NOV-2017

CA FINAL
CORPORATE AND ALLIED LAWS

BY MD IMRAN

Your Author, Finance Adviser, Wealth Creator and Best Friend

THE CONSTITUTION OF INDIA

PREAMBLE

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a [SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC] and to secure all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the [unity and integrity of the Nation];

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949 do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

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UNIT – I: COMPANY LAW

UNIT – II: ALLIED LAWS

CHAPTER 0: SUMMARY- RESOLUTION, APPROVAL, EXEMPTION, APPEAL CHART

Resolution & Approval u/s 123-470

Special Resolution	Ordinary Resolution	Board Resolution	Unanimous Resolution	Authorisation from AOA	CG APPROVAL
140(1) 149(1)&(2) 149(10)&(11) 162 165(2) 180(1)(a) 180(1)(b) 180(1)(c) 180(1)(d) 185 186(3) 188 196(3) 197(4) 210(1) 212 455	123 123(1) 139(1) 139(8) 139(9) 142(1) 149 149(1) 151 152(2) 152(6) 160 161(1) 161(2) 169 181 183 188(1) 191(1) 192(1) 196(3) 197(1) 197(4) 197(7)	123 123(1) 123(3) 128(1) 128(3) 134(1) 135(4) 139(8) 142(1) 148(3) 149 161(1) 161(2) 161(3) 161(4) 179 180(1)(c) 181 182 183 186(5) 188 193 196(4) 203(2) 203(3) 203(3) 203(4)	Board 203(7) 186 Shareholder 162 To make employee eligible for vote	163 161(1)	140(1) 196(4) 197(1)

Exemption under companies Act, 2013					
Government Co.				Pvt, Co.	U/s 8 Co.
Exemption Notification No, GSR 463 (E) Dated 5th June 2015				EN No. GSR 464E Dated 5th June 2015	EN No. GSR 466E Dated 5th June 2015
Govt. Co.	100% Govt.	100% Govt Or WOS of Govt. Co.	Govt Co. Engaged in defence		
134(3)(e)	123(1)	123(4)	129	141(3)g.	136/101
134(3)(p)	170	152(6), (7)	186	160	149 (1)
149(1)(b)		160		162	150
149(6)(a)		162		180	152 (5)
149(6)(c)		163		2(76)	160
164(2)				188	165
186				185	173
188(1)				184	174
196 (2), (4), (5)				196(4)	177(2)
203				197(NA)	178
439(2)					179
					2(76)
					188
					184
					189
					196(4)

APPEAL CHART

Heads	FEMA	SEBI	SCRA	Competition	Banking	SARFAESI ACT	PMLA	COMPANIES ACT
Reason of Appeal	Against order of penalty of AD or DD of enforcement	Against a order of penalty by AA	Against the Refusal of Listing	Against the order of penalty by Directors	Against the order of insufficient compensation under compulsory acquisition	Against the action taken by SC	Against the order of AA or director of PMLA	Against the order of adjudicating officer
Appeal by Whom	Aggrieved Person 45 days	Aggrieved Person 45 days	Company will Appeal Refusal 15 days 10 Weeks	Aggrieved person Normally 45 days	$1/4^{th}$ Shareholders holding $1/4^{th}$ value 45 days	Obligor 45 days	Aggrieved Person 45 days	Aggrieved person ma file to
1^{st} Appeal	Special Director	SAT	SAT	CCI	Tribunal	Debt Recovery Tribunal	Appellate Tribunal	NCLT
Disposal	Suo-Moto 45 days	6 Months Normal Track Fast Mode	6 Months	Suo-Moto 45 days	Suo-Moto	60 Days to 4 Months 30 days	6 Months 60 days	Disposal with in 3 month. (Maximum Condonation 90 days)
2^{nd} Appeal	Appellate Tribunal	60 days Special 60 Special	SC	Competition Appellate Tribunal	It's Final & non-questionable	Appellate Tribunal	High Court	Appellate Tribunal (with in 45 days (Ext-45 days)
Disposal	180 days	Suo-Moto Suo-Moto 60 days	Suo-Moto	6 Months 60 days		Suo-Moto	Suo-Moto 60 days	Disposal with in 3 month. (Maximum Condonation 90 days)
3^{rd} Appeal	High Court	Supreme ☒ Court		High Court			SC or Session Court	**Sumperem court** With in 60 days (Maximum Condonation 60 days)
Disposal	Suo-Moto 60 days	Suo-Moto		Suo-Moto 60 days			Suo-Moto	suo-moto
4^{th} Appeal	SC [Article No. – 134 of Cons itution of India]			Supreme Court				
Disposal	Suo-Moto			Suo-Moto				

