

The Company Auditor

Audit of Share

Ans:

- **How to check the allotment of Securities of a Company (Sec.39):**

- ➔ Study of the contract pursuant to which the issue is made to determine how many shares are agreed to be issued and for what value and the nature and other details of the consideration.
- ➔ Examination of the prospectus to see the substance of the contract and the relevant terms of the issue including the mode of payment of the purchase consideration in case of an issue to a vendor of the business or payability of commission to the underwriters or payability of the preliminary expenses.
- ➔ To check whether minimum amount has been subscribed or not as stated in the prospectus.
- ➔ To check whether the sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument.
- ➔ To check whether 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.
- ➔ Examine the Board minute's for the purpose for which securities is issued and utilized for the same.
- ➔ Check whether the amount is refund to the applicant within prescribed time period in case of minimum amount has not been subscribed and the sum payable on application is not received within a period of **30 days** from the date of issue of the prospectus.
- ➔ To check whether the company has file with the Registrar a return of allotment or not, where the Company having a share capital makes any allotment of securities.

- **Alteration of Share Capital [Section 61]**

- ➔ Confirm that alteration was authorised by articles.
- ➔ Verify the minutes of the Board meeting and ordinary resolution passed in the general meeting in which the approval of members is obtained.
- ➔ Verify that alteration had been effected in copies of Memorandum, Articles, etc.
- ➔ Obtain the reasons for which the memorandum of the company is altered.
- ➔ Check whether there is any change in the voting percentage of shareholders due to consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares.
- ➔ To confirm that the alter share capital's denomination should be more than **Rs. 1**.
- ➔ Verify that proper accounting entries have been passed. Register of members may also be checked to see that the necessary alteration have been effected therein.

- **Issue of Bonus Shares [Section 63]**

- ➔ Confirm that issue of Bonus Share was authorized by articles.
- ➔ Verify the minutes of the Board meeting and ordinary resolution passed in the general meeting in which the approval of members is obtained.
- ➔ Check that the company has issue fully paid-up bonus shares to its members only.
- ➔ Confirm that the issue of bonus shares shall not be made by capitalising reserves created by the revaluation of assets.
- ➔ Check whether the company has made any default in payment of interest or principal in respect of fixed deposit or debt securities issued by it.
- ➔ Check whether the company has made any default in payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus.
- ➔ Whether the partly paid-up shares are made fully paid-up.
- ➔ Check whether the bonus shares shall not be issued in lieu of dividend.

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- **Power of company to Purchase its Own Securities [Section 68]**

- ➔ Confirm that Buy-Back was authorized by articles.
- ➔ Verify the minutes of the Board meeting and special resolution passed in the general meeting in which the approval of members is obtained.
- ➔ Where the buy-back has been authorised by the Board by means of a resolution passed at its meeting then check that the buy-back is not more than ten per cent. or less of the total paid-up equity capital and free reserves of the company.
- ➔ Check that the 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.
- ➔ To check that the buy-back shall not be more than twenty-five per cent. of the aggregate of paid-up capital and free reserves of the company. In case of 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.
- ➔ To check that 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.
- ➔ To check that all the shares or other specified securities for buy-back should be fully paid-up.
- ➔ To check whether the buy-back is made as per SEBI regulations in case of buy-back of the shares or other specified securities listed on any recognized stock exchange.
- ➔ To check 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.
- ➔ To ensure that 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).
- ➔ Ensure that the buy-back has been done only out of the company's free reserves or its securities premium account or out of the proceeds of any shares or other specified securities other than out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.
- ➔ Ascertain that declaration of solvency was filed with the SEBI and/or the Registrar of Companies before making buy-back but subsequent the passing of the special resolution.
- ➔ To ensure that company shall extinguish and physically destroy the shares or securities so bought back within **7 days** of the last date of completion of buy-back.
- ➔ To ensure that the company shall not make a further issue of the same kind of shares or other securities including allotment of new shares or other specified securities within a period of **six months** except by way of a bonus issue.
- ➔ Whether the company has maintained any register of the shares or securities so bought.
- ➔ Check whether that the after the completion of the buy-back under this section the company file with the Registrar and the Securities and Exchange Board a return containing such particulars relating to the buy-back within **30 days** of such completion.

- **Splitting of shares of face value from Rs. 10 to Rs. 1 per share**

- ➔ Confirm that alteration was authorised by articles.
- ➔ Verify the minutes of the Board meeting and ordinary resolution passed in the general meeting in which the approval of members is obtained.
- ➔ Verify that alteration had been effected in copies of Memorandum, Articles, etc.
- ➔ Verify that proper accounting entries have been passed. Register of members may also be checked to see that the necessary alteration have been effected therein.

- **Share Transfer Audit:**

The following aspects are required to be examined by the auditor in conducting the share transfer audit:

- ➔ Inspection of the Articles of Association regarding the prescribed form of transfer and other provisions, particularly the time limits laid down by the Articles or law.

