix in that behalf, not being less than two months from the date on which the copy aforesaid is received by that company, or from any class of shareholders therein, or from any creditors or any class of creditors thereof.

(*6*) The copies of every order made under this section shall, as soon as may be after it has been made, be laid before each House of Parliament.

238. Registration of offer of schemes involving transfer of shares.

(*1*) In relation to every offer of a scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company under section 235,—

(*a*) every circular containing such offer and recommendation to the members of the transferor company by its directors to accept such offer shall be accompanied by such information and in such manner as may be prescribed;

(*b*) every such offer shall contain a statement by or on behalf of the transferee company, disclosing the steps it has taken to ensure that necessary cash will be available; and

(*c*) every such circular shall be presented to the Registrar for registration and no such circular shall be issued until it is so registered:

Provided that the Registrar may refuse, for reasons to be recorded in writing, to register any such circular which does not contain the information required to be given under clause (*a*) or which sets out such information in a manner likely to give a false impression, and communicate such refusal to the parties within thirty days of the application.

(*2*) An appeal shall lie to the Tribunal against an order of the Registrar refusing to register any circular under sub-section (*1*).

(*3*) The director who issues a circular which has not been presented for registration and registered under clause (*c*) of sub-section (*1*), shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

239. Preservation of books and papers of amalgamated companies.

The books and papers of a company which has been amalgamated with, or whose shares have been acquired by, another company under this Chapter shall not be disposed of without the prior permission of the Central Government and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the transferor company or its amalgamation or the acquisition of its shares.

240. Liability of officers in respect of offences committed prior to merger, amalgamation, etc.

Notwithstanding anything in any other law for the time being in force, the liability in respect of offences committed under this Act by the officers in default, of the transferor company prior to its merger, amalgamation or acquisition shall continue after such merger, amalgamation or acquisition.

CHAPTER XVI

PREVENTION OF OPPRESSION AND MISMANAGEMENT

241. Application to Tribunal for relief in cases of oppression, etc.

(*1*) Any member of a company who complains that—

(*a*) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or

(*b*) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.

(*2*) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter.

242. Powers of Tribunal.

(*1*) If, on any application made under section 241, the Tribunal is of the opinion—

(*a*) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and

(*b*) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

(*2*) Without prejudice to the generality of the powers under sub-section (*1*), an order under that sub-section may provide for—

(*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*):

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

(*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 under sub-section (*1*) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.

(*4*) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.

(*5*) Where an order of the Tribunal under sub-section (*1*) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

(*6*) Subject to the provisions of sub-section (*1*), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered.

(*7*) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same.

(*8*) If a company contravenes the provisions of sub-section (*5*), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five 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 twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

243. Consequence of termination or modification of certain agreements.

(*1*) Where an order made under section 242 terminates, sets aside or modifies an agreement such as is referred to in sub-section (*2*) of that section,—

(*a*) such order shall not give rise to any claims whatever 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;

(*b*) no managing director or other director or manager whose agreement is so terminated or set aside shall, 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:

Provided that the Tribunal shall not grant leave under this clause unless 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.

(*2*) Any person who knowingly acts as a managing director or other director or manager of a company in contravention of clause (*b*) of sub-section (*1*), and every other director of the company who is knowingly a party to such contravention, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five lakh rupees, or with both.

244. Right to apply under section 241

(*1*) The following members of a company shall have the right to apply under section 241, namely:—

(*a*) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than onetenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(*b*) in the case of a company not having a share capital, not less than one-fifth of the total number of its members:

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (*a*) or clause (*b*) so as to enable the members to apply under section 241.

Explanation.—For the purposes of this sub-section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(*2*) Where any members of a company are entitled to make an application under subsection (*1*), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

245. Class action.

(*1*) Such number of member or members, depositor or depositors or any class of them, as the case may be, as are indicated in sub-section (*2*) may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors for seeking all or any of the following orders, namely:—

(*a*) to restrain the company from committing an act which is *ultra vires* the articles or memorandum of the company;

(*b*) to restrain the company from committing breach of any provision of the company's memorandum or articles;

(*c*) to 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;

(*d*) to restrain the company and its directors from acting on such resolution;

(*e*) 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;

(*f*) to restrain the company from taking action contrary to any resolution passed by the members;

(*g*) to claim damages or compensation or demand any other suitable action from or against—

(*i*) the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;

(*ii*) the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or

(*iii*) any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;

(*h*) to seek any other remedy as the Tribunal may deem fit.

(*2*) Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner.

(*3*) (*i*) The requisite number of members provided in sub-section (*1*) shall be as under:—

(*a*) in the case of a company having a share capital, not less than one hundred members of the company or not less than such percentage of the total number of its members as may be prescribed, whichever is less, or any member or members holding not less than such percentage of the issued share capital of the company as may be prescribed, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(*b*) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.

(*ii*) The requisite number of depositors provided in sub-section (*1*) shall not be less than one hundred depositors or not less than such percentage of the total number of depositors as may be prescribed, whichever is less, or any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed.

(*4*) In considering an application under sub-section (*1*), the Tribunal shall take into account, in particular—

(*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 an application filed under sub-section (*1*) is admitted, then the Tribunal shall have regard to the following, namely:—

(*a*) public notice shall be served on admission of the application to all the members or depositors of the class in such manner as may be prescribed;

(*b*) all similar applications prevalent in any jurisdiction should be consolidated into a single application and the class members or depositors should be allowed to choose the lead applicant and in the event the members or depositors of the class are unable to come to a consensus, the Tribunal shall have the power to appoint a lead applicant, who shall be in charge of the proceedings from the applicant's side;

(*c*) two class action applications for the same cause of action shall not be allowed;

(*d*) the cost or expenses connected with the application for class action shall be defrayed by the company or any other person responsible for any oppressive act.

(*6*) Any 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.

(*7*) Any company which fails to comply with an order passed by the Tribunal under this section shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

(*8*) Where any application filed before the Tribunal is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, reject the application and make an order that the applicant shall pay to the opposite party such cost, not exceeding one lakh rupees, as may be specified in the order.

(*9*) Nothing contained in this section shall apply to a banking company.

(*10*) Subject to the compliance of this section, an application may be filed or any other action may be taken under this section by any person, group of persons or any association of persons representing the persons affected by any act or omission, specified in sub-section (*1*).

246. Application of certain provisions to proceedings under section 241 or section 245.

The provisions of sections 337 to 341 (both inclusive) shall apply *mutatis mutandis,* in relation to an application made to the Tribunal under section 241 or section 245.

CHAPTER XVII

REGISTERED VALUERS

247. Valuation by registered valuers.

(*1*) Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.

(*2*) The valuer appointed under sub-section (*1*) shall,—

(*a*) make an impartial, true and fair valuation of any assets which may be required to be valued;

(*b*) exercise due diligence while performing the functions as valuer;

(*c*) make the valuation in accordance with such rules as may be prescribed; and

(*d*) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during or after the valuation of assets.

(*3*) If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees:

Provided that if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(*4*) Where a valuer has been convicted under sub-section (*3*), he shall be liable to—

(*i*) refund the remuneration received by him to the company; and

(*ii*) pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

CHAPTER XVIII

REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES

248. Power of Registrar to remove name of company from register of Companies.

(*1*) Where the Registrar has reasonable cause to believe that—

(*a*) a company has failed to commence its business within one year of its incorporation;

(*b*) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay within a period of one hundred and eighty days from the date of incorporation of a company and a declaration under sub-section (*1*) of section 11 to this effect has not been filed within one hundred and eighty days of its incorporation; or

(*c*) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455, he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

(*2*) Without prejudice to the provisions of sub-section (*1*), a company may, after extinguishing all its liabilities, by a special resolution or consent of seventy-five per cent. members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in sub-section (*1*) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner:

Provided that in the case of a company regulated under a special Act, approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the application.

(*3*) Nothing in sub-section (*2*) shall apply to a company registered under section 8.

(*4*) A notice issued under sub-section (*1*) or sub-section (*2*) shall be published in the prescribed manner and also in the Official Gazette for the information of the general public.

(*5*) At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved.

(*6*) The Registrar, before passing an order under sub-section (*5*), shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and, if necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company:

Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies.

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

(*8*) Nothing in this section shall affect the power of the Tribunal to wind up a company the name of which has been struck off from the register of companies.

249. Restrictions on making application under section 248 in certain situations.

(*1*) An application under sub-section (*2*) of section 248 on behalf of a company shall not be made if, at any time in the previous three months, the company—

(*a*) has changed its name or shifted its registered office from one State to another;

(*b*) has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;

(*c*) has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;

(*d*) has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or

(*e*) is being wound up under Chapter XX, whether voluntarily or by the Tribunal.

(*2*) If a company files an application under sub-section (*2*) of section 248 in violation of sub-section (*1*), it shall be punishable with fine which may extend to one lakh rupees.

(*3*) An application filed under sub-section (*2*) of section 248 shall be withdrawn by the company or rejected by the Registrar as soon as conditions under sub-section (*1*) are brought to his notice.

250. Effect of company notified as dissolved.

Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (*5*) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.

251. Fraudulent application for removal of name.

(*1*) Where it is found that an application by a company under sub-section (*2*) of section 248 has been made with the object of evading the liabilities of the company or with the intention to deceive the creditors or to defraud any other persons, the persons in charge of the management of the company shall, notwithstanding that the company has been notified as dissolved—

(*a*) be jointly and severally liable to any person or persons who had incurred loss or damage as a result of the company being notified as dissolved; and

(*b*) be punishable for fraud in the manner as provided in section 447.

(*2*) Without prejudice to the provisions contained in sub-section (*1*), the Registrar may also recommend prosecution of the persons responsible for the filing of an application under sub-section (*2*) of section 248.

252. Appeal to Tribunal.

(*1*) Any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies:

Provided that before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar, the company and all the persons concerned :

Provided further that if the Registrar is satisfied, that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, which requires restoration in the register of companies, he may within a period of three years from the date of passing of the order dissolving the company under section 248, file an application before the Tribunal seeking restoration of name of such company.

(*2*) A copy of the order passed by the Tribunal shall be filed by the company with the Registrar within thirty days from the date of the order and on receipt of the order, the Registrar shall cause the name of the company to be restored in the register of companies and shall issue a fresh certificate of incorporation.

(*3*) If a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (*5*) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.

CHAPTER XIX

REVIVAL AND REHABILITATION OF SICK COMPANIES

253. Determination of sickness.

(*1*) Where on a demand by the secured creditors of a company representing fifty per cent. or more of its outstanding amount of debt, the company has failed to pay the debt within a period of thirty days of the service of the notice of demand or to secure or compound it to the reasonable satisfaction of the creditors, any secured creditor may file an application to the Tribunal in the prescribed manner along with the relevant evidence for such default, non-repayment or failure to offer security or compound it, for a determination that the company be declared as a sick company.

(*2*) The applicant under sub-section (*1*) may, along with an application under that subsection or at any stage of the proceedings thereafter, make an application for the stay of any proceeding for the winding up of the company or for execution, distress or the like against any property and assets of the company or for the appointment of a receiver in respect thereof and that no suit for the recovery of any money or for the enforcement of any security against the company shall lie or be proceeded with.

(*3*) The Tribunal may pass an order in respect of an application under sub-section (*2*) which shall be operative for a period of one hundred and twenty days.

(*4*) The company referred to in sub-section (*1*) may also file an application to the Tribunal on one or more of the grounds specified in sub-sections (*1*) and (*2*) above.

(*5*) Without prejudice to the provisions of sub-sections (*1*) to (*4*), the Central Government or the Reserve Bank of India or a State Government or a public financial institution or a State level institution or a scheduled bank may, if it has sufficient reasons to believe that any company has become, for the purposes of this Act, a sick company, make a reference in respect of such company to the Tribunal for determination of the measures which may be adopted with respect to such company:

Provided that a reference shall not be made under this sub-section in respect of any company by—

(*a*) the Government of any State unless all or any of the undertakings belonging to such company are situated in such State;

(*b*) a public financial institution or a State level institution or a scheduled bank unless it has, by reason of any financial assistance or obligation rendered by it, or undertaken by it, with respect to such company, an interest in such company.

(*6*) Where an application under sub-section (*1*) or sub-section (*4*) has been filed,—

(*a*) the company shall not dispose of or otherwise enter into any obligation with regard to, its properties or assets except as required in the normal course of business;

(*b*) the Board of Directors shall not take any steps likely to prejudice the interests of the creditors.

(*7*) The Tribunal shall, within a period of sixty days of the receipt of an application under sub-section (*1*) or sub-section (*4*), determine whether the company is a sick company or not:

Provided that no such determination shall be made in respect of an application under sub-section (*1*) unless the company has been given notice of the application and a reasonable opportunity to reply to the notice within thirty days of the receipt thereof.

(*8*) If the Tribunal is satisfied that a company has become a sick company, the Tribunal shall, after considering all the relevant facts and circumstances of the case, decide, as soon as may be, by an order in writing, whether it is practicable for the company to make the repayment of its debts referred to in sub-section (*1*) within a reasonable time.

(*9*) If the Tribunal deems fit under sub-section (*8*) that it is practicable for a sick company to pay its debts referred to in that sub-section within a reasonable time, the Tribunal shall, by order in writing and subject to such restrictions or conditions as may be specified in the order, give such time to the company as it may deem fit to make repayment of the debt.

254. Application for revival and rehabilitation.

(*1*) On the determination of a company as a sick company by the Tribunal under section 253, any secured creditor of that company or the company may make an application to the Tribunal for the determination of the measures that may be adopted with respect to the revival and rehabilitation of such company:

Provided that in case any reference had been made before the Tribunal and a scheme for revival and rehabilitation submitted, such reference shall abate if the secured creditors representing three-fourths in value of the amount outstanding against financial assistance disbursed to the borrower have taken measures to recover their secured debt under sub-section (*4*) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002:

Provided further that no reference shall be made under this section if the secured creditors representing three-fourths in value of the amount outstanding against financial assistance disbursed to the borrower have taken measures to recover their secured debt under sub-section (*4*) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002:

Provided also that where the financial assets of the sick company had been acquired by any securitisation company or reconstruction company under sub-section (*1*) of section 5 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, no such application shall be made without the consent of securitization company or reconstruction company which has acquired such assets.

(*2*) An application under sub-section (*1*) shall be accompanied by—

(*a*) audited financial statements of the company relating to the immediately preceding financial year;

(*b*) such particulars and documents, duly authenticated in such manner, along with such fees as may be prescribed; and

(*c*) a draft scheme of revival and rehabilitation of the company in such manner as may be prescribed:

Provided that where the sick company has no draft scheme of revival and rehabilitation to offer, it shall file a declaration to that effect along with the application.

(*3*) An application under sub-section (*1*) shall be made to the Tribunal within a period of sixty days from the date of determination of the company as a sick company by the Tribunal under section 253.

255. Exclusion of certain time in computing period of limitation.

Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application in the name and on behalf of a company for which an application has been made to the Tribunal under sub-section (*1*) of section 253, for a determination to be declared as a sick company or at any stage thereafter, the period during which the stay order as provided under sub-section (*3*) of section 253, was applicable shall be excluded.

256. Appointment of interim administrator.

(*1*) On the receipt of an application under section 254, the Tribunal shall, not later than seven days from such receipt,—

(*a*) fix a date for hearing not later than ninety days from date of its receipt;

(*b*) appoint an interim administrator to convene a meeting of creditors of the company in accordance with the provisions of section 257 to be held not later than forty-five days from receipt of the order of the Tribunal appointing him to consider whether on the basis of the particulars and documents furnished with the application made under section 254, the draft scheme, if any, filed along with such application or otherwise and any other material available, it is possible to revive and rehabilitate the sick company and such other matters, which the interim administrator may consider necessary for the purpose and to submit his report to the Tribunal within sixty days from the date of the order:

Provided that where no draft scheme is filed by the company and a declaration has been made to that effect by the Board of Directors, the Tribunal may direct the interim administrator to take over the management of the company; and

(*c*) issue such other directions to the interim administrator as the Tribunal may consider necessary to protect and preserve the assets of the sick company and for its proper management.

(*2*) Where an interim administrator has been directed to take over the management of the company, the directors and the management of the company shall extend all possible assistance and cooperation to the interim administrator to manage the affairs of the company.

257. Committee of creditors.

(*1*) The interim administrator shall appoint a committee of creditors with such number of members as he may determine, but not exceeding seven, and as far as possible a representative each of every class of creditors should be represented in that committee.

(*2*) The holding of the meeting of the committee of creditors and the procedure to be followed at such meetings, including the appointment of its chairperson, shall be decided by the interim administrator.

(*3*) The interim administrator may direct any promoter, director or any key managerial personnel to attend any meeting of the committee of creditors and to furnish such information as may be considered necessary by the interim administrator.

258. Order of Tribunal.

On the date of hearing fixed by the Tribunal and on consideration of the report of the interim administrator filed under sub-section (*1*) of section 256, if the Tribunal is satisfied

that the creditors representing three-fourths in value of the amount outstanding against the sick company present and voting have resolved that—

(*a*) it is not possible to revive and rehabilitate such company, the Tribunal shall record such opinion and order that the proceedings for the winding up of the company be initiated; or

(*b*) by adopting certain measures the sick company may be revived and rehabilitated, the Tribunal shall appoint a company administrator for the company and cause such administrator to prepare a scheme of revival and rehabilitation of the sick company:

Provided that the Tribunal may, if it thinks fit, appoint an interim administrator as the company administrator.

259. Appointment of administrator.

(*1*) The interim administrator or the company administrator, as the case may be, shall be appointed by the Tribunal from a databank maintained by the Central Government or any institute or agency authorised by the Central Government in a manner as may be prescribed consisting of the names of company secretaries, chartered accountants, cost accountants and such other professionals as may, by notification, be specified by the Central Government.

(*2*) The terms and conditions of the appointment of interim and company administrators shall be such as may be ordered by the Tribunal.

(*3*) The Tribunal may direct the company administrator to take over the assets or management of the company and for the purpose of assisting him in the management of the company, the company administrator may, with the approval of the Tribunal, engage the services of suitable expert or experts.

260. Powers and duties of company administrator.

(*1*) The company administrator shall perform such functions as the Tribunal may direct.

(*2*) Without prejudice to the provisions of sub-section (*1*), the company administrator may cause to be prepared with respect to the company—

(*a*) a complete inventory of—

(*i*) all assets and liabilities of whatever nature;

(*ii*) all books of account, registers, maps, plans, records, documents of title and all other documents of whatever nature;

(*b*) a list of shareholders and a list of creditors showing separately in the list of creditors, the secured creditors and unsecured creditors;

(*c*) a valuation report in respect of the shares and assets in order to arrive at the reserve price for the sale of any industrial undertaking of the company or for the fixation of the lease rent or share exchange ratio;

(*d*) an estimate of the reserve price, lease rent or share exchange ratio;

(*e*) proforma accounts of the company, where no up-to-date audited accounts are available; and

(*f*) a list of workmen of the company and their dues referred to in sub-section (*3*) of section 325.

261. Scheme of revival and rehabilitation.

(*1*) The company administrator shall prepare or cause to be prepared a scheme of revival and rehabilitation of the sick company after considering the draft scheme filed along with the application under section 254.

(*2*) A scheme prepared in relation to any sick company under sub-section (*1*) may provide for any one or more of the following measures, namely:—

(*a*) the financial reconstruction of the sick company;

(*b*) the proper management of the sick company by any change in, or by taking over, the management of such company;

(*c*) the amalgamation of—

(*i*) the sick company with any other company; or

(*ii*) any other company with the sick company;

(*d*) takeover of the sick company by a solvent company;

(*e*) the sale or lease of a part or whole of any asset or business of the sick company;

(*f*) the rationalisation of managerial personnel, supervisory staff and workmen in accordance with law;

(*g*) such other preventive, ameliorative and remedial measures as may be appropriate;

(*h*) repayment or rescheduling or restructuring of the debts or obligations of the sick company to any of its creditors or class of creditors;

(*i*) such incidental, consequential or supplemental measures as may be necessary or expedient in connection with or for the purposes of the measures specified in clauses (*a*) to (*h*).

262. Sanction of scheme.

(*1*) The scheme prepared by the company administrator under section 261 shall be placed before the creditors of the sick company in a meeting convened for their approval by the company administrator within the period of sixty days from his appointment, which may be extended by the Tribunal up to a period not exceeding one hundred twenty days.

(*2*) The company administrator shall convene separate meetings of secured and unsecured creditors of the sick company and if the scheme is approved by the unsecured creditors representing one-fourth in value of the amount owed by the company to such creditors and the secured creditors, representing three-fourths in value of the amount outstanding against financial assistance disbursed by such creditors to the sick company, the company administrator shall submit the scheme before the Tribunal for sanctioning the scheme:

Provided that where the scheme relates to amalgamation of the sick company with any other company, such scheme shall, in addition to the approval of the creditors of the sick company under this sub-section, be laid before the general meeting of both the companies for approval by their respective shareholders and no such scheme shall be proceeded with unless it has been approved, with or without modification, by a special resolution passed by the shareholders of that company.

(*3*) (*i*) The scheme prepared by the company administrator shall be examined by the Tribunal and a copy of the scheme with modification, if any, made by the Tribunal shall be sent, in draft, to the sick company and the company administrator and in the case of amalgamation, also to any other company concerned, and the Tribunal may publish or cause to be published the draft scheme in brief in such daily newspapers as the Tribunal may consider necessary, for suggestions and objections, if any, within such period as the Tribunal may specify.

(*ii*) The complete draft scheme shall be kept at the place where registered office of the company is situated or at such places as mentioned in the advertisement.

(*iii* The Tribunal may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the sick company and the company administrator and also from the transferee company and any other company concerned in the amalgamation and from any shareholder or any creditors or employees of such companies.

(*4*) On the receipt of the scheme under sub-section (*3*), the Tribunal shall within sixty days therefrom, after satisfying that the scheme had been validly approved in accordance with this section, pass an order sanctioning such scheme.

(*5*) Where a sanctioned scheme provides for the transfer of any property or liability of the sick company to any other company or person or where such scheme provides for the transfer of any property or liability of any other company or person in favour of the sick company, then, by virtue of, and to the extent provided in, the scheme, on and from the date of coming into operation of the sanctioned scheme or any provision thereof, the property shall be transferred to, and vest in, and the liability shall become the liability of, such other company or person or, as the case may be, the sick company.

(*6*) The Tribunal may review any sanctioned scheme and make such modifications, as it may deem fit, or may by order in writing direct company administrator, to prepare a fresh scheme providing for such measures as the company administrator may consider necessary.

(*7*) The sanction accorded by the Tribunal under sub-section (*4*) shall be conclusive evidence that all the requirements of the scheme relating to the reconstruction or amalgamation or any other measure specified therein have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Tribunal to be a true copy thereof shall in all legal proceedings be admitted as evidence.

(*8*) A copy of the sanctioned scheme referred to in sub-section (*4*) shall be filed with the Registrar by the sick company within a period of thirty days from the date of receipt of a copy thereof.

263. Scheme to be binding.

On and from the date of the coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick company and the transferee company or, as the case may be, the other company and also on the employees, shareholders, creditors and guarantors of the said companies.

264. Implementation of scheme.

(*1*) The Tribunal shall, for the purpose of effective implementation of the scheme, have power to enforce, modify or terminate any contract or agreement or any obligation pursuant to such agreement or contract entered into by the company with any other person.

(*2*) The Tribunal may, if it deems necessary or expedient so to do, by order in writing, authorise the company administrator appointed under section 259 to implement a sanctioned scheme till its successful implementation on such terms and conditions as may be specified in the order and may for that purpose require him to file periodic reports on the implementation of the sanctioned scheme.

(*3*) Where the whole or substantial assets of the undertaking of the sick company are sold under a sanctioned scheme, the sale proceeds shall be applied towards implementation of the scheme in such manner as the Tribunal may direct:

Provided that debtors and creditors shall have the power to scrutinise and make an appeal for review of the value before final order of fixing value.

(*4*) Where it is difficult to implement the scheme for any reason or the scheme fails due to non-implementation of obligations under the scheme by the parties concerned, the company administrator authorised to implement the scheme and where there is no such administrator, the company, the secured creditors, or the transferee company in a case of amalgamation, may make an application before the Tribunal for modification of the scheme or to declare the scheme as failed and that the company may be wound up.

(*5*) The Tribunal shall, within thirty days of presentation of an application under sub-section (*4*), pass an order for modification of the scheme or, as the case may be, declaring the scheme as failed and pass an order for the winding up of the company if three-fourths in value of the secured creditors consent to the modification of the scheme or winding up of the company.

(*6*) Where an application under sub-section (*4*) has been made before the Tribunal and such application is pending before it, such application shall abate, if the secured creditors representing not less than three-fourths in value of the amount outstanding against financial assistance disbursed to the sick company have taken any measures to recover their secured debt under sub-section (*4*) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

265. Winding up of company on report of company administrator.

(*1*) If the scheme is not approved by the creditors in the manner specified in sub-section (*2*) of section 262, the company administrator shall submit a report to the Tribunal within fifteen days and the Tribunal shall order for the winding up of the sick company.

(*2*) On the passing of an order under sub-section (*1*), the Tribunal shall conduct the proceedings for winding up of the sick company in accordance with the provisions of Chapter XX.

266. Power of Tribunal to assess damages against delinquent directors, etc.

(*1*) If, in the course of the scrutiny or implementation of any scheme or proposal including the draft scheme or proposal, it appears to the Tribunal that any person who has taken part in the promotion, formation or management of the sick company or its undertaking, including any director, manager, officer or employee of the sick company who are or have been in employment of such company,—

(*a*) has misapplied or retained, or become liable or accountable for, any money or property of the sick company; or

(*b*) has been guilty of any misfeasance, malfeasance, non-feasance or breach of trust in relation to the sick company, it may, by order, direct him to repay or restore the money or property, with or without interest, as it thinks just, or to contribute such sum to the assets of the sick company or the other person, entitled thereto by way of compensation in respect of the misapplication, retainer, misfeasance, malfeasance, non-feasance or breach of trust as the Tribunal thinks just and proper:

Provided that such direction by the Tribunal shall be without prejudice to any other legal action that may be taken against the person including any punishment for fraud in the manner as provided in section 447.

(*2*) If the Tribunal is satisfied on the basis of the information and evidence in its possession with respect to any person who is or was a director or an officer or other employee of the sick company, that such person by himself or along with others had diverted the funds or other property of such company for any purpose other than the purposes of the company or had managed the affairs of the company in a manner highly detrimental to the interests of the company, the Tribunal shall, by order, direct the public financial institutions, scheduled banks and State level institutions not to provide, for a maximum period of ten years from the date of the order, any financial assistance to such person or any firm of which such person is a partner or any company or other body corporate of which such person is a director, by whatever name called, or to disqualify the said director, promoter, manager from being appointed as a director in any company registered under this Act for a maximum period of six years.

(*3*) No order shall be made by the Tribunal under this section against any person unless such person has been given a reasonable opportunity of being heard.

267. Punishment for certain offences.

Whoever violates the provisions of this Chapter or any scheme, or any order, of the Tribunal or the Appellate Tribunal or makes a false statement or gives false evidence before the Tribunal or the Appellate Tribunal or attempts to tamper with the records of reference or appeal filed under this Act, he shall be punishable with imprisonment for a term which may extend to seven years and with fine which may extend to ten lakh rupees.

268. Bar of jurisdiction.

No appeal shall lie in any court or other authority and no civil court shall have any jurisdiction in respect of any matter in respect of which the Tribunal or the Appellate Tribunal is empowered by or under this Chapter and no injunction shall be granted by any court or other authority in respect of any action taken or proposed to be taken in pursuance of any power conferred by or under this Chapter.

269. Rehabilitation and Insolvency Fund.

(*1*) There shall be formed a Fund to be called the Rehabilitation and Insolvency Fund for the purposes of rehabilitation, revival and liquidation of the sick companies.

(*2*) There shall be credited to the Fund—

(*a*) the grants made by the Central Government for the purposes of the Fund;

(*b*) the amount deposited by the companies as contribution to the Fund;

(*c*) the amount given to the Fund from any other source; and

(*d*) the income from investment of the amount in the Fund.

(*3*) A company which has contributed any amount to the Fund shall, in the event of proceedings initiated in respect of such company under this Chapter or Chapter XX, may make an application to the Tribunal for withdrawal of funds not exceeding the amount contributed by it, for making payments to workmen, protecting the assets of the company or meeting the incidental costs during proceedings.

(*4*) The Fund shall be managed by an administrator to be appointed by the Central Government in such manner as may be prescribed.

CHAPTER XX

WINDING UP

270. Modes of winding up.

(*1*) The winding up of a company may be either—

(*a*) by the Tribunal; or

(*b*) voluntary.

(*2*) Notwithstanding anything contained in any other Act, the provisions of this Act with respect to winding up shall apply to the winding up of a company in any of the modes specified under sub-section (*1*).

PART I.—Winding up by the Tribunal

271. Circumstances in which company may be wound up by Tribunal.

(*1*) A company may, on a petition under section 272, be wound up by the Tribunal,—

(*a*) if the company is unable to pay its debts;

(*b*) if the company has, by special resolution, resolved that the company be wound up by the Tribunal;

(*c*) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;

(*d*) if the Tribunal has ordered the winding up of the company under Chapter XIX;

(*e*) if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;

(*f*) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or

(*g*) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

(*2*) A company shall be deemed to be unable to pay its debts,—

(*a*) if a creditor, by assignment or otherwise, to whom the company is indebted for an amount exceeding one lakh rupees then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand requiring the company to pay the amount so due and the company has failed to pay the sum within twenty-one days after the receipt of such demand or to provide adequate security or re-structure or compound the debt to the reasonable satisfaction of the creditor;

(*b*) if any execution or other process issued on a decree or order of any court or tribunal in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(*c*) if it is proved to the satisfaction of the Tribunal that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Tribunal shall take into account the contingent and prospective liabilities of the company.

272. Petition for winding up.

(*1*) Subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by—

(*a*) the company;

(*b*) any creditor or creditors, including any contingent or prospective creditor or creditors;

(*c*) any contributory or contributories;

(*d*) all or any of the persons specified in clauses (*a*), (*b*) and (*c*) together;

(*e*) the Registrar;

(*f*) any person authorised by the Central Government in that behalf; or

(*g*) in a case falling under clause (*c*) of sub-section (*1*) of section 271, by the Central Government or a State Government.

(*2*) A secured creditor, the holder of any debentures, whether or not any trustee or trustees have been appointed in respect of such and other like debentures, and the trustee for the holders of debentures shall be deemed to be creditors within the meaning of clause (*b*) of sub-section (*1*).

(*3*) A contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.

(*4*) The Registrar shall be entitled to present a petition for winding up under subsection (*1*) on any of the grounds specified in sub-section (*1*) of section 271, except on the grounds specified in clause (*b*), clause (*d*) or clause (*g*) of that sub-section:

Provided that the Registrar shall not present a petition on the ground that the company is unable to pay its debts unless it appears to him either from the financial condition of the company as disclosed in its balance sheet or from the report of an inspector appointed under section 210 that the company is unable to pay its debts:

Provided further that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition:

Provided also that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.

(*5*) A petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed.

(*6*) Before a petition for winding up of a company presented by a contingent or prospective creditor is admitted, the leave of the Tribunal shall be obtained for the admission of the petition and such leave shall not be granted, unless in the opinion of the Tribunal there is a *prima facie* case for the winding up of the company and until such security for costs has been given as the Tribunal thinks reasonable.

(*7*) A copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition.

273. Powers of Tribunal.

(*1*) The Tribunal may, on receipt of a petition for winding up under section 272 pass any of the following orders, namely:—

(*a*) dismiss it, with or without costs;

(*b*) make any interim order as it thinks fit;

(*c*) appoint a provisional liquidator of the company till the making of a winding up order;

(*d*) make an order for the winding up of the company with or without costs; or

(*e*) any other order as it thinks fit:

Provided that an order under this sub-section shall be made within ninety days from the date of presentation of the petition:

Provided further that before appointing a provisional liquidator under clause (*c*), the Tribunal shall give notice to the company and afford a reasonable opportunity to it to make its representations, if any, unless for special reasons to be recorded in writing, the Tribunal thinks fit to dispense with such notice:

Provided also that the Tribunal shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged for an amount equal to or in excess of those assets, or that the company has no assets.

(*2*) Where a petition is presented on the ground that it is just and equitable that the company should be wound up, the Tribunal may refuse to make an order of winding up, if it is of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing the other remedy.

274. Directions for filing statement of affairs.

(*1*) Where a petition for winding up is filed before the Tribunal by any person other than the company, the Tribunal shall, if satisfied that a *prima facie* case for winding up of the company is made out, by an order direct the company to file its objections along with a statement of its affairs within thirty days of the order in such form and in such manner as may be prescribed:

Provided that the Tribunal may allow a further period of thirty days in a situation of contingency or special circumstances:

Provided further that the Tribunal may direct the petitioner to deposit such security for costs as it may consider reasonable as a precondition to issue directions to the company.

(*2*) A company, which fails to file the statement of affairs as referred to in sub-section (*1*), shall forfeit the right to oppose the petition and such directors and officers of the company as found responsible for such non-compliance, shall be liable for punishment under sub-section (*4*).

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

(*4*) If any director or officer of the company contravenes the provisions of this section, the director or the officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

(*5*) The complaint may be filed in this behalf before the Special Court by Registrar, provisional liquidator, Company Liquidator or any person authorised by the Tribunal.

275. Company Liquidators and their appointments.

(*1*) For the purposes of winding up of a company by the Tribunal, the Tribunal at the time of the passing of the order of winding up, shall appoint an Official Liquidator or a liquidator from the panel maintained under sub-section (*2*) as the Company Liquidator.

(*2*) The provisional liquidator or the Company Liquidator, as the case may be, shall be appointed from a panel maintained by the Central Government consisting of the names of chartered accountants, advocates, company secretaries, cost accountants or firms or bodies corporate having such chartered accountants, advocates, company secretaries, cost accountants and such other professionals as may be notified by the Central Government or from a firm or a body corporate of persons having a combination of such professionals as may be prescribed and having at least ten years' experience in company matters.

(*3*) Where a provisional liquidator is appointed by the Tribunal, the Tribunal may limit and restrict his powers by the order appointing him or it or by a subsequent order, but otherwise he shall have the same powers as a liquidator.

(*4*) The Central Government may remove the name of any person or firm or body corporate from the panel maintained under sub-section (*2*) on the grounds of misconduct, fraud, misfeasance, breach of duties or professional incompetence:

Provided that the Central Government before removing him or it from the panel shall give him or it a reasonable opportunity of being heard.

(*5*) The terms and conditions of appointment of a provisional liquidator or Company Liquidator and the fee payable to him or it shall be specified by the Tribunal on the basis of task required to be performed, experience, qualification of such liquidator and size of the company.

(*6*) On appointment as provisional liquidator or Company Liquidator, as the case may be, such liquidator shall file a declaration within seven days from the date of appointment in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal and such obligation shall continue throughout the term of his appointment.

(*7*) While passing a winding up order, the Tribunal may appoint a provisional liquidator, if any, appointed under clause (*c*) of sub-section (*1*) of section 273, as the Company Liquidator for the conduct of the proceedings for the winding up of the company.

276. Removal and replacement of liquidator.

(*1*) The Tribunal may, on a reasonable cause being shown and for reasons to be recorded in writing, remove the provisional liquidator or the Company Liquidator, as the case may be, as liquidator of the company on any of the following grounds, namely:—

(*a*) misconduct;

(*b*) fraud or misfeasance;

(*c*) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;

(*d*) inability to act as provisional liquidator or as the case may be, Company Liquidator;

(*e*) conflict of interest or lack of independence during the term of his appointment that would justify removal.

(*2*) In the event of death, resignation or removal of the provisional liquidator or as the case may be, Company Liquidator, the Tribunal may transfer the work assigned to him or it to another Company Liquidator for reasons to be recorded in writing.

(*3*) Where the Tribunal is of the opinion that any liquidator is responsible for causing any loss or damage to the company due to fraud or misfeasance or failure to exercise due care and diligence in the performance of his or its powers and functions, the Tribunal may recover or cause to be recovered such loss or damage from the liquidator and pass such other orders as it may think fit.

(*4*) The Tribunal shall, before passing any order under this section, provide a reasonable opportunity of being heard to the provisional liquidator or, as the case may be, Company Liquidator.

277. Intimation to Company Liquidator, provisional liquidator and Registrar.

(*1*) Where the Tribunal makes an order for appointment of provisional liquidator or for the winding up of a company, it shall, within a period not exceeding seven days from the date of passing of the order, cause intimation thereof to be sent to the Company Liquidator or provisional liquidator, as the case may be, and the Registrar.

(*2*) On receipt of the copy of order of appointment of provisional liquidator or winding up order, the Registrar shall make an endorsement to that effect in his records relating to the company and notify in the Official Gazette that such an order has been made and in the case of a listed company, the Registrar shall intimate about such appointment or order, as the case may be, to the stock exchange or exchanges where the securities of the company are listed.

(*3*) The winding up order shall be deemed to be a notice of discharge to the officers, employees and workmen of the company, except when the business of the company is continued.

(*4*) Within three weeks from the date of passing of winding up order, the Company Liquidator shall make an application to the Tribunal for constitution of a winding up committee to assist and monitor the progress of liquidation proceedings by the Company Liquidator in carrying out the function as provided in sub-section (*5*) and such winding up committee shall comprise of the following persons, namely:—

(*i*) Official Liquidator attached to the Tribunal;

(*ii*) nominee of secured creditors; and

(*iii*) a professional nominated by the Tribunal.

(*5*) The Company Liquidator shall be the convener of the meetings of the winding up committee which shall assist and monitor the liquidation proceedings in following areas of liquidation functions, namely:—

(*i*) taking over assets;
(*ii*) examination of the statement of affairs;
(*iii*) recovery of property, cash or any other assets of the company including benefits derived therefrom;
(*iv*) review of audit reports and accounts of the company;
(*v*) sale of assets;
(*vi*) finalisation of list of creditors and contributories;
(*vii*) compromise, abandonment and settlement of claims;
(*viii*) payment of dividends, if any; and
(*ix*) any other function, as the Tribunal may direct from time to time.

(*6*) The Company Liquidator shall place before the Tribunal a report along with minutes of the meetings of the committee on monthly basis duly signed by the members present in the meeting for consideration till the final report for dissolution of the company is submitted before the Tribunal.

(*7*) The Company Liquidator shall prepare the draft final report for consideration and approval of the winding up committee.

(*8*) The final report so approved by the winding up committee shall be submitted by the Company Liquidator before the Tribunal for passing of a dissolution order in respect of the company.

278. Effect of winding up order.

The order for the winding up of a company shall operate in favour of all the creditors and all contributories of the company as if it had been made out on the joint petition of creditors and contributories.

279. Stay of suits, etc., on winding up order.

(*1*) When a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose:

Provided that any application to the Tribunal seeking leave under this section shall be disposed of by the Tribunal within sixty days.

(*2*) Nothing in sub-section (*1*) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

280. Jurisdiction of Tribunal.

The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of,—
(*a*) any suit or proceeding by or against the company;
(*b*) any claim made by or against the company, including claims by or against any of its branches in India;
(*c*) any application made under section 233;
(*d*) any scheme submitted under section 262;
(*e*) any question of priorities or any other question whatsoever, whether of law or facts, including those relating to assets, business, actions, rights, entitlements, privileges, benefits, duties, responsibilities, obligations or in any matter arising out of, or in

relation to winding up of the company, whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made or such scheme has been submitted, or is submitted, before or after the order for the winding up of the company is made.

281. Submission of report by Company Liquidator.

(*1*) Where the Tribunal has made a winding up order or appointed a Company Liquidator, such liquidator shall, within sixty days from the order, submit to the Tribunal, a report containing the following particulars, namely:—

(*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:

Provided that 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 Liquidator may consider necessary to include.

(*2*) The Company Liquidator shall include in his report the manner in which the company was promoted or formed and whether in his opinion any fraud has been committed by any person in its promotion or formation or by any officer of the company in relation to the company since the formation thereof and any other matters which, in his opinion, it is desirable to bring to the notice of the Tribunal.

(*3*) The Company Liquidator shall also make a report on the viability of the business of the company or the steps which, in his opinion, are necessary for maximising the value of the assets of the company.

(*4*) The Company Liquidator may also, if he thinks fit, make any further report or reports.

(*5*) Any person describing himself in writing to be a creditor or a contributory of the company shall be entitled by himself or by his agent at all reasonable times to inspect the report submitted in accordance with this section and take copies thereof or extracts therefrom on payment of the prescribed fees.

282. Directions of Tribunal on report of Company Liquidator.

(*1*) The Tribunal shall, on consideration of the report of the Company Liquidator, fix a time limit within which the entire proceedings shall be completed and the company be dissolved:

Provided that the Tribunal may, if it is of the opinion, at any stage of the proceedings, or on examination of the reports submitted to it by the Company Liquidator and after hearing the Company Liquidator, creditors or contributories or any other interested person, that it will not be advantageous or economical to continue the proceedings, revise the time limit within which the entire proceedings shall be completed and the company be dissolved.

(*2*) The Tribunal may, on examination of the reports submitted to it by the Company Liquidator and after hearing the Company Liquidator, creditors or contributories or any other interested person, order sale of the company as a going concern or its assets or part thereof:

Provided that the Tribunal may, where it considers fit, appoint a sale committee comprising such creditors, promoters and officers of the company as the Tribunal may decide to assist the Company Liquidator in sale under this sub-section.

(*3*) Where a report is received from the Company Liquidator or the Central Government or any person that a fraud has been committed in respect of the company, the Tribunal shall, without prejudice to the process of winding up, order for investigation under section 210, and on consideration of the report of such investigation it may pass order and give directions under sections 339 to 342 or direct the Company Liquidator to file a criminal complaint against persons who were involved in the commission of fraud.

(*4*) The Tribunal may order for taking such steps and measures, as may be necessary, to protect, preserve or enhance the value of the assets of the company.

(*5*) The Tribunal may pass such other order or give such other directions as it considers fit.

283. Custody of company's properties.

(*1*) Where a winding up order has been made or where a provisional liquidator has been appointed, the Company Liquidator or the provisional liquidator, as the case may be, shall, on the order of the Tribunal, forthwith take into his or its custody or control all the property, effects and actionable claims to which the company is or appears to be entitled to and take such steps and measures, as may be necessary, to protect and preserve the properties of the company.

(*2*) Notwithstanding anything contained in sub-section (*1*), all the property and effects of the company shall be deemed to be in the custody of the Tribunal from the date of the order for the winding up of the company.

(*3*) On an application by the Company Liquidator or otherwise, the Tribunal may, at any time after the making of a winding up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent, officer or other employee of the company, to pay, deliver, surrender or transfer forthwith, or within such time as the Tribunal directs, to the Company Liquidator, any money, property or books and papers in his custody or under his control to which the company is or appears to be entitled.

284. Promoters, directors, etc., to co-operate with Company Liquidator.

(*1*) The promoters, directors, officers and employees, who are or have been in employment of the company or acting or associated with the company shall extend full cooperation to the Company Liquidator in discharge of his functions and duties.

(*2*) Where any person, without reasonable cause, fails to discharge his obligations under sub-section (*1*), he shall be punishable with imprisonment which may extend to six months or with fine which may extend to fifty thousand rupees, or with both.