					Penalty		or / and	Imprisonment		or	Both	
No	Sec	Sub sec	Title	Remarks	Min	Max	or / and	Min	Max	or	Both	Remark(2)
1	118	118	Minutes of Board Meeting	Default in Compliance- by company		25,000	Flat					
2	118	118	Minutes of Board Meeting	Default in Compliance- Officer in default		5,000	Flat					
3	118	118	Minutes of Board Meeting	Tampering with the minutes	25,000	100,000	and		2 yrs			
4	124	124	Unpaid Dividend account	company	500,000	2,500,000						not trans- within 90 days - int @12%
5	124	124	Unpaid Dividend account	officer in default	100,000	500,000						
6	127	127	Dividend not paid	within 30 days -Company	Int @18%pa							
7	127	127	Dividend not paid	within 30 days -OID	1,000		per day and		2 yrs			
8	128	128	Preparation and Maintenance of Books of Accounts	Contravene - MD,WTD,CFO etc i.e. person responsible	50,000	500,000	or		1 yr	or	Both	
9	136	136	Circulation of Financial statements	company		25,000	Flat					Listed co + public Co(Net worth >1 Cr and TO>10 Cr)
10	136	136	Circulation of Financial statements	OID		5,000	Flat					Listed co + public Co(Net worth >1 Cr and TO>10 Cr)
11	137	137	Filing of Financial statements with Registrar	company	1,000	1,000,000						
12	137	137	Filing of Financial statements with Registrar	OID-(1.MD+CFO if any or 2.dir charged with compliance of this sec or 3.in absence of 1 &2 all the dir)	100,000	500,000	or		6 m	or	Both	
13	138	138	Internal Audit	Contravene - MD,WTD,CFO etc i.e. person responsible- if not specified all the directors	50,000	500,000	or		1 yr	or	Both	Every listed Co & Unlisted public - Private co O/s deposit(only U P co)>= 25 Cr PSC (only U P co)>=50 Cr O/s loan/borrowing / PFI>=100 Cr TO= >=200 Cr
14	157	157(2)	Consequences of contravention	270+15 days- Company and Officer in Default	25,000	100,000						Not informing DIN to ROC
15	159	159	Punishment for Contravention	152,155,156		50,000	& 500 per day		6 m			152,155,156
16	165	165(6)	Penalty for contravention		5,000	25,000	per day					Number of Directorship
17	166	166(7)	Consequences of contravention		100,000	500,000						Duties of directors
18	167	*167(2)*	*Punishment for Contravention*		100,000	500,000	or		1 yr	or	Both	Vacation of office of Director
19	172	172	Punishment for Contravention		50,000	500,000						Directors Register
20	173	173(4)	Failure to give notice	officer in default		25,000	Flat					Board Meeting
21	182	182 (4)	Consequences of contravention	company		5 time of amount contributed						Prohibition + Restriction on Political contribution
22	182	182 (4)	Consequences of contravention	officer in default		5 time of amount contributed	and		6 m			Prohibition + Restriction on Political contribution
23	184	184	Disclosure of Interest	Effect on directors	50,000	100,000	or		1 yr	or	Both	sec 167(1)(c) &(d) - vacation of director
24	185	185(2)	Punishment for Contravention	company	500,000	2,500,000						Loan to Directors
25	185	185(2)	Punishment for Contravention	officer in default	500,000	2,500,000	or		6 m	or	Both	Loan to Directors
26	186	186 (1 to 13)	Loans and Investments by company	company	25,000	500,000						
27	186	186 (1 to 13)	Loans and Investments by company	officer in default	25,000	100,000	and		2 yrs			
28	188	188	Related Party transaction	Listed company and Other companies- Imprisonment only for listed co	25,000	500,000	or		1 yr	or	Both	
29	194	194	Prohibition of Forward dealing by Dir and KMP		100,000	500,000	or		2 yrs	or	Both	
30	195	195	Insider Trading			5L or <25Cor 3 times profit made w.E.H	or		5 yrs	or	Both	
31	204	204	Secretarial Audit for Bigger Co	Listed co, Public co - >=50 Cr Public Co TO>=250 Cr	100,000	500,000						
32	232	*232(8)*	*Consequences of contravention*	company	100,000	2,500,000						Mergers and Amalgamation of Co
33	232	*232(8)*	*Consequences of contravention*	OID	100,000	300,000	or		1 yr	or	Both	Mergers and Amalgamation of Co
34	238	238(3)	Effect of Non registration	Directors	25,000	500,000						Registration of offer of Scheme involving transfer of shares
35	392	392	Punishment for Contravention	company -if Continuous- additional 50,000/- per day	100,000	300,000						Co incor O/s India
36	392	392	Punishment for Contravention	OID	25,000	500,000	or		6 m	or	Both	Co incor O/s India

Director Summary

Public
Private
Both

Director	Sec	Applicability	Power derived/ subject to AOA	Mode of Appointment		Tenure	Remark
First Director	152(1)	Both	Subject	AOA specify- Follow AOA	AOA silent- STM+Individuals= DFD	152(6)(c) and 152(6)(d)	
Additional Director	161(1)	Both	Derived	BOD- BM/RBC		Up to date of next AGM or Last Date on which AGM should have been held which ever is **Earlier**	
Casual Vacancy	161(4)	Public	Subject	AOA specify- Follow AOA	AOA silent- Follow sec - **BOD- BM**	Up to the date upto which the director in whose place he is appointed	Not applicable to Additional, Alternate and First Director
Alternate Director	161(2)	Both	NA	AOA- BOD - BM/RBC	Resolution in AGM- BOD - BM/RBC		Alt dire cant be app as alt dir for any another co
Nominee Director	161(3)		NA	BOD- AOA or Agreement or in Purssuance of act	CG/SG - in case of gov Co		
Women Director	149(1)- 2nd proviso	Every Listed co & **Other Public co** **TO- >=300 or** **Paid up Capital>=100 Cr**	NA	160	Appointment with in 6 month from date of incorporation	**3 m** from the **Vacancy** **or** Immediate Next Board meeting Which ever is **Later**	
Indian Resident Director	149(3)	Both	NA				atleast 1 women director
SSD	151	Listed public co	NA	upon notice by **1000 SSH or 1/10 th of SSH (WWE)**	suemoto by co (BOD)	3 yrs	SSH means SH holding <=20,000/ nominal value
Independent Director	149(4) to 149(13)	Every Listed co & **Other Public co** **TO- >=100 or** **Paid up Capital>=10 Cr** **O/s Debts>50 cr**	NA			Number of director for unlisted company is 2 or more.	Number of director for listed company - 1/3 rd of total number of director