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- ➔ Notification by transferor of the lodgement made by the transferee and inspect the objections received, if any. Also see, where calls due or not paid, whether transfer can be refused under the articles and whether any transfer was so refused.
- ➔ Examining in the case of particularly partly-paid shares, where the application for registration was made by the transferor, a notice was sent to the transferee and registration was effected only on receipt of 'non-objection' received from him.
- ➔ Scrutiny of transfer forms, noting specially:
 - a) That in every case, the application for transfer was made in the prescribed form and the prescribed authority had stamped the date on which it was presented to it; also that it was delivered to the company:
 - ✓ In case of 'quoted' shares before the Register of Members were closed for the first time subsequent to the transfer within **twelve months** from the date of presentation of the application to the prescribed authority whichever is later.
 - ✓ In any other case within **two months** from the date of such presentation.
 - b) That each transfer form is properly executed and bears the proper stamp duty.
 - c) That the name of the company is correctly stated on the form.
 - d) That where the consideration for transfer appears to be inadequate, an inquiry was made by the company for ascertaining the reasons therefor. (This is not necessary if the transfer form bears the seal of the Collector of Stamps.)
 - e) That the alterations, if any, have been suitably initiated; and
 - f) That the name and address of the transferee have been recorded completely and fully for purposes of correspondence.
- ➔ Comparison of the signatures of each transferor on the transfer form with his signature on the original application for shares or on the transfer form (if the shares were acquired on a transfer).
- ➔ Ascertaining that none of the transferees is disqualified from holding shares in the company.
- ➔ Vouching the entries in the Shares Transfer Journal by reference to the transfer forms, noting in each case:
 - (a) the name of transferor;
 - (b) the name and address of the transferee;
 - (c) the number and class of shares transferred; and
 - (d) the distinctive numbers, if any, of the shares transferred.
- ➔ Verification of postings from the Share Journal to the Register of Members.
- ➔ Inspection of each transfer as to names, addresses, occupations, form of document, description, number (in words), distinctive number of shares, stamp, date, signature, witnesses, etc.
- ➔ Check whether the transfer to firms, etc. have been rejected or not and whether notes of trust has been entered in the share register.
- ➔ Noting transferor's name, etc. and class, number and distinctive number of shares, as stated in the transfers, with old certificates and Register of Members. See that old certificates were cancelled.
- ➔ Inspection of the power of attorney and specimen signatures if transfer executed by an agent.
- ➔ Inspection of letters of indemnity for lost certificates and ensuring that duplicate certificates have been issued on proper authority.
- ➔ Where part of the shares have been transferred, the issue of balance certificates to the transferors should be seen and confirm that the distinctive number of shares have been correctly stated.
- ➔ Refer to the minutes book to ensure that all transfers recorded in the share transfer journal have been approved by the Board.
- ➔ Checking of counterfoils of new certificates.
- ➔ Reconciliation of the amount of transfer fees collected with the total number of transfers lodged and verifying that the amount of transfer fees have been accounted for.
- ➔ Reconciliation of the total number of shares of different classes issued by the company with the total amount of capital issue and its sub-divisions by extracting balances of shares held by different members from the Register of members.
- ➔ Ensuring that, in case of any share transactions by directors, corresponding entries have been made in the Register of Directors' shareholding.

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- **Re-issue of forfeited shares**

- ➔ The auditor should ascertain that the board of directors has the authority under the Articles of Association of the company to reissue forfeited shares. Check the relevant resolution of the Board of Directors.
- ➔ Vouch the amounts collected from persons to whom the shares have been allotted and verify the entries recorded from re-allotment. Auditor should check the total amount received on the shares including received prior to forfeiture, is not less than the par value of shares.
- ➔ Verify that computation of surplus amount arising on the reissue of shares credited to Capital Reserve Account and
- ➔ Where partly paid shares are forfeited for non-payment of call, and re-issued as fully paid, the reissue is considered as an allotment at a discount and compliance of the provisions of Section 53 is essential.

- **Audit of debentures [section 71]**

Ans: "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;

- **Issue of Debenture**

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. No company shall issue any debentures carrying any voting rights. Secured debentures may be issued by a company subject to such terms and conditions as may be prescribed.

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.

- **Auditor's Duty:**

- ➔ The auditor should verify that the prospectus had been duly filed with the registrar before the date of allotment of debentures.
- ➔ He should check the amount collected in the cash book with the counterfoils of receipts issued to the applicants and also cross check the amount into the application and allotment book.
- ➔ He should examine the debenture trust deed and note the conditions contained therein as to issue and repayment.
- ➔ If the debentures are covered by a mortgage of a charge, it should be verified that the charge has been correctly recorded in the register of mortgage and charges and it has also been registered with the registrar of the companies.
- ➔ Compliance with SEBI guidelines should also be ensured.
- ➔ Where debentures have been issued as fully paid up to vendors as a part of the purchase consideration, the contract in this regard should be checked.

- **Interest on Debentures:**

A predetermined fixed rate of interest is payable on debentures irrespective of the fact that company has earned the profit or not. Debenture holders are creditors of the company, they are not the owners. They have no voting powers and cannot influence the management but their claim of interest rank ahead of the claims of the shareholders.