285. Settlement of list of contributories and application of assets.

(*1*) As soon as may be after the passing of a winding up order by the Tribunal, the Tribunal shall settle a list of contributories, cause rectification of register of members in all cases where rectification is required in pursuance of this Act and shall cause the assets of the company to be applied for the discharge of its liability:

Provided that where it appears to the Tribunal that it would not be necessary to make calls on or adjust the rights of contributories, the Tribunal may dispense with the settlement of a list of contributories.

(*2*) In settling the list of contributories, the Tribunal shall distinguish between those who are contributories in their own right and those who are contributories as being representatives of, or liable for the debts of, others.

(*3*) While settling the list of contributories, the Tribunal shall include every person, who is or has been a member, who shall be liable to contribute to the assets of the company an amount sufficient for payment of the debts and liabilities and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, subject to the following conditions, namely:—

(*a*) a person who has been a member shall not be liable to contribute if he has ceased to be a member for the preceding one year or more before the commencement of the winding up;

(*b*) a person who has been a member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(*c*) no person who has been a member shall be liable to contribute unless it appears to the Tribunal that the present members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

(*d*) in the case of a company limited by shares, no contribution shall be required from any person, who is or has been a member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as such member;

(*e*) in the case of a company limited by guarantee, no contribution shall be required from any person, who is or has been a member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up but if the company has a share capital, such member shall be liable to contribute to the extent of any sum unpaid on any shares held by him as if the company were a company limited by shares.

286. Obligations of directors and managers.

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

Provided that —

(*a*) a person who has been a director or manager shall not be liable to make such further contribution, if he has ceased to hold office for a year or upwards before the commencement of the winding up;

(*b*) a person who has been a director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;

(*c*) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the Tribunal deems it necessary to require the contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

287. Advisory Committee.

(*1*) The Tribunal may, while passing an order of winding up of a company, direct that there shall be, an advisory committee to advise the Company Liquidator and to report to the Tribunal on such matters as the Tribunal may direct.

(*2*) The advisory committee appointed by the Tribunal shall consist of not more than twelve members, being creditors and contributories of the company or such other persons in such proportion as the Tribunal may, keeping in view the circumstances of the company under liquidation, direct.

(*3*) The Company Liquidator shall convene a meeting of creditors and contributories, as ascertained from the books and documents, of the company within thirty days from the date of order of winding up for enabling the Tribunal to determine the persons who may be members of the advisory committee.

(*4*) The advisory committee shall have the right to inspect the books of account and other documents, assets and properties of the company under liquidation at a reasonable time.

(*5*) The provisions relating to the convening of the meetings, the procedure to be followed thereat and other matters relating to conduct of business by the advisory committee shall be such as may be prescribed.

(*6*) The meeting of advisory committee shall be chaired by the Company Liquidator.

288. Submission of periodical reports to Tribunal.

(*1*) The Company Liquidator shall make periodical reports to the Tribunal and in any case make report at the end of each quarter with respect to the progress of the winding up of the company in such form and manner as may be prescribed.

(*2*) The Tribunal may, on an application by the Company Liquidator, review the orders made by it and make such modifications as it thinks fit.

289. Power of Tribunal on application for stay of winding up.

(*1*) The Tribunal may, at any time after making a winding up order, on an application of promoter, shareholders or creditors or any other interested person, if satisfied, make an order that it is just and fair that an opportunity to revive and rehabilitate the company be provided staying the proceedings for such time but not exceeding one hundred and eighty days and on such terms and conditions as it thinks fit:

Provided that an order under this sub-section shall be made by the Tribunal only when the application is accompanied with a scheme for rehabilitation.

(*2*) The Tribunal may, while passing the order under sub-section (*1*), require the applicant to furnish such security as to costs as it considers fit.

(*3*) Where an order under sub-section (*1*) is passed by the Tribunal, the provisions of Chapter XIX shall be followed in respect of the consideration and sanction of the scheme of revival of the company.

(*4*) Without prejudice to the provisions of sub-section (*1*), the Tribunal may at any time after making a winding up order, on an application of the Company Liquidator, make an order staying the winding up proceedings or any part thereof, for such time and on such terms and conditions as it thinks fit.

(*5*) The Tribunal may, before making an order, under this section, require the Company Liquidator to furnish to it a report with respect to any facts or matters which are in his opinion relevant to the application.

(*6*) A copy of every order made under this section shall forthwith be forwarded by the Company Liquidator to the Registrar who shall make an endorsement of the order in his books and records relating to the company.

290. Powers and duties of Company Liquidator.

(*1*) Subject to directions by the Tribunal, if any, in this regard, the Company Liquidator, in a winding up of a company by the Tribunal, shall have the power—

(*a*) to carry on the business of the company so far as may be necessary for the beneficial winding up of the company;

(*b*) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose, to use, when necessary, the company's seal;

(*c*) to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels;

(*d*) to sell the whole of the undertaking of the company as a going concern;

(*e*) to raise any money required on the security of the assets of the company;

(*f*) to institute or defend any suit, prosecution or other legal proceeding, civil or criminal, in the name and on behalf of the company;

(*g*) to invite and settle claim of creditors, employees or any other claimant and distribute sale proceeds in accordance with priorities established under this Act;

(*h*) to inspect the records and returns of the company on the files of the Registrar or any other authority;

(*i*) to prove rank and claim in the insolvency of any contributory for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors;

(*j*) to draw, accept, make and endorse any negotiable instruments including cheque, bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if such instruments had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;

(*k*) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any

money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases, the money due shall, for the purpose of enabling the Company Liquidator to take out the letters of administration or recover the money, be deemed to be due to the Company Liquidator himself;

(*l*) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities and for protection of the assets of the company, appoint an agent to do any business which the Company Liquidator is unable to do himself;

(*m*) to take all such actions, steps, or to sign, execute and verify any paper, deed, document, application, petition, affidavit, bond or instrument as may be necessary,—

(*i*) for winding up of the company;

(*ii*) for distribution of assets;

(*iii*) in discharge of his duties and obligations and functions as Company Liquidator; and

(*n*) to apply to the Tribunal for such orders or directions as may be necessary for the winding up of the company.

(*2*) The exercise of powers by the Company Liquidator under sub-section (*1*) shall be subject to the overall control of the Tribunal.

(*3*) Notwithstanding the provisions of sub-section (*1*), the Company Liquidator shall perform such other duties as the Tribunal may specify in this behalf.

291. Provision for professional assistance to Company Liquidator.

(*1*) The Company Liquidator may, with the sanction of the Tribunal, appoint one or more chartered accountants or company secretaries or cost accountants or legal practitioners or such other professionals on such terms and conditions, as may be necessary, to assist him in the performance of his duties and functions under this Act.

(*2*) Any person appointed under this section shall disclose forthwith to the Tribunal in the prescribed form any conflict of interest or lack of independence in respect of his appointment.

292. Exercise and control of Company Liquidator's powers.

(*1*) Subject to the provisions of this Act, the Company Liquidator shall, in the administration of the assets of the company and the distribution thereof among its creditors, have regard to any directions which may be given by the resolution of the creditors or contributories at any general meeting or by the advisory committee.

(*2*) Any directions given by the creditors or contributories at any general meeting shall, in case of conflict, be deemed to override any directions given by the advisory committee.

(*3*) The Company Liquidator—

(*a*) may summon meetings of the creditors or contributories, whenever he thinks fit, for the purpose of ascertaining their wishes; and

(*b*) shall summon such meetings at such times, as the creditors or contributories, as the case may be, may, by resolution, direct, or whenever requested in writing to do so by not less than one-tenth in value of the creditors or contributories, as the case may be.

(*4*) Any person aggrieved by any act or decision of the Company Liquidator may apply to the Tribunal, and the Tribunal may confirm, reverse or modify the act or decision complained of and make such further order as it thinks just and proper in the circumstances.

293. Books to be kept by Company Liquidator.

(*1*) The Company Liquidator shall keep proper books in such manner, as may be prescribed, in which he shall cause entries or minutes to be made of proceedings at meetings and of such other matters as may be prescribed.

(*2*) Any creditor or contributory may, subject to the control of the Tribunal, inspect any such books, personally or through his agent.

294. Audit of Company Liquidator's accounts.

(*1*) The Company Liquidator shall maintain proper and regular books of account including accounts of receipts and payments made by him in such form and manner as may be prescribed.

(*2*) The Company Liquidator shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, present to the Tribunal an account of the receipts and payments as such liquidator in the prescribed form in duplicate, which shall be verified by a declaration in such form and manner as may be prescribed.

(*3*) The Tribunal shall cause the accounts to be audited in such manner as it thinks fit, and for the purpose of the audit, the Company Liquidator shall furnish to the Tribunal with such vouchers and information as the Tribunal may require, and the Tribunal may, at any time, require the production of, and inspect, any books of account kept by the Company Liquidator.

(*4*) When the accounts of the company have been audited, one copy thereof shall be filed by the Company Liquidator with the Tribunal, and the other copy shall be delivered to the Registrar which shall be open to inspection by any creditor, contributory or person interested.

(*5*) Where an account referred to in sub-section (*4*) relates to a Government company, the Company Liquidator shall forward a copy thereof—

(*a*) to the Central Government, if that Government is a member of the Government company; or

(*b*) to any State Government, if that Government is a member of the Government company; or

(*c*) to the Central Government and any State Government, if both the Governments are members of the Government company.

(*6*) The Company Liquidator shall cause the accounts when audited, or a summary thereof, to be printed, and shall send a printed copy of the accounts or summary thereof by post to every creditor and every contributory:

Provided that the Tribunal may dispense with the compliance of the provisions of this sub-section in any case it deems fit.

295. Payment of debts by contributory and extent of set-off.

(*1*) The Tribunal may, at any time after passing of a winding up order, pass an order requiring any contributory for the time being 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 or the estate by virtue of any call in pursuance of this Act.

(*2*) The Tribunal, in making an order, under sub-section (*1*), may,—

(*a*) in the case of an unlimited company, allow to the contributory, by way of setoff, 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; and

(*b*) in the case of a limited company, allow to any director or manager whose liability is unlimited, or to his estate, such set-off.

(*3*) In the case of any company, whether limited or unlimited, when all the creditors have been paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

296. Power of Tribunal to make calls.

The Tribunal may, at any time after the passing of a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company,—

(*a*) make calls on all or any of the contributories for the time being on the list of the contributories, to the extent of their liability, for payment of any money which the Tribunal considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves; and

(*b*) make an order for payment of any calls so made.

297. Adjustment of rights of contributories.

The Tribunal shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

298. Power to order costs.

The Tribunal may, in the event of the assets of a company being insufficient to satisfy its liabilities, make an order for the payment out of the assets, of the costs, charges and expenses incurred in the winding up, in such order of priority *inter se* as the Tribunal thinks just and proper.

299. Power to summon persons suspected of having property of company, etc.

(*1*) The Tribunal may, at any time after the appointment of a provisional liquidator or the passing of a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property or books or papers, of the company, or known or suspected to be indebted to the company, or any person whom the Tribunal thinks to be capable of giving information concerning the promotion, formation, trade, dealings, property, books or papers, or affairs of the company.

(*2*) The Tribunal may examine any officer or person so summoned on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories or on affidavit and may, in the first case, reduce his answers to writing and require him to sign them.

(*3*) The Tribunal may require any officer or person so summoned to produce any books and papers relating to the company in his custody or power, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to such lien, and the Tribunal shall have power to determine all questions relating to that lien.

(*4*) The Tribunal may direct the liquidator to file before it a report in respect of debt or property of the company in possession of other persons.

(*5*) If the Tribunal finds that—

(*a*) a person is indebted to the company, the Tribunal may order him to pay to the provisional liquidator or, as the case may be, the liquidator at such time and in such manner as the Tribunal may consider just, the amount in which he is indebted, or any

part thereof, either in full discharge of the whole amount or not, as the Tribunal thinks fit, with or without costs of the examination;

(*b*) a person is in possession of any property belonging to the company, the Tribunal may order him to deliver to the provisional liquidator or, as the case may be, the liquidator, that property or any part thereof, at such time, in such manner and on such terms as the Tribunal may consider just.

(*6*) If any officer or person so summoned fails to appear before the Tribunal at the time appointed without a reasonable cause, the Tribunal may impose an appropriate cost.

(*7*) Every order made under sub-section (*5*) shall be executed in the same manner as decrees for the payment of money or for the delivery of property under the Code of Civil Procedure, 1908.

(*8*) Any person making any payment or delivery in pursuance of an order made under sub-section (*5*) shall by such payment or delivery be, unless otherwise directed by such order, discharged from all liability whatsoever in respect of such debt or property.

300. Power to order examination of promoters, directors, etc.

(*1*) Where an order has been made for the winding up of a company by the Tribunal, and the Company Liquidator has made a report to the Tribunal under this Act, stating that in his opinion a fraud has been committed by any person in the promotion**,** formation, business or conduct of affairs of the company since its formation, the Tribunal may, after considering the report, direct that such person or officer shall attend before the Tribunal on a day appointed by it for that purpose, and be examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as an officer thereof.

(*2*) The Company Liquidator shall take part in the examination, and for that purpose he or it may, if specially authorised by the Tribunal in that behalf, employ such legal assistance as may be sanctioned by the Tribunal.

(*3*) The person shall be examined on oath and shall answer all such questions as the Tribunal may put, or allow to be put, to him.

(*4*) A person ordered to be examined under this section—

(*a*) shall, before his examination, be furnished at his own cost with a copy of the report of the Company Liquidator; and

(*b*) may at his own cost employ chartered accountants or company secretaries or cost accountants or legal practitioners entitled to appear before the Tribunal under section 432, who shall be at liberty to put to him such questions as the Tribunal may consider just for the purpose of enabling him to explain or qualify any answers given by him.

(*5*) If any such person applies to the Tribunal to be exculpated from any charges made or suggested against him, it shall be the duty of the Company Liquidator to appear on the hearing of such application and call the attention of the Tribunal to any matters which appear to the Company Liquidator to be relevant.

(*6*) If the Tribunal, after considering any evidence given or hearing witnesses called by the Company Liquidator, allows the application made under sub-section (*5*), the Tribunal may order payment to the applicant of such costs as it may think fit.

(*7*) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, a copy be supplied to him and may thereafter be used in evidence against him, and shall be open to inspection by any creditor or contributory at all reasonable times.

(*8*) The Tribunal may, if it thinks fit, adjourn the examination from time to time.

(*9*) An examination under this section may, if the Tribunal so directs, be held before any person or authority authorised by the Tribunal.

(*10*) The powers of the Tribunal under this section as to the conduct of the examination, but not as to costs, may be exercised by the person or authority before whom the examination is held in pursuance of sub-section (*9*).

301. Arrest of person trying to leave India or abscond.

At 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 the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, the Tribunal may cause—

(*a*) the contributory to be detained until such time as the Tribunal may order; and

(*b*) his books and papers and movable property to be seized and safely kept until such time as the Tribunal may order.

302. Dissolution of company by Tribunal.

(*1*) When the affairs of a company have been completely wound up, the Company Liquidator shall make an application to the Tribunal for dissolution of such company.

(*2*) The Tribunal shall on an application filed by the Company Liquidator under sub-section (*1*) or when the Tribunal is of the opinion that it is just and reasonable in the circumstances of the case that an order for the dissolution of the company should be made, make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(*3*) A copy of the order shall, within thirty days from the date thereof, be forwarded by the Company Liquidator to the Registrar who shall record in the register relating to the company a minute of the dissolution of the company.

(*4*) If the Company Liquidator makes a default in forwarding a copy of the order within the period specified in sub-section (*3*), the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

303. Appeals from orders made before commencement of Act.

Nothing in this Chapter shall affect the operation or enforcement of any order made by any Court in any proceedings for the winding up of a company immediately before the commencement of this Act and an appeal against such order shall be filed before such authority competent to hear such appeals before such commencement.

PART II.—Voluntary winding up

304. Circumstances in which company may be wound up voluntarily.

A company may be wound up voluntarily,—

(*a*) if the company in general meeting passes a resolution requiring the company to be wound up voluntarily as a result of the expiry of the period for its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company should be dissolved; or

(*b*) if the company passes a special resolution that the company be wound up voluntarily.

305. Declaration of solvency in case of proposal to wind up voluntarily.

(*1*) Where it is proposed to wind up a company voluntarily, its director or directors, or in case the company has more than two directors, the majority of its directors, shall, at a meeting of the Board, make a declaration verified by an affidavit to the effect that they have made a full inquiry into the affairs of the company and they have formed an opinion that the company has no debt or whether it will be able to pay its debts in full from the proceeds of assets sold in voluntary winding up.

(*2*) A declaration made under sub-section (*1*) shall have no effect for the purposes of this Act, unless—

(*a*) it is made within five weeks immediately preceding the date of the passing of the resolution for winding up the company and it is delivered to the Registrar for registration before that date;

(*b*) it contains a declaration that the company is not being wound up to defraud any person or persons;

(*c*) it is accompanied by a copy of the report of the auditors of the company prepared in accordance with the provisions of this Act, on the profit and loss account of the company for the period commencing from the date up to which the last such account was prepared and ending with the latest practicable date immediately before the making of the declaration and the balance sheet of the company made out as on that date which would also contain a statement of the assets and liabilities of the company on that date; and

(*d*) where there are any assets of the company, it is accompanied by a report of the valuation of the assets of the company prepared by a registered valuer.

(*3*) Where the company is wound up in pursuance of a resolution passed within a period of five weeks after the making of the declaration, but its debts are not paid or provided for in full, it shall be presumed, until the contrary is shown, that the director or directors did not have reasonable grounds for his or their opinion under sub-section (*1*).

(*4*) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full from the proceeds of assets sold in voluntary winding up shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

306. Meeting of creditors.

(*1*) The company shall along with the calling of meeting of the company at which the resolution for the voluntary winding up is to be proposed, cause a meeting of its creditors either on the same day or on the next day and shall cause a notice of such meeting to be sent by registered post to the creditors with the notice of the meeting of the company under section 304.

(*2*) The Board of Directors of the company shall—

(*a*) cause to be presented a full statement of the position of the affairs of the company together with a list of creditors of the company, if any, copy of declaration under section 305 and the estimated amount of the claims before such meeting; and

(*b*) appoint one of the directors to preside at the meeting.

(*3*) Where two-thirds in value of creditors of the company are of the opinion that—

(*a*) it is in the interest of all parties that the company be wound up voluntarily, the company shall be wound up voluntarily; or

(*b*) the company may not be able to pay for its debts in full from the proceeds of assets sold in voluntary winding up and pass a resolution that it shall be in the interest of all parties if the company is wound up by the Tribunal in accordance with the provisions of Part I of this Chapter, the company shall within fourteen days thereafter file an application before the Tribunal.

(*4*) The notice of any resolution passed at a meeting of creditors in pursuance of this section shall be given by the company to the Registrar within ten days of the passing thereof.

(*5*) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees and the director 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 fifty thousand rupees but which may extend to two lakh rupees, or with both.

307. Publication of resolution to wind up voluntarily.

(*1*) Where a company has passed a resolution for voluntary winding up and a resolution under sub-section (*3*) of section 306 is passed, it shall within fourteen days of the passing of the resolution give notice of the resolution by advertisement in the Official Gazette and also in a newspaper which is in circulation in the district where the registered office or the principal office of the company is situate.

(*2*) If a company contravenes the provisions of sub-section (*1*), the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees for every day during which such default continues.

308. Commencement of voluntary winding up.

A voluntary winding up shall be deemed to commence on the date of passing of the resolution for voluntary winding up under section 304.

309. Effect of voluntary winding up.

In the case of a voluntary winding up, the company shall from the commencement of the winding up cease to carry on its business except as far as required for the beneficial winding up of its business:

Provided that the corporate state and corporate powers of the company shall continue until it is dissolved.

310. Appointment of Company Liquidator.

(*1*) The company in its general meeting, where a resolution of voluntary winding up is passed, shall appoint a Company Liquidator from the panel prepared by the Central Government for the purpose of winding up its affairs and distributing the assets of the company and recommend the fee to be paid to the Company Liquidator.

(*2*) Where the creditors have passed a resolution for winding up the company under sub-section (*3*) of section 306, the appointment of the Company Liquidator under this section shall be effective only after it is approved by the majority of creditors in value of the company:

Provided that where such creditors do not approve the appointment of such Company Liquidator, creditors shall appoint another Company Liquidator.

(*3*) The creditors while approving the appointment of Company Liquidator appointed by the company or appointing the Company Liquidator of their own choice, as the case may be, pass suitable resolution with regard to the fee of the Company Liquidator.

(*4*) On appointment as Company Liquidator, such liquidator shall file a declaration in the prescribed form within seven days of the date of appointment disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the company and the creditors and such obligation shall continue throughout the term of his or its appointment.

311. Power to remove and fill vacancy of Company Liquidator.

(*1*) A Company Liquidator appointed under section 310 may be removed by the company where his appointment has been made by the company and, by the creditors, where the appointment is approved or made by such creditors.

(*2*) Where a Company Liquidator is sought to be removed under this section, he shall be given a notice in writing stating the grounds of removal from his office by the company or the creditors, as the case may be.

(*3*) Where three-fourth members of the company or three-fourth of creditors in value, as the case may be, after consideration of the reply, if any, filed by the Company Liquidator, in their meeting decide to remove the Company Liquidator, he shall vacate his office.

(*4*) If a vacancy occurs by death, resignation, removal or otherwise in the office of any Company Liquidator appointed under section 310, the company or the creditors, as the case may be, fill the vacancy in the manner specified in that section.

312. Notice of appointment of Company Liquidator to be given to Registrar.

(*1*) The company shall give notice to the Registrar of the appointment of a Company Liquidator along with the name and particulars of the Company Liquidator, of every vacancy occurring in the office of Company Liquidator, and of the name of the Company Liquidator appointed to fill every such vacancy within ten days of such appointment or the occurrence of such vacancy.

(*2*) If a company contravenes the provisions of sub-section (*1*), the company and every officer of the company who is in default shall be punishable with fine which may extend to five hundred rupees for every day during which such default continues.

313. Cesser of Board's powers on appointment of Company Liquidator.

On the appointment of a Company Liquidator, all the powers of the Board of Directors and of the managing or whole-time directors and manager, if any, shall cease, except for the purpose of giving notice of such appointment of the Company Liquidator to the Registrar.

314. Powers and duties of Company Liquidator in voluntary winding up.

(*1*) The Company Liquidator shall perform such functions and discharge such duties as may be determined from time to time by the company or the creditors, as the case may be.

(*2*) The Company Liquidator shall settle the list of contributories, which shall be *prima facie* evidence of the liability of the persons named therein to be contributories.

(*3*) The Company Liquidator shall call general meetings of the company for the purpose of obtaining the sanction of the company by ordinary or special resolution, as the case may require, or for any other purpose he may consider necessary.

(*4*) The Company Liquidator shall maintain regular and proper books of account in such form and in such manner as may be prescribed and the members and creditors and any officer authorised by the Central Government may inspect such books of account.

(*5*) The Company Liquidator shall prepare quarterly statement of accounts in such form and manner as may be prescribed and file such statement of accounts duly audited within thirty days from the close of each quarter with the Registrar, failing which the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.

(*6*) The Company Liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(*7*) The Company Liquidator shall observe due care and diligence in the discharge of his duties.

(*8*) If the Company Liquidator fails to comply with the provisions of this section except sub-section (*5*) he shall be punishable with fine which may extend to ten lakh rupees.

315. Appointment of committees.

Where there are no creditors of a company, such company in its general meeting and, where a meeting of creditors is held under section 306, such creditors, as the case may be, may appoint such committees as considered appropriate to supervise the voluntary liquidation and assist the Company Liquidator in discharging his or its functions.

316. Company Liquidator to submit report on progress of winding up.

(*1*) The Company Liquidator shall report quarterly on the progress of winding up of the company in such form and in such manner as may be prescribed to the members and creditors and shall also call a meeting of the members and the creditors as and when necessary but at least one meeting each of creditors and members in every quarter and apprise them of the progress of the winding up of the company in such form and in such manner as may be prescribed.

(*2*) If the Company Liquidator fails to comply with the provisions of sub-section (*1*), he shall be punishable, in respect of each such failure, with fine which may extend to ten lakh rupees.

317. Report of Company Liquidator to Tribunal for examination of persons.

(*1*) Where the Company Liquidator is of the opinion that a fraud has been committed by any person in respect of the company, he shall immediately make a report to the Tribunal and the Tribunal shall, without prejudice to the process of winding up, order for investigation under section 210 and on consideration of the report of such investigation, the Tribunal may pass such order and give such directions under this Chapter as it may consider necessary including the direction that such person shall attend before the Tribunal on a day appointed by it for that purpose and be examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as officer thereof or otherwise.

(*2*) The provisions of section 300 shall *mutatis mutandis* apply in relation to any examination directed under sub-section (*1*).

318. Final meeting and dissolution of company.

(*1*) As soon as the affairs of a company are fully wound up, the Company Liquidator shall prepare a report of the winding up showing that the property and assets of the company have been disposed of and its debt fully discharged or discharged to the satisfaction of the creditors and thereafter call a general meeting of the company for the purpose of laying the final winding up accounts before it and giving any explanation therefor.

(*2*) The meeting referred to in sub-section (*1*) shall be called by the Company Liquidator in such form and manner as may be prescribed.

(*3*) If the majority of the members of the company after considering the report of the Company Liquidator are satisfied that the company shall be wound up, they may pass a resolution for its dissolution.

(*4*) Within two weeks after the meeting, the Company Liquidator shall—

(*a*) send to the Registrar—

(*i*) a copy of the final winding up accounts of the company and shall make a return in respect of each meeting and of the date thereof; and

(*ii*) copies of the resolutions passed in the meetings; and

(*b*) file an application along with his report under sub-section (*1*) in such manner as may be prescribed along with the books and papers of the company relating to the winding up, before the Tribunal for passing an order of dissolution of the company.

(*5*) If the Tribunal is satisfied, after considering the report of the Company Liquidator that the process of winding up has been just and fair, the Tribunal shall pass an order dissolving the company within sixty days of the receipt of the application under sub-section (*4*).

(*6*) The Company Liquidator shall file a copy of the order under sub-section (*5*) with the Registrar within thirty days.

(*7*) The Registrar, on receiving the copy of the order passed by the Tribunal under subsection (*5*), shall forthwith publish a notice in the Official Gazette that the company is dissolved.

(*8*) If the Company Liquidator fails to comply with the provisions of this section, he shall be punishable with fine which may extend to one lakh rupees.

319. Power of Company Liquidator to accept shares, etc., as consideration for sale of property of company.

(*1*) Where a company (the transferor company) is proposed to be, or is in the course of being, wound up voluntarily and the whole or any part of its business or property is proposed to be transferred or sold to another company (the transferee company), the Company Liquidator of the transferor company may, with the sanction of a special resolution of the company conferring on him either a general authority or an authority in respect of any particular arrangement,—

(*a*) receive, by way of compensation wholly or in part for the transfer or sale of shares, policies, or other like interest in the transferee company, for distribution among the members of the transferor company; or

(*b*) enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interest or in addition thereto, participate in the profits of, or receive any other benefit from, the transferee company:

Provided that no such arrangement shall be entered into without the consent of the secured creditors.

(*2*) Any transfer, sale or other arrangement in pursuance of this section shall be binding on the members of the transferor company.

(*3*) Any member of the transferor company who did not vote in favour of the special resolution and expresses his dissent therefrom in writing addressed to the Company Liquidator, and left at the registered office of the company within seven days after the passing of the resolution, may require the liquidator either—

(*a*) to abstain from carrying the resolution into effect; or

(*b*) to purchase his interest at a price to be determined by agreement or the registered valuer.

(*4*) If the Company Liquidator elects to purchase the member's interest, the purchase money, raised by him in such manner as may be determined by a special resolution, shall be paid before the company is dissolved.

320. Distribution of property of company.

Subject to the provisions of this Act as to overriding preferential payments under section 326, the assets of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu* and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

321. Arrangement when binding on company and creditors.

(*1*) Any arrangement other than the arrangement referred to in section 319 entered into between the company which is about to be, or is in the course of being wound up and its creditors shall be binding on the company and on the creditors if it is sanctioned by a special resolution of the company and acceded to by the creditors who hold three-fourths in value of the total amount due to all the creditors of the company.

(*2*) Any creditor or contributory may, within three weeks from the completion of the arrangement, apply to the Tribunal and the Tribunal may thereupon amend, vary, confirm or set aside the arrangement.

322. Power to apply to Tribunal to have questions determined, etc.

(*1*) The Company Liquidator or any contributory or creditor may apply to the Tribunal—

(*a*) to determine any question arising in the course of the winding up of a company; or

(*b*) to exercise as respects the enforcing of calls, the staying of proceedings or any other matter, all or any of the powers which the Tribunal might exercise if the company were being wound up by the Tribunal.

(*2*) The Company Liquidator or any creditor or contributory may apply to the Tribunal for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up.

(*3*) The Tribunal, if satisfied on an application under sub-section (*1*) or sub-section (*2*) that the determination of the question or the required exercise of power or the order applied for will be just and fair, may allow the application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks fit.

(*4*) A copy of an order staying the proceedings in the winding up, made under this section, shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company.

323. Costs of voluntary winding up.

All costs, charges and expenses properly incurred in the winding up, including the fee of the Company Liquidator, shall, subject to the rights of secured creditors, if any, be payable out of the assets of the company in priority to all other claims.

PART III.—Provisions applicable to every mode of winding up

324. Debts of all descriptions to be admitted to proof.

In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act or of the law of insolvency), all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency, or may sound only in damages, or for some other reason may not bear a certain value.

325. Application of insolvency rules in winding up of insolvent companies.

(*1*) In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to—

(*a*) debts provable;

(*b*) the valuation of annuities and future and contingent liabilities; and

(*c*) the respective rights of secured and unsecured creditors, as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent:

Provided that the security of every secured creditor shall be deemed to be subject to a *pari passu* charge in favour of the workmen to the extent of the workmen's portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debts, opts to realise his security,—

(*i*) the liquidator shall be entitled to represent the workmen and enforce such charge;

(*ii*) any amount realised by the liquidator by way of enforcement of such charge shall be applied rateably for the discharge of workmen's dues; and

(*iii*) so much of the debts due to such secured creditor as could not be realized by him or the amount of the workmen's portion in his security, whichever is less, shall rank *pari passu* with the workmen's dues for the purposes of section 326.

(*2*) All persons under sub-section (*1*) shall be entitled to prove and receive dividends out of the assets of the company under winding up, and make such claims against the company as they respectively are entitled to make by virtue of this section:

Provided that if a secured creditor, instead of relinquishing his security and proving his debts, proceeds to realise his security, he shall be liable to pay his portion of the expenses incurred by the liquidator, including a provisional liquidator, if any, for the preservation of the security before its realisation by the secured creditor.

Explanation.—For the purposes of this sub-section, the portion of expenses incurred by the liquidator for the preservation of a security which the secured creditor shall be liable to pay shall be the whole of the expenses less an amount which bears to such expenses the same proportion as the workmen's portion in relation to the security bears to the value of the security.

(*3*) For the purposes of this section, section 326 and section 327,—

(*a*) "workmen", in relation to a company, means the employees of the company, being workmen within the meaning of clause (*s*) of section 2 of the Industrial Disputes Act, 1947;

(*b*) "workmen's dues", in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely:—

(*i*) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947;

(*ii*) all accrued holiday remuneration becoming payable to any workman or, in the case of his death, to any other person in his right on the termination of his employment before or by the effect of the winding up order or resolution;

(*iii*) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923, rights capable of being transferred to and vested in the workmen, all amount due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company;

(*iv*) all sums due to any workman from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the workmen, maintained by the company;

(*c*) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of the amount of workmen's dues and the amount of the debts due to the secured creditors.

Illustration

The value of the security of a secured creditor of a company is Rs. 1,00,000. The total amount of the workmen's dues is Rs. 1,00,000. The amount of the debts due from the company to its secured creditors is Rs. 3,00,000. The aggregate of the amount of workmen's dues and the amount of debts due to secured creditors is Rs. 4,00,000. The workmen's portion of the security is, therefore, one-fourth of the value of the security, that is Rs. 25,000.

326. Overriding preferential payments.

(*1*) Notwithstanding anything contained in this Act or any other law for the time being in force, in the winding up of a company,—

(*a*) workmen's dues; and

(*b*) debts due to secured creditors to the extent such debts rank under clause (*iii*) of the proviso to sub-section (*1*) of section 325 *pari passu* with such dues, shall be paid in priority to all other debts:

Provided that in case of the winding up of a company, the sums towards wages or salary referred to in sub-clause (*i*) of clause (*b*) of sub-section (*3*) of section 325, which are payable for a period of two years preceding the winding up order or such other period as may be prescribed, shall be paid in priority to all other debts (including debts due to secured creditors), within a period of thirty days of sale of assets and shall be subject to such charge over the security of secured creditors as may be prescribed.

(*2*) The debts payable under the proviso to sub-section (*1*) shall be paid in full before any payment is made to secured creditors and thereafter debts payable under that sub-section shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

327. Preferential payments.

(*1*) In a winding up, subject to the provisions of section 326, there shall be paid in priority to all other debts,—

(*a*) all revenues, taxes, cesses and rates due from the company to the Central Government or a State Government or to a local authority at the relevant date, and having become due and payable within the twelve months immediately before that date;

(*b*) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any employee in respect of services rendered to the company and due for a period not exceeding four months within the twelve months immediately before the relevant date, subject to the condition that the amount payable under this clause to any workman shall not exceed such amount as may be notified;

(*c*) all accrued holiday remuneration becoming payable to any employee, or in the case of his death, to any other person claiming under him, on the termination of his employment before, or by the winding up order, or, as the case may be, the dissolution of the company;

(*d*) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company, all amount due in respect of contributions payable during the period of twelve months immediately before the relevant date by the company as the employer of persons under the Employees' State Insurance Act, 1948 or any other law for the time being in force;

(*e*) unless the company has, at the commencement of winding up, under such a contract with any insurer as is mentioned in section 14 of the Workmen's Compensation Act, 1923, rights capable of being transferred to and vested in the workmen, all amount due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any employee of the company:

Provided that where any compensation under the said Act is a weekly payment, the amount payable under this clause shall be taken to be the amount of the lump sum for which such weekly payment could, if redeemable, be redeemed, if the employer has made an application under that Act;

(*f*) all sums due to any employee from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the employees, maintained by the company; and

(*g*) the expenses of any investigation held in pursuance of sections 213 and 216, in so far as they are payable by the company.

(*2*) Where any payment has been made to any employee of a company on account of wages or salary or accrued holiday remuneration, himself or, in the case of his death, to any other person claiming through him, out of money advanced by some person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid-up to the amount by which the sum in respect of which the employee or other person in his right would have been

entitled to priority in the winding up has been reduced by reason of the payment having been made.

(*3*) The debts enumerated in this section shall—

(*a*) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(*b*) so far as the assets of the company available for payment to general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(*4*) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the debts under this section shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given under clause (*d*) of sub-section (*1*), formal proof thereof shall not be required except in so far as may be otherwise prescribed.

(*5*) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months immediately before the date of a winding up order, the debts to which priority is given under this section shall be a first charge on the goods or effects so distrained on or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(*6*) Any remuneration in respect of a period of holiday or of absence from work on medical grounds through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period.

Explanation.—For the purposes of this section,—

(*a*) the expression "accrued holiday remuneration" includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment including any order made or direction given thereunder, are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday, had his employment with the company continued until he became entitled to be allowed the holiday;

(*b*) the expression "employee" does not include a workman; and

(*c*) the expression "relevant date" means—

(*i*) in the case of a company being wound up by the Tribunal, the date of appointment or first appointment of a provisional liquidator, or if no such appointment was made, the date of the winding up order, unless, in either case, the company had commenced to be wound up voluntarily before that date; and

(*ii*) in any other case, the date of the passing of the resolution for the voluntary winding up of the company.

328. Fraudulent preference.

(*1*) Where a company has given preference to a person who is one of the creditors of the company or a surety or guarantor for any of the debts or other liabilities of the company, and the company does anything or suffers anything done which has the effect of putting that person into a position which, in the event of the company going into liquidation, will be better than the position he would have been in if that thing had not been done prior to

six months of making winding up application, the Tribunal, if satisfied that, such transaction is a fraudulent preference may order as it may think fit for restoring the position to what it would have been if the company had not given that preference.

(*2*) If the Tribunal is satisfied that there is a preference transfer of property, movable or immovable, or any delivery of goods, payment, execution made, taken or done by or against a company within six months before making winding up application, the Tribunal may order as it may think fit and may declare such transaction invalid and restore the position.

329. Transfers not in good faith to be void.

Any transfer of property, movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrance in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up by the Tribunal or the passing of a resolution for voluntary winding up of the company, shall be void against the Company Liquidator.

330. Certain transfers to be void.

Any transfer or assignment by a company of all its properties or assets to trustees for the benefit of all its creditors shall be void.

331. Liabilities and rights of certain persons fraudulently preferred.

(*1*) Where a company is being wound up and anything made, taken or done after the commencement of this Act is invalid under section 328 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then, without prejudice to any rights or liabilities arising, apart from this provision, the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as a surety for the debt, to the extent of the mortgage or charge on the property or the value of his interest, whichever is less.

(*2*) The value of the interest of the person preferred under sub-section (*1*) shall be determined as at the date of the transaction constituting the fraudulent preference, as if the interest were free of all encumbrances other than those to which the mortgage or charge for the debt of the company was then subject.

(*3*) On an application made to the Tribunal with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the Tribunal shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose, may give leave to bring in the surety or guarantor as a third party as in the case of a suit for the recovery of the sum paid.

(*4*) The provisions of sub-section (*3*) shall apply *mutatis mutandis* in relation to transactions other than payment of money.

332. Effect of floating charge.

Where a company is being wound up, a floating charge on the undertaking or property of the company created within the twelve months immediately preceding the commencement of the winding up, shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except for the amount of any cash paid to

the company at the time of, or subsequent to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum or such other rate as may be notified by the Central Government in this behalf.

333. Disclaimer of onerous property.

(*1*) Where any part of the property of a company which is being wound up consists of—

(*a*) land of any tenure, burdened with onerous covenants;

(*b*) shares or stocks in companies;

(*c*) any other property which is not saleable or is not readily saleable by reason of the possessor thereof being bound either to the performance of any onerous act or to the payment of any sum of money; or

(*d*) unprofitable contracts, the Company Liquidator may, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto or done anything in pursuance of the contract, with the leave of the Tribunal and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the Tribunal, disclaim the property:

Provided that where the Company Liquidator had not become aware of the existence of any such property within one month from the commencement of the winding up, the power of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the Tribunal.

(*2*) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights, interest or liabilities of any other person.

(*3*) The Tribunal, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Tribunal considers just and proper.

(*4*) The Company Liquidator shall not be entitled to disclaim any property in any case where an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim and the Company Liquidator has not, within a period of twenty-eight days after the receipt of the application or such extended period as may be allowed by the Tribunal, give notice to the applicant that he intends to apply to the Tribunal for leave to disclaim, and in case the property is under a contract, if the Company Liquidator after such an application as aforesaid does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

(*5*) The Tribunal may, on the application of any person who is, as against the Company Liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Tribunal considers just and proper, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(*6*) The Tribunal may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged under this Act in respect of any disclaimed property, and after hearing any such persons as it thinks fit, make an order for the vesting of the property in, or the delivery of the property to, any person entitled thereto or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Tribunal considers just and proper, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person named therein in that behalf without any conveyance or assignment for the purpose:

Provided that where the property disclaimed is of a leasehold nature, the Tribunal shall not make a vesting order in favour of any person claiming under the company, whether as under- lessee or as mortgagee or holder of a charge by way of demise, except upon the terms of making that person—

(*a*) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or

(*b*) if the Tribunal thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date, and in either event as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in, and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the Tribunal shall have power to vest the estate and interest of the company in the property in any person liable, either personally or in a representative character, and either alone or jointly with the company, to perform the covenants of the lessee in the lease, free and discharged from all estates, encumbrances and interests created therein by the company.

(*7*) Any person affected by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the compensation or damages payable in respect of such effect, and may accordingly prove the amount as a debt in the winding up.

334. Transfers, etc., after commencement of winding up to be void.

(*1*) In the case of a voluntary winding up, any transfer of shares in the company, not being a transfer made to or with the sanction of the Company Liquidator, and any alteration in the status of the members of the company, made after the commencement of the winding up, shall be void.

(*2*) In the case of a winding up by the Tribunal, any disposition of the property, including actionable claims, of the company, and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up, shall, unless the Tribunal otherwise orders, be void.

335. Certain attachments, executions, etc., in winding up by Tribunal to be void.

(*1*) Where any company is being wound up by the Tribunal,—

(*a*) any attachment, distress or execution put in force, without leave of the Tribunal against the estate or effects of the company, after the commencement of the winding up; or

(*b*) any sale held, without leave of the Tribunal of any of the properties or effects of the company, after such commencement, shall be void.

(*2*) Nothing in this section shall apply to any proceedings for the recovery of any tax or impost or any dues payable to the Government.

336. Offences by officers of companies in liquidation.

(*1*) If any person, who is or has been an officer of a company which, at the time of the commission of the alleged offence, is being wound up, whether by the Tribunal or voluntarily, or which is subsequently ordered to be wound up by the Tribunal or which subsequently passes a resolution for voluntary winding up,—

(*a*) does not, to the best of his knowledge and belief, fully and truly disclose to the Company Liquidator all the property, movable and immovable, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary course of the business of the company;

(*b*) does not deliver up to the Company Liquidator, or as he directs, all such part of the movable and immovable property of the company as is in his custody or under his control and which he is required by law to deliver up;

(*c*) does not deliver up to the Company Liquidator, or as he directs, all such books and papers of the company as are in his custody or under his control and which he is required by law to deliver up;

(*d*) within the twelve months immediately before the commencement of the winding up or at any time thereafter,—

(*i*) conceals any part of the property of the company to the value of one thousand rupees or more, or conceals any debt due to or from the company;

(*ii*) fraudulently removes any part of the property of the company to the value of one thousand rupees or more;

(*iii*) conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to, the property or affairs of the company;

(*iv*) makes, or is privy to the making of, any false entry in any book or paper affecting or relating to, the property or affairs of the company;

(*v*) fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making of any omission in, any book or paper affecting or relating to the property or affairs of the company;

(*vi*) by any false representation or other fraud, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for;

(*vii*) under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or

(*viii*) pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing of the property is in the ordinary course of business of the company;

(*e*) makes any material omission in any statement relating to the affairs of the company;
(*f*) knowing or believing that a false debt has been proved by any person under the winding up, fails for a period of one month to inform the Company Liquidator thereof;
(*g*) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the property or affairs of the company;
(*h*) after the commencement of the winding up or at any meeting of the creditors of the company within the twelve months next before the commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses; or
(*i*) is guilty of any false representation or fraud for the purpose of obtaining the consent of the creditors of the company or any of them, to an agreement with reference to the affairs of the company or to the winding up, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees:

Provided that it shall be a good defence if the accused proves that he had no intent to defraud or to conceal the true state of affairs of the company or to defeat the law.

(*2*) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under sub-clause (*viii*) of clause (*d*) of sub-section (*1*), every person who takes in pawn or pledge or otherwise receives the property, knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than three lakh rupees but which may extend to five lakh rupees.

Explanation.—For the purposes of this section, the expression "officer" includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

337. Penalty for frauds by officers.

If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the Tribunal or which subsequently passes a resolution for voluntary winding up,—
(*a*) has, by false pretences or by means of any other fraud, induced any person to give credit to the company;
(*b*) with intent to defraud creditors of the company or any other person, has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the levying of any execution against, the property of the company; or
(*c*) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since the date of any unsatisfied judgment or order for payment of money obtained against the company or within two months before that date, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.