Penalty Summary

Section	Particulars	Company			Person Responsible				
		Fine		Continuing Offence	Imprisonment [Year(s)]	Fine		Both	Continuing Offence
		Min	Max			Min	Max		
127	Failure to pay dividend in 30 days	-	18% SI	-	2		-	-	1000 per day
128	Books of Accounts	-		-	1	50,000.00	5,00,000.00	✔	-
129	Financial Statements	-	-	-	1	50,000.00	5,00,000.00	✔	-
140	Resignation by Auditor	-	-	-	0	50,000.00	5,00,000.00	-	-
143	Reporting of Fraud by Auditor	-	-	-	0	1,00,000.00	25,00,000.00	-	-
-	Contavention of 139 to 146	25,000.00	5,00,000.00	-	1	10,000.00	1,00,000.00	-	-
-	Contavention by Auditor	-	-	-	0	25,000.00	5,00,000.00	-	-
-	Contavention by Auditor (Willfully)	-	-	-	1	1,00,000.00	25,00,000.00	-	-
159	Contavention of 152,155 & 156	-	-	-	≤6 months	-	50,000.00	-	500 per day
172	Contavention of Chapter XI (149 to 171)	50,000.00	5,00,000.00	-	0	-	-	-	-
182	Contribution to political party	-	5 time amount contributed	-	≤6 months	-	5 time amount contributed	-	-
185	Loan to Directors	5,00,000.00	25,00,000.00	-	≤6 months	5,00,000.00	25,00,000.00	✔	-
194	Probihition in Forward Dealing by KMP or Director	-	-	-	2	1,00,000.00	5,00,000.00	✔	-
195	Probihition in Insider Trading	-	-	-	5	5,00,000.00	25,00,00,000.00 or 3 times of amount	✔	-
392	Contavention of Chapter XXII (379 to 393)	1,00,000.00	3,00,000.00	50,000 per day	≤6 months	25,000.00	5,00,000.00	✔	-
447	Punishment for Fraud - Public Interest	-	-	-	3 to 10	Amount involved in fraud	3 times Amount involved in fraud	-	-
	Punishment for Fraud - Any other case	-	-	-	6m to 10				
448	Punishment for False Statement	Same punishment as in Section 447							
449	Punishment for False Evidance	-	-	-	3 to 7	-	10,00,000.00	-	-
450	Where no penalty specified	-	-	-	0	-	10,000.00	-	1000 per day
451	Punishment in case of repeated default	-	-	-	Same as earlier	-	2 times the amount of such fine	-	-
452	Wrongful with holding of property	-	-	-	2	1,00,000.00	5,00,000.00	-	-
453	Improper use of Words 'Limited' & ' Pvt. Ltd.'	500 per day	2000 per day	-	0	-	-	-	-
454	Concequences of non payment of penalties	25,000.00	5,00,000.00	-	≥6 months	25,000.00	1,00,000.00	✔	-

Exemption for Government Company, Private Company & U/s 8 Company under section 123-470

Exemption for Private companies

By exemption notification number- 464 (E) dated 5Th June-2015

141(3)g.	While counting eligibility for company audit of limit in 20 Companies, Pvt Company having paid up share capital less than 100 Crore is excluded. Also dormate companies, small companies & one person companies has been exempted from counting of such limit.
160	For appoint of fresh director security deposit of Rs. 1,00,000 not require
162	Two or more director can be appointed by single resolution without passing a resolution that two or more director being appointed by single resolution.
180	No Special Resolution require for Sale of undertaking, Investment of compensation received on merger, amalgamation, etc. Borrowing if it exceed sum of paid up share capital and free reserve Remission of debt due to director.
2(76)	Related party not includes Holding company, Subsidiary companies, Associate Companies or subsidiary of holding companies..
188	Member can vote and counted in quorum even if he is related party.
185	Not applicable for private companies in which 1. No other company has made investment. 2. Borrowing is less than twice of paid up share capital or Rs.50 Crore w.i.lower. 3. No default is made in repayment of loan
184	After disclosure of interest, interested director can participate as well as Vote and also shall be counted in quorum.
196(4)	For appointment no prior application/ approval in MR-2 require within 90 days.

Exemption for Under section 8 companies

By exemption notification number- 466 (E) dated 5Th June-2015

136/101	Time limit for circulation of financial statement & Notice reduced to 14 days from 21 days.
149 (1)	Concept of maximum – minimum number of director & independent director not applicable.
150	Data bank provision will not apply.
152 (5)	Consent of director in form-DIR 2 not require.
160	For appoint of fresh director security deposit of Rs. 1,00,000 not require
165	Holding of directorship in U/S 8 Companies will not be counted.
173	Only 1 board meeting in every 6 calendar month, without 90 days gap consideration.
174	Lower of 8 or 25% of total strength w.i.lower but not less than 2.
177(2)	The audit Committee of Sec 8 company need not require the ID as majority.
178	Not applicable , So no Nomination Remuneration Committee or Stake holder relationship Committee require.
179	The power which can be delegated- BIG (Borrowing money, Investment fund & Grant loan) power, can be decided by resolution of circulation.
2(76)	Related party not includes Holding company, Subsidiary companies, Associate Companies or subsidiary of holding companies..
188	Not applicable if transaction less than 1,00,000.
184	
189	
196(4)	For appointment no prior application/ approval in MR-2 require within 90 days.

Exemption for Government companies

By exemption notification number- 463 (E) dated 5Th June-2015

For government companies	
134(3)(e)	Exemption from formation of NRC so no such disclosure require in board report.
134(3)(p)	Exemption from performance evaluation by board, so no such disclosure require in board report
149(1)(b)	Maximum number of director may exceed 15 without passing any special resolution
149(6)(a)	Independence shall be determined by central government, So merely criteria of honesty, integrity & expertise is not sufficient.
149(6)(c)	Proposed independent director may have pecuniary relationship with group companies, in spite of that he will be treated as independent director,
164(2)	No disqualification of director even he fails to file financial statement / Annual return of continuous period of 3 year & even if he fails to repay debenture, deposit or interest there on, or dividend.
186	Not applicable, in case of government companies Loan, Investment, Guarantee and securities can be made without SR in GM & UBR.

188(1)	Not applicable So now for related parties transaction, No any SR in GM require even if prescribed threshold exceed, Although BR in BM require as normally.
196 (2), (4), (5)	These provisions are not applicable to a government company. Section 196(2) relates to term of managing director not to exceed five years. Section 196(4) relates to approval of the members/ Central Government as the case may be for appointment of managing director. So no approval of central government require for appointment. Section 196(5) relates to validity of actions of Managing Director if his appointment is not approved at the General Meeting. Approval not require so no question of validity either CG approve or not.
203	After sub-section (4), the following sub-section shall be inserted, namely :— "(4A) The provisions of sub-sections (1), (2), (3) and (4) of this section shall not apply to a managing director or Chief Executive Officer or manager and in their absence, a whole time director of the Government Company." So, vacancies in the office of KMP shall not be filled up by board.
439(2)	The word "the Registrar, a shareholder of the company" shall be omitted. So now court cannot take cognizance of any offence on compliant of registrar or shareholder of the company. Cognizance can be taken on when complaint is made by person authorised by CG or SEBI.

For WOS of CG/SG/CG or SG

123(1)	Exemption from compliance of Rule- 3 of Declaration and Payment of Dividend rule – 2014
170	No need to maintain register of director or file DIR-12

For WOS of CG/SG/CG or SG & other subsidiary

123(4)	Exemption from transfer of dividend within 5 days in separate scheduled bank.
152(6), (7)	Rotational and non rotation director provision Not applicable.
160	The process of the appointment of the new director and the notice of 14 days and the deposit of Rs. 1 lac for such appointment is not applicable to government company.
162	Two or more director can be appointed by single resolution without passing a resolution that two or more director being appointed by single resolution.
163	Sec 163 of adoption of the method of proportional representation is not applicable to the government company. So government company need not appoint min 2/3 directors by this method.