- **Auditor's Duty:**

- ➔ The payment of interest should be vouched by the auditor with the acknowledgement of the debenture-holders, endorsed warrants and in case of bearer debentures with the coupons surrendered.
- ➔ The auditor should reconcile the total amount paid with the total amount due and payable with the amount of interest outstanding for payment.
- ➔ He should ensure that the interest paid on debenture like that on other fixed loans, must be disclosed as a separate item in the profit & loss account.

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- **Redemption of Debentures:**

A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. If debentures are redeemable it can be redeemed in any of the following way:

- (i) By way of periodical drawing i.e. by creating Debenture Redemption Reserve Account.
- (ii) By way of payment on fixed date.
- (iii) By payment whenever the company desires to do so.

- **Auditor's Duty:**

- ➔ The auditor should inspect the debentures or trust deed for the terms and conditions regarding redemption of debentures.
- ➔ He should see the Director's minute book authorizing the redemption of debentures.
- ➔ He should also vouch the redemption with the help of debenture bonds cancelled and the cash book.
- ➔ He should also examine the accounting treatment thoroughly.

- **AUDIT OF DIVISIBLE PROFIT**

Ans:

- **Declaration of dividend [Section 123]**

Final dividend is declared in the general meeting. Board of Directors have to recommend a dividend. Declaration of dividend is 'Ordinary Business' in general meeting.

- **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.

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.

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.

No dividend shall be declared or paid by a company from its reserves other than free reserves.

No company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.

For the purposes of clause (a) of sub-section (1), depreciation shall be provided in accordance with the provisions of Schedule II.

- **Interim Dividend:**

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.

- **Declaration of interim dividend if company has incurred losses in current financial year:**

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.

- **Legal Provisions applicable to interim dividend:**

The amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within **5 days** from the date of declaration of such dividend.

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- **Entitlement of Dividend:**

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.

Nothing in this sub-section shall be deemed to prohibit the capitalisation 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.

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.

- **Consequences on non-compliance:**

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.

- **Unpaid Dividend Account [Section 124]**

Ans:

- **Transfer of unpaid dividend to separate account:**

Where a dividend has been declared by a company but has not been paid or claimed within **30 days** from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within **7 days** from the date of expiry of the said period of **30 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.

- **Information about unpaid dividend on Company's website:**

The company shall, within a period of **90 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.

- **Effect of non-transfer:**

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.

- **Transfer of unclaimed dividend and also shares to Investor Protection Fund:**

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.

All shares in respect of which dividend has not been paid or claimed for seven consecutive years or more 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.

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.

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Investor Education and Protection Fund [Section 125]

Ans: The Central Government shall establish a Fund to be called the Investor Education and Protection Fund (herein referred to as the Fund).

- **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.

- **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;
- f) 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.

- **Authority to administer the fund:**

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.

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.

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- **Administration and procedures of the fund:**

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.

The Central Government may provide to the authority such offices, officers, employees and other resources in accordance with such rules as may be prescribed.

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.

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).

- **Books of Accounts:**

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.

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.

LOANS TO DIRECTORS [SECTION 185]

Ans:

- **Restrictions on Loans and Gurantees to Directors etc.**

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.
- c) 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; or
- d) 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:

Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for principal business activities.

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) anybody 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) anybody 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.

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- **Personal liability of directors for offences under the Act:**

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.

- **INTER-CORPORATE LOANS AND INVESTMENT [SECTION 186]**

Ans: Section 2(43) of Companies Act, 2013, “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 recognised 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;

- **Restrictions on Investment through Investment Subsidiaries:**

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.

- **Limit in respect of Investment/ Loan/Guarantee:**

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.

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.

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.

- **Prior unanimous approval of Board in meeting:**

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 installments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution.

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- **Company registered with SEBI cannot make investment or give loans/guarantees beyond limit of 60% / 100%:**

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.

- **Minimum Interest chargeable:**

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.

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.

- **Register of Investment/Loan/Guarantees/Security given/made:**

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.

The register referred above 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.

- **Non-applicability of restrictions on guarantees:**

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.

- **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.

- **REMUNERATION OF DIRECTORS**

Ans: As per section 2(78) of the Companies Act, 2013 “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

Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits [Section 197]

- **Ceiling of Total Managerial Remuneration:**

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.

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- **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.

The percentages aforesaid shall be exclusive of any fees payable to directors under sub-section (5).

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 whole-time 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.

- **Remuneration to Director in Professional Capacity:**

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 5 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.

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.

- **Remuneration to non-executive directors based on profits:**

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.

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.

The net profits for the purposes of this section shall be computed in the manner referred to in section 198.

- **Recovery if excess remuneration drawn:**

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.

The company shall not waive the recovery of any sum refundable to it unless permitted by the Central Government.

- **Disclosure by Listed Company in Board Report:**

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.

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- **Insurance against civil liability on behalf of managerial person:**

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.

- **MD/WTM can receive remuneration or commission from holding or subsidiary company:**

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.

- **Recovery from Director if financial statement restated due to fraud:**

If any person contravenes the provisions of this section, he shall be punishable with fine which shall not be less than 1 lakh rupees but which may extend to five lakh rupees.