338. Liability where proper accounts not kept.

(*1*) Where a company is being wound up, if it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable, be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.

(*2*) For the purposes of sub-section (*1*), it shall be deemed that proper books of account have not been kept in the case of any company,—

(*a*) if such books of account as are necessary to exhibit and explain the transactions and financial position of the business of the company, including books containing entries made from day-to-day in sufficient detail of all cash received and all cash paid, have not been kept; and

(*b*) where the business of the company has involved dealings in goods, statements of the annual stock takings and, except in the case of goods sold by way of ordinary retail trade, of all goods sold and purchased, showing the goods and the buyers and the sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified, have not been kept.

339. Liability for fraudulent conduct of business.

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

Provided that on the hearing of an application under this sub-section, the Official Liquidator or the Company Liquidator, as the case may be, may himself give evidence or call witnesses.

(*2*) Where the Tribunal makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration and, in particular,—

(*a*) make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf;

(*b*) make such further order as may be necessary for the purpose of enforcing any charge imposed under this sub-section.

(*3*) Where any business of a company is carried on with such intent or for such purpose as is mentioned in sub-section (*1*), every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be liable for action under section 447.

(*4*) This section shall apply, notwithstanding that the person concerned may be punishable under any other law for the time being in force in respect of the matters on the ground of which the declaration is to be made.

Explanation.—For the purposes of this section,—

(*a*) the expression "assignee" includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest was created, but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters on the ground of which the declaration is made;

(*b*) the expression "officer" includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

340. Power of Tribunal to assess damages against delinquent directors, etc.

(*1*) If in the course of winding up of a company, it appears that any person who has taken part in the promotion or formation of the company, or any person, who is or has been a director, manager, Company Liquidator or officer of the company—

(*a*) has misapplied, or retained, or become liable or accountable for, any money or property of the company; or

(*b*) has been guilty of any misfeasance or breach of trust in relation to the company, the Tribunal may, on the application of the Official Liquidator, or the Company Liquidator, or of any creditor or contributory, made within the period specified in that behalf in sub-section (*2*), inquire into the conduct of the person, director, manager, Company Liquidator or officer aforesaid, and order him to repay or restore the money or property or any part thereof respectively, with interest at such rate as the Tribunal considers just and proper, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Tribunal considers just and proper.

(*2*) An application under sub-section (*1*) shall be made within five years from the date of the winding up order, or of the first appointment of the Company Liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer.

(*3*) This section shall apply, notwithstanding that the matter is one for which the person concerned may be criminally liable.

341. Liability under sections 339 and 340 to extend to partners or directors in firms or companies.

Where a declaration under section 339 or an order under section 340 is made in respect of a firm or body corporate, the Tribunal shall also have power to make a declaration under section 339, or pass an order under section 340, as the case may be, in respect of any person who was at the relevant time a partner in that firm or a director of that body corporate.

342. Prosecution of delinquent officers and members of company.

(*1*) If it appears to the Tribunal in the course of a winding up by the Tribunal, that any person, who is or has been an officer, or any member, of the company has been guilty of any offence in relation to the company, the Tribunal may, either on the application of any person interested in the winding up or *suo motu*, direct the liquidator to prosecute the offender or to refer the matter to the Registrar.

(*2*) If it appears to the Company Liquidator in the course of a voluntary winding up that any person, who is or has been an officer, or any member, of the company has been guilty of any offence in relation to the company under this Act, he shall forthwith report the matter to the Registrar and shall furnish to him such information and give to him such access to and facilities for inspecting and taking copies of any books and papers, being information or books and papers in the possession or under the control of the Company Liquidator and relating to the matter in question, as the Registrar may require.

(*3*) Where any report is made under sub-section (*2*) to the Registrar,—

(*a*) if he thinks fit, he may apply to the Central Government for an order to make further inquiry into the affairs of the company by any person designated by him and for conferring on such person all the powers of investigation as are provided under this Act;

(*b*) if he considers that the case is one in which a prosecution ought to be instituted, he shall report the matter to the Central Government, and that Government may, after taking such legal advice as it thinks fit, direct the Registrar to institute prosecution:

Provided that no report shall be made by the Registrar under this clause without first giving the accused person a reasonable opportunity of making a statement in writing to the Registrar and of being heard thereon.

(*4*) If it appears to the Tribunal in the course of a voluntary winding up that any person, who is or has been an officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the Company Liquidator to the Registrar under sub-section (*2*), the Tribunal may, on the application of any person interested in the winding up or *suo motu,* direct the Company Liquidator to make such a report, and on a report being made, the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of sub-section (*2*).

(*5*) When any prosecution is instituted under this section, it shall be the duty of the liquidator and of every person, who is or has been an officer and agent of the company to give all assistance in connection with the prosecution which he is reasonably able to give.

Explanation.—For the purposes of this sub-section, the expression "agent", in relation to a company, shall include any banker or legal adviser of the company and any person employed by the company as auditor.

(*6*) If a person fails or neglects to give assistance required by sub-section (*5*), he shall be liable to pay fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

343. Company Liquidator to exercise certain powers subject to sanction.

(*1*) The Company Liquidator may—

(*a*) with the sanction of the Tribunal, when the company is being wound up by the Tribunal; and

(*b*) with the sanction of a special resolution of the company and prior approval of the Tribunal, in the case of a voluntary winding up,—

(*i*) pay any class of creditors in full;

(*ii*) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, against the company, or whereby the company may be rendered liable; or

(*iii*) compromise any call or liability to call, debt, and liability capable of resulting in a debt, and any claim, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or alleged to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or liabilities or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(*2*) Notwithstanding anything contained in sub-section (*1*), in the case of a winding up by the Tribunal, the Central Government may make rules to provide that the Company Liquidator may, under such circumstances, if any, and subject to such conditions, restrictions and limitations, if any, as may be prescribed, exercise any of the powers referred to in subclause (*ii*) or sub-clause (*iii*) of clause (*b*) of sub-section (*1*) without the sanction of the Tribunal.

(*3*) Any creditor or contributory may apply in the manner prescribed to the Tribunal with respect to any exercise or proposed exercise of powers by the Company Liquidator under this section, and the Tribunal shall after giving a reasonable opportunity to such applicant and the Company Liquidator, pass such orders as it may think fit.

344. Statement that company is in liquidation.

(*1*) Where a company is being wound up, whether by the Tribunal or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a Company Liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(*2*) If a company contravenes the provisions of sub-section (*1*), the company, and every officer of the company, the Company Liquidator and any receiver or manager, who wilfully authorises or permits the non-compliance, shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees.

345. Books and papers of company to be evidence.

Where a company is being wound up, all books and papers of the company and of the Company Liquidator shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be recorded therein.

346. Inspection of books and papers by creditors and contributories.

(*1*) At any time after the making of an order for the winding up of a company by the Tribunal, any creditor or contributory of the company may inspect the books and papers of the company only in accordance with, and subject to such rules as may be prescribed.

(*2*) Nothing contained in sub-section (*1*) shall exclude or restrict any rights conferred by any law for the time being in force—

(*a*) on the Central Government or a State Government;

(*b*) on any authority or officer thereof; or

(*c*) on any person acting under the authority of any such Government or of any such authority or officer.

347. Disposal of books and papers of company.

(*1*) When the affairs of a company have been completely wound up and it is about to be dissolved, its books and papers and those of the Company Liquidator may be disposed of as follows:—

(*a*) in the case of winding up by the Tribunal, in such manner as the Tribunal directs; and

(*b*) in the case of voluntary winding up, in such manner as the company by special resolution with the prior approval of the creditors direct.

(*2*) After the expiry of five years from the dissolution of the company, no responsibility shall devolve on the company, the Company Liquidator, or any person to whom the custody of the books and papers has been entrusted, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(*3*) The Central Government may, by rules,—

(*a*) prevent for such period as it thinks proper the destruction of the books and papers of a company which has been wound up and of its Company Liquidator; and

(*b*) enable any creditor or contributory of the company to make representations to the Central Government in respect of the matters specified in clause (*a*) and to appeal to the Tribunal from any order which may be made by the Central Government in the matter.

(*4*) If any person acts in contravention of any rule framed or an order made under sub-section (*3*), he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees, or with both.

348. Information as to pending liquidations.

(*1*) If the winding up of a company is not concluded within one year after its commencement, the Company Liquidator shall, unless he is exempted from so doing either wholly or in part by the Central Government, within two months of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals, if any, as may be prescribed, file a statement in such form containing such particulars as may be prescribed, duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation,—

(*a*) in the case of a winding up by the Tribunal, with the Tribunal; and

(*b*) in the case of a voluntary winding up, with the Registrar:

Provided that no such audit as is referred to in this sub-section shall be necessary where the provisions of section 294 apply.

(*2*) When the statement is filed with the Tribunal under clause (*a*) of sub-section (*1*), a copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.

(*3*) Where a statement referred to in sub-section (*1*) relates to a Government company in liquidation, the Company Liquidator shall forward a copy thereof—

(*a*) to the Central Government, if that Government is a member of the Government company;

(*b*) to any State Government, if that Government is a member of the Government company; or

(*c*) to the Central Government and any State Government, if both the Governments are members of the Government company.

(*4*) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement referred to in sub-section (*1*), and to receive a copy thereof or an extract therefrom.

(*5*) Any person fraudulently stating himself to be a creditor or contributory under subsection (*4*) shall be deemed to be guilty of an offence under section 182 of the Indian Penal Code, and shall, on the application of the Company Liquidator, be punishable accordingly.

(*6*) If a Company Liquidator contravenes the provisions of this section, the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.

(*7*) If a Company Liquidator makes wilful default in causing the statement referred to in sub-section (*1*) audited by a person who is not qualified to act as an auditor of the company, the Company Liquidator shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one lakh rupees, or with both.

349. Official Liquidator to make payments into public account of India.

Every Official Liquidator shall, in such manner and at such times as may be prescribed, pay the monies received by him as Official Liquidator of any company, into the public account of India in the Reserve Bank of India.

350. Company Liquidator to deposit monies into scheduled bank.

(*1*) Every Company Liquidator of a company shall, in such manner and at such times as may be prescribed, deposit the monies received by him in his capacity as such in a scheduled bank to the credit of a special bank account opened by him in that behalf:

Provided that if the Tribunal considers that it is advantageous for the creditors or contributories or the company, it may permit the account to be opened in such other bank specified by it.

(*2*) If any Company Liquidator at any time retains for more than ten days a sum exceeding five thousand rupees or such other amount as the Tribunal may, on the application of the Company Liquidator, authorise him to retain, then, unless he explains the retention to the satisfaction of the Tribunal, he shall—

(*a*) pay interest on the amount so retained in excess, at the rate of twelve per cent. per annum and also pay such penalty as may be determined by the Tribunal;

(*b*) be liable to pay any expenses occasioned by reason of his default; and

(*c*) also be liable to have all or such part of his remuneration, as the Tribunal may consider just and proper, disallowed, or may also be removed from his office.

351. Liquidator not to deposit monies into private banking account.

Neither the Official Liquidator nor the Company Liquidator of a company shall deposit any monies received by him in his capacity as such into any private banking account.

352. Company Liquidation Dividend and Undistributed Assets Account.

(*1*) Where any company is being wound up and the liquidator has in his hands or under his control any money representing—

(*a*) dividends payable to any creditor but which had remained unpaid for six months after the date on which they were declared; or

(*b*) assets refundable to any contributory which have remained undistributed for six months fter the date on which they become refundable, the liquidator shall forthwith deposit the said money into a separate special account to be known as the Company Liquidation Dividend and Undistributed Assets Account maintained in a scheduled bank.

(*2*) The liquidator shall, on the dissolution of the company, pay into the Company Liquidation Dividend and Undistributed Assets Account any money representing unpaid dividends or undistributed assets in his hands at the date of dissolution.

(*3*) The liquidator shall, when making any payment referred to in sub-sections (*1*) and (*2*), furnish to the Registrar, a statement in the prescribed form, setting forth, in respect of all sums included in such payment, the nature of the sums, the names and last known addresses of the persons entitled to participate therein, the amount to which each is entitled and the nature of his claim thereto, and such other particulars as may be prescribed.

(*4*) The liquidator shall be entitled to a receipt from the scheduled bank for any money paid to it under sub-sections (*1*) and (*2*), and such receipt shall be an effectual discharge of the Company Liquidator in respect thereof.

(*5*) Where a company is being wound up voluntarily, the Company Liquidator shall, when filing a statement in pursuance of sub-section (*1*) of section 348, indicate the sum of money which is payable under sub-sections (*1*) and (*2*) of this section during the six months preceding the date on which the said statement is prepared, and shall, within fourteen days of the date of filing the said statement, pay that sum into the Company Liquidation Dividend and Undistributed Assets Account.

(*6*) Any person claiming to be entitled to any money paid into the Company Liquidation Dividend and Undistributed Assets Account, whether paid in pursuance of this section or under the provisions of any previous company law may apply to the Registrar for payment thereof, and the Registrar, if satisfied that the person claiming is entitled, may make the payment to that person of the sum due:

Provided that the Registrar shall settle the claim of such person within a period of sixty days from the date of receipt of such claim, failing which the Registrar shall make a report to the Regional Director giving reasons of such failure.

(*7*) Any money paid into the Company Liquidation Dividend and Undistributed Assets Account in pursuance of this section, which remains unclaimed thereafter for a period of fifteen years, shall be transferred to the general revenue account of the Central Government, but a claim to any money so transferred may be preferred under sub-section (*6*) and shall be

dealt with as if such transfer had not been made and the order, if any, for payment on the claim will be treated as an order for refund of revenue.

(*8*) Any liquidator retaining any money which should have been paid by him into the Company Liquidation Dividend and Undistributed Assets Account under this section shall—

(*a*) pay interest on the amount so retained at the rate of twelve per cent. per annum and also pay such penalty as may be determined by the Registrar:

Provided that the Central Government may in any proper case remit either in part or in whole the amount of interest which the liquidator is required to pay under this clause;

(*b*) be liable to pay any expenses occasioned by reason of his default; and

(*c*) where the winding up is by the Tribunal, also be liable to have all or such part of his remuneration, as the Tribunal may consider just and proper, to be disallowed, and to be removed from his office by the Tribunal.

353. Liquidator to make returns, etc.

(*1*) If any Company Liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the Tribunal may, on an application made to it by any contributory or creditor of the company or by the Registrar, make an order directing the Company Liquidator to make good the default within such time as may be specified in the order.

(*2*) Any order under sub-section (*1*) may provide that all costs of, and incidental to, the application shall be borne by the Company Liquidator.

(*3*) Nothing in this section shall prejudice the operation of any enactment imposing penalties on a Company Liquidator in respect of any such default as aforesaid.

354. Meetings to ascertain wishes of creditors or contributories.

(*1*) In all matters relating to the winding up of a company, the Tribunal may—

(*a*) have regard to the wishes of creditors or contributories of the company, as proved to it by any sufficient evidence;

(*b*) if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Tribunal may direct; and

(*c*) appoint a person to act as chairman of any such meeting and to report the result thereof to the Tribunal.

(*2*) While ascertaining the wishes of creditors under sub-section (*1*), regard shall be had to the value of each debt of the creditor.

(*3*) While ascertaining the wishes of contributories under sub-section (*1*), regard shall be had to the number of votes which may be cast by each contributory.

355. Court, Tribunal or person, etc., before whom affidavit may be sworn.

(*1*) Any affidavit required to be sworn under the provisions, or for the purposes, of this Chapter may be sworn—

(*a*) in India before any court, tribunal, judge or person lawfully authorised to take and receive affidavits; and

(*b*) in any other country before any court, judge or person lawfully authorised to take and receive affidavits in that country or before an Indian diplomatic or consular officer.

(*2*) All tribunals, judges, Justices, commissioners and persons acting judicially in India shall take judicial notice of the seal, stamp or signature, as the case may be, of any such court, tribunal, judge, person, diplomatic or consular officer, attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of this Chapter.

356. Powers of Tribunal to declare dissolution of company void.

(*1*) Where a company has been dissolved, whether in pursuance of this Chapter or of section 232 or otherwise, the Tribunal may at any time within two years of the date of the dissolution, on application by the Company Liquidator of the company or by any other person who appears to the Tribunal to be interested, make an order, upon such terms as the Tribunal thinks fit, declaring the dissolution to be void, and thereupon such proceedings may be taken as if the company had not been dissolved.

(*2*) It shall be the duty of the Company Liquidator or the person on whose application the order was made, within thirty days after the making of the order or such further time as the Tribunal may allow, to file a certified copy of the order with the Registrar who shall register the same, and if the Company Liquidator or the person fails so to do, the Company Liquidator or the person shall be punishable with fine which may extend to ten thousand rupees for every day during which the default continues.

357. Commencement of winding up by Tribunal.

(*1*) Where, before the presentation of a petition for the winding up of a company by the Tribunal, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Tribunal, on proof of fraud or mistake, thinks fit to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(*2*) In any other case, the winding up of a company by the Tribunal shall be deemed to commence at the time of the presentation of the petition for the winding up.

358. Exclusion of certain time in computing period of limitation.

Notwithstanding anything in the Limitation Act, 1963, or in any other law for the time being in force, in computing the period of limitation specified for any suit or application in the name and on behalf of a company which is being wound up by the Tribunal, the period from the date of commencement of the winding up of the company to a period of one year immediately following the date of the winding up order shall be excluded.

PART IV.—Official Liquidators

359. Appointment of Official Liquidator.

(*1*) For the purposes of this Act, so far as it relates to the winding up of companies by the Tribunal, the Central Government may appoint as many Official Liquidators, Joint, Deputy or Assistant Official Liquidators as it may consider necessary to discharge the functions of the Official Liquidator.

(*2*) The liquidators appointed under sub-section (*1*) shall be whole-time officers of the Central Government.

(*3*) The salary and other allowances of the Official Liquidator, Joint Official Liquidator, Deputy Official Liquidator and Assistant Official Liquidator shall be paid by the Central Government.

360. Powers and functions of Official Liquidator.

(*1*) The Official Liquidator shall exercise such powers and perform such duties as the Central Government may prescribe.

(*2*) Without prejudice to the provisions of sub-section (*1*), the Official Liquidator may—

(*a*) exercise all or any of the powers as may be exercised by a Company Liquidator under the provisions of this Act; and

(*b*) conduct inquiries or investigations, if directed by the Tribunal or the Central Government, in respect of matters arising out of winding up proceedings.

361. Summary procedure for liquidation.

(*1*) Where the company to be wound up under this Chapter, —

(*i*) has assets of book value not exceeding one crore rupees; and

(*ii*) belongs to such class or classes of companies as may be prescribed, the Central Government may order it to be wound up by summary procedure provided under this Part.

(*2*) Where an order under sub-section (*1*) is made, the Central Government shall appoint the Official Liquidator as the liquidator of the company.

(*3*) The Official Liquidator shall forthwith take into his custody or control all assets, effects and actionable claims to which the company is or appears to be entitled.

(*4*) The Official Liquidator shall, within thirty days of his appointment, submit a report to the Central Government in such manner and form, as may be prescribed, including a report whether in his opinion, any fraud has been committed in promotion, formation or management of the affairs of the company or not.

(*5*) On receipt of the report under sub-section (*4*), if the Central Government is satisfied that any fraud has been committed by the promoters, directors or any other officer of the company, it may direct further investigation into the affairs of the company and that a report shall be submitted within such time as may be specified.

(*6*) After considering the investigation report under sub-section (*5*), the Central Government may order that winding up may be proceeded under Part I of this Chapter or under the provision of this Part.

362. Sale of assets and recovery of debts due to company.

(*1*) The Official Liquidator shall expeditiously dispose of all the assets whether movable or immovable within sixty days of his appointment.

(*2*) The Official Liquidator shall serve a notice within thirty days of his appointment calling upon the debtors of the company or the contributories, as the case may be, to deposit within thirty days with him the amount payable to the company.

(*3*) Where any debtor does not deposit the amount under sub-section (*2*), the Central Government may, on an application made to it by the Official Liquidator, pass such orders as it thinks fit.

(*4*) The amount recovered under this section by the Official Liquidator shall be deposited in accordance with the provisions of section 349.

363. Settlement of claims of creditors by Official Liquidator.

(*1*) The Official Liquidator within thirty days of his appointment shall call upon the creditors of the company to prove their claims in such manner as may be prescribed, within thirty days of the receipt of such call.

(*2*) The Official Liquidator shall prepare a list of claims of creditors in such manner as may be prescribed and each creditor shall be communicated of the claims accepted or rejected along with reasons to be recorded in writing.

364. Appeal by creditor.

(*1*) Any creditor aggrieved by the decision of the Official Liquidator under section 363 may file an appeal before the Central Government within thirty days of such decision.

(*2*) The Central Government may after calling the report from the Official Liquidator either dismiss the appeal or modify the decision of the Official Liquidator.

(*3*) The Official Liquidator shall make payment to the creditors whose claims have been accepted.

(*4*) The Central Government may, at any stage during settlement of claims, if considers necessary, refer the matter to the Tribunal for necessary orders.

365. Order of dissolution of company

(*1*) The Official Liquidator shall, if he is satisfied that the company is finally wound up, submit a final report to—

(*i*) the Central Government, in case no reference was made to the Tribunal under sub-section (*4*) of section 364; and

(*ii*) in any other case, the Central Government and the Tribunal.

(*2*) The Central Government, or as the case may be, the Tribunal on receipt of such report shall order that the company be dissolved.

(*3*) Where an order is made under sub-section (*2*), the Registrar shall strike off the name of the company from the register of companies and publish a notification to this effect.

CHAPTER XXI

PART I.— *Companies Authorised to Register under this Act*

366. Companies capable of being registered.

(*1*) For the purposes of this Part, the word "company" includes any partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law for the time being in force which applies for registration under this Part.

(*2*) With the exceptions and subject to the provisions contained in this section, any company formed, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act or of any other law for the time being in force or being otherwise duly constituted according to law, and consisting of seven or more members, may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee, in such manner as may be prescribed and the registration shall not be invalid by reason only that it has taken place with a view to the company's being wound up:

Provided that—

(*i*) a company registered under the Indian Companies Act, 1882 or under the Indian Companies Act, 1913 or the Companies Act, 1956, shall not register in pursuance of this section;

(*ii*) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other law for the time being in force, shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;

(*iii*) a company shall be registered in pursuance of this section as a company limited by shares only if it has a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in the one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons;

(*iv*) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person, or where proxies are allowed, by proxy, at a general meeting summoned for the purpose;

(*v*) where a company not having the liability of its members limited by any Act of Parliament or any other law for the time being in force is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person, or where proxies are allowed, by proxy, at the meeting;

(*vi*) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(*3*) In computing any majority required for the purposes of sub-section (*1*), when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

367. Certificate of registration of existing companies.

On compliance with the requirements of this Chapter with respect to registration, and on payment of such fees, if any, as are payable under section 403, the Registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited and thereupon the company shall be so incorporated.

368. Vesting of property on registration.

All property, movable and immovable (including actionable claims), belonging to or vested in a company at the date of its registration in pursuance of this Part, shall, on such registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

369. Saving of existing liabilities.

The registration of a company in pursuance of this Part shall not affect its rights or liabilities in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

370. Continuation of pending legal proceedings.

All suits and other legal proceedings taken by or against the company, or any public officer or member thereof, which are pending at the time of the registration of a company in pursuance of this Part, may be continued in the same manner as if the registration had not taken place:

Provided that execution shall not issue against the property or persons of any individual member of the company on any decree or order obtained in any such suit or proceeding; but, in the event of the property of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company.

371. Effect of registration under this Part.

(*1*) When a company is registered in pursuance of this Part, sub-sections (*2*) to (*7*) shall apply.

(*2*) All provisions contained in any Act of Parliament or any other law for the time being in force, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.

(*3*) All the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows:—

(*a*) Table F in Schedule I shall not apply unless and except in so far as it is adopted by special resolution;

(*b*) the provisions of this Act relating to the numbering of shares shall not apply to any company whose shares are not numbered;

(*c*) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid;

(*d*) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives of deceased contributories, or with respect to the assignees of insolvent contributories, as the case may be, shall apply.

(*4*) The provisions of this Act with respect to—

(*a*) the registration of an unlimited company as a limited company;

(*b*) the powers of an unlimited company on registration as a limited company, to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called-up except in the event of winding up;

(*c*) the power of a limited company to determine that a portion of its share capital shall not be capable of being called-up except in the event of winding up, shall apply, notwithstanding anything in any Act of Parliament or any other law for the time being in force, or other instrument constituting or regulating the company.

(*5*) Nothing in this section shall authorise the company to alter any such provisions contained in any instrument constituting or regulating the company as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act.

(*6*) None of the provisions of this Act (apart from those of section 242) shall derogate from any power of altering its constitution or regulations which may be vested in the company, by virtue of any Act of Parliament or any other law for the time being in force, or other instrument constituting or regulating the company.

(*7*) In this section, the expression "instrument" includes deed of settlement, deed of partnership, or limited liability partnership.

372. Power of Court to stay or restrain proceedings.

The provisions of this Act with respect to staying and restraining suits and other legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order, shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and other legal proceedings against any contributory of the company.

373. **Obligation of Companies registering under this Part.**

Where an order has been made for winding up, or a provisional liquidator has been appointed for, a company registered in pursuance of this Part, no suit or other legal proceeding shall be proceeded with or commenced against the company or any contributory of the company in respect of any debt of the company, except by leave of the Tribunal and except on such terms as the Tribunal may impose.

374. Obligation of Companies registering under this Part.

Every company which is seeking registration under this Part shall,—

(*a*) ensure that secured creditors of the company, prior to its registration under this Part, have either consented to or have given their no objection to company's registration under this Part;

(*b*) publish in a newspaper, advertisement one in English and one in vernacular language in such form as may be prescribed giving notice about registration under this Part, seeking objections and address them suitably;

(*c*) file an affidavit, duly notarised, from all the members or partners to provide that in the event of registration under this Part, necessary documents or papers shall be submitted to the registering or other authority with which the company was earlier registered, for its dissolution as partnership firm, limited liability partnership, cooperative society, society or any other business entity, as the case may be.

(*d*) comply with such other conditions as may be prescribed.

PART II.—*Winding up of unregistered companies*

375. Winding up of unregistered companies.

(*1*) Subject to the provisions of this Part, any unregistered company may be wound up under this Act, in such manner as may be prescribed, and all the provisions of this Act, with respect to winding up shall apply to an unregistered company, with the exceptions and additions mentioned in sub-sections (*2*) to (*4*).

(*2*) No unregistered company shall be wound up under this Act voluntarily.

(*3*) An unregistered company may be wound up under the following circumstances, namely:—

(*a*) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(*b*) if the company is unable to pay its debts;

(*c*) if the Tribunal is of opinion that it is just and equitable that the company should be wound up.

(*4*) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts—

(*a*) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding one lakh rupees then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary, or some director, manager or principal officer of the company, or by otherwise serving in such manner as the Tribunal may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has, for three weeks after the service of the demand, neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;

(*b*) if any suit or other legal proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his

character as a member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, manager or principal officer of the company or by otherwise serving the same in such manner as the Tribunal may approve or direct, the company has not, within ten days after service of the notice,—

(*i*) paid, secured or compounded for the debt or demand;

(*ii*) procured the suit or other legal proceeding to be stayed; or

(*iii*) indemnified the defendant to his satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;

(*c*) if execution or other process issued on a decree or order of any Court or Tribunal in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied in whole or in part;

(*d*) if it is otherwise proved to the satisfaction of the Tribunal that the company is unable to pay its debts.

Explanation.—For the purposes of this Part, the expression "unregistered company"—

(*a*) shall not include—

(*i*) a railway company incorporated under any Act of Parliament or other Indian law or any Act of Parliament of the United Kingdom;

(*ii*) a company registered under this Act; or

(*iii*) a company registered under any previous companies law and not being a company the registered office whereof was in Burma, Aden, Pakistan immediately before the separation of that country from India; and

(*b*) save as aforesaid, shall include any partnership firm, limited liability partnership or society or co-operative society, association or company consisting of more than seven members at the time when the petition for winding up the partnership firm, limited liability partnership or society or co-operative society, association or company, as the case may be, is presented before the Tribunal.

376. Power to wind up foreign companies although dissolved.

Where a body corporate incorporated outside India which has been carrying on business in India, ceases to carry on business in India, it may be wound up as an unregistered company under this Part, notwithstanding that the body corporate has been dissolved or otherwise ceased to exist as such under or by virtue of the laws of the country under which it was incorporated.

377. Provisions of Chapter cumulative.

(*1*) The provisions of this Part, with respect to unregistered companies shall be in addition to and not in derogation of, any provisions hereinbefore in this Act contained with respect to the winding up of companies by the Tribunal.

(*2*) The Tribunal or Official Liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by the Tribunal or Official Liquidator in winding up of companies formed and registered under this Act:

Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

378. Saving and construction of enactments conferring power to wind up partnership firm, association or company, etc., in certain cases.

Nothing in this Part, shall affect the operation of any enactment which provides for any partnership firm, limited liability partnership or society or co-operative society, association or company being wound up, or being wound up as a company or as an unregistered company, under the Companies Act, 1956, or any Act repealed by that Act:

Provided that references in any such enactment to any provision contained in the Companies Act, 1956 or in any Act repealed by that Act shall be read as references to the corresponding provision, if any, contained in this Act.

Rules for Chapter XXI

Companies (Authorised to Registered) Rules, 2014

In exercise of the powers conferred by sub section (1) of section 164, sub section (1) of section 466, section 367, and section 374 read with sub-section (1) and sub-section (2) of section 469 of the Companies Act, 2013 (18 of 2013) and in supersession of Companies (Central Government's) General Rules and Forms, 1956 prescribed under the Companies Act, 1956 (1 of 1956) in so far as they relate to the matters covered under these rules, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely: -

1. Short title and commencement

(1) These rules may be called the Companies (Authorised to Registered) Rules, 2014.

(2) They shall come into force on the 1st day of April, 2014.

2. Definitions (1) In these rules, unless the context otherwise requires,-

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "Schedule" means the schedule annexed to these Rules;

(c) 'fees' means the fees as specified in the Companies (Registration Offices and Fees) Rules, 2014;

(d) "Form" or "e-form" means the form in the schedule to these rules which shall be used for the matter to which it relates;

(e) 'Regional Director' means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director;

(f) "Registrar(LLP)" means the Registrar dealing with the matters relations to Limited Liability Partnership.

(2) Words and expressions used in these rules but not defined and defined in the Act or in Companies (Specification of definitions details) Rules, 2014 shall have the meanings respectively assigned to them in the Act and said rules.

3. (1) For the purposes of sub-section (2) of section 366 of the Act, the provision of Chapter II relating to incorporation of company and matters incidental thereto shall be applicable *mutatis mutandis* for such registration:

Provided that there shall be seven or more members for the purposes of registration of a company under this sub-rule.

(2) A company after obtaining availability of name in terms of the provisions of section 4 of the Act, shall attach the required documents and information to the Registrar along with **Form No. URC. 1** in the following manner, namely:-

(a) **For registration as a company limited by shares:**

(i) A list showing the names, addresses, and occupations of all persons named therein as members with details of shares held by them respectively, showing separately shares allotted for consideration in cash and for consideration other than cash along-with the source of consideration) and distinguishing, in cases where the shares are numbered, each share by its number ,who on a day, not being more

than six clear days before the day of seeking registration, were partners of the Limited Liability Partnership;

(ii) a list showing the particulars of persons proposed as the first directors of the company, their names, including surnames or family names, the DIN , passport number(if any) with expiry date, residential addresses and their interests in other firms or bodies corporate along with their consent to act as directors of the company;

(iii) an affidavit from each of the persons proposed as the first directors, that he is not disqualified to be a director under sub section (1) of section 164 and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

(iv) a list containing the names and addresses of the Partners of the Limited Liability Partnership;

(v) a copy of the Act of Parliament or other Indian law, deed of partnership, bye laws or other instrument constituting or regulating the company and duly verified in the manner provided in sub-rule(4)

(vi) a statement specifying the following particulars:—

(i) the nominal share capital of the company and the number of shares into which it is divided;

(ii) the number of shares taken and the amount paid on each share;

(iii) the name of the company, with the addition of the word "Limited" or "Private Limited" as the case may require, as the last word or words thereof;

(vii) written consent or No Objection Certificate from all the secured creditors of the applicant;

(viii) written consent from the majority of members whether present in person or by proxy at a general meeting agreeing for registration under this part.

(b) **For registration as a company limited by guarantee or as an unlimited company;**

(i) a list showing the names, addresses and occupations of all persons, who on a day, not being more than six clear days before the day of seeking registration, were members of the company with proof of membership;

(ii) a list showing the particulars of persons proposed as the first directors of the company, their names, including surnames or family names, the DIN, passport number(if any) with expiry date, residential addresses and their interests in other firms or bodies corporate along with their consent to act as directors of the company;

(iii) an affidavit from each of the first directors, that he is not disqualified to be a director under sub section (1) of section 164 and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

(iv) a list containing the names and addresses of the Partners of the Limited Liability Partnership;

(v) a copy of the Act of Parliament or other Indian law, bye-laws or other instrument constituting or regulating the company duly verified in the manner provided in rule (4);

(vi) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount guarantee.

(vii) Written consent or No Objection Certificate from all the secured creditors of the applicant.

(viii) Written consent from the majority of members whether present in person or by proxy at a general meeting agreeing for registration under this part.

(3) An affidavit, duly notarised, from all the members or partners providing that in the event of registration as a company under Part I of Chapter XXI of the Act, necessary documents or papers shall be submitted to the registering or other authority with which the company was earlier registered, for its dissolution as Limited Liability Partnership.

(4) The list of members and directors and any other particulars relating to the company which are required to be delivered to the Registrar shall be duly verified by the declaration of any two or more proposed directors , or two or more designated partners of the Limited Liability Partnership

4. Obligation of companies seeking registration to make publication.- (1) For the purpose of clause (b) of section 374 of the Act, every 'company' seeking registration under the provision of Part I of Chapter XXI shall publish an advertisement about registration under the said Part, seeking objections, if any within twenty one clear days from the date of publication of notice and the said advertisement shall be in **Form No. URC. 2,** which shall be published in a newspaper and in English and the in the principal vernacular language of the district in which Limited Liability Partnership is in existence and circulated in that district.

(2) A copy of the notice, as published and the copy of the notice served on Registrar (LLP) along with proof of service, shall be attached with **Form No. URC. 1**.

(3) The Registrar shall, after considering the application and the objections, if any, received by him within thirty days from the date of publication of advertisement, and after ensuring that the company has addressed the objections, suitably decide whether the registration should or should not be granted.

(4) If the Registrar is satisfied on the basis of documents and information filed by the applicants, decides that the applicant should be registered, he shall issue a certificate of incorporation in **Form No. INC.11.**

5. Other obligations of companies seeking registration.- For the purpose of clause (d) of section 374 of the Act,-

(i) where a Limited Liability Partnership has obtained a certificate of registration under section 367, an intimation to this effect shall be given, within fifteen days of such registration to the concerned Registrar (LLP) under which it was originally registered, along with necessary documents or papers for its dissolution as Limited Liability Partnership;

(ii) statement of accounts, prepared not later than fifteen days preceding the date of seeking registration and certified by the Auditor together with the Audited Financial Statements of the previous year, wherever applicable shall be attached with **Form No. URC. 1**

Provided that if the assets of the existing company during the immediately preceding three years are revalued for the purpose of vesting of its assets with the company to be incorporated under this Act, the surplus arising out of such revaluation shall not be deemed to have been credited to the capital account or current account of partners.

(iv) notice shall be given to the concerned Registrar (LLP) under which it was originally registered and shall require that objections, if any to be made by such concerned

Registrar of Companies (LLP) to the Registrar, shall be made within a period of twenty-one days from the date of such notice, failing which it shall be presumed that they have no objection and the notice shall disclose the purpose and substance of matters in relation to objections.

(iv) in case of the registration of Limited Liability Partnership into a company under these rules, a declaration by the said Limited Liability Partnership that it has filed all documents which are required to be filed under the Liability Partnership Act with the Registrar (LLP) and the declaration shall be attached with **Form No. URC. 1;**

(v) a statement of proceedings, if any, by or against the Limited Liability Partnership which are pending in any court or any other Authority shall be attached with **Form No. URC.**

CHAPTER XXII

COMPANIES INCORPORATED OUTSIDE INDIA

379. Application of Act to foreign companies.

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

380. Documents, etc., to be delivered to Registrar by foreign companies.

(*1*) Every foreign company shall, within thirty days of the establishment of its place of business in India, deliver to the Registrar for registration—

(*a*) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English language;

(*b*) the full address of the registered or principal office of the company;

(*c*) a list of the directors and secretary of the company containing such particulars as may be prescribed;

(*d*) the name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;

(*e*) the full address of the office of the company in India which is deemed to be its principal place of business in India;

(*f*) particulars of opening and closing of a place of business in India on earlier occasion or occasions;

(*g*) declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and

(*h*) any other information as may be prescribed.

(*2*) Every foreign company existing at the commencement of this Act shall, if it has not delivered to the Registrar before such commencement, the documents and particulars specified in sub-section (*1*) of section 592 of the Companies Act, 1956, continue to be subject to the obligation to deliver those documents and particulars in accordance with that Act.

(*3*) Where any alteration is made or occurs in the documents delivered to the Registrar under this section, the foreign company shall, within thirty days of such alteration, deliver to the Registrar for registration, a return containing the particulars of the alteration in the prescribed form.

381. Accounts of foreign company.

(*1*) Every foreign company shall, in every calendar year,—

(*a*) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having annexed or attached thereto such documents as may be prescribed; and

(*b*) deliver a copy of those documents to the Registrar:

Provided that the Central Government may, by notification, direct that, in the case of any foreign company or class of foreign companies, the requirements of clause (*a*) shall not apply, or shall apply subject to such exceptions and modifications as may be specified in that notification.

(*2*) If any such document as is mentioned in sub-section (*1*) is not in the English language, there shall be annexed to it a certified translation thereof in the English language.

(*3*) Every foreign company shall send to the Registrar along with the documents required to be delivered to him under sub-section (*1*), a copy of a list in the prescribed form of all places of business established by the company in India as at the date with reference to which the balance sheet referred to in sub-section (*1*) is made out.

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

Every foreign company shall—

(*a*) conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate;

(*b*) cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, billheads and letter paper, and in all notices, and other official publications of the company; and

(*c*) if the liability of the members of the company is limited, cause notice of that fact—

(*i*) to be stated in every such prospectus issued and in all business letters, bill-heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and

(*ii*) to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situate.

383. Service on foreign company.

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

384. Debentures, annual return, registration of charges, books of account and their inspection.

(*1*) The provisions of section 71 shall apply *mutatis mutandis* to a foreign company.

(*2*) The provisions of section 92 shall, subject to such exceptions, modifications and adaptations as may be made therein by rules made under this Act, apply to a foreign company as they apply to a company incorporated in India.

(*3*) The provisions of section 128 shall apply to a foreign company to the extent of requiring it to keep at its principal place of business in India, the books of account referred to in that section, with respect to monies received and spent, sales and purchases made, and assets and liabilities, in the course of or in relation to its business in India.

(*4*) The provisions of Chapter VI shall apply *mutatis mutandis* to charges on properties which are created or acquired by any foreign company.

(*5*) The provisions of Chapter XIV shall apply *mutatis mutandis* to the Indian business of a foreign company as they apply to a company incorporated in India.

385. Fee for registration of documents.

There shall be paid to the Registrar for registering any document required by the provisions of this Chapter to be registered by him, such fee, as may be prescribed.

386. Interpretation.

For the purposes of the foregoing provisions of this Chapter,—

(*a*) the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation;

(*b*) the expression "director", in relation to a foreign company, includes any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act; and

(*c*) the expression "place of business" includes a share transfer or registration office.

387. Dating of prospectus and particulars to be contained therein.

(*1*) No person shall issue, circulate or distribute in India any prospectus offering to subscribe for securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless the prospectus is dated and signed, and—

(*a*) contains particulars with respect to the following matters, namely:—

(*i*) the instrument constituting or defining the constitution of the company;

(*ii*) the enactments or provisions by or under which the incorporation of the company was effected;

(*iii*) address in India where the said instrument, enactments or provisions, or copies thereof, and if the same are not in the English language, a certified translation thereof in the English language can be inspected;

(*iv*) the date on which and the country in which the company would be or was incorporated; and

(*v*) whether the company has established a place of business in India and, if so, the address of its principal office in India; and

(*b*) states the matters specified under section 26:

Provided that sub-clauses (*i*), (*ii*) and (*iii*) of clause (*a*) of this sub-section shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

(*2*) Any condition requiring or binding an applicant for securities to waive compliance with any requirement imposed by virtue of sub-section (*1*), or purporting to impute him with notice of any contract, documents or matter not specifically referred to in the prospectus, shall be void.

(*3*) No person shall issue to any person in India a form of application for securities of such a company or intended company as is mentioned in sub-section (*1*), unless the form is issued with a prospectus which complies with the provisions of this Chapter and such issue does not contravene the provisions of section 388:

Provided that this sub-section shall not apply if it is shown that the form of application was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to securities.

(*4*) This section —

(*a*) shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to securities of the company, whether an applicant for securities will or will not have the right to renounce in favour of other persons; and

(*b*) except in so far as it requires a prospectus to be dated, to the issue of a prospectus relating to securities which are or are to be in all respects uniform with securities previously issued and for the time being dealt in or quoted on a recognized stock exchange, but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(*5*) Nothing in this section shall limit or diminish any liability which any person may incur under any law for the time being in force in India or under this Act apart from this section.

388. Provisions as to expert's consent and allotment.

(*1*) No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not been established, or when formed will or will not establish, a place of business in India,—

(*a*) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included, or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or

(*b*) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions of sections 33 and 40, so far as applicable.

(*2*) For the purposes of this section, a statement shall be deemed to be included in a prospectus, if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

389. Registration of prospectus.

No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish,

a place of business in India, unless before the issue, circulation or distribution of the prospectus in India, a copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed.

390. Offer of Indian Depository Receipts.

Notwithstanding anything contained in any other law for the time being in force, the Central Government may make rules applicable for—

(*a*) the offer of Indian Depository Receipts;

(*b*) the requirement of disclosures in prospectus or letter of offer issued in connection with Indian Depository Receipts;

(*c*) the manner in which the Indian Depository Receipts shall be dealt with in a depository mode and by custodian and underwriters; and

(*d*) the manner of sale, transfer or transmission of Indian Depository Receipts, by a company incorporated or to be incorporated outside India, whether the company has or has not established, or will or will not establish, any place of business in India.

391. Application of sections 34 to 36 and Chapter XX.

(*1*) The provisions of sections 34 to 36 (both inclusive) shall apply to—

(*i*) the issue of a prospectus by a company incorporated outside India under section 389 as they apply to prospectus issued by an Indian company;

(*ii*) the issue of Indian Depository Receipts by a foreign company.

(*2*) The provisions of Chapter XX shall apply *mutatis mutandis* for closure of the place of business of a foreign company in India as if it were a company incorporated in India.

392. Punishment for contravention.

Without prejudice to the provisions of section 391, if a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and in the case of a continuing offence, with an additional fine which may extend to fifty thousand rupees for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees, or with both.

393. Company's failure to comply with provisions of this Chapter not to affect validity of contracts, etc.

Any failure by a company to comply with the provisions of this Chapter shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof, but the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until the company has complied with the provisions of this Act applicable to it.