For Government companies engaged in defence

129	Exemption from compliance with AS -17
186	Not applicable, in case of government companies Loan, Investment, Guarantee and securities can be made without SR in GM & UBR.

1. **Companies audit section 123-147**

123- Condition for declaration and payment of dividend out of reserve in case of inadequate profit.

Rate <3PFY / withdrawal ≤ **10%** / **set off c.f.losses** /Balance in GR ≥ **15%**

124- Unpaid dividend and investor education protection fund.

125- DADU GI SIR Should be transfer to IEPF if it remains unpaid for 7 year.

126- Dividend, etc to be held in abeyance

127- Failure to distribute dividend within 30 days.

NODAD not default, if dividend not paid within 30 days

128- **Location, manner, period of maintenance and inspection of books of accounts.**

Book of accounts can be maintain in electronic mode in a manner as prescribed in rule- 3 **BRICKS** & Intimate to registrar **NIL** on annual basis.

129- **Financial Statement-** B/S, SPL, CFS, Statement of change in equity

Rule-6 Consolidated financial statement.

130- Re-open of accounts or recast of financial statement on court or tribunal order.

131- Voluntary revision of financial statement on obtaining approval from tribunal.

133- Central government to prescribe Accounting Standards.

134(3) Content of Boards report

END FDN ELRS in RDMC & RCE

E	N	D	F	D	N	E	L	R	S	R	D	M	C	R	C	E
a	b	c	ca	d	e	f	g	H	i	j	k	l	m	n	o	p

134(5) Director Responsibilities Statements

Director responsibilities statement shall disclose : AAJ PG *kal* ID

Mnemonics	A	AJ	P	G	I	D
Clause	a	b	c	d	e	f

135 CSR:App-NNT:5/500/1000, Duties- FRMI, Not CSR activity- NPO$_2$, Amount- 2% percentage of Average net profit made during 3 immediate PFY

136- Circulation of financial statement - 21/14 Days

137- Filling of financial statement and other with the registrar. - 30/180 Days.

138- Internal audit - App- Listed Co., Un Listed Public Co.- DPBT-25/50/100/200, Pvt Co.- BT- 100/200.

139: Appointment, Reappointment and rotation of auditor.

FURNISHING OF CERTIFICATE AND CONSENT BY AUDITOR ON APPOINTMENT.

Rule-4 LPP Eligible.

140- Removal, resignation of auditor, giving of Special notice & direction by Tribunal to change auditor in case of fraud.

Section 141(3) : Disqualification:- BOP & SIG *ne mil kar* **BRFC** *kar dia* **144** *laga kar*

Mnemonics	B	O	P	SIG	B	R	F	C	144
clause	a	b	c	d	e	f	g	h	i

142- Remuneration of auditor- fixed only at general meeting.

143(1) Duties to make inquiry. LTILPC

Mnemonics	L	T	I	L	P	C
clause	a	b	c	d	e	f

143(3)Duties to make report - I B_2A_3D MIS

Mnemonics	I	B	B	A	A	A	D	M	I	S
Clause	a	b	c	d	e	f	g	h	i	j

143 (12) – Reporting of fraud by auditor.
Report consists of following particular: NPA Remedial
144 Auditor not to render certain cervices
IAD AI IMRAN
145- Auditor to sign audit report.
146- Auditor to attend general meeting.
147- Punishment for contravention.

Ceiling limit under companies act 2013					
Section	Particular	**Deposit**	**Paid up share capital**	**Borrowing or loan**	**Turnover**
	Mnemonics	*D*	*Profit*	*Before*	*Tax*
138	**Internal audit**				
	Every Listed co.				
	Unlisted public co.	≥25	≥50	≥100	≥200
	Private Co.	----	----	≥100	≥200
			Profit	Before	Tax
			Paid up share capital	**Borrowing, loans, debenture & deposit**	**Turnover**
177 178 149	**Audit committee –** 3 member majority should be independent. **Nomination Remuneration Committee-** not less than ½ of NRC shall be independent. **Independent Director-** Listed Co.- 1/3rd of TNOD, UPC- At least two director as independent director.				
	Every Listed co.		1/3rd		
	Unlisted public co.		≥10	≥50	≥100
149	**Women director**				
	Every Listed co.				
	Unlisted public co.		≥100	-----	≥300
204	**Secretarial audit**				
	Every Listed co.				
	Unlisted public co.		≥50	-----	≥250
XBRL	**XBRL rule 2015**				
	Every Listed co.				
	Unlisted public co.		≥5	----	≥100

	Private Co.	≥5	----	≥100
		Net profit	**Net worth**	**Turnover**
135	**Corporate social responsibilities**	≥5	≥500	≥1000
136	**Circulation of financial statement**	----	>1	>10
CARO 2016	**1. Exempted class of companies** ➢ Banking companies ➢ Insurance companies ➢ u/s 8 companies ➢ one person companies ➢ small companies ➢ private companies (not being subsidiary or holding of public companies) and following condition should be satisfied: ♦ Paid up Share capital + **Reserve and Surplus*** ≤ 1 crore ♦ Borrowing ≤ 1 Crore ♦ Turnover** ≤ 10 Crore (including revenue from discontinuing operation)			

Law meaning
≥ means should not be less than.
≤ means should not exceed.
< means less than
> means more than.

APPOINTMENT AND QUALIFICATIONS OF DIRECTORS

149	**INDEPENDENT DIRECTOR/ WOMEN DIRECTOR**	
149(1)& (2)	**NUMBER OF DIRECTORS**	
150	**MANNER OF SELECTION OF INDEPENDENT DIRECTOR AND MAINTENANCE OF DATABANK OF INDEPENDENT DIRECTOR.**	
151	**APPOINTMENT OF DIRECTOR BY SMALL SHAREHOLDERS.**	
152	**FIRST DIRECTOR, GENERAL PROVISION RELATING TO DIRECTOR,**	
152(6)& (7)	**ROTATIONAL AND NON- ROTATIONAL DIRECTOR**	
160	**APPOINTMENT OF A PERSON OTHER THAN RETIRING DIRECTOR.**	
161(1)	**APPOINTMENT OF ADDITIONAL DIRECTOR.**	
161(2)	**APPOINTMENT OF ALTERNATE DIRECTOR.**	
161(3)	**NOMINEE DIRECTOR.**	
161(4)	**FILLING OF CASUAL VACANCIES BY BOARD**	
162	**APPOINTMENT OF DIRECTOR TO BE VOTED INDIVIDUALLY**	
163	**APPOINTMENT OF DIRECTOR BY PROPORTIONAL REPRESENTATION**	
164(1)	**QUALIFICATION AND DISQUALIFICATION OF DIRECTOR**	**UUACOLON**
164(2)	**DISQUALIFICATION FOR DEFAULT MADE BY COMPANY**	**- failed to file F.st , annual return for continuous period of 3 year**

		- failed to repay D/D/D 1 year
165	NUMBER OF DIRECTORSHIP.	20/10
166	DUTIES OF DIRECTOR.	
167(1)	VACATION OF OFFICE BY DIRECTOR.	DACF DCRA
168	RESIGNATION OF DIRECTOR.	DIR 11, DIR 12
169	REMOVAL OF DIRECTOR	
170	REGISTER OF DIRECTOR AND KMP.	
171	MEMBER RIGHT TO INSPECT THE REGISTER OF DIRECTORS AND KMP AND THEIR SHAREHOLDING.	

Meeting of Board and its powers

173	***Number of board meeting and notice of board meeting.***	
174(1)	**Quorum for a Board meeting**	
174(3)	Where at any time the number of **interested directors** exceeds or is equal to two- thirds of the total strength of the Board of Directors, the **quorum shall be the number of directors who are present at the meeting and not interested directors and are not be less than 2**.	
	Where board meeting could not held for the want of quorum, it shall be adjourned on same day on next week (or it that day is a national holiday, till the next succeeding days which is not a national holiday), same time and same place.	
96	AGM shall be held on a day which is not a national holiday. AGM shall be held during business hour only. Board meeting can be held even on national holiday. Board meeting can be held even beyond business hour. However adjourned board on same day on next week (or it that day is a national holiday, till the next succeeding days which is not a national holiday), same time and same place.	
175	**Passing of resolution by circulation**	If 1/3d decides at BM no, then NOPRBC
176	**Validity of act of director**	
177	**Audit committee**	10/50/100, >3 director majority independent
177	**Vigil mechanism for director and employee.**	For listed co, Co. Accepting deposit, Borrowed > 50 crores
178	**nomination and remuneration committee**:	
178	**Stakeholders Relationship Committee**	
179	**Power of board**	Power that can be exercise by company may exercise by board, whatever a company can do board can do.
180	**Restriction on power of board.**	RBI Sale Remission of debt due to director, Borrowing money if money already borrowed and proposed to borrow exceeds aggregate of paid up share capital and free reserve. Invest compensation received on any merger or amalgamation Sale of undertaking.
181	**Company to contribute to Bona fide and charitable fund.**	5% of average net profit made during 3 immediately preceding FYs.
182	**Prohibition and restriction**	The aggregate of the amount which may be so contributed by the company in any financial year shall not exceed 7.5%

	regarding political contribution	of average net profit made during 3 immediately preceding FYs. Prohibited for govt. Co and Company in existence for less than 3 year
183	**Contribution to national defence fund**	
185	**Loan to director**	
186(1)	layers of investment companies:	
186(2)	**Loan and investment by companies**	
187	**Investment of companies to be held in its own name**	
184	**Disclosure of interest by director**	
188	**Related party transaction**	
189	**Register of contracts in which director are interested.**	
190	**Contract of employment with MD/WTD**	
191	**Payment to director for loss of office.**	
192	**Restriction on non-cash transactions involving directors**	

Appointment and Remuneration of Managerial Personnel

196	**Appointment of MD, WTD or Manager**
197	**Managerial Remuneration**
199	**Recovery of remuneration in certain cases**
200	**Central Government or company to fix limit with regard to remuneration**
201	**Forms of, and procedure in relation to, certain applications**
202	**Compensation for loss of office of MD, WTD and Manager.**
203	**Appointment of KMP For listed Co, Public Co. PUSC_10 Crores**
204	**Secretarial audit for bigger companies**

Inspection, inquiry and investigation

206	**POWER TO CALL FOR INFORMATION, INSPECT BOOKS AND CONDUCT SURVEYS**
207	**CONDUCT OF INSPECTION AND INQUIRY.**
208	**REPORT ON INSPECTION MADE.**
209	**SEARCH AND SEIZURE**
210	**INVESTIGATION IN TO AFFAIR OF COMPANY.**
211	**ESTABLISHMENT OF SERIOUS FRAUD INVESTIGATION OFFICER.**
212	**INVESTIGATION IN TO AFFAIR OF COMPANY BY SERIOUS FRAUD INVESTIGATION OFFICER**
213	**INVESTIGATION IN TO THE AFFAIR OF COMPANY ON ORDER MADE BY THE TRIBUNAL**