Rules for Chapter XXII

Companies (Registration of Foreign Companies) Rules, 2014

In exercise of the powers conferred under clause (c) and clause (h) of sub-section (1) and sub-section (3) of section 380, clause (a) of sub-section (1) and sub-section (3) of section 381, section 385, clause (a) of section 386, section 389 and section 390 read with section 469 of the Companies Act, 2013, and in supersession of the Companies (Central Government's) General Rules and Forms, 1956 or any other rules prescribed under the Companies Act, 1956 (1 of 1956) on matters covered under these rules, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:-

1. Short title and commencement. - (1) These rules may be called the Companies (Registration of Foreign Companies) Rules, 2014.

(2) They shall come into force on the 1st day of April, 2014.

2. **Definitions.** (1) In these rules, unless the context otherwise requires,-

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "Annexure" means the Annexure enclosed to these rules;

(c) For the purposes of clause (42) of section 2 of the Act, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to -

(i) business to business and business to consumer transactions, data interchange and other digital supply transactions;

(ii) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;

(iii) financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;

(iv) online services such as telemarketing, telecommuting, telemedicine, education and information research; and

(v) all related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise;

(d) "fees" means the fees as specified in the Companies (Registration Offices and Fees) Rules, 2014;

(e) "Form" or "e-Form" means a form set forth in Annexure to these rules which shall be used for the matter to which it relates;

(f) "Schedule" means the Schedule to the Act;

(g) "section" means section of the Act.

(2) The words and expressions used in these rules but not defined and defined in the Act or in the Companies (Specification of definitions details) Rules, 2014 shall have the meanings respectively assigned to them in the Act or in the said rules.

3. Particulars relating to directors and Secretary to be furnished to the Registrar by foreign Companies.- (1) Every foreign company shall, within thirty days of establishment of its place of business in India, in addition to the particulars specified in sub-section (1) of section 380 of the Act, also deliver to the Registrar for registration, a list of directors and Secretary of such company.

(2) The list of directors and secretary or equivalent (by whatever name called) of the foreign company shall contain the following particulars, for each of the persons included in such list, namely:-
(a) personal name and surname in full;
(b) any former name or names and surname or surnames in full;
(c) father's name or mother's name and spouse's name;
(d) date of birth;
(e) residential address;
(f) nationality;
(g) if the present nationality is not the nationality of origin, his nationality of origin;
(h) passport Number, date of issue and country of issue; (if a person holds more than one passport then details of all passports to be given)
(i) income-tax permanent account number (PAN) , if applicable;
(j) occupation, if any ;
(k) whether directorship in any other Indian company, (Director Identification Number (DIN), Name and Corporate Identity Number (CIN) of the company in case of holding directorship);
(l) other directorship or directorships held by him;
(m) Membership Number (for Secretary only); and
(n) e-mail ID.

(3) A foreign company shall, within a period of thirty days of the establishment of its place of business in India, file with the registrar Form **FC-1** with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and with the documents required to be delivered for registration by a foreign company in accordance with the provisions of sub-section (1) of section 380 and the application shall also be supported with an attested copy of approval from the Reserve Bank of India under Foreign Exchange Management Act or Regulations, and also from other regulators, if any, approval is required by such foreign company to establish a place of business in India or a declaration from the authorised representative of such foreign company that no such approval is required.

(4) Where any alteration is made or occurs in the document delivered to the Registrar for registration under sub-section (1) of section 380, the foreign company shall file with the Registrar, a return in Form **FC-2** along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 containing the particulars of the alteration, within a period of thirty days from the date on which the alteration was made or occurred.

4. Financial Statement of foreign company.- (1) Every foreign company shall prepare financial statement of its Indian business operations in accordance with Schedule III or as near thereto as may be possible for each financial year including-
(i) documents required to be annexed thereto in accordance with the provisions of Chapter IX of the Act i.e. Accounts of Companies ;
(ii) documents relating to copies of latest consolidated financial statements of the parent foreign company , as submitted by it to the prescribed authority in the country of its incorporation under the provisions of the law for the time being in force in that country:

Provided that where such documents are not in English language, there shall be annexed to it a certified translation thereof in the English language:

Provided further that where the Central Government has exempted or specified different documents for any foreign company or a class of foreign companies, then documents as specified shall be submitted;

(iii) Such other documents as may be required to be annexed or attached in accordance with sub-rule (2).

(2) Every foreign company shall, along with the financial statement required to be filed with the Registrar, attach thereto the following documents; namely:-

(a) Statement of related party transaction, which shall include-

(i) name of the person in India which shall be deemed to be the related party within the meaning of clause (76) of section 2 of the Act of the foreign company or of any subsidiary or holding company of such foreign company or of any firm in which such foreign company or its subsidiary or holding company is a partner;

(ii) nature of such relationship;

(iii) description and nature of transaction;

(iv) amount of such transaction during the year with opening ,closing, highest and lowest balance during the year and provisions made (if any) in respect of such transactions;

(v) reason of such transaction;

(vi) material effect of such transaction on both the parties;

(vii) amount written off or written back in respect of dues from or to the related parties;

(viii) a declaration that such transactions were carried out at arms length basis; and

(ix) any other details of the transaction necessary to understand the financial impact;

(b) Statement of repatriation of profits which shall include-

(i) amount of profits repatriated during the year;

(ii) recipients of the repatriation;

(iii) form of repatriation;

(iv) dates of repatriation;

(v) details if repatriation made to a jurisdiction other than the residence of the beneficiary;

(vi) mode of repatriation; and

(vii) approval of the Reserve Bank of India or any other authority, if any.

(c) Statement of transfer of funds (including dividends if any) which shall, in relation of any fund transfer between place of business of foreign company in India and any other related party of the foreign company outside India including its holding, subsidiary and associate company, include-

(i) date of such transfer;

(ii) amount of fund transferred or received;

(iii) mode of receipt or transfer of fund;

(iv) purpose of such receipt or transfer; and

(v) approval of Reserve Bank of India or any other authority, if any.

(3) The documents referred to in this rule shall be delivered to the Registrar within a period of six months of the close of the financial year of the foreign company to which the documents relate:

Provided that the Registrar may, for any special reason, and on application made in writing by the foreign company concerned, extend the said period by a period not exceeding three months.

5. Audit of accounts of foreign company.- (1) Every foreign company shall get its accounts, pertaining to the Indian business operations prepared in accordance with the requirements of clause (a) of sub-section (1) of section 381 and rule 4, audited by a practicing Chartered Accountant in India or a firm or limited liability partnership of practicing chartered accountants.

Explanation.- For the purposes of this sub-rule, the expressions "Chartered Accountant", "Firm" and limited liability partnership shall have the meanings respectively assigned to them under the Act and Limited Liability Partnership Act, 2008 (6 of 2009) respectively.

(2) The provisions of Chapter X i.e. Audit and Auditors and rules made there under, as far as applicable, shall apply, *mutatis mutandis*, to the foreign company.

6. List of places of business of foreign company.- Every foreign company shall file with the Registrar, along with the financial statement, in Form **FC.3** with such fee as provided under Companies (Registration Offices and Fees) Rules, 2014 a list of all the places of business established by the foreign company in India as on the date of balance sheet.

7. Annual Return.- Every foreign company shall prepare and file, within a period of sixty days from the last day of its financial year, to the Registrar annual return in Form **FC.4** along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 containing the particulars as they stood on the close of the financial year.

8. Office where documents to be delivered and fee for registration of documents.

(1) Any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi, and references to the Registrar in Chapter XXII of the Act i.e. Companies Incorporated Outside India and these rules shall be construed accordingly.

(2) The fee to be paid to the Registrar for registering any document relating to a foreign company shall be such as provided in the Companies (Registration Offices and Fees) Rules, 2014.

(3) If any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in India.

9. Certification.- A copy of any charter, statutes, memorandum and articles, or other instrument constituting or defining the constitution of a Foreign company shall be duly certified to be a true copy in the manner given below –

(1) If the company is incorporated in a country outside the Commonwealth-

(a) the copy aforesaid shall be certified as a true copy by-

(i) an official of the Government to whose custody the original is situated; or

(ii) a Notary (Public) of such Country; or

(iii) an officer of the company.

(b) The signature or seal of the official referred to in sub-clause (i) of clause (a) or the certificate of the Notary (Public) referred to in sub-clause (ii) of clause (a) shall be authenticated by a diplomatic or consular officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (XL of 1948), or where there is no such officer, by any of the officials mentioned in section 6 of the Commissioners of Oath Act, 1889 (52 and 53 Vic. C. 10), or in any relevant Act for the said purpose.

(c) The certificate of the officer of the company referred to in sub-clause (iii) of clause (a) shall be signed before a person having authority to administer an oath as provided under section 3 of the Diplomatic and Consular Officers (Oath and Fees) Act, 1948 (XL of 1948), or as the case may be, by section 3 of the Commissioners of Oath Act, 1889 (52 and 53 Vic, C. 10) and the status of the person administering the oath in the latter case being authenticated by any official specified in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vic. C. 10) or in any relevant Act for the said purpose.

(2) If the company is incorporated in any part of the Commonwealth, the copy of the document shall be certified as a true copy by-

(a) an official of the Government to whose custody the original of the document is committed; or

(b) a Notary (Public) in that part of the Commonwealth; or

(c) an officer of the company, on oath before a person having authority to administer an oath in that part of the Commonwealth.

(3) Any altered document delivered to the Registrar should also be duly certified in the manner mentioned above.

(4) If the Company is incorporated in a country falling outside the Commonwealth, but a party to the Hague Apostille Convention, 1961-

(a) the copy of the documents shall be certified as a true copy by an official of the Government to whose custody the original is committed and be duly apostillised in accordance with Hague Convention;

(b) a list of the directors and the secretary of the Company, if any, the name and address of persons resident in India, authorized to accept notice on behalf of the Company shall be duly notarized and be apostillised in the Country of their origin in accordance with Hague Convention;

(c) the signatures and address on the Memorandum of Association and proof of identity, where required, of foreign nationals seeking to register a company in India shall be notarized before the notary of the country of their origin and be duly apostillised in accordance with the said Hague Convention.

10. Authentication of translated documents.- (1) All the documents required to be filed with the Registrar by the foreign companies shall be in English language and where any such document is not in English language, there shall be attached a translation thereof in English language duly certified to be correct in the manner given in these rules.

(2) Where any such translation is made outside India, it shall be authenticated by the signature and the seal, if any, of-

(a) the official having custody of the original; or

(b) a Notary (Public) of the country (or part of the country) where the company is incorporated:

Provided that where the company is incorporated in a country outside the Commonwealth, the signature or seal of the person so certifying shall be authenticated by

a diplomatic or consular officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948, or, where there is no such officer, by any of the officials mentioned in section 6, of the Commissioners of Oaths Act, 1889 (52 and 53 Vic C 10), or in any relevant Act for the said purpose.

(3) Where such translation is made within India, it shall be authenticated by-
(a) an advocate, attorney or pleader entitled to appear before any High Court; or
(b) an affidavit, of a competent person having, in the opinion of the Registrar, an adequate knowledge of the language of the original and of English.

11. Documents to be annexed to prospectus.- The following documents shall be annexed to the prospectus, namely:-
(a) any consent to the issue of the prospectus required from any person as an expert;
(b) a copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;
(c) a copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding two years;
(d) a copy of underwriting agreement; and
(e) a copy of power of attorney, if prospectus is signed through duly authorized agent of directors.

12. Action for improper use or description as foreign company.- If any person or persons trade or carry on business in any manner under any name or title or description as a foreign company registered under the Act or the rules made thereunder, that person or each of those persons shall, unless duly registered as foreign company under the Act and rules made thereunder, shall be liable for investigation under section 210 of the Act and action consequent upon that investigation shall be taken against that person.

13. Issue of Indian Depository Receipts (IDRs).- (1) For the purposes of section 390, no company incorporated or to be incorporated outside India, whether the company has or has not established, or may or may not establish, any place of business in India (hereinafter in this rule called 'issuing company') shall make an issue of Indian Depository Receipts (IDRs) unless such company complies with the conditions mentioned under this rule, in addition to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and any directions issued by the Reserve Bank of India.

Explanation.- For the purposes of this rule, the term "Indian Depository Receipt" (hereinafter referred to as 'IDR') means any instrument in the form of a depository receipt created by a Domestic Depository in India and authorized by a company incorporated outside India making an issue of such depository receipts.

(2) The issuing company shall not issue IDRs unless-
(a) its pre-issue paid-up capital and free reserves are at least US$ 50 million and it has a minimum average market capitalization (during the last three years) in its parent country of at least US$ 100 million;
(b) it has been continuously trading on a stock exchange in its parent or home country (the country of incorporation of such company) for at least three immediately preceding years;

(c) it has a track record of distributable profits in terms of section 123 of the Act, for at least three out of immediately preceding five years;

(d) It fulfills such other eligibility criteria as may be laid down by the Securities and Exchange Board of India from time to time in this behalf.

(3) The issuing company shall follow the following procedure for making an issue of IDRs:

(a) the issuing company shall, where required, obtain the necessary approvals or exemptions from the appropriate authorities from the country of its incorporation under the relevant laws relating to issue of capital and IDRs.

(b) issuing company shall obtain prior written approval from the Securities and Exchange Board of India on an application made in this behalf for issue of IDRs along with the issue size.

(c) an application under clause (b) shall be made to the Securities and Exchange Board of India (along with draft prospectus) at least ninety days prior to the opening date of the IDRs issue, in such form , along with such fee and furnishing such information as may be specified by the Securities and Exchange Board of India from time to time:

Provided that the issuing company shall also file with the Securities and Exchange Board of India, through a Merchant Banker, a due diligence report along with the application under clause (b) in the form specified by the Securities and Exchange Board of India.

(d) the Securities and Exchange Board of India may, within a period of thirty days of receipt of an application under clause (c), call for such further information, and explanations, as it may deem necessary, for disposal of such application and shall dispose the application within a period of thirty days of receipt of further information or explanation:

Provided that if within a period of sixty days from the date of submission of application or draft prospectus, the Securities and Exchange Board of India specifies any changes to be made in the draft prospectus, the prospectus shall not be filed with the Securities and Exchange Board of India or Registrar of Companies unless such changes have been incorporated therein.

(e) the issuing company shall on approval being granted by the Securities and Exchange Board of India to an application under clause (b), pay to the Securities and Exchange Board of India an issue fee as may be prescribed from time to time by the Securities and Exchange Board of India.

(f) the issuing company shall file a prospectus, certified by two authorized signatories of the issuing company, one of whom shall be a whole-time director and other the Chief Financial Officer, stating the particulars of the resolution of the Board by which it was approved with the Securities and Exchange Board of India and Registrar of Companies, New Delhi before such issue:

Provided that at the time of filing of said prospectus with the Registrar of Companies, New Delhi, a copy of approval granted by the Securities and Exchange Board of India and the statement of fees paid by the Issuing Company to the Securities and Exchange Board of India shall also be attached.

(g) the prospectus to be filed with the Securities and Exchange Board of India and the Registrar of Companies, New Delhi shall contain the particulars as prescribed in sub-rule (8) and shall be signed by all the whole-time directors of the issuing company, and the Chief Financial Officer.

(h) the issuing company shall appoint an overseas custodian bank, a Domestic Depository and a Merchant Banker for the purpose of issue of IDRs.

(i) the issuing company may appoint underwriters registered with the Securities and Exchange Board of India to underwrite the issue of IDRs.

(j) the issuing company shall deliver the underlying equity shares or cause them to be delivered to an Overseas Custodian Bank and the said bank shall authorize the domestic depository to issue IDRs.

(k) the issuing company shall obtain in-principle listing permission from one or more stock exchanges having nationwide trading terminals in India.

Explanation- For the purposes of this rule,-

(i) "Domestic Depository" means custodian of securities registered with the Securities and Exchange Board of India and authorized by the issuing company to issue IDRs.

(ii) "Merchant Banker" means a Merchant Banker as defined in sub-regulation (cb) of regulation 2 of the Securities and Exchange Board (Merchant Bankers) Regulations, 1992.

(iii) "Overseas Custodian Bank" means a banking company which is established in a country outside India and which acts as custodian for the equity shares of Issuing Company, against which IDRs are proposed to be issued by having a custodial arrangement or agreement with the Domestic Depository or by establishing a place of business in India.

(4) The Merchant Banker to the issue of IDRs shall deliver for registration the following documents or information to the Securities and Exchange Board of India and Registrar of Companies at New Delhi, namely:-

(a) instrument constituting or defining the constitution of the issuing company;

(b) the enactments or provisions having the force of law by or under which the incorporation of the Issuing company was effected, a copy of such provisions attested by an officer of the company be annexed;

(c) if the issuing company has established place of business in India, address of its principal office in India;

(d) if the issuing company does not establish a principal place of business in India, an address in India where the said instrument, enactments or provision or copies thereof are available for public inspection, and if these are not in English, a translation thereof certified by a key managerial personnel of the Issuing company shall be kept for public inspection;

(e) a certified copy of the certificate of incorporation of the issuing company in the country in which it is incorporated;

(f) the copies of the agreements entered into between the issuing company, the overseas custodian bank, the Domestic Depository, which shall inter alia specify the rights to be passed on to the IDR holders;

(g) if any document or any portion thereof required to be filed with the Securities and Exchange Board of India or the Registrar of Companies is not in English language, a translation of that document or portion thereof in English, certified by a key managerial personnel of the company to be correct and attested by an authorized officer of the Embassy or Consulate of that country in India, shall be attached to each copy of the document.

(5) (a) No application form for the securities of the issuing company shall be issued unless the form is accompanied by a memorandum containing the salient features of prospectus in the specified form.

(b) An application form can be issued without the memorandum as specified in clause (a), if it is issued in connection with an invitation to enter into an underwriting agreement with respect to the IDRs.

(c) The prospectus for subscription of IDRs of the Issuing company which includes a statement purporting to be made by an expert shall not be circulated, issued or distributed in India or abroad unless a statement that the expert has given his written consent to the issue thereof and has not withdrawn such consent before the delivery of a copy of the prospectus to the Securities and Exchange Board of India and the Registrar of Companies, New Delhi, appears on the prospectus.

(d) The provisions of the Act shall apply for all liabilities for mis-statements in prospectus or punishment for fraudulently inducing persons to invest money in IDRs.

(e) The person(s) responsible for issue of the prospectus shall not incur any liability by reason of any non-compliance with or contravention of any provision of this rule, if-

(i) as regards any matter not disclosed, he proves that he had no knowledge thereof; or

(ii) the contravention arose in respect of such matters which in the opinion of the Central Government or the Securities and Exchange Board of India were not material.

(6) (a) A holder of IDRs may transfer the IDRs, may ask the Domestic Depository to redeem them or any person may seek reissuance of IDRs by conversion of underlying equity shares, subject to the provisions of the Foreign Exchange Management Act, 1999, the Securities and Exchange Board of India Act, 1992, or the rules, regulations or guidelines issued under these Acts, or any other law for the time being in force;

(b) In case of redemption, Domestic Depository shall request the Overseas Custodian Bank to get the corresponding underlying equity shares released in favour of the holder of IDRs for being sold directly on behalf of holder of IDRs, or being transferred in the books of Issuing company in the name of holder of IDRs and a copy of such request shall be sent to the issuing company for information.

(c) A holder of IDRs may, at any time, nominate a person to whom his IDRs shall vest in the event of his death and Form **FC-5** may be used for this purpose.

(7) (a) The repatriation of the proceeds of issue of IDRs shall be subject to laws for the time being in force relating to export of foreign exchange.

(b) The number of underlying equity shares offered in a financial year through IDR offerings shall not exceed twenty five per cent. of the post issue number of equity shares of the company.

(c) Notwithstanding the denomination of securities of an Issuing company, the IDRs issued by it shall be denominated in Indian Rupees.

(d) The IDRs issued under this Rule shall be listed on the recognized Stock Exchange(s) in India as specified in clause (k) of sub-rule (3) and such IDRs may be purchased, possessed and freely transferred by a person resident in India as defined in section 2(v) of the Foreign Exchange Management Act, 1999, subject to the provisions of the said Act:

Provided that the IDRs issued by an Issuing company may be purchased, possessed and transferred by a person other than a person resident in India if such Issuing company

obtains specific approval from Reserve Bank of India in this regard or complies with any policy or guidelines that may be issued by Reserve Bank of India on the subject matter;

(e) Every issuing company shall comply with such continuous disclosure requirements as may be specified by the Securities and Exchange Board of India in this regard.

(f) On the receipt of dividend or other corporate action on the IDRs as specified in the agreements between the Issuing company and the Domestic Depository, the Domestic Depository shall distribute them to the IDR holders in proportion to their holdings of IDRs.

(8) The prospectus or letter of offer shall, inter alia, contain the following particulars, namely:-

(a) General information-

(i) Name and address of the registered office of the company;

(ii) name and address of the Domestic Depository, the Overseas Custodian Bank with the address of its office in India, the Merchant Banker, the underwriter to the issue and any other intermediary which may be appointed in connection with the issue of IDRs;

(iii) names and addresses of Stock Exchanges where applications are made or proposed to be made for listing of the IDRs;

(iv) the provisions relating to punishment for fictitious applications;

(v) statement or declaration for refund of excess subscription;

(vi) declaration about issue of allotment letters or certificates or IDRs within the stipulated period;

(vii) date of opening of issue;

(viii) date of closing of issue;

(ix) date of earliest closing of the issue;

(x) declaration by the Merchant Banker with regard to adequacy of resources of underwriters to discharge their respective obligations, in case of being required to do so;

(xi) a statement by the Issuing company that all moneys received out of issue of IDRs shall be transferred to a separate domestic bank account, name and address of the bank and the nature and number of the account to which the amount shall be credited;

(xii) the details of proposed utilisation of the proceeds of the IDR issue.

(b) Capital Structure of the Company- The authorized, issued, subscribed and paid-up capital of the issuing company;

(c) Terms of the issue-

(i) rights of the IDR holders against the underlying securities;

(ii) details of availability of prospectus and forms, i.e., date, time, place etc;

(iii) amount and mode of payment seeking issue of IDRs; and

(iv) any special tax benefits for the Issuing company and holders of IDRs in India.

(d) Particulars of Issue-

(i) the objects of the issue;

(ii) the cost of the Project, if any; and

(iii) the means of financing the projects, if any including contribution by promoters.

(e) Company, Management and Project-

(i) the main objects, history and present business of the company;

(ii) the Promoters or parent group or owner group and their background:

Provided that in case there are no identifiable promoters, the names, addresses and other particulars as may be specified by the Securities and Exchange Board of India of all the persons who hold five percent. or more equity share capital of the company shall be disclosed;

(iii) the subsidiaries of the company, if any;

(iv) the particulars of the Management or Board (i.e. Name and complete address(es) of Directors, Manager, Managing Director or other principal officers of the company);

(v) the location of the project, if any;

(vi) the details of plant and machinery, infrastructure facilities, technology etc., where applicable;

(vii) the schedule of implementation of project and progress made so far, if applicable;

(viii) nature of product(s), consumer(s), industrial users;

(ix) the particulars of legal, financial and other defaults, if any;

(x) the risk factors to the issue as perceived; and

(xi) consent of the Merchant Bankers, Overseas Custodian Bank, the Domestic Depository and all other intermediaries associated with the issue of IDRs.

(xii) the information, as may be specified by the Securities and Exchange Board of India, in respect of listing, trading record or history of the Issuing company on all the stock exchanges, whether situated in its parent country or elsewhere.

(f) Report-

(i) Where the law of a country, in which the Issuing company is incorporated, requires annual statutory audit of the accounts of the Issuing company, a report by the statutory auditor of the Issuing company, in such form as may be specified by the Securities and Exchange Board of India on -

(A) the audited financial statements of the Issuing company in respect of three financial years immediately preceding the date of prospectus;

(B) the interim audited financial statements in respect of the period ending on a date which is less than 180 days prior to the date of opening of the issue, if the gap between the ending date of the latest audited financial statements disclosed under clause (A) and the date of the opening of the issue is more than 180 days:

Provided that if the gap between such date of latest audited financial statements and the date of opening of issue is 180 days or less, the requirement under item (B) shall be deemed to be complied with, if a statement, as may be specified by the Securities and Exchange Board of India, in respect of material changes in the financial position of Issuing company for such gap is disclosed in the Prospectus:

Provided further that in case of an Issuing company which is a foreign bank incorporated outside India and which is regulated by a member of the Bank for International Settlements or a member of the International Organization of Securities Commissions which is a signatory to a Multilateral Memorandum of Understanding, the requirement under this paragraph, in respect of period beginning with last date of period for which the latest audited financial statements are made and the date of opening of the issue shall be satisfied, if the relevant financial statements are based on limited review report of such statutory auditor;

(ii) Where the law of the country, in which the Issuing company is incorporated, does not require annual statutory audit of the accounts of the Issuing company, a report, in such

form as may be specified by the Securities And Exchange Board of India, certified by a Chartered Accountant in practice within the terms and meaning of the Chartered Accountants Act, 1949 on -

(A) the financial statements of the Issuing company, in particular on the profits and losses for each of the three financial years immediately preceding the date of prospectus and upon the assets and liabilities of the Issuing company; and

(B) the interim financial statements in respect of the period ending on a date which is less than one hundred and eighty days prior to the date of opening of the issue have to be included in report, if the gap between the ending date of the latest financial statements disclosed under item (A) and the date of the opening of the issue is more than one hundred and eighty days:

Provided that if the gap between such date of latest audited financial statements and the date of opening of issue is one hundred and eighty days or less, the requirement under item (B) shall be deemed to be complied with if a statement, as may be specified by the Securities And Exchange Board of India, in respect of changes in the financial position of Issuing company for such gap is disclosed in the Prospectus.

(iii) the gap between date of opening of issue and date of reports specified under sub-clauses (i) and (ii) shall not exceed one hundred and twenty days;

(iv) If the proceeds of the IDR issue are used for investing in other body(ies) corporate, then following details of such body(ies) corporate shall be given-

(A) the Name and address(es) of the bodies corporate;

(B) the reports stated in sub-clauses (i) and (ii), as the case may be, in respect of such body (ies) corporate also."

(g) Other Information-

(i) the Minimum subscription for the issue;

(ii) the fees and expenses payable to the intermediaries involved in the issue of IDRs;

(iii) the declaration with regard to compliance with the Foreign Exchange Management Act, 1999.

(h) Inspection of Documents-

The Place at which inspection of the offer documents, the financial statements and auditor's report thereof shall be allowed during the normal business hours; and

(i) any other information as specified by the Securities and Exchange Board of India or the Income-tax Authorities or the Reserve Bank of India or other regulatory authorities from time to time.

CHAPTER XXIII

GOVERNMENT COMPANIES

394. Annual reports on Government companies.

(*1*) Where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that company to be—

(*a*) prepared within three months of its annual general meeting before which the comments given by the Comptroller and Auditor-General of India and the audit report is placed under the proviso to sub-section (*6*) of section 143; and

(*b*) as soon as may be after such preparation, laid before both Houses of Parliament together with a copy of the audit report and comments upon or supplement to the audit report, made by the Comptroller and Auditor-General of India.

(*2*) Where in addition to the Central Government, any State Government is also a member of a Government company, that State Government shall cause a copy of the annual report prepared under sub-section (*1*) to be laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments upon or supplement to the audit report referred to in sub-section (*1*).

395. Annual reports where one or more State Governments are members of companies.

(*1*) Where the Central Government is not a member of a Government company, every State Government which is a member of that company, or where only one State Government is a member of the company, that State Government shall cause an annual report on the working and affairs of the company to be—

(*a*) prepared within the time specified in sub-section (*1*) of section 394; and

(*b*) as soon as may be after such preparation, laid before the House or both Houses of the State Legislature together with a copy of the audit report and comments upon or supplement to the audit report referred to in sub-section (*1*) of that section.

(*2*) The provisions of this section and section 394 shall, so far as may be, apply to a Government company in liquidation as they apply to any other Government company.

CHAPTER XXIV

REGISTRATION OFFICES AND FEES

396. Registration offices.

(*1*) For the purposes of exercising such powers and discharging such functions as are conferred on the Central Government by or under this Act or under the rules made thereunder and for the purposes of registration of companies under this Act, the Central Government shall, by notification, establish such number of offices at such places as it thinks fit, specifying their jurisdiction.

(*2*) The Central Government may appoint such Registrars, Additional, Joint, Deputy and Assistant Registrars as it considers necessary for the registration of companies and discharge of various functions under this Act, and the powers and duties that may be exercisable by such officers shall be such as may be prescribed.

(*3*) The terms and conditions of service, including the salaries payable to persons appointed under sub-section (*2*), shall be such as may be prescribed.

(*4*) The Central Government may direct a seal or seals to be prepared for the authentication of documents required for, or connected with, the registration of companies.

397. Admissibility of certain documents as evidence.

Notwithstanding anything contained in any other law for the time being in force, any document reproducing or derived from returns and documents filed by a company with the Registrar on paper or in electronic form or stored on any electronic data storage device or computer readable media by the Registrar, and authenticated by the Registrar or any other officer empowered by the Central Government in such manner as may be prescribed, shall be deemed to be a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder without further proof or production of the original as evidence of any contents of the original or of any fact stated therein of which direct evidence is admissible.

398. Provisions relating to filing of applications, documents, inspection, etc., in electronic form.

(*1*) Notwithstanding anything to the contrary contained in this Act, and without prejudice to the provisions contained in section 6 of the Information Technology Act, 2000, the Central Government may make rules so as to require from such date as may be prescribed in the rules that—

(*a*) such applications, balance sheet, prospectus, return, declaration, memorandum, articles, particulars of charges, or any other particulars or document as may be required to be filed or delivered under this Act or the rules made thereunder, shall be filed in the electronic form and authenticated in such manner as may be prescribed;

(*b*) such document, notice, any communication or intimation, as may be required to be served or delivered under this Act, in the electronic form and authenticated in such manner as may be prescribed;

(*c*) such applications, balance sheet, prospectus, return, register, memorandum, articles, particulars of charges, or any other particulars or document and return filed under this Act or rules made thereunder shall be maintained by the Registrar in the electronic form and registered or authenticated, as the case may be, in such manner as may be prescribed;

(*d*) such inspection of the memorandum, articles, register, index, balance sheet, return or any other particulars or document maintained in the electronic form, as is otherwise available for inspection under this Act or the rules made thereunder, may be made by any person through the electronic form in such manner as may be prescribed;

(*e*) such fees, charges or other sums payable under this Act or the rules made thereunder shall be paid through the electronic form and in such manner as may be prescribed;

(*f*) the Registrar shall register change of registered office, alteration of memorandum or articles, prospectus, issue certificate of incorporation, register such document, issue such certificate, record the notice, receive such communication as may be required to be registered or issued or recorded or received, as the case may be, under this Act or the rules made thereunder or perform duties or discharge functions or exercise powers under this Act or the rules made thereunder or do any act which is by this Act directed to be performed or discharged or exercised or done by the Registrar in the electronic form in such manner as may be prescribed.

Explanation.— For the removal of doubts, it is hereby clarified that the rules made under this section shall not relate to imposition of fines or other pecuniary penalties or demand or payment of fees or contravention of any of the provisions of this Act or punishment therefor.

(*2*) The Central Government may, by notification, frame a scheme to carry out the provisions of sub-section (*1*) through the electronic form.

399. Inspection, production and evidence of documents kept by Registrar.

(*1*) Save as otherwise provided elsewhere in this Act, any person may—

(*a*) inspect by electronic means any documents kept by the Registrar in accordance with the rules made, being documents filed or registered by him in pursuance of this Act, or making a record of any fact required or authorised to be recorded or registered in pursuance of this Act, on payment for each inspection of such fees as may be prescribed;

(*b*) require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar, on payment in advance of such fees as may be prescribed:

Provided that the rights conferred by this sub-section shall be exercisable—

(*i*) in relation to documents delivered to the Registrar with a prospectus in pursuance of section 26, only during the fourteen days beginning with the date of publication of the prospectus; and at other times, only with the permission of the Central Government; and

(*ii*) in relation to documents so delivered in pursuance of clause (*b*) of subsection (*1*) of section 388, only during the fourteen days beginning with the date of the prospectus; and at other times, only with the permission of the Central Government.

(*2*) No process for compelling the production of any document kept by the Registrar shall issue from any court or the Tribunal except with the leave of that court or the Tribunal and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the court or the Tribunal.

(*3*) A copy of, or extract from, any document kept and registered at any of the offices for the registration of companies under this Act, certified to be a true copy by the Registrar

(whose official position it shall not be necessary to prove), shall, in all legal proceedings, be admissible in evidence as of equal validity with the original document.

400. Electronic form to be exclusive, alternative or in addition to physical form.
The Central Government may also provide in the rules made under section 398 and section 399 that the electronic form for the purposes specified in these sections shall be exclusive, or in the alternative or in addition to the physical form, therefor.

401. Provision of value added services through electronic form.
The Central Government may provide such value added services through the electronic form and levy such fee thereon as may be prescribed.

402. Application of provisions of Information Technology Act, 2000.
All the provisions of the Information Technology Act, 2000 relating to the electronic records, including the manner and format in which the electronic records shall be filed, in so far as they are not inconsistent with this Act, shall apply in relation to the records in electronic form specified under section 398.

403. Fee for filing, etc.
(*1*) Any document, required to be submitted, filed, registered or recorded, or any fact or information required or authorised to be registered under this Act, shall be submitted, filed, registered or recorded within the time specified in the relevant provision on payment of such fee as may be prescribed:

Provided that any document, fact or information may be submitted, filed, registered or recorded, after the time specified in relevant provision for such submission, filing, registering or recording, within a period of two hundred and seventy days from the date by which it should have been submitted, filed, registered or recorded, as the case may be, on payment of such additional fee as may be prescribed:

Provided further that any such document, fact or information may, without prejudice to any other legal action or liability under the Act, be also submitted, filed, registered or recorded, after the first time specified in first proviso on payment of fee and additional fee specified under this section.

(*2*) Where a company fails or commits any default to submit, file, register or record any document, fact or information under sub-section (*1*) before the expiry of the period specified in the first proviso to that sub-section with additional fee, the company and the officers of the company who are in default, shall, without prejudice to the liability for payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default.

404. Fees, etc., to be credited into public account.
All fees, charges and other sums received by any Registrar, Additional, Joint, Deputy or Assistant Registrar or any other officer of the Central Government in pursuance of any provision of this Act shall be paid into the public account of India in the Reserve Bank of India.

Rules for Chapter XXIV

Companies (Registration Offices and Fees) Rules, 2014

In exercise of the powers conferred by section 396, 398, 399, 403 and 404, read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013) and in supersession of Companies (Central Government's) General Rules and Forms, 1956, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely: -

1. Short title and commencement.-

(1) These rules may be called of the Companies (**Registration Offices and Fees**) Rules, 2014.

(2) They shall come into force on the 1st day of April, 2014.

2. Definitions.- (1) In these rules, unless the context otherwise requires,-

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "Annexure" means Annexure to these rules;

(c) "Certifying Authority" for the purpose of "Digital Signature Certificate" means a person who has been granted a licence to issue it under section 24 of the Information Technology Act, 2000 (21 of 2000).

(d) "Digital Signature" means digital signature as defined under clause (p) of sub-section (1) of section 2 of the Information Technology Act, 2000; (21 of 2000);

(e) "Digital Signature Certificate" means a Digital Signature Certificate as defined under clause (q) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000)

(f) "electronic record" means electronic record as defined under clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000; (21 of 2000);

(g) "electronic registry" means an electronic repository or storage system of the Central Government in which the information or documents are received, stored, protected and preserved in electronic form;

(h) "electronic mail" means message sent, received or forwarded in digital form using any electronic communication mechanism such that the message so sent, received or forwarded is storable and retrievable ;

(i) "Form" or "e-form" means a form set forth in Annexure to these rules which shall be used for the matter to which it relates;

(j) "Regional Director" means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director;

(k) "Registrar's Facilitation Office" means an office maintained by the Central Government or an agency authorised by it to facilitate e-filing of documents into the electronic registry and their inspection and viewing;

(l) "Straight Through Process" means the process in which an e-from is approved through system without manual interruption.

(2) Words and expressions used in these rules but not defined and defined in the Act and the Information Technology Act, 2000 (21 of 2000) or in Companies (Specification of definitions details) Rules, 2014 shall have the meanings respectively assigned to them in those Acts and the said rules.

3. Business activity.- Every company including foreign company which carries out its business through electronic mode, whether its main server is installed in India or outside India, which-

(i) undertakes business to business and business to consumer transactions, data interchange or other digital supply transactions;

(ii) offers to accept deposits or invites deposits or accepts deposits or subscriptions in securities, in India or from citizens of India;

(iii) undertakes financial settlements, web based marketing, advisory and transactional services, database services or products, supply chain management;

(iv) offers online services such as telemarketing, telecommuting, telemedicine, education and information research; or

(v) undertakes any other related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise, shall be deemed to have carried out business in India.

4. Registration offices.-

(1) The Central Government shall establish such number of offices at such places as it thinks fit, specifying their jurisdiction for the purpose of exercising such powers and discharge of such functions as are conferred on the Central Government by or under this Act or under the rules made thereunder and for the purposes of registration of companies under the Act.

(2) The office of the Registrar shall observe such normal working hours as may be approved by the Central Government and shall be open for the transaction of business with the public on all days except Saturday, Sunday and public holidays during working hours between 10.30 a.m. and 3.30 p.m.

(3) The offices other than the office of the Registrar shall observe such normal working hours as may be approved by the Central Government.

5. Powers and duties of Registrars.-

(1) The Registrars shall exercise such powers and discharge such duties as are conferred on them by the Act or the rules made thereunder or delegated to them by the Central Government, wherever the power or duty has been conferred upon the Central Government by the Act or the rules made there under.

(2) Whenever according to the Act, any function or duty is to be discharged by the Registrar, it shall, until the Central Government otherwise directs, be done by the Registrar , or in his absence, by such person as the Central Government may for the time being authorise:

Provided that in the event of the Central Government altering the constitution of the existing registry offices or any of them, any such function or duty shall be discharged by such officer and at such place, with reference to the local situation of the registered offices of the companies concerned, as the Central Government may appoint.

6. Seal of Registrar.- The Registrar shall have a seal and such seal shall bear the words "Registrar of Companies, _____(Place and State)".

7. Manner and conditions of filing.- Every application, financial statement, prospectus, return, declaration, memorandum, articles, particulars of charges, or any other particulars or document or any notice, or any communication or intimation required to be filed or

delivered or served under the Act and rules made there under, shall be filed or delivered or served in computer readable electronic form, in portable document format (pdf) or in such other format as has been specified in any rule or form in respect of such application or form or document or declaration to the Registrar through the portal maintained by the Central Government on its web-site or through any other website notified by the Central Government:

Provided that where the documents are required to be filed on Non-Judicial Stamp Paper, the company shall submit such documents in the physical form, in addition to their submission in electronic form, unless the Central Government, by an order, does not require submission in physical form and proof of delivery of documents submitted in physical form shall be scanned and form part of attachment to the e-form.

Provided further that if stamp duty on such documents is paid electronically through the portal maintained by the Central Government or through any other website notified by the Central Government, then, the company shall not be required to make physical submission of such documents, in addition to their submission in the electronic form:

Provided also that in respect of certain documents filed under the Act which are not covered for payment of stamp duty through the portal of the Central Government, and stamp duty payable on such documents in the respective State is equal to or less than one hundred rupees, the company shall scan such stamped documents complete in all respects and shall file electronically for evidencing by the Registrar and shall not be required to submit such documents, except those which are required to be filed for compounding of offences or adjudication of penalties or applications to Central Government or Regional Director in the physical form separately:

Provided also that unless otherwise stated in any law for the time being in force, the company shall retain such documents duly stamped in original permanently for the documents relating to incorporation and matters incidental thereto, changes in any of the clauses of the Memorandum and Articles of Association and in other cases for a minimum period of eight years from the date of filing of the documents and shall be required to produce the same as and when the same is required for inspection and verification by the competent authority under any law for the time being in force:

Provided also that any correspondences (physically or electronically) and documents to be filed by any person shall contain name, designation, address, membership number or Director Identification Number, as the case may be, of the person signing such document and make sure correctness thereof and in no case, correspondence, merely with signature and writing authorised signatory shall be acceptable**.**

Provided also that no request for recording any event based information or changes shall be accepted by the Registrar from such defaulting companies, unless they file their updated Balance Sheet and Profit and Loss Account and Annual Return with the Registrar of Companies except,-
(i) filing of order of Court or other authorities,
(ii) Balance Sheet and Profit and Loss Account,
(iii) Compounding application,

(iv) Form for transfer of money to Investor Education and Protection Fund,
(v) Application for removal of the Auditor and
(vi) GNL-1 for making company active.

8. Authentication of documents.-

(1) An electronic form shall be authenticated by authorised signatories using digital signature.
(2) Where there is any change in directors or secretaries, the form relating to appointment of such directors or secretaries has to be filed by an continuing director or the secretary of the company.
(3) The authorised signatory and the professional, if any, who certify e-form shall be responsible for the correctness of the contents of e-form and correctness of the enclosures attached with the electronic form.
(4) Every person authorised for authentication of e-forms, documents or applications etc., which are required to be filed or delivered under the Act or rules made there under, shall obtain a digital signature certificate from the Certifying Authority for the purpose of such authentication and such certificate shall not be valid unless it is of class II or Class III specification under the Information Technology Act, 2000 (21 of 2000).
(5) The electronic forms required to be filed under the Act or the rules thereunder shall be authenticated on behalf of the company by the Managing Director or Director or Secretary of the Company or other key managerial personnel.
(6) Scanned image of documents shall be of original signed documents relevant to the e-forms or forms and the scanned document image shall not be left blank without bearing the actual signature of authorised person.
(7) It shall be the sole responsibility of the person who is signing the form and professional who is certifying the form to ensure that all the required attachments relevant to the form have been attached completely and legibly as per provisions of the Act, and rules made thereunder to the forms or application or returns filed.
(8) The documents or form or application filed may contain a power of attorney issued to an Advocate or Chartered Accountant or Cost Accountant or Company Secretary who is in whole time practice and to any others person supported by Board resolution to make representation to the registering or approving authority failing which a Director or key managerial personnel can make representation before such authority.
(9) Where any instance of filing document, application or return etc, containing a false or misleading information or omission of material fact, requiring action under section 448 or section 449 is observed, the person shall be liable under section 448 and 449 of the Act.
(10) Without prejudice to any other liability, in case of certification of any form, document, application or return under the Act containing wrong or false or misleading information or omission of material fact or attachments by the person, the Digital Signature Certificate shall be de-activated by the Central Government till a final decision is taken in this regard.
(11) The Central Government shall set up and maintain for filing of electronic forms, documents and applications, and for viewing and inspection of documents in the electronic registry or for obtaining certified copies thereof-
(a) a website or portal to provide access to the electronic registry; and
(b) as many Registrar's Facilitation Offices as may be necessary and at such places and for such time as the Central Government may determine**.**

(12)[1] (a) The following e-forms filed by companies, other than one person companies and small companies, under sub-rule (1) of rule 9, shall be pre-certified by the Chartered Accountant or the Company Secretary or as the case may be the Cost Accountant, in whole-time practice, namely:-

INC-2I, INC-22, INC-28, PAS-3, SH-7, CHG-1, CHG-4, CHG-9, MGT-14, DIR-6, DIR-I2, MR-1, MR-2, MSC-I, MSC-3, MSC-4, GNL-3, ADT-1,NDH-1, NDH-2, NDH-3 ;

(b) The following e-forms filed by companies, other than one person companies and small companies, under sub-rule (1) of rule 9, shall be pre-certified in the following manner, namely:-

(i) GNL-1 - optional pre-certification by the Chartered Accountant or the Company Secretary or as the case may be the Cost Accountant, in whole-time practice;

(ii) DPT-3 - certification by Auditors of the company;

(iii) MGT-10 – certification by a Company Secretary in whole-time practice;

(iv) AOC-4- certification by a Chartered Accountant in whole-time practice;

(c) E-form DIR-3 shall be filed along with attestation of photograph, identity proof and proof of residence of the applicant by the Chartered Accountant or the Company Secretary or as the case may be the Cost Accountant, in whole-time practice.