214	**SECURITY FOR PAYMENT OF COST AND EXPENSES OF INVESTIGATION**
215	**FIRM, BODY CORPORATE OR ASSOCIATION NOT TO BE APPOINTED AS INSPECTOR.**
216	**INVESTIGATION OF OWNERSHIP OF COMPANY**
217	**PROCEDURE, POWER, ETC OF INSPECTOR**
218	**TEMPORARY PROTECTION OF EMPLOYEE.**
219	**POWER OF INSPECTOR TO CONDUCT INVESTIGATION INTO AFFAIR OF RELATED COMPANIES.**
220	**SEIZURE OF DOCUMENT BY INSPECTOR**
221	**FREEZING THE ASSETS OF COMPANY ON INQUIRY AND INVESTIGATION**
222	**IMPOSITION OF RESTRICTION UPON SECURITIES.**
223	**INSPECTOR REPORT**
224	**ACTION TO BE TAKEN IN PURSUANCE OF INSPECTOR REPORT.**
225	**EXPENSES OF INVESTIGATION**
226	VOLUNTARY WINDING UP OF COMPANY, ETC., NOT TO STOP INVESTIGATION PROCEEDINGS
227	**SAVING OF LEGAL ADVISOR AND BANKER-** NON-DISCLOSURE OF CERTAIN INFORMATION BY CERTAIN PERSONS.
228	**INQUIRY, INSPECTION AND INVESTIGATION OF FOREIGN COMPANIES. -** MUTATIS MUTANDIS SAME.
229	**PENALTY OF FURNISHING FALSE STATEMENT MUTILATION, DESTRUCTION OF DOCUMENTS**
Companies (Inspection, Investigation and Inquiry) Rules, 2014	
Chapter XV (230-240)	
COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS	
230	Power to compromise or make arrangements with creditors and members.
231	POWER OF TRIBUNAL TO ENFORCE COMPROMISE OR ARRANGEMENT.
232	MERGER AND AMALGAMATION OF COMPANIES.
233	MERGER OR AMALGAMATION OF CERTAIN COMPANIES. 2 OR MORE SMALL COMPANIES / A HOLDING COMPANY AND ITS WHOLLY OWNED SUBSIDIARY COMPANY / SUCH OTHER CLASS OR CLASSES OF COMPANIES AS MAY BE PRESCRIBED IN RULE 25
234	MERGER OR AMALGAMATION OF COMPANY WITH FOREIGN COMPANY./ CROSS BORDER MERGER.
235	POWER TO **ACQUIRE SHARES OF SHAREHOLDERS DISSENTING** FROM SCHEME OR

	CONTRACT APPROVED BY MAJORITY. ACQUISITION / TAKEOVER BY SALE OF SHARE.
236	PURCHASE OF **MINORITY SHAREHOLDING.**
237	POWER OF CENTRAL GOVERNMENT TO PROVIDE FOR AMALGAMATION OF COMPANIES IN PUBLIC INTEREST.
238	REGISTRATION OF OFFER OF SCHEMES INVOLVING TRANSFER OF SHARES.
239	PRESERVATION OF BOOKS AND PAPERS OF AMALGAMATED COMPANIES.

Prevention of oppression and mismanagement

241	**CLAIMING RELIEF FROM OPPRESSION**
244	THE FOLLOWING MEMBERS OF A COMPANY SHALL HAVE THE RIGHT TO APPLY UNDER SECTION 241, NAMELY:—
242	**POWER OF TRIBUNAL**
243	CONSEQUENCES OF TERMINATION OR MODIFICATION OF CERTAIN AGREEMENTS
245	CLASS ACTION

Chapter XVIII (248-252)

REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES

248	POWER OF REGISTRAR TO REMOVE NAME OF COMPANY FROM REGISTER OF COMPANIES.
249	RESTRICTIONS ON MAKING APPLICATION UNDER SECTION 248 IN CERTAIN SITUATIONS.
250	EFFECT OF COMPANY NOTIFIED AS DISSOLVED.
251	FRAUDULENT APPLICATION FOR REMOVAL OF NAME.
252	APPEAL TO TRIBUNAL.

Chapter XX (270-365)

WINDING UP

270. Modes of winding up.
"270. The provisions of Part I shall apply to the winding up of a company by the Tribunal under this Act."

PART I.— Winding up by the Tribunal

271. Circumstances in which company may be wound up by Tribunal.
272. Petition for winding up.
273. Powers of Tribunal.
274. Directions for filing statement of affairs.
275. Company Liquidators and their appointments.
276. Removal and replacement of liquidator.
277. Intimation to Company Liquidator, provisional liquidator and Registrar.
278. Effect of winding up order.
279. Stay of suits, etc., on winding up order.
280. Jurisdiction of Tribunal.
281. Submission of report by Company Liquidator.
282. Directions of Tribunal on report of Company Liquidator.
283. Custody of company's properties.
284. Promoters, directors, etc., to co-operate with Company Liquidator.
285. Settlement of list of contributories and application of assets.
286. Obligations of directors and managers.
287. Advisory Committee.
288. Submission of periodical reports to Tribunal
290. Powers and duties of Company Liquidator.
291. Provision for professional assistance to Company Liquidator.
292. Exercise and control of Company Liquidator's powers.
293. Books to be kept by Company Liquidator.
294. Audit of Company Liquidator's accounts.
295. Payment of debts by contributory and extent of set-off.
296. Power of Tribunal to make calls.
297. Adjustment of rights of contributories.

companies.
342. Prosecution of delinquent officers and members of company.
343. Company Liquidator to exercise certain powers subject to sanction.
344. Statement that company is in liquidation.
345. Books and papers of company to be evidence.
346. Inspection of books and papers by creditors and contributories.
347. Disposal of books and papers of company.
348. Information as to pending liquidations.
349. Official Liquidator to make payments into public account India.
350. Company Liquidator to deposit monies into scheduled bank.
352. Company Liquidation Dividend and Undistributed Assets Account.
353. Liquidator to make returns, etc.
354. Meetings to ascertain wishes of creditors or contributories.
355. Court, Tribunal or person, etc., before whom affidavit may be sworn.
356. Powers of Tribunal to declare dissolution of company void.
357. Commencement of winding up by Tribunal.
358. Exclusion of certain time in computing period of limitation.
PART IV.—Official liquidators
359. Appointment of Official Liquidator.
360. Powers and functions of Official Liquidator.
361. Summary procedure for liquidation.
362. Sale of assets and recovery of debts due to company.
363. Settlement of claims of creditors by Official Liquidator.
364. Appeal by creditor.
365. Order of dissolution of company.

Chapter XXI (366-378) **PART I.—Companies authorised to register under this Act**
366. COMPANIES CAPABLE OF BEING REGISTERED.
367. CERTIFICATE OF REGISTRATION OF EXISTING COMPANIES.
368. VESTING OF PROPERTY ON REGISTRATION.
369. SAVING OF EXISTING LIABILITIES.
370. CONTINUATION OF PENDING LEGAL PROCEEDINGS.
371. EFFECT OF REGISTRATION UNDER THIS PART.
372. POWER OF COURT TO STAY OR RESTRAIN PROCEEDINGS.
373. SUITS STAYED ON WINDING UP ORDER.
374. OBLIGATION OF COMPANIES REGISTERING UNDER THIS PART.
PART II.—WINDING UP OF UNREGISTERED COMPANIES
375. WINDING UP OF UNREGISTERED COMPANIES.
376. POWER TO WIND UP FOREIGN COMPANIES ALTHOUGH DISSOLVED.
377. PROVISIONS OF CHAPTER CUMULATIVE.
378. SAVING AND CONSTRUCTION OF ENACTMENTS CONFERRING POWER TO WIND UP PARTNERSHIP FIRM, ASSOCIATION OR COMPANY, ETC., INCERTAIN CASES.
Chapter XXII (379-393)
COMPANIES INCORPORATED OUTSIDE INDIA
379. APPLICATION OF ACT TO FOREIGN COMPANIES.
380. DOCUMENTS, ETC., TO BE DELIVERED TO REGISTRAR BY FOREIGN COMPANIES.
381. ACCOUNTS OF FOREIGN COMPANY.
382. DISPLAY OF NAME, ETC., OF FOREIGN COMPANY.
383. SERVICE ON FOREIGN COMPANY.
384. APPLICABILITY OF OTHER PROVISION ON FOREIGN COMPANY w.r.t DEBENTURES, ANNUAL RETURN, REGISTRATION OF CHARGES, BOOKS OF ACCOUNT AND THEIR INSPECTION.
385. FEE FOR REGISTRATION OF DOCUMENTS.
386. INTERPRETATION.
387. DATING OF PROSPECTUS AND PARTICULARS TO BE CONTAINED THEREIN.
388. PROVISIONS AS TO EXPERT'S CONSENT AND ALLOTMENT.
389. REGISTRATION OF PROSPECTUS.
390. OFFER OF INDIAN DEPOSITORY RECEIPTS.
391. APPLICATION OF SECTIONS 34 TO 36 AND CHAPTER XX.
392. PUNISHMENT FOR CONTRAVENTION.
393. COMPANY'S FAILURE TO COMPLY WITH PROVISIONS OF THIS CHAPTER NOT TO AFFECT VALIDITY OF CONTRACTS, ETC.
Companies (Registration of Foreign Companies) Rules, 2014
Chapter XXIII(394-395)

GOVERNMENT COMPANIES
394. ANNUAL REPORTS ON GOVERNMENT COMPANIES.
395. ANNUAL REPORTS WHERE ONE OR MORE STATE GOVERNMENTS ARE MEMBERS OF COMPANIES.
Chapter XXIV (396-404)
REGISTRATION OFFICES AND FEES
396. REGISTRATION OFFICES.
397. ADMISSIBILITY OF CERTAIN DOCUMENTS AS EVIDENCE.
398. PROVISIONS RELATING TO FILING OF APPLICATIONS, DOCUMENTS, INSPECTION, ETC., IN ELECTRONIC FORM.
399. INSPECTION, PRODUCTION AND EVIDENCE OF DOCUMENTS KEPT BY REGISTRAR.
400. ELECTRONIC FORM TO BE EXCLUSIVE, ALTERNATIVE OR IN ADDITION TO PHYSICAL FORM.
401. PROVISION OF VALUE ADDED SERVICES THROUGH ELECTRONIC FORM.
402. APPLICATION OF PROVISIONS OF INFORMATION TECHNOLOGY ACT, 2000.
403. FEE FOR FILING, ETC.
404. FEES, ETC., TO BE CREDITED INTO PUBLIC ACCOUNT IN THE RESERVE BANK OF INDIA.
Companies (Registration Offices and Fees) Rules, 2014 (amendments incorporated)
Chapter XXV(405)
COMPANIES TO FURNISH INFORMATION OR STATISTICS
405. POWER OF CENTRAL GOVERNMENT TO DIRECT COMPANIES TO FURNISH INFORMATION OR STATISTICS.
Chapter XXVI
(406)NIDHIS
406. POWER TO MODIFY ACT IN ITS APPLICATION TO NIDHIS.
Nidhi Rules, 2014
Chapter XXVII(407-434)
NATIONAL COMPANY LAW TRIBUNAL AND APPELLATETRIBUNAL
407. Definitions.
408. Constitution of National Company Law Tribunal.
409. Qualification of President and Members of Tribunal.

410. Constitution of Appellate Tribunal.
411. Qualifications of Chairperson and members of AppellateTribunal.
412. Selection of Members of Tribunal and Appellate Tribunal.
413. Term of office of President, Chairperson and other Members.
414. Salary, allowances and other terms and conditions of service ofMembers.
415. Acting President and Chairperson of Tribunal or AppellateTribunal.
416. Resignation of Members.
417. Removal of Members.
418. Staff of Tribunal and Appellate Tribunal.
419. Benches of Tribunal.
420. Orders of Tribunal.
421. Appeal from Orders of Tribunal.
422. Expeditious disposal by Tribunal and Appellate Tribunal.
423. Appeal to Supreme Court.
424. Procedure before Tribunal and Appellate Tribunal.
425. Power to punish for contempt.
426. Delegation of powers.
427. President, Members, officers, etc., to be public servants.
428. Protection of action taken in good faith.
429. Power to seek assistance of Chief Metropolitan Magistrate, etc.
430. Civil court not to have jurisdiction.
431. Vacancy in Tribunal or Appellate Tribunal not to invalidate acts or proceedings.
432. Right to legal representation.
433. Limitation.
434. Transfer of certain pending proceedings.
Chapter XXVIII(435-446)
SPECIAL COURTS
435. Establishment of Special Courts.
436. Offences triable by Special Courts.
437. Appeal and revision.
438. Application of Code to proceedings before Special Court.
439. Offences to be non-cognizable.
440. Transitional provisions.
441. Compounding of certain offences.
442. Mediation and conciliation penal.
443. Power of Central Government to appoint company prosecutors.
444. Appeal against acquittal.
445. Compensation for accusation without reasonable cause.
446. Application of fines.
Chapter XXIX (447-470)