9. Maintaining documents electronically.-

(1) The Central (government shall set up and maintain a secure centralised electronic registry in which all the applications, financial statement, prospectus, return, register, memorandum, articles, particulars of charges, or any particulars or returns or any other documents under the Act shall be filed and stored electronically.[2]

(2) Every document or certificate or notice or other document required to be registered or authenticated by the Registrar or an officer of the Central Government under the Act or rules made there under, shall be registered or authenticated through a valid digital signature of such person or a system generated digital signature.

(3) The Registrar shall issue document, certificate, notice, receipt, approval or communicate endorsement or acknowledgement in the electronic mode:

Provided that where the Registrar is not able to issue any certificate, receipt, endorsement, acknowledgement or approval in electronic mode for the reasons to be recorded in writing, he may issue such certificate or receipt or endorsement, acknowledgement or approval in the physical form under manual signature affixing seal of his office.

(4) The Registrar may send any document, certificate, notice or any other communication to the company or its authorised representative or directors or both in the electronic manner for which the company shall create and maintain at all times a valid electronic addresses including e-mail, user identifications capable of receiving and acknowledging the receipt of the document, certificate, notice or other communication, automated or otherwise.

10. Procedure on receipt of any application or form or document electronically.-

[1] Inserted vide Companies (Registration Offices and Fees) Amendment Rules 2014 dated 28.04.2014

[2] Substituted vide Companies (Registration Offices and Fees) Amendment Rules 2014 dated 28.04.2014

(1) The Registrar shall examine or cause to be examined every application or e-Form or document required or authorised to be filed or delivered under the Act and rules made thereunder for approval, registration, taking on record or rectification by the Registrar, as the case may be:

Provided that save as otherwise provided in the Act, the Registrar shall take a decision on the application, e-form or documents within thirty days from the date of its filing excluding the cases in which an approval of the Central Government or the Regional Director or any other competent authority is required:

Provided further that the e-Forms or documents identified as informative in nature and filed under Straight Through Process may be examined by the Registrar at any time on *suo-motu* or on receipt of any information or complaint from any source at any time after its filing:

Provided also that nothing contained in the first proviso shall affect the powers of the Registrar to call information or explanation in pursuance of section 206.

(2) Where the Registrar, on examining any application or e-Form or document referred to in sub-rule (1), finds it necessary to call for further information or finds such application or e-form or document to be defective or incomplete in any respect, he shall give intimation of such information called for or defects or incompleteness, by e-mail on the last intimated e-mail address of the person or the company, which has filed such application or e-form or document, directing him or it to furnish such information or to rectify such defects or incompleteness or to re-submit such application or e-Form or document within the period allowed under sub-rule (3):

Provided that in case the e-mail address of the person or the company in question is not available, the intimation shall be given by the Registrar by post at the last intimated registered office address of the company or the last intimated address of the person, as the case may be and the Registrar shall preserve the facts of the intimation in the electronic record.

(3) Except as otherwise provided in the Act, the Registrar shall allow fifteen days' time to the person or company which has filed the application or e-Form or document under sub-rule (1) for furnishing further information or for rectification of the defects or incompleteness or for re-submission of such application or e-form or document.

(4) In case where such further information called for has not been provided or has been furnished partially or defects or incompleteness has not been rectified or has been rectified partially or has not been rectified as required within the period allowed under sub-rule (3), the Registrar shall either reject or treat the application or e-form or document, as the case may be, as invalid in the electronic record, and shall inform the person or company, as the case may be, in the manner as specified in sub-rule (2).

(5) Where any document has been recorded as invalid by the Registrar, the document may be rectified by the person or company only by fresh filing along with payment of fee and additional fee, as applicable at the time of fresh filing, without prejudice to any other liability under the Act.

(6) In case the Registrar finds any e-form or document filed under Straight Through Process as defective or incomplete in any respect, at any time *suo-motu* or on receipt of

information or compliant from any source at any time, he shall treat the e-form or document as defective in the electronic registry and shall also issue a notice pointing out the defects or incompleteness in the e-Form or document at the last intimated e-mail address of the person or the company which has filed the document, calling upon the person or company to file the e-Form or document afresh along with fee and additional fee, as applicable at the time of actual re-filing, after rectifying the defects or incompleteness within a period of thirty days from the date of the notice:

Provided that in case the e-mail address of the person or the company in question is not available, the intimation shall be given by the Registrar by post at the last intimated registered office address of the company or the last intimated address of the person, as the case may be and the Registrar shall preserve the facts of the intimation in the electronic record.

11. Vacation or removal of directors.-

(1) In the event of vacation or removal of directors before approving or invalidating **Form No DIR-12,** the Registrar shall verify the documents as to correctness of contents and whether adequate supporting documents namely, copy of board resolution, copy of notices sent for calling board meeting or copy of minutes of board of directors reflecting voted for or against.

(2) If the Registrar on verification of documents further finds that the company has violated any of the provisions of the Act or rules, he shall refer the matter to the Regional Director concerned, who shall enquire the matter by giving an opportunity to the person who has been removed or vacated as director and convey the decision of the matter to the Registrar within ninety days from the date of reference to him by the Registrar.

12. Fees.-

(1) The documents required to be submitted, filed, registered or recorded or any fact or information required or authorised to be registered under the Act shall be submitted, filed, registered or recorded on payment of the fee or on payment of such additional fee as applicable, as mentioned in Table annexed to these rules.

(2) For the purpose of filing the documents or applications for which no e-form is prescribed under the various rules prescribed under the Act, the document or application shall be filed through **Form No.GNL.1** or **GNL.2** along with fee as applicable and in case a single form is prescribed for multiple purposes, the fee shall be paid for each of the purposes contained in the single form.

(3) For the purpose of filing information to sub-clause (60) of section 2 of the Act, such information shall be filed in **Form No.GNL.3** along with fee as applicable."

13. Mode of Payment.- The fees, charges or other sums payable for filing any application, form, return or any other document in pursuance of the Act or any rule made thereunder shall be paid by means of credit card; or internet banking; or remittance at the counter of the authorised banks or any other mode as approved by the Central Government.

14. Inspection, production and evidence of documents kept by Registrar.- The inspection of the documents maintained in the electronic registry so set up in pursuance of rule 9 and which are otherwise available for inspection under the Act or rules made thereunder, shall be made by any person in electronic form.

15. Inspection of documents.- Any person may –

(a) inspect any document kept by the Registrar, being documents filed or registered by him in pursuance of this Act or the Companies Act, 1956 (1 of 1956) or making a record of any fact required or authorised to be recorded or registered in pursuance of this Act, on payment for each inspection of fee.

(b) require a certificate of incorporation of any company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar, on payment of fee.

CHAPTER XXV

COMPANIES TO FURNISH INFORMATION OR STATISTICS

405. Power of Central Government to direct companies to furnish information or statistics.

(*1*) The Central Government may, by order, require companies generally, or any class of companies, or any company, to furnish such information or statistics with regard to their or its constitution or working, and within such time, as may be specified in the order.

(*2*) Every order under sub-section (*1*) shall be published in the Official Gazette and may be addressed to companies generally or to any class of companies, in such manner, as the Central Government may think fit and the date of such publication shall be deemed to be the date on which requirement for information or statistics is made on such companies or class of companies, as the case may be.

(*3*) For the purpose of satisfying itself that any information or statistics furnished by a company or companies in pursuance of any order under sub-section (*1*) is correct and complete, the Central Government may by order require such company or companies to produce such records or documents in its possession or allow inspection thereof by such officer or furnish such further information as that Government may consider necessary.

(*4*) If any company fails to comply with an order made under sub-section (*1*) or subsection (*3*), or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect, the company shall be punishable with fine which may extend to twenty-five thousand rupees and every officer of the company who is in default, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to three lakh rupees, or with both.

(*5*) Where a foreign company carries on business in India, all references to a company in this section shall be deemed to include references to the foreign company in relation, and only in relation, to such business.

CHAPTER XXVI

NIDHIS

406. Power to modify Act in its application to Nidhis.

(*1*) In this section, *"Nidhi"* means a company which has been incorporated as a *Nidhi* with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

(*2*) Save as otherwise expressly provided, the Central Government may, by notification, direct that any of the provisions of this Act shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified in that notification, to any *Nidhi* or *Nidhis* of any class or description as may be specified in that notification.

(*3*) A copy of every notification proposed to be issued under sub-section (*2*), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

Rules for Chapter XXVI

Nidhi Rules, 2014

In exercise of the powers conferred under sub-section (1) of section 406 read with sub-sections (1) and (2) of 469 of the Companies Act, 2013, the Central Government hereby makes the following rules, namely:-

1. Short title and commencement. –

(1) These Rules may be called Nidhi Rules, 2014.

(2) They shall come into force on the 1st day of April, 2014.

2. Application.- These rules shall apply to,-

(a) every company which had been declared as a *Nidhi* or Mutual Benefit Society under - section (1) of section 620A of the Companies, 1956;

(b) every company functioning on the lines of a *Nidhi* company or Mutual Benefit Society but has either not applied for or has applied for and is awaiting notification to be a *Nidhi* or Mutual Benefit Society under sub-section (1) of section 620A of the Companies Act, 1956; and

(c) every company incorporated as a *Nidhi* pursuant to the provisions of section 406 of the Act.

3. **Definitions**.- (1) In these rules, unless the context otherwise requires,-

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "Doubtful Asset" means a borrowal account which has remained a nonperforming asset for more than two years but less than three years;

(c) "Loss Asset" means a borrowal account which has remained a nonperforming asset for more than three years or where in the opinion of the Board, a shortfall in the recovery of the loan account is expected because the documents executed may become invalid if subjected to legal process or for any other reason;

(d) "Net Owned Funds" means the aggregate of paid up equity share capital and free reserves as reduced by accumulated losses and intangible assets appearing in the last audited balance sheet:
Provided that the amount representing the proceeds of issue of preference shares shall not be included for calculating Net Owned Funds.

(e) "Non-Performing Asset" means a borrowal account in respect of which interest income or instalment of loan towards repayment of principal amount has remained unrealised for twelve months;

(f) "Standard Asset" means the asset in respect of which no default in repayment of principal or payment of interest has occurred or is perceived and which has neither shown signs of any problem relating to repayment of principal sum or interest nor does it carry more than normal risk attached to the business;

(g) "Sub-Standard Asset" means a borrowal account which is a non performing asset:

Provided that reschedulement or renegotiation or rephasement of the loan instalment or interest payment shall not change the classification of an asset unless the borrowal

account has satisfactorily performed for at least twelve months after such reschedulement or renegotiation or rephasement.

(2) Words and expressions used herein, but not defined in these rules and defined in the Act or in the Companies (Specification of definitions details) Rules, 2014 shall have the same meaning as assigned to them in the Act or in the said Rules.

4. Incorporation and incidental matters.-

(1) A *Nidhi* to be incorporated under the Act shall be a public company and shall have a minimum paid up equity share capital of five lakh rupees

(2) On and after the commencement of the Act, no *Nidhi* shall issue preference shares.

(3) If preference shares had been issued by a *Nidhi* before the commencement of this Act, such preference shares shall be redeemed in accordance with the terms of issue of such shares.

(4) Except as provided under the proviso to sub-rule (e) to rule 6, no *Nidhi* shall have any object in its Memorandum of Association other than the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit.

(5) Every Company incorporated as a "*Nidhi*" shall have the last words 'Nidhi Limited' as part of its name.

5. Requirements for minimum number of members, net owned fund etc.-

(1) Every *Nidhi* shall, within a period of one year from the commencement of these rules, ensure that it has-
   (a) not less than two hundred members;
   (b) Net Owned Funds of ten lakh rupees or more;
   (c) unencumbered term deposits of not less than ten per cent. Of the outstanding deposits as specified in rule 14; and
   (d) ratio of Net Owned Funds to deposits of not more than 1:20.

(2) Within ninety days from the close of the first financial year after its incorporation and where applicable, the second financial year, *Nidhi* shall file a return of statutory compliances in Form **NDH-1** along with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 with the Registrar duly certified by a company secretary in practice or a chartered accountant in practice or a cost accountant in practice.

(3) If a *Nidhi* is not complying with clauses (a) or (d) of sub-rule (1) above, it shall within thirty days from the close of the first financial year, apply to the Regional Director in Form **NDH-2** along with fee specified in Companies (Registration Offices and Fees) Rules, 2014 for extension of time and the Regional Director may consider the application and pass orders within thirty days of receipt of the application.
   Explanation.- For the purpose of this rule "Regional Director" means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director;

(4) If the failure to comply with sub-rule (1) of this rule extends beyond the second financial year, *Nidhi* shall not accept any further deposits from the commencement of the second financial year till it complies with the provisions contained in sub-rule (1), besides being liable for penal consequences as provided in the Act.

6. General restrictions or prohibitions.- No *Nidhi* shall-

(a) carry on the business of chit fund, hire purchase finance, leasing finance, insurance or acquisition of securities issued by any body corporate;
(b) issue preference shares, debentures or any other debt instrument by any name or in any form whatsoever;
(c) open any current account with its members;
(d) acquire another company by purchase of securities or control the composition of the Board of Directors of any other company in any manner whatsoever or enter into any arrangement for the change of its management, unless it has passed a special resolution in its general meeting and also obtained the previous approval of the Regional Director having jurisdiction over such *Nidhi*;

Explanation.- For the purposes of this sub-rule, "control" shall have the same meaning assigned to it in clause (27) of section 2 of the Act;
(e) carry on any business other than the business of borrowing or lending in its own name:

Provided that *Nidhi*s which have adhered to all the provisions of these rules may provide locker facilities on rent to its members subject to the rental income from such facilities not exceeding twenty per cent. of the gross income of the *Nidhi* at any point of time during a financial year.

(f) accept deposits from or lend to any person, other than its members;
(g) pledge any of the assets lodged by its members as security;
(h) take deposits from or lend money to anybody corporate;
(i) enter into any partnership arrangement in its borrowing or lending activities;
(j) issue or cause to be issued any advertisement in any form for soliciting deposit:

Provided that private circulation of the details of fixed deposit schemes among the members of the *Nidhi* carrying the words "for private circulation to members only" shall not be considered to be an advertisement for soliciting deposits.

(k) pay any brokerage or incentive for mobilising deposits from members or for deployment of funds or for granting loans.

7. Share capital and allotment.-

(1) Every *Nidhi* shall issue equity shares of the nominal value of not less than ten rupees each:

Provided that this requirement shall not apply to a company referred to in sub-rules (a) and (b) of rule 2.

(2) No service charge shall be levied for issue of shares.

(3) Every *Nidhi* shall allot to each deposit holder at least a minimum of ten equity shares or shares equivalent to one hundred rupees:

Provided that a savings account holder and a recurring deposit account holder shall hold at least one equity share of rupees ten.

8. Membership.-

(1) A *Nidhi* shall not admit a body corporate or trust as a member.
(2) Except as otherwise permitted under these rules, every *Nidhi* shall ensure that its membership is not reduced to less than two hundred members at any time.
(3) A minor shall not be admitted as a member of *Nidhi*:

Provided that deposits may be accepted in the name of a minor, if they are made by the natural or legal guardian who is a member of *Nidhi*.

9. Net owned funds.- Every *Nidhi* shall maintain Net Owned Funds (excluding the proceeds of any preference share capital) of not less than ten lakh rupees or such higher amount as the Central Government may specify from time to time.

10. Branches.-
(1) A *Nidhi* may open branches, only if it has earned net profits after tax continuously during the preceding three financial years.
(2) Subject to the provisions contained in sub-rule (1), a *Nidhi* may open upto three branches within the district.
(3) If a *Nidhi* proposes to open more than three branches within the district or any branch outside the district, it shall obtain the prior permission of the Regional Director and an intimation is to be given to the Registrar about opening of every branch within thirty days of such opening.
(4) No *Nidhi* shall open branches or collection centres or offices or deposit centres, or by whatever name called outside the State where its registered office is situated.
(5) No *Nidhi* shall open branches or collection centres or offices or deposit centres, or by whatever name called unless financial statement and annual return (up to date) are filed with the Registrar.
(6) A *Nidhi* shall not close any branch unless it-
  (a) publishes an advertisement in a newspaper in vernacular language in the place where it carries on business at least thirty days prior to such closure, informing the public about such closure;
  (b) fixes a copy of such advertisement or a notice informing such closure of the branch on the notice board of *Nidhi* for a period of at least thirty days from the date on which advertisement was published under clause (a) ; and
  (c) gives an intimation to the Registrar within thirty days of such closure.

11. Acceptance of deposits by *Nidhi*s.-
(1) A *Nidhi* shall not accept deposits exceeding twenty times of its Net Owned Funds (NOF) as per its last audited financial statements.
(2) In the case of companies covered under clauses (a) and (b) of rule 2 and existing on or before 26th July, 2001 and which have accepted deposits in excess of the aforesaid limits, the same shall be restored to the prescribed limit by increasing the Net Owned Funds position or alternatively by reducing the deposit according to the table given below:

TABLE

Ratio of Net Owned Funds to Deposits (as on 31.3. 2013)	**Date by which the company has to achieve prescribed ceiling of 1:20**

a) More than 1:20 but upto 1:35	By 31.3. 2015
b) More than 1:35 but upto 1:45	By 31.3. 2016
c) More than 1:45	By 31.3. 2017

(3) The companies which are covered under the Table in sub-rule (2) above shall not accept fresh deposits or renew existing deposits if such acceptance or renewal leads to violation of the prescribed ratio.

(4) The ratio specified in sub-rule (2) above shall also apply to incremental deposits.

12. Application form for deposit.-

(1) Every application form for placing a deposit with a *Nidhi* shall contain the following particulars, namely:-

(a) Name of *Nidhi*;

(b) Date of incorporation of *Nidhi*;

(c) The business carried on by *Nidhi* with details of branches, if any;

(d) Brief particulars of the management of *Nidhi* (name, addresses and occupation of the directors, including DIN);

(e) Net profits of *Nidhi* before and after making provision for tax for the preceding three financial years;

(f) Dividend declared by *Nidhi* during the preceding three financial years;

(g) Mode of repayment of the deposit;

(h) Maturity period of the deposit;

(i) Interest payable on the deposit;

(j) The rate of interest payable to the depositor in case the depositor withdraws the deposit prematurely;

(k) The terms and conditions subject to which the deposit may be accepted or renewed;

(l) A summary of the financials of the company as per the latest two audited financial statements as given below:

(i) Net Owned Funds

(ii) Deposits accepted

(iii) Deposits repaid

(iv) Deposits claimed but remaining unpaid

(v) Loans disbursed against-

(a) immovable property;

(b) deposits; and

(c) gold and jewellery

(vi) Profit before tax

(vii) Provision for tax

(viii) Profit after tax

(ix) Dividend per share

(m) any other special features or terms and conditions subject to which the deposit is accepted or renewed.

(2) The application form shall also contain the following statements, namely:-

(a) in case of non- payment of the deposit or part thereof as per the terms and conditions of such deposit, the depositor may approach the Registrar of companies having jurisdiction over *Nidhi*;

(b) in case of any deficiency of *Nidhi* in servicing its depositors, the depositor may approach the National Consumers Disputes Redressal Forum, the State Consumers Disputes Redressal Forum or District Consumers Disputes Redressal Forum, as the case may be, for redressal of his relief;

(c) a declaration by the Board of Directors to the effect that the financial position of *Nidhi* as disclosed and the representations made in the application form are true and correct and that *Nidhi* has complied with all the applicable rules;

(d) a statement to the effect that the Central Government does not undertake any responsibility for the financial soundness of *Nidhi* or for the correctness of any of the statement or the representations made or opinions expressed by *Nidhi*;

(e) the deposits accepted by *Nidhi* are not insured and the repayment of deposits is not guaranteed by either the Central Government or the Reserve Bank of India; and

(f) a verification clause by the depositor stating that he had read and understood the financial and other particulars furnished and representations made by *Nidhi* in his application form and after careful consideration he is making the deposit with *Nidhi* at his own risk and volition.

(3) Every *Nidhi* shall obtain proper introduction of new depositors before opening their accounts or accepting their deposits and keep on its record the evidence on which it has relied upon for the purpose of such introduction.

(4) For the purposes of introduction of depositors, a *Nidhi* shall obtain documentary evidence of the depositor in the form of proof of identity and address as under:

(a) Proof of Identity (any one of the following)

(i) Passport
(ii) Unique Identification Number
(iii) Income-tax PAN card
(iv) Elector Photo Identity Card
(v) Driving licence
(vi) Ration card

(b) Proof of address (any one of the following)

(i) Passport
(ii) Unique Identification Number
(iii) Elector Photo Identity Card
(iv) Driving licence
(v) Ration card
(vi) Telephone bill
(vii) Bank account statement
(viii) Electricity bill (documents referred to serial numbers (vi), (vii) and (viii) above shall not be more than two months old)

13. Deposits.-

(1) The fixed deposits shall be accepted for a minimum period of six months and a maximum period of sixty months.

(2) Recurring deposits shall be accepted for a minimum period of twelve months and a maximum period of sixty months.

(3) In case of recurring deposits relating to mortgage loans, the maximum period of recurring deposits shall correspond to the repayment period of such loans granted by *Nidhi*.

(4) The maximum balance in a savings deposit account at any given time qualifying for interest shall not exceed one lakh rupees at any point of time and the rate of interest shall not exceed two per cent. above the rate of interest payable on savings bank account by nationalised banks.

(5) A *Nidhi* may offer interest on fixed and recurring deposits at a rate not exceeding the maximum rate of interest prescribed by the Reserve Bank of India which the Non-Banking Financial Companies can pay on their public deposits.

(6) A fixed deposit account or a recurring deposit account shall be foreclosed by the depositor subject to the following conditions, namely:-

(a) a *Nidhi* shall not repay any deposit within a period of three months from the date of its acceptance;

(b) where at the request of the depositor, a *Nidhi* repays any deposit after a period of three months, the depositor shall not be entitled to any interest up to six months from the date of deposit;

(c) where at the request of the depositor, a *Nidhi* makes repayment of a deposit before the expiry of the period for which such deposit was accepted by *Nidhi*, the rate of interest payable by *Nidhi* on such deposit shall be reduced by two per cent. from the rate which *Nidhi* would have ordinarily paid, had the deposit been accepted for the period for which such deposit had run:

Provided that in the event of death of a depositor, the deposit may be repaid prematurely to the surviving depositor or depositors in the case of joint holding with survivor clause, or to the nominee or to legal heir with interest up to the date of repayment at the rate which the company would have ordinarily paid, had such deposit been accepted for the period for which such deposit had run.

14. Un-encumbered term deposits.- Every *Nidhi* shall invest and continue to keep invested, in unencumbered term deposits with a scheduled commercial bank (other than a co-operative bank or a regional rural bank), or post office deposits in its own name an amount which shall not be less than ten per cent. of the deposits outstanding at the close of business on the last working day of the second preceding month:

Provided that in cases of unforeseen commitments, temporary withdrawal may be permitted with the prior approval of the Regional Director for the purpose of repayment to depositors, subject to such conditions and time limit which may be specified by the Regional Director to ensure restoration of the prescribed limit of ten per cent.

15. Loans.- (1) A *Nidhi* shall provide loans only to its members.

(2) The loans given by a *Nidhi* to a member shall be subject to the following limits, namely:-

(a) two lakh rupees, where the total amount of deposits of such *Nidhi* from its members is less than two crore rupees;

(b) seven lakh fifty thousand rupees, where the total amount of deposits of such *Nidhi* from its members is more than two crore rupees but less than twenty crore rupees;

(c) twelve lakh rupees, where the total amount of deposits of such *Nidhi* from its members is more than twenty crore rupees but less than fifty crore rupees; and

(d) fifteen lakh rupees, where the total amount of deposits of such *Nidhi* from its members is more than fifty crore rupees:

Provided that where a *Nidhi* has not made profits continuously in the three preceding financial years, it shall not make any fresh loans exceeding fifty per cent. of the maximum amounts of loans specified in clauses (a), (b), (c) or (d).

Provided further that a member shall not be eligible for any further loan if he has borrowed any earlier loan from the *Nidhi* and has defaulted in repayment of such loan.

(3) For the purposes of sub-rule (2), the amount of deposits shall be calculated on the basis of the last audited annual financial statements.

(4) A *Nidhi* shall give loans to its members only against the following securities, namely:-
(a) gold, silver and jewellery:

Provided that the repayment period of such loan shall not exceed one year.
(b) immovable property:

Provided that the total loans against immovable property [excluding mortgage loans granted on the security of property by registered mortgage, being a registered mortgage under section 69 of the Transfer of Property Act, 1882 (IV of 1882)] shall not exceed fifty per cent. of the overall loan outstanding on the date of approval by the board, the individual loan shall not exceed fifty per cent. of the value of property offered as security and the period of repayment of such loan shall not exceed seven years.

(c) fixed deposit receipts, National Savings Certificates, other Government Securities and insurance policies:

Provided that such securities duly discharged shall be pledged with *Nidhi* and the maturity date of such securities shall not fall beyond the loan period or one year whichever is earlier:

Provided further that in the case of loan against fixed deposits, the period of loan shall not exceed the unexpired period of the fixed deposits.

16. Rate of interest.- The rate of interest to be charged on any loan given by a *Nidhi* shall not exceed seven and half per cent. above the highest rate of interest offered on deposits by *Nidhi* and shall be calculated on reducing balance method:

Provided that *Nidhi* shall charge the same rate of interest on the borrowers in respect of the same class of loans and the rates of interest of all classes of loans shall be prominently displayed on the notice board at the registered office and each branch office of *Nidhi*.

17. Rules relating to Directors.

(1) The Director shall be a member of Nidhi.
(2) The Director of a *Nidhi* shall hold office for a term up to ten consecutive years on the Board of *Nidhi.*
(3) The Director shall be eligible for re-appointment only after the expiration of two years of ceasing to be a Director.

(4) Where the tenure of any Director in any case had already been extended by the Central Government, it shall terminate on expiry of such extended tenure.
(5) The person to be appointed as a Director shall comply with the requirements of sub-section (4) of section 152 of the Act and shall not have been disqualified from appointment as provided in section 164 of the Act.

18. Dividend.- A *Nidhi* shall not declare dividend exceeding twenty five per cent. or such higher amount as may be specifically approved by the Regional Director for reasons to be recorded in writing and further subject to the following conditions, namely:-
(a) an equal amount is transferred to General Reserve;
(b) there has been no default in repayment of matured deposits and interest; and
(c) it has complied with all the rules as applicable to *Nidhi*s.

19. Auditor:-
(1) No Nidhi shall appoint or re-appoint an individual as auditor for more than one term of five consecutive years.
(2) No Nidhi shall appoint or re-appoint an audit firm as auditor for more than two terms of five consecutive years;

Provided that an auditor (whether an individual or an audit firm) shall be eligible for subsequent appointment after the expiration of two years from the completion of his or its term.
Explanation: For the purposes of this proviso:

(i) in case of an auditor (whether an individual or audit firm), the period for which he or it has been holding office as auditor prior to the commencement of these rules shall be taken into account in calculating the period of five consecutive years or ten consecutive years, as the case may be;
(ii) appointment includes re-appointment.

20. Prudential norms.-
(1) Every *Nidhi* shall adhere to the prudential norms for revenue recognition and classification of assets in respect of mortgage loans or jewel loans as contained hereunder.
(2) Income including interest or any other charges on non-performing assets shall be recognised only when it is actually realised and any such income recognised before the asset became non-performing and which remains unrealised in a year shall be reversed in the profit and loss account of the immediately succeeding year.
(3) (a) In respect of mortgage loans, the classification of assets and the provisioning required shall be as under:

Nature of Asset	**Provision Required**
Standard Asset	No provision
Sub-standard Asset	10% of the aggregate outstanding amount
Doubtful Asset	25% of the aggregate outstanding amount
Loss Asset	100% of the aggregate outstanding amount

Provided that a *Nidhi* may make provision for exceeding the percentage specific herein.

(b) The estimated realisable value of the collateral security to which a *Nidhi* has valid recourse may be reduced from the aggregate outstanding amount, if the proceedings for the sale of the mortgaged property have been initiated in a court of law within the previous two years of the interest, income or instalment remaining unrealised.

(4) In case of companies which were incorporated on or before 26-07-2001, such companies shall make provisions in respect of loans disbursed and outstanding as on 31-03-2002 for income reversal and non-performing assets as per table given below:

For the year ended	**Extent of provision**
31-03- 2015	Un-provided balance on equal basis over the three years as specified in the preceding column.
31-03- 2016	
31-03- 2017	

(5) (a) The Notes on the financial statements of a year shall disclose-

(i) the total amount of provisions, if any, to be made on account of income reversal and non-performing assets remaining unrealised;

(ii) the cumulative amount provided till the previous year;

(iii) the amount provided in the current year; and

(iv) the balance amount to be provided.

(b) Such disclosure shall continue to be made until the entire amount to be provided has been provided for.

(6) In respect of loans against gold or jewellery-

(a) the aggregate amount of loan outstanding against the security of gold or jewellery shall either be recovered or renewed within three months from the due date of repayment;

(b) if the loan is not recovered or renewed and the security is not sold within the aforesaid period of three months, the company shall make provision in the current year's financial statements to the extent of unrealised amount or the aggregate outstanding amount of loan including interest as applicable;

(c) no income shall be recognised on such loans outstanding after the expiry of the three months period specified in (a) above or sale of gold or jewellery, whichever is earlier; and the loan to value ratio shall not exceed 80 percent.

Explanation.- For the purposes of this rule, the term 'loan to value ratio' means the ratio between the amount of loan given and the value of gold or jewellery against which such loan is given.

21. Filing of half yearly return.- Every company covered under rule 2 shall file half yearly return with the Registrar in Form **NDH-3** along with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 within thirty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice or cost accountant in practice.

22. Auditor's certificate.-The Auditor of the company shall furnish a certificate every year to the effect that the company has complied with all the provisions contained in the rules

and such certificate shall be annexed to the audit report and in case of non-compliance, he shall specifically state the rules which have not been complied with.

23. Power to enforce compliance.- (1) For the purposes of enforcing compliance with these rules, the Registrar of companies may call for such information or returns from *Nidhi* as he deems necessary and may engage the services of chartered accountants, company secretaries in practice, cost accountants, or any firm thereof from time to time for assisting him in the discharge of his duties.

(2) In respect of any *Nidhi* which has violated these rules or has failed to function in terms of the Memorandum and Articles of Association, the concerned Regional Director may appoint a Special Officer to take over the management of *Nidhi* and such Special Officer shall function as per the guidelines given by such Regional Director:

Provided that an opportunity of being heard shall be given to the concerned *Nidhi* by the Regional Director before appointing any Special Officer.

24. Penalty for non-compliance.- If a company falling under rule 2 contravenes any of the provisions of the rules prescribed herein, the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees, and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues.

CHAPTER XXVII

NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL

407. Definitions.

In this Chapter, unless the context otherwise requires,—

(*a*) "Chairperson" means the Chairperson of the Appellate Tribunal;

(*b*) "Judicial Member" means a member of the Tribunal or the Appellate Tribunal appointed as such and includes the President or the Chairperson, as the case may be;

(*c*) "Member" means a member, whether Judicial or Technical of the Tribunal or the Appellate Tribunal and includes the President or the Chairperson, as the case may be;

(*d*) "President" means the President of the Tribunal;

(*e*) "Technical Member" means a member of the Tribunal or the Appellate Tribunal appointed as such.

408. Constitution of National Company Law Tribunal.

The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, a Tribunal to be known as the National Company Law Tribunal consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force.

409. Qualification of President and Members of Tribunal.

(*1*) The President shall be a person who is or has been a Judge of a High Court for five years.

(*2*) A person shall not be qualified for appointment as a Judicial Member unless he—

(*a*) is, or has been, a judge of a High Court; or

(*b*) is, or has been, a District Judge for at least five years; or

(*c*) has, for at least ten years been an advocate of a court.

Explanation.—For the purposes of clause (*c*), in computing the period during which a person has been an advocate of a court, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he become an advocate.

(*3*) A person shall not be qualified for appointment as a Technical Member unless he—

(*a*) has, for at least fifteen years been a member of the Indian Corporate Law Service or Indian Legal Service out of which at least three years shall be in the pay scale of Joint Secretary to the Government of India or equivalent or above in that service; or

(*b*) is, or has been, in practice as a chartered accountant for at least fifteen years; or

(*c*) is, or has been, in practice as a cost accountant for at least fifteen years; or

(*d*) is, or has been, in practice as a company secretary for at least fifteen years; or

(*e*) is a person of proven ability, integrity and standing having special knowledge and experience, of not less than fifteen years, in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies; or

(*f*) is, or has been, for at least five years, a presiding officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947.

410. Constitution of Appellate Tribunal.

The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, an Appellate Tribunal to be known as the National Company Law Appellate Tribunal consisting of a chairperson and such number of Judicial and Technical Members, not exceeding eleven, as the Central Government may deem fit, to be appointed by it by notification, for hearing appeals against the orders of the Tribunal.

411. Qualifications of Chairperson and members of Appellate Tribunal.

(1) The chairperson shall be a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court.

(2) A Judicial Member shall be a person who is or has been a Judge of a High Court or is a Judicial Member of the Tribunal for five years.

(3) A Technical Member shall be a person of proven ability, integrity and standing having special knowledge and experience, of not less than twenty-five years, in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies.

412. Selection of Members of Tribunal and Appellate Tribunal.

(*1*) The President of the Tribunal and the chairperson and Judicial Members of the Appellate Tribunal, shall be appointed after consultation with the Chief Justice of India.

(*2*) The Members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed on the recommendation of a Selection Committee consisting of—

(*a*) Chief Justice of India or his nominee—Chairperson;

(*b*) a senior Judge of the Supreme Court or a Chief Justice of High Court— Member;

(*c*) Secretary in the Ministry of Corporate Affairs—Member;

(*d*) Secretary in the Ministry of Law and Justice—Member; and

(*e*) Secretary in the Department of Financial Services in the Ministry of Finance— Member.

(*3*) The Secretary, Ministry of Corporate Affairs shall be the Convener of the Selection Committee.

(*4*) The Selection Committee shall determine its procedure for recommending persons under sub-section (*2*).

(*5*) No appointment of the Members of the Tribunal or the Appellate Tribunal shall be invalid merely by reason of any vacancy or any defect in the constitution of the Selection Committee.

413. Term of office of President, Chairperson and other Members.

(*1*) The President and every other Member of the Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of five years.

(*2*) A Member of the Tribunal shall hold office as such until he attains,—

(*a*) in the case of the President, the age of sixty-seven years;

(*b*) in the case of any other Member, the age of sixty-five years:

Provided that a person who has not completed fifty years of age shall not be eligible for appointment as Member:

Provided further that the Member may retain his lien with his parent cadre or Ministry or Department, as the case may be, while holding office as such for a period not exceeding one year.

(*3*) The chairperson or a Member of the Appellate Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office, but shall be eligible for re-appointment for anonther term of five years.

(*4*) A Member of the Appellate Tribunal shall hold office as such until he attains,—
(*a*) in the case of the Chairperson, the age of seventy years;
(*b*) in the case of any other Member, the age of sixty-seven years:

Provided that a person who has not completed fifty years of age shall not be eligible for appointment as Member:

Provided further that the Member may retain his lien with his parent cadre or Ministry or Department, as the case may be, while holding office as such for a period not exceeding one year.

414. Salary, allowances and other terms and conditions of service of Members.
The salary, allowances and other terms and conditions of service of the Members of the Tribunal and the Appellate Tribunal shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Members shall be varied to their disadvantage after their appointment.

415. Acting President and Chairperson of Tribunal or Appellate Tribunal.
(*1*) In the event of the occurrence of any vacancy in the office of the President or the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the President or the Chairperson, as the case may be, until the date on which a new President or Chairperson appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

(*2*) When the President or the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the President or the Chairperson, as the case may be, until the date on which the President or the Chairperson resumes his duties.

416. Resignation of Members.
The President, the Chairperson or any Member may, by notice in writing under his hand addressed to the Central Government, resign from his office:

Provided that the President, the Chairperson, or the Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Central Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earliest.

417. Removal of Members.

(*1*) The Central Government may, after consultation with the Chief Justice of India, remove from office the President, Chairperson or any Member, who—

(*a*) has been adjudged an insolvent; or

(*b*) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(*c*) has become physically or mentally incapable of acting as such President, the Chairperson, or Member; or

(*d*) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, the Chairperson or Member; or

(*e*) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President, the Chairperson or the Member shall not be removed on any of the grounds specified in clauses (*b*) to (*e*) without giving him a reasonable opportunity of being heard.

(*2*) Without prejudice to the provisions of sub-section (*1*), the President, the Chairperson or the Member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Central Government in which such President, the Chairperson or Member had been informed of the charges against him and given a reasonable opportunity of being heard.

(*3*) The Central Government may, with the concurrence of the Chief Justice of India, suspend from office, the President, the Chairperson or Member in respect of whom reference has been made to the Judge of the Supreme Court under sub-section (*2*) until the Central Government has passed orders on receipt of the report of the Judge of the Supreme Court on such reference.

(*4*) The Central Government shall, after consultation with the Supreme Court, make rules to regulate the procedure for the inquiry on the ground of proved misbehaviour or incapacity referred to in sub-section (*2*).

418. Staff of Tribunal and Appellate Tribunal.

(*1*) The Central Government shall, in consultation with the Tribunal and the Appellate Tribunal, provide the Tribunal and the Appellate Tribunal, as the case may be, with such officers and other employees as may be necessary for the exercise of the powers and discharge of the functions of the Tribunal and the Appellate Tribunal.

(*2*) The officers and other employees of the Tribunal and the Appellate Tribunal shall discharge their functions under the general superintendence and control of the President, or as the case may be, the Chairperson, or any other Member to whom powers for exercising such superintendence and control are delegated by him.

(*3*) The salaries and allowances and other conditions of service of the officers and other employees of the Tribunal and the Appellate Tribunal shall be such as may be prescribed.

419. Benches of Tribunal.

(*1*) There shall be constituted such number of Benches of the Tribunal, as may, by notification, be specified by the Central Government.

(*2*) The Principal Bench of the Tribunal shall be at New Delhi which shall be presided over by the President of the Tribunal.

(*3*) The powers of the Tribunal shall be exercisable by Benches consisting of two Members out of whom one shall be a Judicial Member and the other shall be a Technical Member:

Provided that it shall be competent for the Members of the Tribunal authorised in this behalf to function as a Bench consisting of a single Judicial Member and exercise the powers of the Tribunal in respect of such class of cases or such matters pertaining to such class of cases, as the President may, by general or special order, specify:

Provided further that if at any stage of the hearing of any such case or matter, it appears to the Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the President, or, as the case may be, referred to him for transfer, to such Bench as the President may deem fit.

(4) The President shall, for the disposal of any case relating to rehabilitation, restructuring, reviving or winding up, of companies, constitute one or more Special Benches consisting of three or more Members, majority necessarily being of Judicial Members.

(5) If the Members of a Bench differ in opinion on any point or points, it shall be decided according to the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President for hearing on such point or points by one or more of the other Members of the Tribunal and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.

420. Orders of Tribunal.

(*1*) The Tribunal may, after giving the parties to any proceeding before it, a reasonable opportunity of being heard, pass such orders thereon as it thinks fit.

(*2*) The Tribunal may, at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act.

(*3*) The Tribunal shall send a copy of every order passed under this section to all the parties concerned.

421. Appeal from Orders of Tribunal.

(1) Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.

(2) No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.

(3) Every appeal under sub-section *(1)* shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person

aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

(4) On the receipt of an appeal under sub-section *(1)*, the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.

422. Expeditious disposal by Tribunal and Appellate Tribunal.

(*1*) Every application or petition presented before the Tribunal and every appeal filed before the Appellate Tribunal shall be dealt with and disposed of by it as expeditiously as possible and every endeavour shall be made by the Tribunal or the Appellate Tribunal, as the case may be, for the disposal of such application or petition or appeal within three months from the date of its presentation before the Tribunal or the filing of the appeal before the Appellate Tribunal.

(*2*) Where any application or petition or appeal is not disposed of within the period specified in sub-section (*1*), the Tribunal or, as the case may be, the Appellate Tribunal, shall record the reasons for not disposing of the application or petition or the appeal, as the case may be, within the period so specified; and the President or the Chairperson, as the case may be, may, after taking into account the reasons so recorded, extend the period referred to in sub-section (*1*) by such period not exceeding ninety days as he may consider necessary.

423. Appeal to Supreme Court.

Any person aggrieved by any order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of receipt of the order of the Appellate Tribunal to him on any question of law arising out of such order:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

424. Procedure before Tribunal and Appellate Tribunal.

(*1*) The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act and of any rules made thereunder, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.

(*2*) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

(*a*) summoning and enforcing the attendance of any person and examining him on oath;

(*b*) requiring the discovery and production of documents;

(*c*) receiving evidence on affidavits;
(*d*) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;
(*e*) issuing commissions for the examination of witnesses or documents;
(*f*) dismissing a representation for default or deciding it *ex parte;*
(*g*) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte;* and
(*h*) any other matter which may be prescribed.

(*3*) Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Tribunal or the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,—
(*a*) in the case of an order against a company, the registered office of the company is situate; or
(*b*) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(*4*) All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Tribunal and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

425. Power to punish for contempt.

The Tribunal and the Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court has and may exercise, for this purpose, the powers under the provisions of the Contempt of Courts Act, 1971, which shall have the effect subject to modifications that—
(*a*) the reference therein to a High Court shall be construed as including a reference to the Tribunal and the Appellate Tribunal; and
(*b*) the reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officers as the Central Government may, specify in this behalf.

426. Delegation of powers.

The Tribunal or the Appellate Tribunal may, by general or special order, direct, subject to such conditions, if any, as may be specified in the order, any of its officers or employees or any other person authorised by it to inquire into any matter connected with any proceeding or, as the case may be, appeal before it and to report to it in such manner as may be specified in the order.

427. President, Members, officers, etc., to be public servants.

The President, Members, officers and other employees of the Tribunal and the Chairperson, Members, officers and other employees of the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

428. Protection of action taken in good faith.

No suit, prosecution or other legal proceeding shall lie against the Tribunal, the President, Member, officer or other employee, or against the Appellate Tribunal, the Chairperson, Member, officer or other employees thereof or liquidator or any other person authorised by the Tribunal or the Appellate Tribunal for the discharge of any function under this Act in respect of any loss or damage caused or likely to be caused by any act which is in good faith done or intended to be done in pursuance of this Act.

429. Power to seek assistance of Chief Metropolitan Magistrate, etc.

(*1*) The Tribunal may, in any proceeding relating to a sick company or winding up of any other company, in order to take into custody or under its control all property, books of account or other documents, request, in writing, the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector within whose jurisdiction any such property, books of account or other documents of such sick or other company, are situate or found, to take possession thereof, and the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector, as the case may be, shall, on such request being made to him,—

(*a*) take possession of such property, books of account or other documents; and

(*b*) cause the same to be entrusted to the Tribunal or other person authorised by it.

(*2*) For the purpose of securing compliance with the provisions of sub-section (*1*), the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary.

(*3*) No act of the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector done in pursuance of this section shall be called in question in any court or before any authority on any ground whatsoever.

430. Civil court not to have jurisdiction.

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.

431. Vacancy in Tribunal or Appellate Tribunal not to invalidate acts or proceedings.

No act or proceeding of the Tribunal or the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Tribunal or the Appellate Tribunal, as the case may be.

432. Right to legal representation.

A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any other person to present his case before the Tribunal or the Appellate Tribunal, as the case may be.

433. Limitation.

The provisions of the Limitation Act, 1963 shall, as far as may be, apply to proceedings or appeals before the Tribunal or the Appellate Tribunal, as the case may be.

434. Transfer of certain pending proceedings.

(*1*) On such date as may be notified by the Central Government in this behalf,—

(*a*) all matters, proceedings or cases pending before the Board of Company Law Administration (herein in this section referred to as the Company Law Board) constituted under sub-section (*1*) of section 10E of the Companies Act, 1956, immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act;

(*b*) any person aggrieved by any decision or order of the Company Law Board made before such date may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:

Provided that the High Court may if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding sixty days;

(*c*) all proceedings under the Companies Act, 1956, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer.

(*d*) any appeal preferred to the Appellate Authority for Industrial and Financial Reconstruction or any reference made or inquiry pending to or before the Board of Industrial and Financial Reconstruction or any proceeding of whatever nature pending before the Appellate Authority for Industrial and Financial Reconstruction or the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 immediately before the commencement of this Act shall stand abated:

Provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make a reference to the Tribunal under this Act within one hundred and eighty days from the commencement of this Act in accordance with the provisions of this Act:

Provided further that no fees shall be payable for making such reference under this Act by a company whose appeal or reference or inquiry stands abated under this clause.

(*2*) The Central Government may make rules consistent with the provisions of this Act to ensure timely transfer of all matters, proceedings or cases pending before the Company Law Board or the courts, to the Tribunal under this section.

CHAPTER XXVIII

SPECIAL COURTS

435. Establishment of Special Courts.

(*1*) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

(*2*) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(*3*) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge.

436. Offences triable by Special Courts.

(*1*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

(*a*) all offences under this Act shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned;

(*b*) where a person accused of, or suspected of the commission of, an offence under this Act is forwarded to a Magistrate under sub-section (*2*) or sub-section (*2A*) of section 167 of the Code of Criminal Procedure, 1973, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that where such Magistrate considers that the detention of such person upon or before the expiry of the period of detention is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

(*c*) the Special Court may exercise, in relation to the person forwarded to it under clause (*b*), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 in relation to an accused person who has been forwarded to him under that section; and

(*d*) a Special Court may, upon perusal of the police report of the facts constituting an offence under this Act or upon a complaint in that behalf, take cognizance of that offence without the accused being committed to it for trial.

(*2*) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.

(*3*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Special Court may, if it thinks fit, try in a summary way any offence under this Act which is punishable with imprisonment for a term not exceeding three years:

Provided that in the case of any conviction in a summary trial, no sentence of imprisonment for a term exceeding one year shall be passed:

Provided further that when at the commencement of, or in the course of, a summary trial, it appears to the Special Court that the nature of the case is such that the sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Special Court shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or rehear the case in accordance with the procedure for the regular trial.

437. Appeal and revision.

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

438. Application of Code to proceedings before Special Court.

Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

439. Offences to be non-cognizable.

(*1*) Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in sub-section (*6*) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.

(*2*) No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder of the company, or of a person authorised by the Central Government in that behalf:

Provided that the court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorised by the Securities and Exchange Board of India:

Provided further that nothing in this sub-section shall apply to a prosecution by a company of any of its officers.

(*3*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, where the complainant under sub-section (*2*) is the Registrar or a person authorised by the Central Government, the presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial.

(*4*) The provisions of sub-section (*2*) shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters in Chapter XX or in any other provision of this Act relating to winding up of companies.

Explanation.—The liquidator of a company shall not be deemed to be an officer of the company within the meaning of sub-section (*2*).

440. Transitional provisions.

Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973:

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code to transfer any case or class of cases taken cognizance by a Court of Session under this section.

441. Compounding of certain offences.

(*1*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act (whether committed by a company or any officer thereof) with fine only, may, either before or after the institution of any prosecution, be compounded by—

(*a*) the Tribunal; or

(*b*) where the maximum amount of fine which may be imposed for such offence does not exceed five lakh rupees, by the Regional Director or any officer authorised by the Central Government, on payment or credit, by the company or, as the case may be, the officer, to the Central Government of such sum as that Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, may specify:

Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded:

Provided further that in specifying the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (*2*) of section 403 shall be taken into account:

Provided also that any offence covered under this sub-section by any company or its officer shall not be compounded if the investigation against such company has been initiated or is pending under this Act.

(*2*) Nothing in sub-section (*1*) shall apply to an offence committed by a company or its officer within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

Explanation.—For the purposes of this section,—

(*a*) any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence;

(*b*) "Regional Director" means a person appointed by the Central Government as a Regional Director for the purposes of this Act.

(*3*) (*a*) Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Tribunal or the

Regional Director or any officer authorised by the Central Government, as the case may be.

(*b*) Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the company to the Registrar within seven days from the date on which the offence is so compounded.

(*c*) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorised by the Central Government against the offender in relation to whom the offence is so compounded.

(*d*) Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the court in which the prosecution is pending and on such notice of the compounding of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.

(*4*) The Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires a company or its officer to file or register with, or deliver or send to, the Registrar any return, account or other document, may direct, by an order, if it or he thinks fit to do so, any officer or other employee of the company to file or register with, or on payment of the fee, and the additional fee, required to be paid under section 403, such return, account or other document within such time as may be specified in the order.

(*5*) Any officer or other employee of the company who fails to comply with any order made by the Tribunal or the Regional Director or any officer authorised by the Central Government under sub-section (*4*) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one lakh rupees, or with both.

(*6*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

(*a*) any offence which is punishable under this Act, with imprisonment or fine, or with imprisonment or fine or with both, shall be compoundable with the permission of the Special Court, in accordance with the procedure laid down in that Act for compounding of offences;

(*b*) any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.

(*7*) No offence specified in this section shall be compounded except under and in accordance with the provisions of this section.

442. Mediation and conciliation penal.

(*1*) The Central Government shall maintain a panel of experts to be called as the Mediation and Conciliation Panel consisting of such number of experts having such qualifications as may be prescribed for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Act.

(*2*) Any of the parties to the proceedings may, at any time during the proceedings before the Central Government or the Tribunal or the Appellate Tribunal, apply to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, in such form along with such fees as may be prescribed, for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel and the Central Government or

Tribunal or the Appellate Tribunal, as the case may be, shall appoint one or more experts from the panel referred to in sub-section (*1*).

(*3*) The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may, *suo motu*, refer any matter pertaining to such proceeding to such number of experts from the Mediation and Conciliation Panel as the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, deems fit.

(*4*) The fee and other terms and conditions of experts of the Mediation and Conciliation Panel shall be such as may be prescribed.

(*5*) The Mediation and Conciliation Panel shall follow such procedure as may be prescribed and dispose of the matter referred to it within a period of three months from the date of such reference and forward its recommendations to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

(*6*) Any party aggreived by the recommendation of the Mediation and Conciliation Panel may file objections to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

443. Power of Central Government to appoint company prosecutors.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Central Government may appoint generally, or for any case, or in any case, or for any specified class of cases in any local area, one or more persons, as company prosecutors for the conduct of prosecutions arising out of this Act and the persons so appointed as company prosecutors shall have all the powers and privileges conferred by the Code on Public Prosecutors appointed under section 24 of the Code.

444. Appeal against acquittal.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Central Government may, in any case arising under this Act, direct any company prosecutor or authorise any other person either by name or by virtue of his office, to present an appeal from an order of acquittal passed by any court, other than a High Court, and an appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.

445. Compensation for accusation without reasonable cause.

The provisions of section 250 of the Code of Criminal Procedure, 1973 shall apply *mutatis mutandis* to compensation for accusation without reasonable cause before the Special Court or the Court of Session.

446. Application of fines.

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

CHAPTER XXIX

MISCELLANEOUS

447. Punishment for fraud.
Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Explanation.—For the purposes of this section—

(*i*) "fraud" in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;
(*ii*) "wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;
(*iii*) "wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled.

448. Punishment for false statements.
Save as otherwise provided in this Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement,—
(*a*) which is false in any material particulars, knowing it to be false; or
(*b*) which omits any material fact, knowing it to be material, he shall be liable under section 447.

449. Punishment for false evidence.
Save as otherwise provided in this Act, if any person intentionally gives false evidence—
(*a*) upon any examination on oath or solemn affirmation, authorised under this Act; or
(*b*) in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten lakh rupees.

450. Punishment where no specific penalty or punishment is provided.
If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and

every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

451. Punishment in case of repeated default.

If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.

452. Punishment for wrongful withholding of property.

(*1*) If any officer or employee of a company—

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

(*b*) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act, he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(*2*) The Court trying an offence under sub-section (*1*) may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from such property or cash or in default, to undergo imprisonment for a term which may extend to two years.

453. Punishment for improper use of "Limited" or "Private Limited".

If any person or persons trade or carry on business under any name or title, of which the word "Limited" or the words "Private Limited" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with limited liability, or unless duly incorporated as a private company with limited liability, as the case may be, punishable with fine which shall not be less than five hundred rupees but may extend to two thousand rupees for every day for which that name or title has been used.

454. Adjudication of penalties.

(*1*) The Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of this Act in the manner as may be prescribed.

(*2*) The Central Government shall while appointing adjudicating officers, specify their jurisdiction in the order under sub-section (*1*).

(*3*) The adjudicating officer may, by an order impose the penalty on the company and the officer who is in default stating any non-compliance or default under the relevant provision of the Act.

(*4*) The adjudicating officer shall, before imposing any penalty, give a reasonable opportunity of being heard to such company and the officer who is in default.

(*5*) Any person aggrieved by an order made by the adjudicating officer under sub-section (*3*) may prefer an appeal to the Regional Director having jurisdiction in the matter.

(*6*) Every appeal under sub-section (*5*) shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person and shall be in such form, manner and be accompanied by such fees as may be prescribed.

(*7*) The Regional Director may, after giving the parties to the appeal an opportunity of being heard, pass such order as he thinks fit, confirming, modifying or setting aside the order appealed against.

(*8*) (*i*) Where company does not pay the penalty imposed by the adjudicating officer or the Regional Director within a period of ninety days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees.

(*ii*) Where an officer of a company who is in default does not pay the penalty within a period of ninety days from the date of the receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

455. Dormant company.

(*1*) Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

Explanation.—For the purposes of this section,—

(*i*) "inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;

(*ii*) "significant accounting transaction" means any transaction other than—

(*a*) payment of fees by a company to the Registrar;

(*b*) payments made by it to fulfil the requirements of this Act or any other law;

(*c*) allotment of shares to fulfil the requirements of this Act; and

(*d*) payments for maintenance of its office and records.

(*2*) The Registrar on consideration of the application shall allow the status of a dormant company to the applicant and issue a certificate in such form as may be prescribed to that effect.

(*3*) The Registrar shall maintain a register of dormant companies in such form as may be prescribed.

(*4*) In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.

(*5*) A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed.

(*6*) The Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.

456. Protection of action taken in good faith.

No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder, or in respect of the publication by or under the authority of the Government or such officer, of any report, paper or proceedings.

457. Non-disclosure of information in certain cases.

Notwithstanding anything contained in any other law for the time being in force, the Registrar, any officer of the Government or any other person shall not be compelled to disclose to any court, Tribunal or other authority, the source from where he got any information which—

(*a*) has led the Central Government to order an investigation under section 210; or

(*b*) is or has been material or relevant in connection with such investigation.

458. Delegation by Central Government of its powers and functions.

(*1*) The Central Government may, by notification, and subject to such conditions, limitations and restrictions as may be specified therein, delegate any of its powers or functions under this Act other than the power to make rules to such authority or officer as may be specified in the notification:

Provided that the powers to enforce the provisions contained in section 194 and section 195 relating to forward dealing and insider trading shall be delegated to Securities and Exchange Board for listed companies or the companies which intend to get their securities listed and in such case, any officer authorised by the Securities and Exchange Board shall have the power to file a complaint in the court of competent jurisdiction.

(*2*) A copy of every notification issued under sub-section (*1*) shall, as soon as may be after it is issued, be laid before each House of Parliament.

459. Powers of Central Government or Tribunal to accord approval, etc., subject to conditions and to prescribe fees on applications.

(*1*) Where the Central Government or the Tribunal is required or authorised by any provision of this Act—

(*a*) to accord approval, sanction, consent, confirmation or recognition to, or in relation to, any matter; or

(*b*) to give any direction in relation to any matter; or

(*c*) to grant any exemption in relation to any matter, then, the Central Government or the Tribunal may in the absence of anything to the contrary contained in that provision or any other provision of this Act, accord, give or grant such approval, sanction, consent, confirmation, recognition, direction or exemption, subject to such conditions, limitations or restrictions as it may think fit to impose and may, in the case of a contravention of any such condition, limitation or restriction, rescind or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption.

(*2*) Save as otherwise provided in this Act, every application which may be, or is required to be, made to the Central Government or the Tribunal under any provision of this Act—

(*a*) in respect of any approval, sanction, consent, confirmation or recognition to be accorded by that Government or the Tribunal to, or in relation to, any matter; or

(*b*) in respect of any direction or exemption to be given or granted by that Government or the Tribunal in relation to any matter; or

(*c*) in respect of any other matter, shall be accompanied by such fees as may be prescribed:

Provided that different fees may be prescribed for applications in respect of different matters or in case of applications by different classes of companies.

460. Condonation of delay in certain cases.

Notwithstanding anything contained in this Act,—

(*a*) where any application required to be made to the Central Government under any provision of this Act in respect of any matter is not made within the time specified therein, that Government may, for reasons to be recorded in writing, condone the delay; and

(*b*) where any document required to be filed with the Registrar under any provision of this Act is not filed within the time specified therein, the Central Government may, for reasons to be recorded in writing, condone the delay.

461. Annual report by Central Government.

The Central Government shall cause a general annual report on the working and administration of this Act to be prepared and laid before each House of Parliament within one year of the close of the year to which the report relates.

462. Power to exempt class or classes of companies from provisions of this Act.

(*1*) The Central Government may in the public interest, by notification direct that any of the provisions of this Act,—

(*a*) shall not apply to such class or classes of companies; or

(*b*) shall apply to the class or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification.

(*2*) A copy of every notification proposed to be issued under sub-section (*1*), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

463. Power of court to grant relief in certain cases.

(*1*) If in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, it appears to the court hearing the case that he is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly

to be excused, the court may relieve him, either wholly or partly, from his liability on such term, as it may think fit:

Provided that in a criminal proceeding under this sub-section, the court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.

(*2*) Where any such officer has reason to apprehend that any proceeding will or might be brought against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the High Court for relief and the High Court on such application shall have the same power to relieve him as it would have had if it had been a court before which a proceedings against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought under sub-section (*1*).

(3) No court shall grant any relief to any officer under sub-section (*1*) or sub-section (*2*) unless it has, by notice served in the manner specified by it, required the Registrar and such other person, if any, as it thinks necessary, to show cause why such relief should not be granted.

464. Prohibition of association or partnership of persons exceeding certain number.

(*1*) No association or partnership consisting of more than such number of persons as may be prescribed shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force:

Provided that the number of persons which may be prescribed under this sub-section shall not exceed one hundred.

(*2*) Nothing in sub-section (*1*) shall apply to—

(*a*) a Hindu undivided family carrying on any business; or

(*b*) an association or partnership, if it is formed by professionals who are governed by special Acts.

(*3*) Every member of an association or partnership carrying on business in contravention of sub-section (*1*) shall be punishable with fine which may extend to one lakh rupees and shall also be personally liable for all liabilities incurred in such business.

465. Repeal of certain enactments and savings.

(*1*) The Companies Act, 1956 and the Registration of Companies (Sikkim) Act, 1961 (hereafter in this section referred to as the repealed enactments) shall stand repealed:

Provided that the provisions of Part IX A of the Companies Act, 1956 shall be applicable *mutatis mutandis* to a Producer Company in a manner as if the Companies Act, 1956 has not been repealed until a special Act is enacted for Producer Companies:

Provided further that until a date is notified by the Central Government under subsection (*1*) of Section 434 for transfer of all matters, proceedings or cases to the Tribunal, the provisions of the Companies Act, 1956 in regard to the jurisdiction, powers, authority and

functions of the Board of Company Law Administration and court shall continue to apply as if the Companies Act, 1956 has not been repealed:

Provided also that provisions of the Companies Act, 1956 referred in the notification issued under section 67 of the Limited Liability Partnership Act, 2008 shall, until the relevant notification under such section applying relevant corresponding provisions of this Act to limited liability partnerships is issued, continue to apply as if the Companies Act, 1956 has not been repealed.

(*2*) Notwithstanding the repeal under sub-section (*1*) of the repealed enactments,—

(*a*) anything done or any action taken or purported to have been done or taken, including any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(*b*) subject to the provisions of clause (*a*), any order, rule, notification, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of any repealed enactment shall, if in force at the commencement of this Act, continue to be in force, and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act;

(*c*) any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not be affected, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in, or from, the repealed enactments;

(*d*) any person appointed to any office under or by virtue of any repealed enactment shall be deemed to have been appointed to that office under or by virtue of this Act;

(*e*) any jurisdiction, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not in existence or in force shall not be revised or restored;

(*f*) the offices existing on the commencement of this Act for the registration of companies shall continue as if they have been established under the provisions of this Act;

(*g*) the incorporation of companies registered under the repealed enactments shall continue to be valid and the provisions of this Act shall apply to such companies as if they were registered under this Act;

(*h*) all registers and all funds constituted and established under the repealed enactments shall be deemed to be registers and funds constituted or established under the corresponding provisions of this Act;

(*i*) any prosecution instituted under the repealed enactments and pending immediately before the commencement of this Act before any Court shall, subject to the provisions of this Act, continue to be heard and disposed of by the said Court;

(*j*) any inspection, investigation or inquiry ordered to be done under the Companies Act, 1956 shall continue to be proceeded with as if such inspection, investigation or inquiry has been ordered under the corresponding provisions of this Act; and

(*k*) any matter filed with the Registrar, Regional Director or the Central Government under the Companies Act, 1956 before the commencement of this Act and not fully addressed at that time shall be concluded by the Registrar, Regional Director or the Central Government, as the case may be, in terms of that Act, despite its repeal.

(*3*) The mention of particular matters in sub-section (*2*) shall not be held to prejudice the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal of the repealed enactments as if the Registration of Companies (Sikkim) Act, 1961 were also a Central Act.

466. Dissolution of Company Law Board and consequential provisions.

(*1*) Notwithstanding anything contained in section 465, the Board of Company Law Administration constituted under the Companies Act, 1956 (hereafter in this section referred to as the Company Law Board) shall stand dissolved on the constitution of the Tribunal and the Appellate Tribunal:

Provided that until the Tribunal and the Appellate Tribunal is constituted, the Chairman, Vice-Chairman and Members of the Company Law Board immediately before the constitution of the Tribunal and the Appellate Tribunal, who fulfil the qualifications and requirements provided under this Act regarding appointment as President or Chairperson or Member of the Tribunal or the Appellate Tribunal, shall function as President, Chairperson or Member of the Tribunal or the Appellate Tribunal:

Provided further that every officer or other employee, who had been appointed on deputation basis to the Company Law Board, shall, on such dissolution,—

(*i*) become officer or employee of the Tribunal or the Appellate Tribunal, if he fulfils the qualifications and requirements under this Act; and

(*ii*) stand reverted to his parent cadre, Ministry or Department, in any other case:

Provided also that every officer and the other employee of the Company Law Board, employed on regular basis by that Board, shall become, on and from such dissolution the officer and other employee, respectively, of the Tribunal or the Appellate Tribunal with the same rights and privileges as to pension, gratuity and other like benefits as would have been admissible to him if he had continued to serve that Board and shall continue to do so unless and until his employment in the Tribunal or the Appellate Tribunal is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the Tribunal or the Appellate Tribunal, as the case may be:

Provided also that notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, any officer or other employee who becomes an officer or other employee of the Tribunal or the Appellate Tribunal under the preceding proviso shall not be entitled to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority:

Provided also that where the Company Law Board has established a provident fund, superannuation fund, welfare fund or other fund for the benefit of the officers and other employees employed in that Board, the monies relatable to the officers and other

employees who have become officers or employees of the Tribunal or the Appellate Tribunal shall, out of the monies standing to the credit of such provident fund, superannuation fund, welfare fund or other fund, stand transferred to, and vest in, the Tribunal or the Appellate Tribunal, as the case may be, and such monies which stand so transferred shall be dealt with by the Tribunal or the Appellate Tribunal in such manner as may be prescribed.

(*2*) The persons holding the offices of Chairman, Vice-Chairman and Members, and officers and other employees of the Company Law Board immediately before the constitution of the Tribunal and the Appellate Tribunal who are not covered under proviso to sub-section (*1*) shall vacate their respective offices on such constitution and no such Chairman, Vice-Chairman and Members and officers or other employees shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service, if any.

467. Power of Central Government to amend Schedules.

(*1*) Subject to the provisions of this section, the Central Government may, by notification, alter any of the regulations, rules, Tables, forms and other provisions contained in any of the Schedules to this Act.

(*2*) Any alteration notified under sub-section (*1*) shall have effect as if enacted in this Act and shall come into force on the date of the notification, unless the notification otherwise directs:

Provided that no such alteration in Table F of Schedule I shall apply to any company registered before the date of such alteration.

(*3*) Every alteration made by the Central Government under sub-section (*1*) shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the alteration, or both Houses agree that the alteration should not be made, the alteration shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done in pursuance of that alteration.

468. Powers of Central Government to make rules relating to winding up.

(*1*) The Central Government shall, make rules consistent with the Code of Civil Procedure, 1908 providing for all matters relating to the winding up of companies, which by this Act, are to be prescribed, and may make rules providing for all such matters, as may be prescribed.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

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

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

(*iii*) for the holding of meetings of creditors and members in connection with proceedings under section 230;
(*iv*) for giving effect to the provisions of this Act as to the reduction of the capital;
(*v*) generally for all applications to be made to the Tribunal under the provisions of this Act;
(*vi*) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
(*vii*) the settling of lists of contributories and the rectifying of the register of members where required, and collecting and applying the assets;
(*viii*) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
(*ix*) the making of calls; and
(*x*) the fixing of a time within which debts and claims shall be proved.

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

469. Power of Central Government to make rules.

(*1*) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(*2*) Without prejudice to the generality of the provisions of sub-section (*1*), the Central Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provision is to be or may be made by rules.

(*3*) Any rule made under sub-section (*1*) may provide that a contravention thereof shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues.

(*4*) Every rule made under this section and every regulation made by Securities and Exchange Board under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

470. Power to remove difficulties

(*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of five years from the date of commencement of section 1 of this Act.

(*2*) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Rules for Chapter XXIX

Companies (Adjudication of Penalties) Rules, 2014

In exercise of the powers conferred by section 454 read with section 469 of the Companies Act, 2013, the Central Government hereby makes the following rules, namely:-

1. Short title and commencement. –

(1) These rules may be called the Companies (Adjudication of Penalties) Rules, 2014.

(2) They shall come into force on the 1st day of April, 2014.

2. Definitions. (1) In these rules, unless the context otherwise requires,-

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "Annexure" means the Annexure enclosed to these Rules;

(c) "Fees" means fees as prescribed in the Companies (Registration Offices and Fees) Rules, 2014;

(d) "Form" or 'e-Form" means a form set forth in Annexure to these rules which shall be used for the matter to which it relates;

(e) "Regional Director" means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director;

(f) "section" means section of the Act;

(2) Words and expressions used in these rules but not defined, and defined in the Act or in the Companies (Specification of definitions details) Rules, 2014 shall have the meanings respectively assigned to them in the Act or in the said Rules.

3. Adjudication of penalties.- (1) The Central Government may appoint any of its officers, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of the Act.

(2) Before adjudging penalty, the adjudicating officer shall issue a written notice to the company and to every officer of the company who is in default, to show cause, within such period as may be specified in the notice (not being less than fifteen days and more than forty five days from the date of service thereon), why the inquiry should not be held against him:

Provided that every notice issued under this sub-rule, shall clearly indicate the nature of non-compliance or default under the Act alleged to have been committed or made by such company and officer in default, as the case may be:

Provided further that the adjudicating officer may, for reasons to be recorded in writing, extend the period referred to above by a further period not exceeding fifteen days, if the company or officer (as applicable) satisfies the said officer that it has sufficient cause for not responding to the notice within the stipulated period.

(3) If, after considering the cause, if any, shown by such company or officer, the adjudicating officer is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of such company, through its authorised representative, or officer of such company whether personally or through his authorised representative

(4) On the date fixed for hearing and after giving a reasonable opportunity of being heard to the person(s) concerned, the adjudicating officer may, subject to reasons to be recorded in writing, pass any order as he thinks fit including an order for adjournment of the hearing to a future date.

(5) Every order passed under sub-rule (4), shall be dated and signed by the adjudicating officer.

(6) The adjudicating officer shall send a copy of the order passed by it to the concerned company or officer who is in default and to the Central Government.

(7) While holding an inquiry, the adjudicating officer shall have the following powers, namely:-

(a) to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case;

(b) to order for evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry.

(8) If any person fails, neglects or refuses to appear as required under sub-rule (7) before the adjudicating officer, the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so.

(9) While adjudging quantum of penalty, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors or creditors as a result of the default;

(c) the repetitive nature of the default.

(10) All sums realised by way of penalties under the Act shall be credited to the Consolidated Fund of India.

4. Appeal against the order of adjudicating officer. - (1) Every appeal against the order of the adjudicating officer shall be filed in writing with the Regional Director having jurisdiction in the matter within a period of sixty days from the date of receipt of the order of adjudicating officer by the aggrieved party, in Form **ADJ** setting forth the grounds of appeal and shall be accompanied by a certified copy of the order against which the appeal is sought:

Provided that where the party is represented by an authorized representative, a copy of such authorisation in favour of the representative and the written consent thereto by such authorized representative shall also be appended to the appeal:

Provided further that an appeal in Form **ADJ** shall not seek relief(s) therein against more than one order unless the reliefs prayed for are consequential.

(2) Every appeal filed under this rule shall be accompanied by such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

5. Registration of appeal.- (1) On the receipt of an appeal, office of the Regional Director shall endorse the date on such appeal and shall sign such endorsement.

(2) If, on scrutiny, the appeal is found to be in order, it shall be duly registered and given a serial number:

Provided that where the appeal is found to be defective, the Regional Director may allow the appellant such time, not being less than fourteen days following the date of receipt of intimation by the appellant from the Regional Director about the nature of the defects, to rectify the defects and if the appellant fails to rectify such defects within the time period allowed as above, the Regional Director may by order and for reasons to be recorded in writing, decline to register such appeal and communicate such refusal to the appellant within a period of seven days thereof:

Provided further that the Regional Director may, for reasons to be recorded in writing, extend the period referred to in the first proviso above by a further period of fourteen days if an appellant satisfies the Regional Director that the appellant had sufficient cause for not rectifying the defects within the period of fourteen days referred to in the first proviso.

6. Disposal of appeal by Regional Director.- (1) On the admission of the appeal, the Regional Director shall serve a copy of appeal upon the adjudicating officer against whose order the appeal is sought along-with a notice requiring such adjudicating officer to file his reply thereto within such period, not exceeding twenty-one days, as may be stipulated by the Regional Director in the said notice:

Provided that the Regional Director may, for reasons to be recorded in writing, extend the period referred to in sub-rule (1) above for a further period of twenty-one days, if the adjudicating officer satisfies the Regional Director that he had sufficient cause for not being able to file his reply to the appeal within the above-said period of twenty-one days.

(2) A copy of every reply, application or written representation filed by the adjudicating officer before the Regional Director shall be forthwith served on the appellant by the adjudicating officer.

(3) The Regional Director shall notify the parties, the date of hearing of the appeal which shall not be a date earlier than thirty days following the date of such notification for hearing of the appeal.

(4) On the date fixed for hearing the Regional Director may, subject to the reasons to be recorded in writing, pass any order as he thinks fit including an order for adjournment of the hearing to a future date.

(5) In case the appellant or the adjudicating officer does not appear on the date fixed for hearing, the Regional Director may dispose of the appeal *ex-parte:*

Provided that where the appellant appears afterwards and satisfies the Regional Director that there was sufficient cause for his nonappearance, the Regional Director may make an order setting aside the *ex-parte* order and restore the appeal.

(6) Every order passed under this rule shall be dated and signed by the Regional Director.

(7) A certified copy of every order passed by the Regional Director shall be communicated to the adjudicating officer and to the appellant forthwith and to the Central Government.

Companies (Miscellaneous) Rules, 2014

In exercise of the powers conferred under section 455, sub-section (2) of section 459 and sub-section (1) of section 464 read with section 469 of the Companies Act, 2013, and in supersession of the Companies (Central Government's) General Rules and Forms, 1956 or any other rules prescribed under the Companies Act, 1956 (1 of 1956) on matters covered under these rules, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:-

1. Short title and commencement. –

(1) These rules may be called the Companies (Miscellaneous) Rules, 2014.

(2) They shall come into force on the 1st day of April, 2014.

2. **Definitions.** (1) In these rules, unless the context otherwise requires,-

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "Annexure" means Annexure enclosed to these Rules;

(c) "Fees" means fees as prescribed in the Companies (Registration Offices and Fees) Rules, 2014;

(d) "Form" or "e-Form" means a form set forth in Annexure to these rules which shall be used for the matter to which it relates;

(e) "section" means section of the Act;

(2) Words and expressions used in these rules but not defined, and defined in the Act or in the Company (Specification of definitions details) Rules, 2014 shall have the meanings respectively assigned to them in the Act or in the said Rules.

3. Application for obtaining status of dormant company.- For the purposes of sub-section (1) of section 455, a company may make an application in Form **MSC-1** along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 to the Registrar for obtaining the status of a Dormant Company in accordance with the provisions of section 455 after passing a special resolution to this effect in the general meeting of the company or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders (in value):

Provided that a company shall be eligible to apply under this rule only, if-

(i) no inspection, inquiry or investigation has been ordered or taken up or carried out against the company;

(ii) no prosecution has been initiated and pending against the company under any law;

(iii) the company is neither having any public deposits which are outstanding nor the company is in default in payment thereof or interest thereon;

(iv) the company is not having any outstanding loan, whether secured or unsecured:

Provided that if there is any outstanding unsecured loan, the company may apply under this rule after obtaining concurrence of the lender and enclosing the same with Form **MSC-1** ;

(v) there is no dispute in the management or ownership of the company and a certificate in this regard is enclosed with Form **MSC-1**;

(vi) the company does not have any outstanding statutory taxes, dues, duties etc. payable to the Central Government or any State Government or local authorities etc.;
(vii) the company has not defaulted in the payment of workmen's dues;
(viii) the securities of the company are not listed on any stock exchange within or outside India.

4. Certificate of status of dormant company.- The Registrar shall, after considering the application filed in Form **MSC-1**, issue a certificate in Form **MSC-2** allowing the status of a Dormant Company to the applicant.

5. Register of dormant companies.- The Register maintained under the portal maintained by the Ministry of Corporate Affairs on its web-site www.mca.gov.in or any other website notified by the Central Government, shall be the register for dormant companies.

6. Minimum number of directors for dormant company.- A dormant company shall have a minimum number of three directors in case of a public company, two directors in case of a private company and one director in case of a One Person Company:

Provided that the provisions of the Act in relation to the rotation of auditors shall not apply on dormant companies.

7. Return of dormant companies.- A dormant company shall file a "Return of Dormant Company" annually, inter-alia, indicating financial position duly audited by a chartered accountant in practice in Form **MSC-3** along with such annual fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within a period of thirty days from the end of each financial year:

Provided that the company shall continue to file the return or returns of allotment and change in directors in the manner and within the time specified in the Act, whenever the company allots any security to any person or there is any change in the directors of the company.

8. Application for seeking status of an active company.- (1) An application, under sub-section (5) of section 455, for obtaining the status of an active company shall be made in Form **MSC-4** along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by a return in Form **MSC-3** in respect of the financial year in which the application for obtaining the status of an active company is being filed:

Provided that the Registrar shall initiate the process of striking off the name of the company if the company remains as a dormant company for a period of consecutive five years.

(2) The Registrar shall, after considering the application filed under subrule-(1), issue a certificate in Form **MSC-5** allowing the status of an active company to the applicant.
(3) Where a dormant company does or omits to do any act mentioned in the Grounds of application in Form **MSC-1** submitted to Registrar for obtaining the status of dormant

company, affecting its status of dormant company, the directors shall within seven days from such event, file an application, under sub-rule (1) of this rule, for obtaining the status of an active company.

(4) Where the Registrar has reasonable cause to believe that any company registered as 'dormant company' under his jurisdiction has been functioning in any manner, directly or indirectly, he may initiate the proceedings for enquiry under section 206 of the Act and if, after giving a reasonable opportunity of being heard to the company in this regard, it is found that the company has actually been functioning, the Registrar may remove the name of such company from register of dormant companies and treat it as an active company.

9. Fees for application to Central Government.- For the purposes of sub-section (2) of section 459, every application which may be, or is required to be, made to the Central Government under any provision of the Act

(a) in respect of any approval, sanction, consent, confirmation or recognition to be accorded by that Government to, or in relation to, any matter; or

(b) in respect of any direction or exemption to be given or granted by that Government in relation to any matter; or

(c) in respect of any other matter, shall be accompanied by such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

10. Association or partnership of persons exceeding certain number. - No association or partnership shall be formed, consisting of more than fifty persons for the purpose of carrying on any business that has for its objects the acquisition of gain by the association or partnership or by individual members thereof, unless it is registered as a company under the Act or is formed under any other law for the time being in force.

SCHEDULES
TO
THE ACT

Schedule I

(*See* sections 4 and 5)

TABLE -A

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES

1st The name of the company is ".....Limited / Private Limited".

2nd The registered office of the company will be situated in the State of .....

3rd (*a*) The objects to be pursued by the company on its incorporation are:—

(*b*) Matters which are necessary for furtherance of the objects specified in clause 3(*a*) are:—

4th The liability of the member(s) is limited and this liability is limited to the amount unpaid, if any, on the shares held by them.

5th The share capital of the company is.....rupees, divided into.....shares of.....rupees each.

6th We, the several persons, whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and werespectively agree to take the number of shares in the capital of the company set against our respective names:—

Names, addresses, descriptions and occupations of subscribers	No. of shares taken by each subscriber	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses
A.B. of..... Merchant	.....		Signed before me: Signature.....
C.D. of..... Merchant	.....		Signed before me: Signature.....
E.F. of..... Merchant	.....		Signed before me: Signature.....
G.H. of.....Merchant	.....		Signed before me: Signature.....
I.J. of..... Merchant	.....		Signed before me: Signature.....
K.L. of..... Merchant	.....		Signed before me: Signature.....
M.N. of.....Merchant	.....		Signed before me: Signature.....

Total shares taken: _____

7th I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association and agree to take all the shares in the capital of the company (Applicable in case of one person company):—

Name, address, description and occupation of subscriber	Signature of subscriber	Signature, name, address, description and occupation of witness

A.B. .....Merchant		Signed before me: Signature.....

8th Shri/Smt....., son/daughter of ....., resident of..... aged..... year shall be the nominee in the event of death of the sole member (Applicable in case of one person company)

Dated..... the day of .....

TABLE -B

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

1st The name of the company is ".....Limited/Private Limited".
2nd The registered office of the company will be situated in the State of.....
3rd (*a*) The objects to be pursued by the company on its incorporation are:—
(*b*) Matters which are necessary for furtherance of the objects specified in clause 3(*a*) are:—
4th The liability of the member(s) is limited.
5th Every member of the company undertakes to contribute:
(*i*) to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member; and
(*ii*) to the costs, charges and expenses of winding up (and for the adjustment of the rights of the contributories among themselves), such amount as may be required, not exceeding.....rupees.
6th We, the several persons, whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association.

Names, addresses, descriptions and occupations of subscribers	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses
A.B. of.....Merchant		Signed before me: Signature.....
C.D. of.....Merchant		Signed before me: Signature.....
E.F. of.....Merchant		Signed before me: Signature.....
G.H. of.....Merchant		Signed before me: Signature.....
I.J. of.....Merchant		Signed before me: Signature.....
K.L. of.....Merchant		Signed before me: Signature.....
M.N. of.....Merchant		Signed before me: Signature.....

7th I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association (Applicable in case of one person company):—

Name, address, description and occupation of subscriber	Signature of subscriber	Signature, name, address, description and occupation of witness
A.B. .....Merchant		Signed before me: Signature.....

8th Shri/Smt....., son/daughter of ....., resident of..... aged..... years shall be the nominee in the event of death of the sole member (Applicable in case of one person company)

Dated..... the day of .....

TABLE -C
MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL

1st The name of the company is "....Limited/Private Limited".
2nd The registered office of the company will be situated in the State of.....
3rd (*a*) The objects to be pursued by the company on its incorporation are:—
(*b*) Matters which are necessary for furtherance of the objects specified in clause 3(*a*) are:—
4th The liability of the member(s) is limited.
5th Every member of the company undertakes to contribute:
(*i*) to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member; and
(*ii*) to the costs, charges and expenses of winding up (and for the adjustment of the rights of the contributories among themselves),such amount as may be required, not exceeding.....rupees.
6th The share capital of the company is.....rupees, divided into.....shares of.....rupees each
7th We, the several persons, whose names, addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association and were respectively agree to take the number of shares in the capital of the company set against our respective names:—

Names, addresses, descriptions and occupations of subscribers	No. of shares taken by each subscriber	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses
A.B. of..... Merchant	.....		Signed before me: Signature.....
C.D. of..... Merchant	.....		Signed before me:

			Signature.....
E.F. of.....Merchant	.....		Signed before me: Signature.....
G.H. of..... Merchant	.....		Signed before me: Signature.....
I.J. of..... Merchant	.....		Signed before me: Signature.....
K.L. of.....Merchant	.....		Signed before me: Signature.....
M.N. of.....Merchant	.....		Signed before me: Signature.....

8th I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association and agree to take all the shares in the capital of the company (Applicable in case of one person company):—

Name, address, description and occupation of subscriber	Signature of subscriber	Signature, name, address, description and occupation of witness
A.B. .....Merchant		Signed before me: Signature.....

9th Shri/Smt....., son/daughter of ....., resident of..... aged..... years shall be the nominee in the event of death of the sole member (Applicable in case of one person company)

Dated..... the day of.....

TABLE -D

MEMORANDUM OF ASSOCIATION OF AN UNLIMITED COMPANY AND NOT HAVING SHARE CAPITAL

1st The name of the company is "....Company".
2nd The registered office of the company will be situated in the State of.....
3rd (*a*) The objects to be pursued by the company on its incorporation are:—
(*b*) Matters which are necessary for furtherance of the objects specified in clause 3(*a*) are:—
4th The liability of the member(s) is unlimited.
5th We, the several persons, whose names and addresses are subscribed are desirous of being formed into a company in pursuance of this memorandum of association.

Names, addresses, descriptions and occupations of subscribers	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses
A.B. of.....Merchant		Signed before me: Signature.....

C.D. of.....Merchant		Signed before me: Signature.....
E.F. of.....Merchant		Signed before me: Signature.....
G.H. of.....Merchant		Signed before me: Signature.....
I.J. of.....Merchant		Signed before me: Signature.....
K.L. of.....Merchant		Signed before me: Signature.....
M.N. of.....Merchant		Signed before me: Signature.....

6th I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association (Applicable in case of one person company):—

Name, address, description and occupation of subscriber	Signature of subscriber	Signature, name, address, description and occupation of witness
A.B. .....Merchant		Signed before me: Signature.....

7th Shri/Smt....., son/daughter of ....., resident of..... aged..... years shall be the nominee in the event of death of the sole member (Applicable in case of one person company)

Dated..... the day of.....

TABLE -E
MEMORANDUM OF ASSOCIATION OF AN UNLIMITED COMPANY AND HAVING SHARE CAPITAL

1st The name of the company is "....Company".

2nd The registered office of the company will be situated in the State of .....

3rd (*a*) The objects to be pursued by the company on its incorporation are:—

(*b*) Matters which are necessary for furtherance of the objects specified in clause 3(*a*) are:—

4th The liability of the member(s) is unlimited.

5th The share capital of the company is.....rupees, divided into .....shares of.....rupees each.

6th We, the several persons, whose names, and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association and we respectively agree to take the number of shares in the capital of the company set against our respective names:—

Names, addresses, descriptions and occupations of subscribers	No. of shares taken by each subscriber	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses

A.B. of..... Merchant	.....		Signed before me: Signature.....
C.D. of..... Merchant	.....		Signed before me: Signature.....
E.F. of..... Merchant	.....		Signed before me: Signature.....
G.H. of..... Merchant	.....		Signed before me: Signature.....
I.J. of..... Merchant	.....		Signed before me: Signature.....
K.L. of..... Merchant	.....		Signed before me: Signature.....
M.N. of.... Merchant	.....		Signed before me: Signature.....

7th I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association and agree to take all the shares in the capital of the company (Applicable in case of one person company):—

Name, address, description and occupation of subscriber	Signature of subscriber	Signature, name, address, description and occupation of witness
A.B. .....Merchant		Signed before me: Signature.....

8th Shri/Smt....., son/daughter of ....., resident of..... aged..... years shall be the nominee in the event of death of the sole member (Applicable in case of one person company)

Dated..... the day of .....

TABLE -F
ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY SHARES

Interpretation

I. (*1*) In these regulations—
(*a*) "the Act" means the Companies Act, 2013,
(*b*) "the seal" means the common seal of the company.
(*2*) Unless the context otherwise requires, words or expressions contained in these regulations shall bear the same meaning as in the Act or any statutory modification thereofin force at the date at which these regulations become binding on the company.

Share capital and variation of rights

II. 1. Subject to the provisions of the Act and these Articles, the shares in the capital of the company shall be under the control of the Directors who may issue, allot or otherwise dispose of the same or any of them to such persons, in such proportion and on such terms and conditions and either at a premium or at par and at such time as they may from time to time think fit.

2. (i) Every person whose name is entered as a member in the register of members shall be entitled to receive within two months after incorporation, in case of subscribers to the memorandum or after allotment or within one month after the application for the registration of transfer or transmission or within such other period as the conditions of issue shall be provided,—

(*a*) one certificate for all his shares without payment of any charges; or

(*b*) several certificates, each for one or more of his shares, upon payment of twenty rupees for each certificate after the first.

(*ii*) Every certificate shall be under the seal and shall specify the shares to which it relates and the amount paid-up thereon.

(*iii*) In respect of any share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

3. (i) If any share certificate be worn out, defaced, mutilated or torn or if there be no further space on the back for endorsement of transfer, then upon production and surrender thereof to the company, a new certificate may be issued in lieu thereof, and if any certificate is lost or destroyed then upon proof thereof to the satisfaction of the company and on execution of such indemnity as the company deem adequate, a new certificate in lieu thereof shall be given. Every certificate under this Article shall be issued on payment of twenty rupees for each certificate.

(*ii*) The provisions of Articles (*2*) and (*3*) shall *mutatis mutandis* apply to debentures of the company.

4. Except as required by law, no person shall be recognised by the company as share upon any trust, and the company shall not be bound by, or be compelled in anyway to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share, or any interest in any fractional part of a share, or (except only asby these regulations or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

5. (*i*) The company may exercise the powers of paying commissions conferred by sub-section (*6*) of section 40, provided that the rate per cent. or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by that section and rules made thereunder.

(*ii*) The rate or amount of the commission shall not exceed the rate or amount prescribed in rules made under sub-section (6) of section 40.

(*iii*) The commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in the one way and partly in the other.

6. (*i*) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, subject to the provisions of section 48, and whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate meetingof the holders of the shares of that class.

(*ii*) To every such separate meeting, the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be atleast two persons holding at least one-third of the issued shares of the class in question.

7. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the

shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.

8. Subject to the provisions of section 55, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are to be redeemed on such terms and in such manner as the company before the issue of the shares may, by special resolution, determine.

9. ***Lien***

(*i*) The company shall have a first and paramount lien—

(*a*) on every share (not being a fully paid share), for all monies (whether presently payable or not) called, or payable at a fixed time, in respect of that share; and

(*b*) on all shares (not being fully paid shares) standing registered in the name of a single person, for all monies presently payable by him or his estate to the company:

Provided that the Board of directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause.

(*ii*) The company's lien, if any, on a share shall extend to all dividends payable and bonuses declared from time to time in respect of such shares.

10. The company may sell, in such manner as the Board thinks fit, any shares on which the company has a lien:

Provided that no sale shall be made—

(*a*) unless a sum in respect of which the lien exists is presently payable; or

(*b*) until the expiration of fourteen days after a notice in writing stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share or the person entitled thereto by reason of his death or insolvency.

11. (*i*) To give effect to any such sale, the Board may authorise some person to transfer the shares sold to the purchaser thereof.

(*ii*) The purchaser shall be registered as the holder of the shares comprised in any such transfer.

(*iii*) The purchaser shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

12. (*i*) The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable.

(*ii*) The residue, if any, shall, subject to a like lien for sums not presently payable as existed upon the shares before the sale, be paid to the person entitled to the shares at the date of the sale.

Calls on shares

13. (*i*) The Board may, from time to time, make calls upon the members in respect of any monies unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times:

Provided that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call.

(*ii*) Each member shall, subject to receiving at least fourteen days' notice specifying the time or times and place of payment, pay to the company, at the time or times and place sospecified, the amount called on his shares.

(*iii*) A call may be revoked or postponed at the discretion of the Board.

14. A call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed and may be required to be paid by installments.

15. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

16. (*i*) If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest thereon from the day appointed for payment thereof to the time of actual payment at ten per cent. per annum or at such lower rate, if any, as the Board may determine.

(*ii*) The Board shall be at liberty to waive payment of any such interest wholly or in part.

17. (*i*) Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall, for the purposes of these regulations, be deemed to be a call duly made and payable on the date on which by the terms of issue such sum becomes payable.

(*ii*) In case of non-payment of such sum, all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.

18. The Board—

(*a*) may, if it thinks fit, receive from any member willing to advance the same, all or any part of the monies uncalled and unpaid upon any shares held by him; and

(*b*) upon all or any of the monies so advanced, may (until the same would, but for such advance, become presently payable) pay interest at such rate not exceeding, unless the company in general meeting shall otherwise direct, twelve per cent. per annum, as may be agreed upon between the Board and the member paying the sum in advance.

Transfer of shares

19. (*i*) The instrument of transfer of any share in the company shall be executed by or on behalf of both the transferor and transferee.

(*ii*) The transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

20. The Board may, subject to the right of appeal conferred by section 58 decline to register—

(*a*) the transfer of a share, not being a fully paid share, to a person of whom they do not approve; or

(*b*) any transfer of shares on which the company has a lien.

21. The Board may decline to recognise any instrument of transfer unless—

(*a*) the instrument of transfer is in the form as prescribed in rules made under sub-section (*1*) of section 56;

(*b*) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer; and

(*c*) the instrument of transfer is in respect of only one class of shares.

22. On giving not less than seven days' previous notice in accordance with section 91 and rules made thereunder, the registration of transfers may be suspended at such times and for such periods as the Board may from time to time determine:

Provided that such registration shall not be suspended for more than thirty days at any one time or for more than forty-five days in the aggregate in any year.

Transmission of shares

23. (*i*) On the death of a member, the survivor or survivors where the member was a joint holder, and his nominee or nominees or legal representatives where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares.

(*ii*) Nothing in clause (*i*) shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

24.(*i*) Any person becoming entitled to a share in consequence of the death or insolvency of a member may, upon such evidence being produced as may from time to time properly be required by the Board and subject as hereinafter provided, elect, either—

(*a*) to be registered himself as holder of the share; or

(*b*) to make such transfer of the share as the deceased or insolvent member could have made.

(*ii*) The Board shall, in either case, have the same right to decline or suspend registration as it would have had, if the deceased or insolvent member had transferred the share beforehis death or insolvency.

25. (*i*) If the person so becoming entitled shall elect to be registered as holder of the share himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects.

(*ii*) If the person aforesaid shall elect to transfer the share, he shall testify his election by executing a transfer of the share.

(*iii*) All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or insolvency of the member had not occurred and the notice or transfer were a transfer signed by that member.

26. A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company:

Provided that the Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends, bonuses or other monies payable in respect of the share, until the requirements of the notice have been complied with.

27. In case of a One Person Company—

(*i*) on the death of the sole member, the person nominated by such member shall be the person recognised by the company as having title to all the shares of the member;

(*ii*) the nominee on becoming entitled to such shares in case of the member's death shall be informed of such event by the Board of the company;
(*iii*) such nominee shall be entitled to the same dividends and other rights and liabilities to which such sole member of the company was entitled or liable;
(*iv*) on becoming member, such nominee shall nominate any other person with the prior written consent of such person who, shall in the event of the death of the member, become the member of the company.

Forfeiture of shares

28. If a member fails to pay any call, or instalment of a call, on the day appointed for payment thereof, the Board may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the callor instalment as is unpaid, together with any interest which may have accrued.

29. The notice aforesaid shall—
(*a*) name a further day (not being earlier than the expiry of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made; and
(*b*) state that, in the event of non-payment on or before the day so named, the shares in respect of which the call was made shall be liable to be forfeited.

30. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may, at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect.

31. (*i*) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit.
(*ii*) At any time before a sale or disposal as aforesaid, the Board may cancel the forfeiture on such terms as it thinks fit.

32. (*i*) A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding the forfeiture, remain liable to pay to the company all monies which, at the date of forfeiture, were presently payable by him to the company in respect of the shares.
(*ii*) The liability of such person shall cease if and when the company shall have received payment in full of all such monies in respect of the shares.

33. (*i*) A duly verified declaration in writing that the declarant is a director, the manager or the secretary, of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share;
(*ii*) The company may receive the consideration, if any, given for the share on any sale or disposal thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of;
(*iii*) The transferee shall thereupon be registered as the holder of the share; and

(*iv*) The transferee shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

34. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Alteration of capital

35. The company may, from time to time, by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as may be specified in the resolution.

36. Subject to the provisions of section 61, the company may, by ordinary resolution,—

(*a*) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(*b*) convert all or any of its fully paid-up shares into stock, and reconvert that stock in to fully paid-up shares of any denomination;

(*c*) sub-divide its existing shares or any of them into shares of smaller amount than is fixed by the memorandum;

(*d*) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

37. Where shares are converted into stock,—

(*a*) the holders of stock may transfer the same or any part thereof in the same manner as, and subject to the same regulations under which, the shares from which the stock arose might before the conversion have been transferred, or as near thereto as circumstances admit:

Provided that the Board may, from time to time, fix the minimum amount of stock transferable, so, however, that such minimum shall not exceed the nominal amount of the shares from which the stock arose.

(*b*) the holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company, and other matters, as if they held the shares from which the stock arose; but no such privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.

(*c*) such of the regulations of the company as are applicable to paid-up shares shall apply to stock and the words "share" and "shareholder" in those regulations shall include "stock" and "stock-holder" respectively.

38. The company may, by special resolution, reduce in any manner and with, and subject to, any incident authorised and consent required by law,—

(*a*) its share capital;

(*b*) any capital redemption reserve account; or

(*c*) any share premium account.

Capitalization of profits

39. (*i*) The company in general meeting may, upon the recommendation of the Board, resolve—

(*a*) that it is desirable to capitalize any part of the amount for the time being standing to the credit of any of the company's reserve accounts, or to the credit of the profit and loss account, or otherwise available for distribution; and

(*b*) that such sum be accordingly set free for distribution in the manner specified in clause (*ii*) amongst the members who would have been entitled thereto, if distributed by way of dividend and in the same proportions.

(*ii*) The sum aforesaid shall not be paid in cash but shall be applied, subject to the provision contained in clause (*iii*), either in or towards—

(*A*) paying up any amounts for the time being unpaid on any shares held by such members respectively;

(*B*) paying up in full, unissued shares of the company to be allotted and distributed, credited as fully paid-up, to and amongst such members in the proportions aforesaid;

(*C*) partly in the way specified in sub-clause (*A*) and partly in that specified in sub-clause (*B*);

(*D*) A securities premium account and a capital redemption reserve account may, for the purposes of this regulation, be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares;

(*E*) The Board shall give effect to the resolution passed by the company in pursuance of this regulation.

40. (*i*) Whenever such a resolution as aforesaid shall have been passed, the Board shall—

(*a*) make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully paid shares if any; and

(*b*) generally do all acts and things required to give effect thereto.

(*ii*) The Board shall have power—

(*a*) to make such provisions, by the issue of fractional certificates or by payment in cash or otherwise as it thinks fit, for the case of shares becoming distributable infractions; and

(*b*) to authorise any person to enter, on behalf of all the members entitled thereto, into an agreement with the company providing for the allotment to them respectively, credited as fully paid-up, of any further shares to which they may be entitled upon such capitalisation, or as the case may require, for the payment by the company on their behalf, by the application thereto of their respective proportions of profits resolved to be capitalised, of the amount or any part of the amounts remaining unpaid on their existing shares;

(*iii*) Any agreement made under such authority shall be effective and binding on such members.

Buy-back of shares

41. Notwithstanding anything contained in these articles but subject to the provisions of sections 68 to 70 and any other applicable provision of the Act or any other law for the time being in force, the company may purchase its own shares or other specified securities.

General meetings

42. All general meetings other than annual general meeting shall be called extraordinary general meeting.

43. (*i*) The Board may, whenever it thinks fit, call an extraordinary general meeting.

(*ii*) If at any time directors capable of acting who are sufficient in number to form a quorum are not within India, any director or any two members of the company may call an extraordinary general meeting in the same manner, as nearly as possible, as that in which such a meeting may be called by the Board.

Proceedings at general meetings

44. (*i*) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

(*ii*) Save as otherwise provided herein, the quorum for the general meetings shall be as provided in section 103.

45. The chairperson, if any, of the Board shall preside as Chairperson at every general meeting of the company.

46. If there is no such Chairperson, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairperson of the meeting, the directors present shall elect one of their members to be Chairperson of the meeting.

47. If at any meeting no director is willing to act as Chairperson or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their members to be Chairperson of the meeting.

48. In case of a One Person Company—

(*i*) the resolution required to be passed at the general meetings of the company shall be deemed to have been passed if the resolution is agreed upon by the sole member and communicated to the company and entered in the minutes book maintained under section 118;

(*ii*) such minutes book shall be signed and dated by the member;

(*iii*) the resolution shall become effective from the date of signing such minutes by the sole member.

Adjournment of meeting

49. (*i*) The Chairperson may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place.

(*ii*) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(*iii*) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(*iv*) Save as aforesaid, and as provided in section 103 of the Act, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

Voting rights

50. Subject to any rights or restrictions for the time being attached to any class or classes of shares,—

(*a*) on a show of hands, every member present in person shall have one vote; and

(*b*) on a poll, the voting rights of members shall be in proportion to his share in the paid-up equity share capital of the company.

51. A member may exercise his vote at a meeting by electronic means in accordance with section 108 and shall vote only once.

52. (*i*) In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.

(*ii*) For this purpose, seniority shall be determined by the order in which the names stand in the register of members.

53. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

54. Any business other than that upon which a poll has been demanded may be proceeded with, pending the taking of the poll.

55. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

56. (*i*) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.

(*ii*) Any such objection made in due time shall be referred to the Chairperson of the meeting, whose decision shall be final and conclusive.

Proxy

57. The instrument appointing a proxy and the power-of-attorney or other authority, if any, under which it is signed or a notarised copy of that power or authority, shall be deposited at the registered office of the company not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll; and in default the instrument of proxy shall not be treated as valid.

58. An instrument appointing a proxy shall be in the form as prescribed in the rules made under section 105.

59. A vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death or insanity of the principal or the revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the shares in respect of which the proxy is given:

Provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the company at its office before the commencement of the meeting or adjourned meeting at which the proxy is used.

Board of Directors

60. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them.

61. (*i*) The remuneration of the directors shall, in so far as it consists of a monthly payment, be deemed to accrue from day-to-day.

(*ii*) In addition to the remuneration payable to them in pursuance of the Act, the directors may be paid all travelling, hotel and other expenses properly incurred by them—

(*a*) in attending and returning from meetings of the Board of Directors or any committee thereof or general meetings of the company; or

(*b*) in connection with the business of the company.

62. The Board may pay all expenses incurred in getting up and registering the company.

63. The company may exercise the powers conferred on it by section 88 with regard to the keeping of a foreign register; and the Board may (subject to the provisions of that section) make and vary such regulations as it may thinks fit respecting the keeping of any such register.

64. All cheques, promissory notes, drafts, *hundis*, bills of exchange and other negotiable instruments, and all receipts for monies paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, by such person and in such manner as the Board shall from time to time by resolution determine.

65. Every director present at any meeting of the Board or of a committee thereof shall sign his name in a book to be kept for that purpose.

66. (*i*) Subject to the provisions of section 149, the Board shall have power at any time, and from time to time, to appoint a person as an additional director, provided the number of the directors and additional directors together shall not at any time exceed the maximum strength fixed for the Board by the articles.

(*ii*) Such person shall hold office only up to the date of the next annual general meeting of the company but shall be eligible for appointment by the company as a director at that meeting subject to the provisions of the Act.

Proceedings of the Board

67. (*i*) The Board of Directors may meet for the conduct of business, adjourn and otherwise regulate its meetings, as it thinks fit.

(*ii*) A director may, and the manager or secretary on the requisition of a director shall, at any time, summon a meeting of the Board.

68. (*i*) Save as otherwise expressly provided in the Act, questions arising at any meeting of the Board shall be decided by a majority of votes.

(*ii*) In case of an equality of votes, the Chairperson of the Board, if any, shall have a second or casting vote.

69. The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company, but for no other purpose.

70. (*i*) The Board may elect a Chairperson of its meetings and determine the period for which he is to hold office.

(*ii*) If no such Chairperson is elected, or if at any meeting the Chairperson is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be Chairperson of the meeting.

71. (*i*) The Board may, subject to the provisions of the Act, delegate any of its powers to committees consisting of such member or members of its body as it thinks fit.

(*ii*) Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.

72. (*i*) A committee may elect a Chairperson of its meetings.

(*ii*) If no such Chairperson is elected, or if at any meeting the Chairperson is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their members to be Chairperson of the meeting.

73. (*i*) A committee may meet and adjourn as it thinks fit.

(*ii*) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of an equality of votes, the Chairperson shall have a second or casting vote.

74. All acts done in any meeting of the Board or of a committee thereof or by any person acting as a director, shall, notwithstanding that it may be afterwards discovered that there was some defect in the appointment of any one or more of such directors or of any person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such director or such person had been duly appointed and was qualified to be a director.

75. Save as otherwise expressly provided in the Act, a resolution in writing, signed by all the members of the Board or of a committee thereof, for the time being entitled to receive notice of a meeting of the Board or committee, shall be valid and effective as if it had been passed at a meeting of the Board or committee, duly convened and held.

76. In case of a One Person Company—

(*i*) where the company is having only one director, all the businesses to be transacted at the meeting of the Board shall be entered into minutes book maintained under section 118;

(ii) such minutes book shall be signed and dated by the director;

(*iii*) the resolution shall become effective from the date of signing such minutes by the director.

Chief Executive Officer, Manager, Company Secretary or Chief Financial Officer

77. Subject to the provisions of the Act,—

(*i*) A chief executive officer, manager, company secretary or chief financial officer may be appointed by the Board for such term, at such remuneration and upon such conditions as it may thinks fit; and any chief executive officer, manager, company secretary or chief financial officer so appointed may be removed by means of a resolution of the Board;

(*ii*) A director may be appointed as chief executive officer, manager, company secretary or chief financial officer.

78. A provision of the Act or these regulations requiring or authorising a thing to be done by or to a director and chief executive officer, manager, company secretary or chief financial officer shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, chief executive officer, manager, company secretary or chief financial officer.

The Seal

79. (*i*) The Board shall provide for the safe custody of the seal.

(*ii*) The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the Board or of a committee of the Board authorised by it in that behalf, and except in the presence of at least two directors and of the secretary or such other person as the Board may appoint for the purpose; and those two directors and the secretary or other person aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Dividends and Reserve

80. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board.

81. Subject to the provisions of section 123, the Board may from time to time pay to the members such interim dividends as appear to it to be justified by the profits of the company.

82. (*i*) The Board may, before recommending any dividend, set aside out of the profits of the company such sums as it thinks fit as a reserve or reserves which shall, at the discretion of the Board, be applicable for any purpose to which the profits of the company may be properly applied, including provision for meeting contingencies or for equalizing dividends; and pending such application, may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of thecompany) as the Board may, from time to time, thinks fit.

(*ii*) The Board may also carry forward any profits which it may consider necessary not to divide, without setting them aside as a reserve.

83. (*i*) Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the amounts of the shares.

(*ii*) No amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share.

(*iii*) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.

84. The Board may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

85. (*i*) Any dividend, interest or other monies payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members, or to such person and to such address as the holder or joint holders may in writing direct.

(*ii*) Every such cheque or warrant shall be made payable to the order of the person to whom it is sent.

86. Any one of two or more joint holders of a share may give effective receipts for any dividends, bonuses or other monies payable in respect of such share.

87. Notice of any dividend that may have been declared shall be given to the persons entitled to share therein in the manner mentioned in the Act.

88. No dividend shall bear interest against the company.

Accounts

89. (*i*) The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations, the accounts and books of the company, or any of them, shall be open to the inspection of members not being directors.

(*ii*) No member (not being a director) shall have any right of inspecting any account or document of the company except as conferred by law or authorised by the Board or by the company in general meeting.

Winding up

90. Subject to the provisions of Chapter XX of the Act and rules made thereunder—

(*i*) If the company shall be wound up, the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Act, divide amongst the

members, in specie or kind, the whole or any part of the assets of the company, whether they shall consist of property of the same kind or not.

(*ii*) For the purpose aforesaid, the liquidator may set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members.

(*iii*) The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories if he considers necessary, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

Indemnity

91. Every officer of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in which relief is granted to him by the court or the Tribunal.

Note: The Articles shall be signed by each subscriber of the memorandum of association who shall add his address, description and occupation, if any, in the presence of atleast one witness who shall attest the signature and shall likewise add his address, description and occupation, if any, and such signatures shall be in form specified below:

Names, addresses, descriptions and occupations of subscribers	Witnesses (along with names, addresses, descriptions and occupations)
A.B. of……Merchant	Signed before me Signature…….
C.D. of……Merchant	Signed before me Signature…….
E.F. of……Merchant	Signed before me Signature…….
G.H. of……Merchant	Signed before me Signature…….
I.J. of……Merchant	Signed before me Signature…….
K.L. of……Merchant	Signed before me Signature…….
M.N. of……Merchant	Signed before me Signature…….

Dated the……..day of ……20……

Place: .....

TABLE – G
ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL

1. The number of members with which the company proposes to be registered is hundred, but the Board of Directors may, from time to time, register an increase of members.

2. All the articles of Table F in Schedule I annexed to the Companies Act, 2013 shall bedeemed to be incorporated with these articles and to apply to the company.

TABLE - H

ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT HAVING SHARE CAPITAL

Interpretation

I. (*1*) In these regulations—

(*a*) "the Act" means the Companies Act, 2013;

(*b*) "the seal" means the common seal of the company.

(*2*) Unless the context otherwise requires, words or expressions contained in these regulations shall have the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company.

Members

II. 1. The number of members with which the company proposes to be registered is hundred, but the Board of Directors may, from time to time, whenever the company or the business of the company requires it, register an increase of members.

2. The subscribers to the memorandum and such other persons as the Board shall admit to membership shall be members of the company.

General meetings

3. All general meetings other than annual general meeting shall be called extraordinary general meeting.

4. (*i*) The Board may, whenever it thinks fit, call an extraordinary general meeting.

(*ii*) If at any time directors capable of acting who are sufficient in number to form a quorum are not within India, any director or any two members of the company may call an extraordinary general meeting in the same manner, as nearly as possible, as that in which such a meeting may be called by the Board.

Proceedings at general meetings

5. (*i*) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

(*ii*) Save as otherwise provided herein, the quorum for the general meetings shall be as provided in section 103.

6. The Chairperson, if any, of the Board shall preside as Chairperson at every general meeting of the company.

7. If there is no such Chairperson, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as Chairperson of the meeting, the directors present shall elect one of their members to be Chairperson of the meeting.

8. If at any meeting no director is willing to act as Chairperson or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their members to be Chairperson of the meeting.

Adjournment of meeting

9. (*i*) The Chairperson may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place.

(*ii*) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(*iii*) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(*iv*) Save as aforesaid, and as provided in section 103 of the Act, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

Voting rights

10. Every member shall have one vote.

11. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

12. No member shall be entitled to vote at any general meeting unless all sums presently payable by him to the company have been paid.

13.(*i*) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.

(*ii*)Any such objection made in due time shall be referred to the Chairperson of the meeting, whose decision shall be final and conclusive.

14. A vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death or insanity of the principal or the revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the shares in respect of which the proxy is given:

Provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the company at its office before the commencement of the meeting or adjourned meeting at which the proxy is used.

15. A member may exercise his vote at a meeting by electronic means in accordance with section 108 and shall vote only once.

16. Any business other than that upon which a poll has been demanded may be proceeded with, pending the taking of the poll.

Board of Directors

17. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them.

18.(*i*) The remuneration of the directors shall, in so far as it consists of a monthly payment, be deemed to accrue from day-to-day.

(*ii*) In addition to the remuneration payable to them in pursuance of the Act, the directors may be paid all travelling, hotel and other expenses properly incurred by them—

(*a*) in attending and returning from meetings of the Board of Directors or any committee thereof or general meetings of the company; or

(*b*) in connection with the business of the company.

Proceedings of the Board

19. (*i*) The Board of Directors may meet for the conduct of business, adjourn and otherwise regulate its meetings, as it thinks fit.

(*ii*) A director may, and the manager or secretary on the requisition of a director shall, at any time, summon a meeting of the Board.

20. (*i*) Save as otherwise expressly provided in the Act, questions arising at any meeting of the Board shall be decided by a majority of votes.

(*ii*) In case of an equality of votes, the Chairperson of the Board, if any, shall have a second or casting vote.

21. The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company, but for no other purpose.

22.(*i*) The Board may elect a Chairperson of its meetings and determine the period for which he is to hold office.

(*ii*) If no such chairperson is elected, or if at any meeting the Chairperson is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their members to be Chairperson of the meeting.

23. (*i*) The Board may, subject to the provisions of the Act, delegate any of its powers to committees consisting of such member or members of its body as it thinks fit.

(*ii*) Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.

24. (*i*) A committee may elect a Chairperson of its meetings.

(*ii*) If no such Chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their members to be Chairperson of the meeting.

25. (*i*) A committee may meet and adjourn as it thinks proper.

(*ii*) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.

26. All acts done by any meeting of the Board or of a committee thereof or by any person acting as a director, shall, notwithstanding that it may be afterwards discovered that there was some defect in the appointment of any one or more of such directors or of any person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such director or such person had been duly appointed and was qualified to be a director.

27. Save as otherwise expressly provided in the Act, a resolution in writing, signed by all the members of the Board or of a committee thereof, for the time being entitled to receive notice of a meeting of the Board or committee, shall be as valid and effective as if it had been passed at a meeting of the Board or committee, duly convened and held.

Chief Executive Officer, Manager, Company Secretary or Chief Financial Officer

28. Subject to the provisions of the Act,—

(*i*) A chief executive officer, manager, company secretary or chief financial officer may be appointed by the Board for such term, at such remuneration and upon such conditions as it thinks fit; and any chief executive officer, manager, company secretary or chief financial officer so appointed may be removed by means of a resolution of the Board.

(*ii*) A director may be appointed as chief executive officer, manager, company secretary or chief financial officer.

29. A provision of the Act or these regulations requiring or authorising a thing to be done by or to a director and chief executive officer, manager, company secretary or chief financial

officer shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, chief executive officer, manager, company secretary or chief financial officer.

The Seal

30. (*i*) The Board shall provide for the safe custody of the seal.

(*ii*) The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the Board or of a committee of the Board authorised by it in that behalf, and except in the presence of at least two directors and of the secretary or such other person as the Board may appoint for the purpose; and those two directors and the secretary or other person aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Note: The Articles shall be signed by each subscriber of the memorandum of association who shall add his address, description and occupation, if any, in the presence of atleast one witness who shall attest the signature and shall likewise add his address, description and occupation, if any, and such signatures shall be in form specified below:

Names, addresses, descriptions and occupations of subscribers	Witnesses (along with names, addresses, descriptions and occupations)
A.B. of……Merchant	Signed before me Signature…….
C.D. of……Merchant	Signed before me Signature…….
E.F. of……Merchant	Signed before me Signature…….
G.H. of……Merchant	Signed before me Signature…….
I.J. of……Merchant	Signed before me Signature…….
K.L. of……Merchant	Signed before me Signature…….
M.N. of……Merchant	Signed before me Signature…….

Dated the……..day of ……20……
Place: .....

TABLE – I

ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY AND HAVING A SHARE CAPITAL

1. The number of members with which the company proposes to be registered is hundred, but the Board of Directors may, from time to time, register an increase of members.
2. All the articles of Table F in Schedule I annexed to the Companies Act, 2013 shall be deemed to be incorporated with these articles and to apply to the company.

TABLE - J

ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY AND NOT HAVING SHARE CAPITAL

1. The number of members with which the company proposes to be registered is hundred, but the Board of Directors may, from time to time, whenever the company or the business of the company requires it, register an increase of members.
2. The subscribers to the memorandum and such other persons as the Board shall admit to membership shall be members of the company.
3. All the articles of Table H in Schedule I annexed to the Companies Act, 2013 shall be deemed to be incorporated with these articles and to apply to the company.

Schedule II

(*See* section 123)

USEFUL LIVES TO COMPUTE DEPRECIATION

PART 'A'

1. Depreciation is the systematic allocation of the depreciable amount of an asset over its useful life. The depreciable amount of an asset is the cost of an asset or other amount substituted for cost, less its residual value. The useful life of an asset is the period over which an asset is expected to be available for use by an entity, or the number of production or similar units expected to be obtained from the asset by the entity.
2. For the purpose of this Schedule, the term depreciation includes amortization.
3. Without prejudice to the foregoing provisions of paragraph 1[3],—
   (*i*) The useful life of an asset shall not be longer than the useful life specified in Part 'C' and the residual value of an asset shall not be more than five percent of the original cost of the asset:
   Provided that where a company uses a useful life or residual value of the asset which is different from the above limits, justifications for the difference shall be disclosed in its financial statement.
   be In case of such class of companies, as may be prescribed and whose financial statements comply with the accounting standards prescribed for such class of companies under section 133 the useful life of an asset shall not normally be different from the useful life and the residual value shall not be different from that as indicated in Part C, provided that if such a company uses a useful life or residual value which is different from the useful life or residual value indicated therein, it shall disclose the justification for the same.
   (*ii*) For intangible assets, the provisions of the Accounting Standards applicable for the time being in force shall apply, except in case of intangible assets (Toll Roads) created under 'Build, Operate and Transfer', 'Build, Own, Operate and Transfer' or any other form of public private partnership route in case of road projects. Amortisation in such cases may be done as follows:

(a) <u>Mode of amortization :</u>

$$\text{Amortisation Rate} = \frac{\text{Amortisation Amount} * 100}{\text{Cost of Intangible Assets (A)}}$$

Amortisation Amount = Cost of Intangible Amount (A) * $\frac{\text{Actual Revenue for the year (B)}}{\text{Projected Revenue from Intangible Asset (till the end of the concession period) (C)}}$

b) Meaning of particulars are as follows:-

[3] Substituted vide Notification G.S.R. 237 (E) dated 31.03.2014

Cost of Intangible Assets (A) = Cost incurred by the company in accordance with the accounting standards.

Actual Revenue for the year (B)= Actual revenue (Toll Charges) received during the accounting year.

Projected Revenue from Intangible Asset (C)= Total projected revenue from the Intangible Assets as provided to the project lender at the time of financial closure/agreement.

The amortization amount or rate should ensure that the whole of the cost of the intangible asset is amortised over the concession period.

Revenue shall be reviewed at the end of each financial year and projected revenue shall be adjusted to reflect such changes, if any, in the estimates as will lead to the actual collection at the end of the concession period.

(c) Example:-

Cost of creation of Intangible Assets	:	Rs. 500 crores
Total period of Agreement	:	20 years
Time used for creation of Intangible Assets	:	2 years
Intangible Assets to be amortised in	:	18 years

Assuming that the Total revenue to be generated out of Intangible Assets over the period would be Rs. 600 Crores, in the following manner:-

Year No	**Revenue (in Crores)**	**Remarks**
Year 1	5	Actual
Year 2	7.5	Estimate*
Year 3	10	Estimate*
Year 4	12.5	Estimate*
Year 5	17.5	Estimate*
Year 6	20	Estimate*
Year 7	23	Estimate*
Year 8	27	Estimate*
Year 9	31	Estimate*
Year 10	34	Estimate*
Year 11	38	Estimate*
Year 12	41	Estimate*
Year 13	46	Estimate*
Year 14	50	Estimate*
Year 15	53	Estimate*
Year 16	57	Estimate*
Year 17	60	Estimate*
Year 18	67.5	Estimate*
TOTAL	**600**	

*will be actual at the end of financial year.

Based on this the charge for first year would be Rs. 4.16 Crore (approx.) (i.e. Rs. 5/Rs. 600 * Rs. 500 Crores) which would be charged to P&L and 0.83% (i.e. Rs. 4.16 Crore/Rs. 500 Crore *100) is the amortization rate for the first year.

Where a company arrives at the amortization amount in respect of the said Intangible Assets in accordance with any method as per the applicable Accounting Standards, it shall disclose the same."

PART 'B'

4. The useful life or residual value of any specific asset, as notified for accounting purposes by a Regulatory Authority constituted under an Act of Parliament or by the Central Government shall be applied in calculating the depreciation to be provided for such asset irrespective of the requirements of this Schedule.

PART 'C'

5. Subject to Parts A and B above, the following are the useful lives of various tangible assets:

Nature of assets	**Useful Life (in years)**
I. Buildings [NESD]	
(*a*) Buildings (other than factory buildings) RCC Frame Structure	**60**
(*b*) Buildings (other than factory buildings) other than RCC Frame Structure	**30**
(*c*) Factory buildings	**-do-**
(*d*) Fences, wells, tube wells	**5**
(*e*) Others (including temporary structure, etc)	**3**
II. Bridges, culverts, bunders, etc. [NESD]	**30**
III. Roads [NESD]	
(*a*) Carpeted roads	
(*i*) Carpeted Roads-RCC	**10**
(*ii*) Carpeted Roads-other than RCC	**5**
(*b*) Non-carpeted roads	**3**
IV. Plant and Machinery	
(*i*) General rate applicable to plant and machinery not covered under special plant and machinery	
(*a*) Plant and Machinery other than continuous process plant not covered under specific industries	**15**
(*b*) continuous process plant for which no special rate has been prescribed under (*ii*) below [NESD]	**25**[4]
(*ii*) **Special Plant and Machinery**	
(*a*) Plant and Machinery related to production and exhibition of Motion Picture Films	

[4] Substituted vide Notification G.S.R. 237 (E) dated 31.03.2014

1. Cinematograph films—Machinery used in the production and exhibition of cinematograph films, recording and reproducing equipments, developing machines, printing machines, editing machines, synchronizers and studio lights except bulbs	**13**
2. Projecting equipment for exhibition of films	
(*b*) Plant and Machinery used in glass manufacturing	
1. Plant and Machinery except direct fire glass melting furnaces — Recuperative and regenerative glass melting furnaces	**13**
2. Plant and Machinery except direct fire glass melting furnaces — Moulds [NESD]	**8**
3. Float Glass Melting Furnaces [NESD]	**10**
(*c*) Plant and Machinery used in mines and quarries—Portable underground machinery and earth moving machinery used in open cast mining [NESD]	**8**
(*d*) Plant and Machinery used in Telecommunications [NESD]	
1. Towers	**18**
2. Telecom transceivers, switching centres, transmission and other network equipment	**13**
3. Telecom—Ducts, Cables and optical fibre	**18**
4. Satellites	**-do-**
(*e*) Plant and Machinery used in exploration, production and refining oil and gas [NESD]	
1. Refineries	**25**
2. Oil and gas assets (including wells), processing plant and facilities	**-do-**
3. Petrochemical Plant	**-do-**
4. Storage tanks and related equipment	**-do-**
5. Pipelines	**30**
6. Drilling Rig	**-do-**
7. Field operations (above ground) Portable boilers, drilling tools, well-head tanks, etc.	**8**
8. Loggers	**-do-**
(*f*) Plant and Machinery used in generation, transmission and distribution of power [NESD]	
1. Thermal/ Gas/ Combined Cycle Power Generation Plant	**40**
2. Hydro Power Generation Plant	**-do-**
3. Nuclear Power Generation Plant	**-do-**
4. Transmission lines, cables and other network assets	**-do-**
5. Wind Power Generation Plant	**22**
6. Electric Distribution Plant	**35**
7. Gas Storage and Distribution Plant	**30**
8. Water Distribution Plant including pipelines	**-do-**
(*g*) Plant and Machinery used in manufacture of steel	
1. Sinter Plant	**20**
2. Blast Furnace	**-do-**
3. Coke ovens	**-do-**
4. Rolling mill in steel plant	**-do-**
5. Basic oxygen Furnace Converter	**25**

(*h*) Plant and Machinery used in manufacture of non-ferrous metals	
1. Metal pot line [NESD]	**40**
2. Bauxite crushing and grinding section [NESD]	**-do-**
3. Digester Section [NESD]	**-do-**
4. Turbine [NESD]	**-do-**
5. Equipments for Calcination [NESD]	**-do-**
6. Copper Smelter [NESD]	**-do-**
7. Roll Grinder	**40**
8. Soaking Pit	**30**
9. Annealing Furnace	**-do-**
10. Rolling Mills	**-do-**
11. Equipments for Scalping, Slitting , etc. [NESD]	**-do-**
12. Surface Miner, Ripper Dozer, etc., used in mines	**25**
13. Copper refining plant [NESD]	**-do-**
(*i*) Plant and Machinery used in medical and surgical operations [NESD]	
1. Electrical Machinery, X-ray and electrotherapeutic apparatus and accessories thereto, medical, diagnostic equipments, namely, Cat-scan, Ultrasound Machines, ECG Monitors, etc.	**13**
2. Other Equipments	**15**
(*j*) Plant and Machinery used in manufacture of pharmaceuticals and chemicals [NESD]	
1. Reactors	**20**
2. Distillation Columns	**-do-**
3. Drying equipments/Centrifuges and Decanters	**-do-**
4. Vessel/storage tanks	**-do-**
(*k*) Plant and Machinery used in civil construction	
1. Concreting, Crushing, Piling Equipments & Road making equipments	**12**
2. Heavy Lift Equipments—	
Cranes with capacity of more than 100 tons	**20**
Cranes with capacity of less than 100 tons	**15**
3. Transmission line, Tunneling Equipments [NESD]	**10**
4. Earth-moving equipments	**9**
5. Others including Material Handling /Pipeline/Welding Equipments [NESD]	**12**
(*l*) Plant and Machinery used in salt works [NESD]	**15**
V. Furniture and fittings [NESD]	
i) General furniture and fittings	**10**
(*ii*) Furniture and fittings used in hotels, restaurants and boarding houses, schools, colleges and other educational institutions, libraries; welfare centres; meeting halls, cinema houses; theatres and circuses; and furniture and fittings let out on hire for use on the occasion of marriages and similar functions.	**8**
VI. Motor Vehicles [NESD]	
1. Motor cycles, scooters and other mopeds	**10**
2. Motor buses, motor lorries, motor cars and motor taxies used in a business of running them on hire	**6**
3. Motor buses, motor lorries and motor cars other than those used in a	**8**

business of running them on hire	
4. Motor tractors, harvesting combines and heavy vehicles	**-do-**
5. Electrically operated vehicles including battery powered or fuel cell powered vehicles	**8**
VII. Ships [NESD]	
1. Ocean-going ships	
(*i*) Bulk Carriers and liner vessels	**25**
(*ii*) Crude tankers, product carriers and easy chemical carriers with or without conventional tank coatings.	**20**
(*iii*) Chemicals and Acid Carriers:	
(a) With stainless steel tanks	**25**
(b) With other tanks	**20**
(*iv*) Liquified gas carriers	**30**
(*v*) Conventional large passenger vessels which are used for cruise purpose also	**-do-**
(*vi*) Coastal service ships of all categories	**-do-**
(*vii*) Offshore supply and support vessels	**20**
(*viii*) Catamarans and other high speed passenger for ships or boats	**-do-**
(*ix*) Drill ships	**25**
(*x*) Hovercrafts	**15**
(*xi*) Fishing vessels with wooden hull	**10**
(*xii*) Dredgers, tugs, barges, survey launches and other similar ships used mainly for dredging purposes	**14**
2. Vessels ordinarily operating on inland waters—	
(*i*) Speed boats	**13**
(*ii*) Other vessels	**28**
VIII. Aircrafts or Helicopters [NESD]	**20**
IX. Railways sidings, locomotives, rolling stocks, tramways and railways used by concerns, excluding railway concerns [NESD]	**15**
X. Ropeway structures [NESD]	**15**
XI. Office equipment [NESD]	**5**
XII. Computers and data processing units [NESD]	
(*i*) Servers and networks	**6**
(*ii*) End user devices, such as, desktops, laptops, etc.	**3**
XIII. Laboratory equipment [NESD]	
(*i*) General laboratory equipment	**10**
(*ii*) Laboratory equipments used in educational institutions	**5**
XIV. Electrical Installations and Equipment [NESD]	**10**
XV. Hydraulic works, pipelines and sluices [NESD]	**15**

Notes.—

1. "Factory buildings" does not include offices, godowns, and staff quarters.
2. Where, during any financial year, any addition has been made to any asset, or where any asset has been sold, discarded, demolished or destroyed, the depreciation on such assets shall be calculated on a *pro rata* basis from the date of such addition or, as the case may be, up to the date on which such asset has been sold, discarded, demolished or destroyed.
3. The following information shall also be disclosed in the accounts, namely:—

(*i*) Depreciation methods used; and

(*ii*) The useful lives of the assets for computing depreciation, if they are different from the life specified in the Schedule.

4. Useful life specified in Part C of the Schedule is for whole of the asset. Where cost of a part of the asset is significant to total cost of the asset and useful life of that part is different from the useful life of the remaining asset, useful life of that significant part shall be determined separately.
5. ~~Depreciable amount is the cost of an asset, or other amount substituted for cost, less its residual value. Ordinarily, the residual value of an asset is often insignificant but it should generally be not more than 5% of the original cost of the asset.~~[5]
6. The useful lives of assets working on shift basis have been specified in the Schedule based on their single shift working. Except for assets in respect of which no extra shift depreciation is permitted (indicated by NESD in Part C above), if an asset is used for any time during the year for double shift, the depreciation will increase by 50% for that period and incase of the triple shift the depreciation shall be calculated on the basis of 100% for that period.
7. From the date this Schedule comes into effect, the carrying amount of the asset as on that date—

   (*a*) Shall be depreciated over the remaining useful life of the asset as per this Schedule;

   (*b*) After retaining the residual value, shall be recognised in the opening balance of retained earnings where the remaining useful life of an asset is nil.
8. "Continuous process plant" means a plant which is required and designed to operate for twenty-four hours a day.

[5] Deleted vide Notification G.S.R. 237 (E) dated 31.03.2014

SCHEDULE III
(*See* section 129)

GENERAL INSTRUCTIONS FOR PREPARATION OF BALANCE SHEET AND STATEMENT OF PROFIT AND LOSS OF A COMPANY

GENERAL INSTRUCTIONS

1. Where compliance with the requirements of the Act including Accounting Standards as applicable to the companies require any change in treatment or disclosure including addition, amendment, substitution or deletion in the head or sub-head or any changes, *inter se*, in the financial statements or statements forming part thereof, the same shall be made and the requirements of this Schedule shall stand modified accordingly.
2. The disclosure requirements specified in this Schedule are in addition to and not in substitution of the disclosure requirements specified in the Accounting Standards prescribed under the Companies Act, 2013. Additional disclosures specified in the Accounting Standards shall be made in the notes to accounts or by way of additional statement unless required to be disclosed on the face of the Financial Statements. Similarly, all other disclosures as required by the Companies Act shall be made in the notes to accounts in addition to the requirements set out in this Schedule.
3. (*i*) Notes to accounts shall contain information in addition to that presented in the Financial Statements and shall provide where required (*a*) narrative descriptions or disaggregations of items recognised in those statements; and (*b*) information about items that do not qualify for recognition in those statements.

   (*ii*) Each item on the face of the Balance Sheet and Statement of Profit and Loss shall be cross-referenced to any related information in the notes to accounts. In preparing the Financial Statements including the notes to accounts, a balance shall be maintained between providing excessive detail that may not assist users of financial statements and not providing important information as a result of too much aggregation.
4. (*i*) Depending upon the turnover of the company, the figures appearing in the Financial Statements may be rounded off as given below:—

Turnover	**Rounding off**
(i) less than one hundred crore rupees	To the nearest hundreds, thousands, lakhs or millions, or decimals thereof.
(ii) one hundred crore rupees or more	To the nearest, lakhs, millions or crores, or decimals thereof.

(ii) Once a unit of measurement is used, it should be used uniformly in the Financial Statements.

5. Except in the case of the first Financial Statements laid before the Company (after its incorporation) the corresponding amounts (comparatives) for the immediately preceding reporting period for all items shown in the Financial Statements including notes shall also be given.
6. For the purpose of this Schedule, the terms used herein shall be as per the applicable Accounting Standards.

Notes

This part of Schedule sets out the minimum requirements for disclosure on the face of the Balance Sheet, and the Statement of Profit and Loss (hereinafter referred to as "Financial Statements" for the purpose of this Schedule) and Notes. Line items, sub-line items and sub-totals shall be presented as an addition or substitution on the face of the Financial Statements when such presentation is relevant to an understanding of the company's financial position or performance or to cater to industry/sector-specific disclosure requirements or when required for compliance with the amendments to the Companies Act or under the Accounting Standards.

PART I – Form of BALANCE SHEET

Name of the Company…….
Balance Sheet as at ……

(Rupees in……)

	Particulars	**Note No**	**Figures as at the end of (Current reporting period) (in Rs.) _____ (DD/MM/YYYY)**	**Figures as at the end of (Previous reporting period) (in Rs.) _____ (DD/MM/YYYY)**
	1	**2**	**3**	**4**
I.	**EQUITY AND LIABILITIES** **Shareholders' funds** (*a*) Share capital (*b*) Reserves and surplus			
	(*c*)Money received against share warrants			
(2)	**Share application money pending allotment**			
(3)	**Non-current liabilities**			
	(*a*) Long-term borrowings			
	(*b*) Deferred tax liabilities (Net)			
	(*b*) Deferred tax liabilities (Net)			
	(*d*) Long-term provisions			
(4)	**Current liabilities**			
	(*a*) Short-term borrowings			
	(*b*) Trade payables			
	(*c*) Other current liabilities			
	(*d*) Short-term provisions			
	TOTAL			
II.	**ASSETS**			
(1)	**Non Current Assets**			
	(*a*) Fixed assets			
	(*i*) Tangible assets (*ii*) Intangible assets			
	(*iii*) Capital work-in-progress			

	(*iv*) Intangible assets under development			
	(*b*) Non-current investments			
	(*c*) Deferred tax assets (net)			
	(*d*) Long-term loans and advances			
	(*e*) Other non-current assets			
(2)	**Current assets**			
	(*a*) Current investments			
	(*b*) Inventories			
	(*c*) Trade receivables			
	(*d*) Cash and cash equivalents			
	(*e*) Short-term loans and advances			
	(*f*) Other current assets			
	TOTAL			

See accompanying notes to the financial statements

Notes

GENERAL INSTRUCTIONS FOR PREPARATION OF BALANCE SHEET

1. An asset shall be classified as current when it satisfies any of the following criteria:
   (a) it is expected to be realized in, or is intended for sale or consumption in, the company's normal operating cycle;
   (b) it is held primarily for the purpose of being traded;
   (c) it is expected to be realized within twelve months after the reporting date; or
   (d) it is Cash or cash equivalent unless it is restricted from being exchanged or used to settle a liability for at least twelve months after the reporting date.
   All other assets shall be classified as non-current.
2. An operating cycle is the time between the acquisition of assets for processing and their realization in Cash or cash equivalents. Where the normal operating cycle cannot be identified, it is assumed to have a duration of 12 months.
3. A liability shall be classified as current when it satisfies any of the following criteria:
   (a) it is expected to be settled in the company's normal operating cycle;
   (b) it is held primarily for the purpose of being traded;
   (c) it is due to be settled within twelve months after the reporting date; or
   (d) the company does not have an unconditional right to defer settlement of the liability for at least twelve months after the reporting date. Terms of a liability that could, at the option of the counterparty, result in its settlement by the issue of equity instruments do not affect its classification.
   All other liabilities shall be classified as non-current.
4. A receivable shall be classified as a 'trade receivable' if it is in respect of the amount due on account of goods sold or services rendered in the normal course of business.
5. A payable shall be classified as a 'trade payable' if it is in respect of the amount due on account of goods purchased or services received in the normal course of business.
6. A company shall disclose the following in the Notes to Accounts:

A. Share Capital

For each class of share capital (different classes of preference shares to be treated separately):
(a) the number and amount of shares authorized;

(b) the number of shares issued, subscribed and fully paid, and subscribed but not fully paid;
(c) par value per share;
(d) a reconciliation of the number of shares outstanding at the beginning and at the end of the reporting period;
(e) the rights, preferences and restrictions attaching to each class of shares including restrictions on the distribution of dividends and the repayment of capital;
(f) shares in respect of each class in the company held by its holding company or its ultimate holding company including shares held by or by subsidiaries or associates of the holding company or the ultimate holding company in aggregate;
(g) shares in the company held by each shareholder holding more than 5 percent shares specifying the number of shares held;
(h) shares reserved for issue under options and contracts/commitments for the sale of shares/disinvestment, including the terms and amounts;
(i) For the period of five years immediately preceding the date as at which the Balance Sheet is prepared:
- Aggregate number and class of shares allotted as fully paid up pursuant to contract(s) without payment being received in cash.
- Aggregate number and class of shares allotted as fully paid up by way of bonus shares.
- Aggregate number and class of shares bought back.

(j) Terms of any securities convertible into equity/preference shares issued along with the earliest date of conversion in descending order starting from the farthest such date.
(k) Calls unpaid (showing aggregate value of calls unpaid by directors and officers)
(l) Forfeited shares (amount originally paid up)

B. Reserves and Surplus

(i) Reserves and Surplus shall be classified as:
(a) Capital Reserves;
(b) Capital Redemption Reserve;
(c) Securities Premium Reserve;
(d) Debenture Redemption Reserve;
(e) Revaluation Reserve;
(f) Share Options Outstanding Account;
(g) Other Reserves – (specify the nature and purpose of each reserve and the amount in respect thereof);
(h) Surplus i.e. balance in Statement of Profit and Loss disclosing allocations and appropriations such as dividend, bonus shares and transfer to/from reserves etc. (Additions and deductions since last Balance Sheet to be shown under each of the specified heads)

(ii) A reserve specifically represented by earmarked investments shall be termed as a 'fund'.
(iii) Debit balance of statement of profit and loss shall be shown as a negative figure under the head 'Surplus'. Similarly, the balance of 'Reserves and Surplus', after adjusting negative balance of surplus, if any, shall be shown under the head 'Reserves and Surplus' even if the resulting figure is in the negative.

C. Long-Term Borrowings

(i) Long-term borrowings shall be classified as:

(a) Bonds/debentures.
(b) Term loans
- From banks
- From other parties

(c) Deferred payment liabilities.
(d)Deposits.
(e)Loans and advances from related parties.
(f)Long term maturities of finance lease obligations
(g)Other loans and advances (specify nature).

(ii) Borrowings shall further be sub-classified as secured and unsecured. Nature of security shall be specified separately in each case.
(iii) Where loans have been guaranteed by directors or others, the aggregate amount of such loans under each head shall be disclosed.
(iv) Bonds/debentures (along with the rate of interest and particulars of redemption or conversion, as the case may be) shall be stated in descending order of maturity or conversion, starting from farthest redemption or conversion date, as the case may be. Where bonds/debentures are redeemable by installments, the date of maturity for this purpose must be reckoned as the date on which the first installment becomes due.
(v) Particulars of any redeemed bonds/ debentures which the company has power to reissue shall be disclosed.
(vi) Terms of repayment of term loans and other loans shall be stated.
(vii) Period and amount of continuing default as on the Balance Sheet date in repayment of loans and interest, shall be specified separately in each case.

D. Other Long term Liabilities

Other Long term Liabilities shall be classified as:
(a) Trade payables
(b) Others

E. Long-term provisions

The amounts shall be classified as:
(a) Provision for employee benefits.
(b) Others (specify nature).

F. Short-term borrowings

(i) Short-term borrowings shall be classified as:
(a) Loans repayable on demand
- From banks
- From other parties

(b) Loans and advances from related parties.
(c) Deposits.
(d) Other loans and advances (specify nature).

(ii) Borrowings shall further be sub-classified as secured and unsecured. Nature of security shall be specified separately in each case.
(iii) Where loans have been guaranteed by directors or others, the aggregate amount of such loans under each head shall be disclosed.
(iv) Period and amount of default as on the Balance Sheet date in repayment of loans and interest, shall be specified separately in each case.

G. Other current liabilities

The amounts shall be classified as:

(a) Current maturities of long-term debt;
(b) Current maturities of finance lease obligations;
(c) Interest accrued but not due on borrowings;
(d) Interest accrued and due on borrowings;
(e) Income received in advance;
(f) Unpaid dividends
(g) Application money received for allotment of securities and due for refund and interest accrued thereon. Share application money includes advances towards allotment of share capital. The terms and conditions including the number of shares proposed to be issued, the amount of premium, if any, and the period before which shares shall be allotted shall be disclosed. It shall also be disclosed whether the company has sufficient authorized capital to cover the share capital amount resulting from allotment of shares out of such share application money. Further, the period for which the share application money has been pending beyond the period for allotment as mentioned in the document inviting application for shares along with the reason for such share application money being pending shall be disclosed. Share application money not exceeding the issued capital and to the extent not refundable shall be shown under the head Equity and share application money to the extent refundable i.e., the amount in excess of subscription or in case the requirements of minimum subscription are not met, shall be separately shown under 'Other current liabilities'
(h) Unpaid matured deposits and interest accrued thereon
(i) Unpaid matured debentures and interest accrued thereon
(j) Other payables (specify nature);

H. Short-term provisions

The amounts shall be classified as:
(a) Provision for employee benefits.
(b) Others (specify nature).

I. Tangible assets

(i) Classification shall be given as:
  (a) Land.
  (b) Buildings.
  (c) Plant and Equipment.
  (d) Furniture and Fixtures.
  (e) Vehicles.
  (f) Office equipment.
  (g) Others (specify nature).
(ii) Assets under lease shall be separately specified under each class of asset.
(iii) A reconciliation of the gross and net carrying amounts of each class of assets at the beginning and end of the reporting period showing additions, disposals, acquisitions through business combinations and other adjustments and the related depreciation and impairment losses/reversals shall be disclosed separately.
(iv) Where sums have been written off on a reduction of capital or revaluation of assets or where sums have been added on revaluation of assets, every Balance Sheet subsequent to date of such write-off, or addition shall show the reduced or increased figures as applicable and shall by way of a note also show the amount of the reduction or increase as applicable together with the date thereof for the first five years subsequent to the date of such reduction or increase.

J. Intangible assets

(i) Classification shall be given as:
  (a) Goodwill.
  (b) Brands /trademarks.
  (c) Computer software.
  (d) Mastheads and publishing titles.
  (e) Mining rights.
  (f) Copyrights, and patents and other intellectual property rights, services and operating rights.
  (g) Recipes, formulae, models, designs and prototypes.
  (h) Licenses and franchise.
    (i) Others (specify nature).
    (ii) A reconciliation of the gross and net carrying amounts of each class of assets at the beginning and end of the reporting period showing additions, disposals, acquisitions through business combinations and other adjustments and the related amortization and impairment losses/reversals shall be disclosed separately.
    (iii) Where sums have been written off on a reduction of capital or revaluation of assets or where sums have been added on revaluation of assets, every Balance Sheet subsequent to date of such write-off, or addition shall show the reduced or increased figures as applicable and shall by way of a note also show the amount of the reduction or increase as applicable together with the date thereof for the first five years subsequent to the date of such reduction or increase.

K. Non-current investments

(i) Non-current investments shall be classified as trade investments and other investments and further classified as:
  (a) Investment property;
  (b) Investments in Equity Instruments;
  (c) Investments in preference shares
  (d) Investments in Government or trust securities;
  (e) Investments in debentures or bonds;
  (f) Investments in Mutual Funds;
  (g) Investments in partnership firms
  (h) Other non-current investments (specify nature)

  Under each classification, details shall be given of names of the bodies corporate (indicating separately whether such bodies are (i) subsidiaries, (ii) associates, (iii) joint ventures, or (iv) controlled special purpose entities) in whom investments have been made and the nature and extent of the investment so made in each such body corporate (showing separately investments which are partly-paid). In regard to investments in the capital of partnership firms, the names of the firms (with the names of all their partners, total capital and the shares of each partner) shall be given.

(ii) Investments carried at other than at cost should be separately stated specifying the basis for valuation thereof.

(iii) The following shall also be disclosed:
  (a) Aggregate amount of quoted investments and market value thereof;
  (b) Aggregate amount of unquoted investments;

(c) Aggregate provision for diminution in value of investments

L. Long-term loans and advances

(i) Long-term loans and advances shall be classified as:
(a)Capital Advances;
(b)Security Deposits;
(c)Loans and advances to related parties (giving details thereof);
(d)Other loans and advances (specify nature).

(ii) The above shall also be separately sub-classified as:
(a)Secured, considered good;
(b)Unsecured, considered good;
(c)Doubtful.

(iii) Allowance for bad and doubtful loans and advances shall be disclosed under the relevant heads separately.

(iv) Loans and advances due by directors or other officers of the company or any of them either severally or jointly with any other persons or amounts due by firms or private companies respectively in which any director is a partner or a director or a member should be separately stated.

M. Other non-current assets

Other non-current assets shall be classified as:

(i) Long Term Trade Receivables (including trade receivables on deferred credit terms);

(ii) Others (specify nature)

(iii) Long term Trade Receivables, shall be sub-classified as:
(i) (a) Secured, considered good;
(b)Unsecured considered good;
(c)Doubtful
(ii) Allowance for bad and doubtful debts shall be disclosed under the relevant heads separately.
(iii) Debts due by directors or other officers of the company or any of them either severally or jointly with any other person or debts due by firms or private companies respectively in which any director is a partner or a director or a member should be separately stated.

N. Current Investments

(i) Current investments shall be classified as:
(a) Investments in Equity Instruments;
(b) Investment in Preference Shares
(c) Investments in government or trust securities;
(d) Investments in debentures or bonds;
(e) Investments in Mutual Funds;
(f) Investments in partnership firms
(g) Other investments (specify nature).

Under each classification, details shall be given of names of the bodies corporate (indicating separately whether such bodies are (i) subsidiaries, (ii) associates, (iii) joint ventures, or (iv) controlled special purpose entities) in whom investments have been made and the nature and extent of the investment so made in each such body corporate (showing separately investments which are partly-paid). In regard to investments in the capital of partnership firms, the names of the firms (with the names of all their partners, total capital and the shares of each partner) shall be given.

(ii) The following shall also be disclosed:
(a) The basis of valuation of individual investments
(b) Aggregate amount of quoted investments and market value thereof;
(c) Aggregate amount of unquoted investments;
(d) Aggregate provision made for diminution in value of investments.

O. Inventories

(i) Inventories shall be classified as:
(a)Raw materials;
(b)Work-in-progress;
(c)Finished goods;
(d)Stock-in-trade (in respect of goods acquired for trading);
(e)Stores and spares;
(f)Loose tools;
(g)Others (specify nature).
(ii) Goods-in-transit shall be disclosed under the relevant sub-head of inventories.
(iii) Mode of valuation shall be stated.

P. Trade Receivables

(i) Aggregate amount of Trade Receivables outstanding for a period exceeding six months from the date they are due for payment should be separately stated.
(ii) Trade receivables shall be sub-classified as:
(a) Secured, considered good;
(b) Unsecured considered good;
(c) Doubtful.
(iii) Allowance for bad and doubtful debts shall be disclosed under the relevant heads separately.
(iv) Debts due by directors or other officers of the company or any of them either severally or jointly with any other person or debts due by firms or private companies respectively in which any director is a partner or a director or a member should be separately stated.

Q. Cash and cash equivalents

(i) Cash and cash equivalents shall be classified as:
(a) Balances with banks;
(b) Cheques, drafts on hand;
(c) Cash on hand;
(d) Others (specify nature).
(ii) Earmarked balances with banks (for example, for unpaid dividend) shall be separately stated.
(iii) Balances with banks to the extent held as margin money or security against the borrowings, guarantees, other commitments shall be disclosed separately.
(iv) Repatriation restrictions, if any, in respect of cash and bank balances shall be separately stated.
(v) Bank deposits with more than 12 months maturity shall be disclosed separately.

R. Short-term loans and advances

(i) Short-term loans and advances shall be classified as:
(a) Loans and advances to related parties (giving details thereof);
(b) Others (specify nature).
(ii) The above shall also be sub-classified as:
(a) Secured, considered good;

(b) Unsecured, considered good;
(c) Doubtful.

(iii) Allowance for bad and doubtful loans and advances shall be disclosed under the relevant heads separately.

(iv) Loans and advances due by directors or other officers of the company or any of them either severally or jointly with any other person or amounts due by firms or private companies respectively in which any director is a partner or a director or a member shall be separately stated.

S. Other current assets (specify nature).

This is an all-inclusive heading, which incorporates current assets that do not fit into any other asset categories.

T. Contingent liabilities and commitments (to the extent not provided for)

(i) Contingent liabilities shall be classified as:
(a)Claims against the company not acknowledged as debt;
(b)Guarantees;
(c)Other money for which the company is contingently liable

(ii) Commitments shall be classified as:
(a) Estimated amount of contracts remaining to be executed on capital account and not provided for;
(b) Uncalled liability on shares and other investments partly paid
(c) Other commitments (specify nature).

U. The amount of dividends proposed to be distributed to equity and preference shareholders for the period and the related amount per share shall be disclosed separately. Arrears of fixed cumulative dividends on preference shares shall also be disclosed separately.

V. Where in respect of an issue of securities made for a specific purpose, the whole or part of the amount has not been used for the specific purpose at the Balance Sheet date, there shall be indicated by way of note how such unutilized amounts have been used or invested.

W. If, in the opinion of the Board, any of the assets other than fixed assets and non-current investments do not have a value on realization in the ordinary course of business at least equal to the amount at which they are stated, the fact that the Board is of that opinion, shall be stated

PART II – Form of STATEMENT OF PROFIT AND LOSS

Name of the Company…….

Profit and loss statement for the year ended ……

(Rupees in……)

	Particulars	**Note**	**Figures for the current reporting period (in) From _____ (DD/MM/YYYY) To _____ (DD/MM/YYYY)**	**Figures for the previous reporting period (in) From_____ (DD/MM/YYYY) To_____ (DD/MM/YYYY)**

	1	2	3	4
I.	Revenue from operations		Xxx	xxx
II.	Other income		Xxx	xxx
III.	Total Revenue (I + II)		Xxx	xxx
IV.	Expenses			
	Cost of materials consumed			
	Purchases of Stock-in-Trade			
	Changes in inventories of finished goods		Xxx	xxx
	Work-in-progress and Stock-in-Trade		Xxx	xxx
	Employee benefits expense		Xxx	xxx
	Depreciation and amortization expense		Xxx	xxx
	Other expenses		Xxx	xxx
	Total expenses		Xxx	xxx
V	Profit before exceptional and extraordinary items and tax (III-IV)		Xxx	xxx
VI	Exceptional items		Xxx	xxx
VII	Profit before extraordinary items and tax (V - VI)		Xxx	xxx
VIII	Extraordinary Items		Xxx	xxx
IX	Profit before tax (VII- VIII)		Xxx	xxx
X	Tax expense:			
	(1) Current tax		Xxx	xxx
	(2) Deferred tax		Xxx	xxx
XI	Profit (Loss) for the period from continuing operations (VII-VIII)		Xxx	xxx
XII	Profit/(loss) from discontinuing operations		Xxx	xxx
XIII	Tax expense of discontinuing operations		Xxx	xxx
XIV	Profit/(loss) from Discontinuing operations (after tax) (XII-XIII)		Xxx	xxx
XV	Profit/ (Loss) (XI + XIV)		Xxx	xxx
XVI	Earnings per equity share		Xxx	xxx
	(1) Basic		Xxx	xxx
	(2) Diluted		Xxx	xxx

See accompanying notes to the financial statements

GENERAL INSTRUCTIONS FOR PREPARATION OF STATEMENT OF PROFIT AND LOSS

1. The provisions of this Part shall apply to the income and expenditure account referred to in sub-clause (ii) of clause (40) section 2, in like manner as they apply to a statement of profit and loss.

2. (A) In respect of a company other than a finance company revenue from operations shall disclose separately in the notes revenue from
(a) sale of products;
(b) sale of services;
(c) other operating revenues;
Less:
(d) Excise duty.

(B) In respect of a finance company, revenue from operations shall include revenue from
(a) Interest; and
(b) Other financial services
Revenue under each of the above heads shall be disclosed separately by way of Notes to Accounts to the extent applicable.

3. Finance Costs
Finance costs shall be classified as:
(a) Interest expense;
(b Other borrowing costs;
(c) Applicable net gain/loss on foreign currency transactions and translation.

4. Other income
Other income shall be classified as:
(a) Interest Income (in case of a company other than a finance company);
(b) Dividend Income;
(c) Net gain/loss on sale of investments
(d) Other non-operating income (net of expenses directly attributable to such income).

5. Additional Information
A Company shall disclose by way of notes additional information regarding aggregate expenditure and income on the following items:-
(i) (a) Employee Benefits Expense [showing separately (i) salaries and wages, (ii) contribution to provident and other funds, (iii) expense on Employee Stock Option Scheme (ESOP) and Employee Stock Purchase Plan (ESPP), (iv) staff welfare expenses].
(b) Depreciation and amortization expense;
(c) Any item of income or expenditure which exceeds one per cent of the revenue from operations or Rs.1,00,000, whichever is higher;
(d) Interest Income;
(e) Interest Expense;
(f) Dividend Income;
(g) Net gain/ loss on sale of investments;
(h) Adjustments to the carrying amount of investments;
(i) Net gain or loss on foreign currency transaction and translation (other than considered as finance cost);
(j) Payments to the auditor as (a) auditor,(b) for taxation matters, (c) for company law matters, (d) for management services, (e) for other services, (f) for reimbursement of expenses;
(k) Details of items of exceptional and extraordinary nature;
(l) Prior period items;

(ii) (a) In the case of manufacturing companies,-
(1) Raw materials under broad heads.
(2) goods purchased under broad heads.

(b) In the case of trading companies, purchases in respect of goods traded in by the company under broad heads.
(c) In the case of companies rendering or supplying services, gross income derived form services rendered or supplied under broad heads.
(d) In the case of a company, which falls under more than one of the categories mentioned in (a), (b) and (c) above, it shall be sufficient compliance with the requirements herein if purchases, sales and consumption of raw material and the gross income from services rendered is shown under broad heads.
(e) In the case of other companies, gross income derived under broad heads.

(iii) In the case of all concerns having works in progress, works-in-progress under broad heads.

(iv) (a) The aggregate, if material, of any amounts set aside or proposed to be set aside, to reserve, but not including provisions made to meet any specific liability, contingency or commitment known to exist at the date as to which the balance-sheet is made up.
(b) The aggregate, if material, of any amounts withdrawn from such reserves.

(v) (a) The aggregate, if material, of the amounts set aside to provisions made for meeting specific liabilities, contingencies or commitments.
(b) The aggregate, if material, of the amounts withdrawn from such provisions, as no longer required.

(vi) Expenditure incurred on each of the following items, separately for each item:-
(a) Consumption of stores and spare parts.
(b) Power and fuel.
(c) Rent.
(d) Repairs to buildings.
(e) Repairs to machinery.
(f) Insurance.
(g) Rates and taxes, excluding, taxes on income.
(h) Miscellaneous expenses,

(vii) (a) Dividends from subsidiary companies.
(b) Provisions for losses of subsidiary companies.

(Viii) The profit and loss account shall also contain by way of a note the following information, namely:-
a) Value of imports calculated on C.I.F basis by the company during the financial year in respect of –
I. Raw materials;
II. Components and spare parts;
III. Capital goods;
b) Expenditure in foreign currency during the financial year on account of royalty, know-how, professional and consultation fees, interest, and other matters;
c) Total value if all imported raw materials, spare parts and components consumed during the financial year and the total value of all indigenous raw materials, spare parts and components similarly consumed and the percentage of each to the total consumption;
d) The amount remitted during the year in foreign currencies on account of dividends with a specific mention of the total number of non-resident

shareholders, the total number of shares held by them on which the dividends were due and the year to which the dividends related;

e) Earnings in foreign exchange classified under the following heads, namely:-
   I. Export of goods calculated on F.O.B. basis;
   II. Royalty, know-how, professional and consultation fees;
   III. Interest and dividend;
   IV. Other income, indicating the nature thereof

Note:-Broad heads shall be decided taking into account the concept of materiality and presentation of true and fair view of Financial Statements".

GENERAL INSTRUCTIONS FOR THE PREPARATION OF CONSOLIDATED FINANCIAL STATEMENTS

1. Where a company is required to prepare Consolidated Financial Statements, *i.e.*, consolidated balance sheet and consolidated statement of profit and loss, the company shall *mutatis mutandis* follow the requirements of this Schedule as applicable to a company in the preparation of balance sheet and statement of profit and loss. In addition, the consolidated financial statements shall disclose the information as per the requirements specified in the applicable Accounting Standards including the following:
   (*i*) Profit or loss attributable to "minority interest" and to owners of the parent in the statement of profit and loss shall be presented as allocation for the period.
   (*ii*) "Minority interests" in the balance sheet within equity shall be presented separately from the equity of the owners of the parent.
2. In Consolidated Financial Statements, the following shall be disclosed by way of additional information:

Name of the entity in	**Net Assets i.e., total assets minus total liabilities**		**Share in profit or loss**	
	As % of Consolidated net assets	Amount	As % of Consolidated profit or loss	Amount
1	2	3	4	5
Parent Subsidiaries Indian				
1.				
2.				
3.				
…				
…				
Foreign				
1.				
2.				
3.				
…				

…				
Minority interest in all subsidiaries Associates (Investment as per equity method)				
Indian				
1.				
2.				
3.				
…				
…				
Foreign				
1				
2.				
3.				
…				
…				
Joint Ventures (as per proportionate consolidation / Investment as per equity method)				
Indian				
1.				
2.				
3.				
…				
…				
Foreign				
1.				
2.				
3.				
…				
…				
TOTAL				

3. All subsidiaries, associates and joint ventures (whether Indian or foreign) will be covered under consolidated financial statements.

4. An entity shall disclose the list of subsidiaries or associates or joint ventures which have not been consolidated in the consolidated financial statements along with the reasons of not consolidating.

SCHEDULE IV
[*See* section 149(8)]
CODE FOR INDEPENDENT DIRECTORS

The Code is a guide to professional conduct for independent directors. Adherence to these standards by independent directors and fulfilment of their responsibilities in a professional and faithful manner will promote confidence of the investment community, particularly minority shareholders, regulators and companies in the institution of independent directors.

I. Guidelines of professional conduct:

An independent director shall:

(1) uphold ethical standards of integrity and probity;
(2) act objectively and constructively while exercising his duties;
(3) exercise his responsibilities in a *bona fide* manner in the interest of the company;
(4) devote sufficient time and attention to his professional obligations for informed and balanced decision making;
(5) not allow any extraneous considerations that will vitiate his exercise of objective independent judgment in the paramount interest of the company as a whole, while concurring in or dissenting from the collective judgment of the Board in its decision making;
(6) not abuse his position to the detriment of the company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person;
(7) refrain from any action that would lead to loss of his independence;
(8) where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly;
(9) assist the company in implementing the best corporate governance practices.

II. Role and functions:

The independent directors shall:

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

III. Duties:

The independent directors shall—

(1) undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;
(2) seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;
(3) strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;
(4) participate constructively and actively in the committees of the Board in which they are chairpersons or members;
(5) strive to attend the general meetings of the company;
(6) where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting;
(7) keep themselves well informed about the company and the external environment in which it operates;
(8) not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;
(9) pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company;
(10) ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;
(11) report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy;
(12) acting within his authority, assist in protecting the legitimate interests of the company, shareholders and its employees;
(13) not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.

IV. Manner of appointment:

(1) Appointment process of independent directors shall be independent of the company management; while selecting independent directors the Board shall ensure that there is appropriate balance of skills, experience and knowledge in the Board so as to enable the Board to discharge its functions and duties effectively.
(2) The appointment of independent director(s) of the company shall be approved at the meeting of the shareholders.
(3) The explanatory statement attached to the notice of the meeting for approving the appointment of independent director shall include a statement that in the opinion of the Board, the independent director proposed to be appointed fulfils the conditions specified in the Act and the rules made thereunder and that the proposed director is independent of the management.
(4) The appointment of independent directors shall be formalized through a letter of appointment, which shall set out:
(a) the term of appointment;

(b) the expectation of the Board from the appointed director; the Board-level committee(s) in which the director is expected to serve and its tasks;
(c) the fiduciary duties that come with such an appointment along with accompanying liabilities;
(d) provision for Directors and Officers (D and O) insurance, if any;
(e) the Code of Business Ethics that the company expects its directors and employees to follow;
(f) the list of actions that a director should not do while functioning as such in the company; and
(g) the remuneration, mentioning periodic fees, reimbursement of expenses for participation in the Boards and other meetings and profit related commission, if any.

(5) The terms and conditions of appointment of independent directors shall be open for inspection at the registered office of the company by any member during normal business hours.

(6) The terms and conditions of appointment of independent directors shall also be posted on the company's website.

V. Reappointment:

The re-appointment of independent director shall be on the basis of report of performance evaluation.

VI. Resignation or removal:

(1) The resignation or removal of an independent director shall be in the same manner as is provided in sections 168 and 169 of the Act.

(2) An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within a period of not more than one hundred and eighty days from the date of such resignation or removal, as the case may be.

(3) Where the company fulfils the requirement of independent directors in its Board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director shall not apply.

VII. Separate meetings:

(1) The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management;

(2) All the independent directors of the company shall strive to be present at such meeting;

(3) The meeting shall:
(a) review the performance of non-independent directors and the Board as a whole;
(b) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;
(c) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

VIII. Evaluation Mechanism:

(1) The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated.

(2) On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

Schedule V

(*See* sections 196 and 197)

PART I

CONDITIONS TO BE FULFILLED FOR THE APPOINTMENT OF A MANAGING OR WHOLE-TIME DIRECTOR OR A MANAGER WITHOUT THE APPROVAL OF THE CENTRAL GOVERNMENT

APPOINTMENTS

No person shall be eligible for appointment as a managing or whole-time director or a manager (hereinafter referred to as managerial person) of a company unless he satisfies the following conditions, namely:—

(*a*) he had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the following Acts, namely:—

(*i*) The Indian Stamp Act, 1899 (2 of 1899);
(*ii*) The Central Excise Act, 1944 (1 of 1944);
(*iii*) The Industries (Development and Regulation) Act, 1951 (65 of 1951);
(*iv*) The Prevention of Food Adulteration Act, 1954 (37 of 1954);
(*v*) The Essential Commodities Act, 1955 (10 of 1955);
(*vi*) The Companies Act, 2013;
(*vii*) The Securities Contracts (Regulation) Act, 1956 (42 of 1956);
(*viii*) The Wealth-tax Act, 1957 (27 of 1957);
(*ix*) The Income-tax Act, 1961 (43 of 1961);
(*x*) The Customs Act, 1962 (52 of 1962);
(*xi*) The Competition Act, 2002 (12 of 2003);
(*xii*) The Foreign Exchange Management Act, 1999 (42 of 1999);
(*xiii*) The Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986);
(*xiv*) The Securities and Exchange Board of India Act, 1992 (15 of 1992);
(*xv*) The Foreign Trade (Development and Regulation) Act, 1922 (22 of 1922);
(*xvi*) The Prevention of Money-Laundering Act, 2002 (15 of 2003);

(*b*) He had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974):

Provided that where the Central Government has given its approval to the appointment of a person convicted or detained under sub-paragraph (*a*) or sub-paragraph (*b*), as the case may be, no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval.

(*c*) He has completed the age of twenty-one years and has not attained the age of seventy years:
Provided that where he has attained the age of seventy years; and where his appointment is approved by a special resolution passed by the company in general meeting, no further approval of the Central Government shall be necessary for such appointment;

(*d*) Where he is a managerial person in more than one company, he draws remuneration from one or more companies subject to the ceiling provided in section V of Part II;

(*e*) He is resident of India.

Explanation I.—For the purpose of this Schedule, resident in India includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person and who has come to stay in India,—
(*i*) For taking up employment in India; or
(*ii*) For carrying on a business or vacation in India.

Explanation II.—This condition shall not apply to the companies in Special Economic Zones as notified by Department of Commerce from time to time:

Provided that a person, being a non-resident in India shall enter India only after obtaining a proper Employment Visa from the concerned Indian mission abroad. For this purpose, such person shall be required to furnish, along with the visa application form, profile of the company, the principal employer and terms and conditions of such person's appointment.

PART II

REMUNERATION

Section I. — Remuneration payable by companies having profits:

Subject to the provisions of section 197, a company having profits in a financial year may pay remuneration to a managerial person or persons not exceeding the limits specified in such section.

Section II. — Remuneration payable by companies having no profit or inadequate profit without Central Government approval:

Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding the higher of the limits under (*A*) and (*B*) given below:—

(*A*):

(1)	(2)
Where the effective capital is	Limit of yearly remuneration payable shall not exceed (Rupees)
(*i*) Negative or less than 5 crores	30 lakhs
(*ii*) 5 crores and above but less than 100 crores	42 lakhs
(*iii*) 100 crores and above but less than 250 crores	60 lakhs
(*iv*) 250 crores and above	60 lakhs *plus* 0.01% of the effective

	capital in excess of Rs. 250 crores:

Provided that the above limits shall be doubled if the resolution passed by the shareholders is a special resolution.

Explanation.—It is hereby clarified that for a period less than one year, the limits shall be pro-rated.

(*B*) In the case of a managerial person who was not a security holder holding securities of the company of nominal value of rupees five lakh or more or an employee or a director of the company or not related to any director or promoter at any time during the two years prior to his appointment as a managerial person, — 2.5% of the current relevant profit:

Provided that if the resolution passed by the shareholders is a special resolution, this limit shall be doubled:

Provided further that the limits specified under this section shall apply, if—

(*i*) Payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under sub-section (*1*) of section 178 also by the Nomination and Remuneration Committee;

(*ii*) the company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person;

(*iii*) A special resolution has been passed at the general meeting of the company for payment of remuneration for a period not exceeding three years;

(*iv*) A statement along with a notice calling the general meeting referred to in clause (*iii*) Is given to the shareholders containing the following information, namely:—

I. General Information:
(1) Nature of industry
(2) Date or expected date of commencement of commercial production
(3) In case of new companies, expected date of commencement of activities as per project approved by financial institutions appearing in the prospectus
(4) Financial performance based on given indicators
(5) Foreign investments or collaborations, if any.

II. Information about the appointee:
(1) Background details
(2) Past remuneration
(3) Recognition or awards
(4) Job profile and his suitability
(5) Remuneration proposed

(6) Comparative remuneration profile with respect to industry, size of the company, profile of the position and person (in case of expatriates the relevant details would be with respect to the country of his origin)

(7) Pecuniary relationship directly or indirectly with the company, or relationship with the managerial personnel, if any.

III. Other information:

(1) Reasons of loss or inadequate profits

(2) Steps taken or proposed to be taken for improvement

(3) Expected increase in productivity and profits in measurable terms.

IV. Disclosures:

The following disclosures shall be mentioned in the Board of Director's report under the heading "Corporate Governance", if any, attached to the financial statement:—

(*i*) All elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc., of all the directors;

(*ii*) Details of fixed component and performance linked incentives along with the performance criteria;

(*iii*) Service contracts, notice period, severance fees;

(*iv*) Stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable.

Section III. — Remuneration payable by companies having no profit or inadequate profit without Central Government approval in certain special circumstances:

In the following circumstances a company may, without the Central Government approval, pay remuneration to a managerial person in excess of the amounts provided in Section II above:—

(*a*) where the remuneration in excess of the limits specified in Section I or II is paid by any other company and that other company is either a foreign company or has got the approval of its shareholders in general meeting to make such payment, and treats this amount as managerial remuneration for the purpose of section 197 and the total managerial remuneration payable by such other company to its managerial persons including such amount or amounts is within permissible limits under section 197.

(*b*) Where the company—

(*i*) Is a newly incorporated company, for a period of seven years from the date of its incorporation, or

(*ii*) Is a sick company, for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction or National Company Law Tribunal, for a period of five years from the date of sanction of scheme of revival, it may pay remuneration up to two times the amount permissible under Section II.

(*c*) Where remuneration of a managerial person exceeds the limits in Section II but the remuneration has been fixed by the Board for Industrial and Financial Reconstruction or the National Company Law Tribunal:

Provided that the limits under this Section shall be applicable subject to meeting all the conditions specified under Section II and the following additional conditions:—

(*i*) Except as provided in para (*a*) of this Section, the managerial person is not receiving remuneration from any other company;

(*ii*) the auditor or Company Secretary of the company or where the company has not appointed a Secretary, a Secretary in whole-time practice, certifies that all secured creditors and term lenders have stated in writing that they have no objection for the appointment of the managerial person as well as the quantum of remuneration and such certificate is filed along with the return as prescribed under sub-section (*4*) of section 196.

(*iii*) The auditor or Company Secretary or where the company has not appointed a secretary, a secretary in whole-time practice certifies that there is no default on payments to any creditors, and all dues to deposit holders are being settled on time.

(*d*) a company in a Special Economic Zone as notified by Department of Commerce from time to time which has not raised any money by public issue of shares or debentures in India, and has not made any default in India in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in any financial year, may pay remuneration up to Rs. 2, 40, 00,000 per annum.

Section IV. — Perquisites not included in managerial remuneration:

1. A managerial person shall be eligible for the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in Section II and Section III:—
   (*a*) Contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Income-tax Act, 1961 (43 of 1961);
   (*b*) Gratuity payable at a rate not exceeding half a month's salary for each completed year of service; and
   (*c*) Encashment of leave at the end of the tenure.

2. In addition to the perquisites specified in paragraph 1 of this section, an expatriate managerial person (including a non-resident Indian) shall be eligible to the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in Section II or Section III—
   (*a*) *Children's education allowance*: In case of children studying in or outside India, an allowance limited to a maximum of Rs. 12,000 per month per child or actual expenses incurred, whichever is less. Such allowance is admissible up to a maximum of two children.
   (*b*) *Holiday passage for children studying outside India or family staying abroad:* Return holiday passage once in a year by economy class or once in two years by first class to children and to the members of the family from the place of their study or stay abroad to India if they are not residing in India, with the managerial person.
   (*c*) *Leave travel concession:* Return passage for self and family in accordance with the rules specified by the company where it is proposed that the leave be spent in home country instead of anywhere in India.

   Explanation I.— For the purposes of Section II of this Part, "effective capital" means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, over drafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the

aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities), accumulated losses and preliminary expenses not written off.

Explanation II.—
(*a*) Where the appointment of the managerial person is made in the year in which company has been incorporated, the effective capital shall be as on the date of such appointment;
(*b*) In any other case the effective capital shall be calculated as on the last date of the financial year preceding the financial year in which the appointment of the managerial person is made.

Explanation III. — For the purposes of this Schedule, "family" means the spouse, dependent children and dependent parents of the managerial person.

Explanation IV.— The Nomination and Remuneration Committee while approving the remuneration under Section II or Section III, shall—
(*a*) take into account, financial position of the company, trend in the industry, appointee's qualification, experience, past performance, past remuneration, etc.;
(*b*) Be in a position to bring about objectivity in determining the remuneration package while striking a balance between the interest of the company and the shareholders.

Explanation V. — For the purposes of this Schedule, "negative effective capital" means the effective capital which is calculated in accordance with the provisions contained in *Explanation* I of this Part is less than zero.

Explanation VI. — For the purposes of this Schedule:—
(*A*) "current relevant profit" means the profit as calculated under section 198 but without deducting the excess of expenditure over income referred to in sub-section 4 (l) thereof in respect of those years during which the managerial person was not an employee, director or shareholder of the company or its holding or subsidiary companies.
(*B*) "Remuneration" means remuneration as defined in clause (*78*) of section 2 and includes reimbursement of any direct taxes to the managerial person.

Section V. —Remuneration payable to a managerial person in two companies:

Subject to the provisions of sections I to IV, a managerial person shall draw remuneration from one or both companies, provided that the total remuneration drawn from the companies does not exceed the higher maximum limit admissible from any one of the companies of which he is a managerial person.

PART III

Provisions applicable to Parts I and II of this Schedule

1. The appointment and remuneration referred to in Part I and Part II of this Schedule shall be subject to approval by a resolution of the shareholders in general meeting.

2. The auditor or the Secretary of the company or where the company is not required to appointed a Secretary, a Secretary in whole-time practice shall certify that the requirement

of this Schedule have been complied with and such certificate shall be incorporated in the return filed with the Registrar under sub-section (*4*) of section 196.

PART IV

The Central Government may, by notification, exempt any class or classes of companies from any of the requirements contained in this Schedule.

Schedule VI

(*See* sections 55 and 186)

The term "infrastructural projects" or "infrastructural facilities" includes the following projects or activities:—

(*1*) Transportation (including inter modal transportation), includes the following:—
- (*a*) roads, national highways, state highways, major district roads, other district roads and village roads, including toll roads, bridges, highways, road transport providers and other road-related services;
- (*b*) Rail system, rail transport providers, metro rail road's and other railway related services;
- (*c*) Ports (including minor ports and harbours), inland waterways, coastal shipping including shipping lines and other port related services;
- (*d*) Aviation, including airports, heliports, airlines and other airport related services;
- (*e*) Logistics services.

(*2*) Agriculture, including the following, namely:—
- (*a*) infrastructure related to storage facilities;
- (*b*) Construction relating to projects involving agro-processing and supply of inputs to agriculture;
- (*c*) Construction for preservation and storage of processed agro-products, perishable goods such as fruits, vegetables and flowers including testing facilities for quality.

(*3*) Water management, including the following, namely:—
- (*a*) Water supply or distribution;
- (*b*) Irrigation;
- (*c*) Water treatment.

(*4*) Telecommunication, including the following, namely:—
- (*a*) Basic or cellular, including radio paging;
- (*b*) Domestic satellite service (*i.e.*, satellite owned and operated by an Indian Company for providing telecommunication service);
- (*c*) Network of trunking, broadband network and internet services.

(*5*) Industrial, commercial and social development and maintenance, including the following, namely:—
- (*a*) Real estate development, including an industrial park or special economic zone;
- (*b*) Tourism, including hotels, convention centres and entertainment centres;
- (*c*) Public markets and buildings, trade fair, convention, exhibition, cultural centres, sports and recreation infrastructure, public gardens and parks;
- (*d*) Construction of educational institutions and hospitals;
- (*e*) Other urban development, including solid waste management systems, sanitation and sewerage systems.

(*6*) Power, including the following:—
- (*a*) generation of power through thermal, hydro, nuclear, fossil fuel, wind and other renewable sources;
- (*b*) Transmission, distribution or trading of power by laying a network of new transmission or distribution lines.

(*7*) Petroleum and natural gas, including the following:—

(*a*) Exploration and production;
(*b*) Import terminals;
(*c*) Liquefaction and re-gasification;
(*d*) Storage terminals;
(*e*) Transmission networks and distribution networks including city gas infrastructure.

(*8*) Housing, including the following:—
(*a*) Urban and rural housing including public / mass housing, slum rehabilitation, etc;
(*b*) Other allied activities such as drainage, lighting, laying of roads, sanitation and facilities.

(*9*) Other miscellaneous facilities/services, including the following:—
(*a*) Mining and related activities;
(*b*) Technology related infrastructure;
(*c*) Manufacturing of components and materials or any other utilities or facilities required by the infrastructure sector like energy saving devices and metering devices;
(*d*) Environment related infrastructure;
(*e*) Disaster management services;
(*f*) Preservation of monuments and icons;
(*g*) Emergency services (including medical, police, fire and rescue).

(*10*) Such other facility service as may be prescribed.

Schedule VII

In exercise of the powers conferred by section (1) of section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following amendment to Schedule VII of the Act, namely: -

Activities which may be included by companies in their Corporate Social Responsibility Policies

Activities relating to: -

(i) eradicating hunger, poverty and malnutrition, promoting preventive health care and sanitation and making available safe drinking water.
(ii) promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.
(iii) promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
(iv) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water;
(v) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;
(vi) measures for the benefit of armed forces veteran, war widows and their dependents;
(vii) training to promote rural sports nationally recognized sports and Olympic sports;
(viii) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and
(ix) contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;
(x) rural development projects.