MISCELLANEOUS PROVISION
447. PUNISHMENT FOR FRAUD.
448. PUNISHMENT FOR FALSE STATEMENTS.
449. PUNISHMENT FOR FALSE EVIDENCE.
450. PUNISHMENT WHERE **NO** SPECIFIC PENALTY OR PUNISHMENT IS PROVIDED.
451. PUNISHMENT IN CASE OF REPEATED DEFAULT.
452. PUNISHMENT FOR WRONGFUL WITHHOLDING OF PROPERTY.
453. PUNISHMENT FOR IMPROPER USE OF "LIMITED" OR "PRIVATE LIMITED".
454. ADJUDICATION OF PENALTIES.
455. DORMANT COMPANY.
456. PROTECTION OF ACTION TAKEN IN GOOD FAITH.
457. NON-DISCLOSURE OF INFORMATION IN CERTAIN CASES.
458. DELEGATION BY CENTRAL GOVERNMENT OF ITS POWERS AND FUNCTIONS.
459. POWERS OF CENTRAL GOVERNMENT OR TRIBUNAL TO ACCORD APPROVAL, ETC., SUBJECT TO CONDITIONS AND TO PRESCRIBE FEES ON APPLICATIONS.
460. CONDONATION OF DELAY IN CERTAIN CASES.
461. ANNUAL REPORT BY CENTRAL GOVERNMENT.
462. POWER TO EXEMPT CLASS OR CLASSES OF COMPANIES FROM PROVISIONS OF THIS ACT.
463. POWER OF COURT TO GRANT RELIEF IN CERTAIN CASES.
464. PROHIBITION OF ASSOCIATION OR PARTNERSHIP OF PERSONS EXCEEDING CERTAIN NUMBER.
465. REPEAL OF CERTAIN ENACTMENTS AND SAVINGS.
466. DISSOLUTION OF COMPANY LAW BOARD AND CONSEQUENTIAL PROVISIONS.
467. POWER OF CENTRAL GOVERNMENT TO AMEND SCHEDULES.
468. POWERS OF CENTRAL GOVERNMENT TO MAKE RULES RELATING TO WINDING UP.
469. POWER OF CENTRAL GOVERNMENT TO MAKE RULES.
470. POWER TO REMOVE DIFFICULTIES.

Allied Law

The foreign exchange management Act,1999

2(u)	Person
2(v)	Person Resident in India.
2(w)	Person resident outside India.
5	Current account transaction Rule-3 PROHIBITED-------------------------------------NCLT prohibit CDR Rule-4 Permitted with the approval of central government—Commercial nature Rule-5 Permissible with the approval of RBI-
6	Capital account transaction.
7	Exports of goods services
8	Realisation and repatriation of foreign exchange
9	FOREIGN EXCHANGE MANAGEMENT (ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY OUTSIDE INDIA) REGULATIONS, 2015

The Competition Act, 2002

2	Definition- Acquisition, agreement, cartel, consumer, goods, Services, person, enterprises
8,9,10	Composition of Chairmen.
15	Validity of Act
11	Removal by CG
12	Restriction of employment
3	Anti competitive agreement
5,6	Combination

The prevention of money laundering Act, 2002

2	Definition – money laundering
4	Punishment for money laundering
12	Banking Companies financial institution to Maintain, furnish and verify records.
26	Appeal to Appellate tribunal
45	Certain offence to be cognizable and non-bail able.

The banking regulation Act, 1949

7	The word Bank, Banker, banking can only be used by banking companies.
9	Disposal of non- banking Assets within 7 year and maximum 5 year extension can be by RBI.
17	Transfer of Profit to Reserve fund
30	Audit- Additional disclosure- ITR p/l
31	Publish and submission of return.

The insurance Act, 1938

3	Registration of insurer
3A	Renewal of Registration.
6	Requirement of Capital
34	Control over management.
39	Nomination of policy holder.
64VA	Sufficiency of assets.

The Securitisation and reconstruction of financial assets and enforcement of securities interest Act, 2002

2	Definition- Obligor, originator, Financial Assets, Assets Reconstruction, Securities receipt.
3	Registration – prerequisites and condition.
4	Cancellation of certification of registration.
5	Acquisition of rights or interest in financial assets
6	Notice to obligor and discharge of obligation of such obligor.
9	Measures for assets reconstruction
13	Enforcement of security interest act
15	Manner and affect of takeover of management.
17	Application against measure to recover secured debts

CHAPTER 1: DIVIDENDS (Sections 123 – 127)

Section	Particular
DECLARATION AND PAYMENT OF DIVIDEND	
2(35)	**Meaning of dividend**
	Dividend refers to that portion of profit which is distributed among shareholder. Dividends mean final dividend and interim dividend. Final dividend declared after closing of book that is after closing of financial year whereas interim dividend means dividend distributed in between two AGM. To declare dividend, first it is recommended by board than it require approval of share holder in general meeting. Declaration of dividend is an item of ordinary resolution. Member at AGM may declare dividend at lower than rate or amount recommended by board but they cannot increase it. AOA which authorise to declare dividend at higher than rate recommended by board is void.
123	**Condition for declaration and payment of dividend**
	Dividend can be distributed out of current year profit, brought forward profit, and grant from government. Carry forward and unabsorbed losses to be set off before declaration of dividend. There is no any condition to transfer to general reserve before declaration of dividend, A company may transfer such appropriate percentage of profit to reserve as it may deem fit. If in current year there is loss, then there is no any condition for declaration of dividend out of carry forward surplus in profit of loss, but there are following condition for declaration of dividend out of free general reserve:- **Rule 3 of the companies (Declaration and payment of dividend) Rule, 2014.** a) Dividend **rate** should be less than average rate of dividend declared in 3PFY. b) Maximum permissible withdrawal from general reserve is **10%** of (paid up share capital + free reserve). c) First **set off** carry forward losses from above withdrawal reserve. d) Balance in the general reserve should not be less than **15%** of paid up share capital.
123(3)	**Interim dividend** can be declared by board out of surplus in P&L account or Profit of current financial year. Rate of dividend should be less than average rate of dividend declared in 3PFY in case company has incurred loss up to the end of the quarter immediately preceding the date of declaration of interim dividend. Interim dividend once declared, like final dividend, is a debt due from the company, Accordingly ones declared cannot be revoked unless: Declaration of dividend is ultra vires. Or where company cease to be going concern.
123(6)	**Prohibition on declaration of dividend**
	As per Section 123(6) of the Act**, a company** which fails to comply with the provisions of section 73 or 74 **shall not**, so long as such failure continues**, declare** any dividend on its equity shares. 73 (manners to be followed while inviting, accepting or renewing deposits under the new

	Companies Act, 2013 from the public), and section 74 (manners to be followed for repayment of deposits etc. before the commencement of this Companies Act, 2013)
124	**Unpaid dividend and investor education protection fund.**
	Dividend shall be transfer to separate bank account within 5 days from date of declaration of dividend, and it should be paid (or Post Dividend Warrant) within 30 days from date of declaration of dividend. A dividend remaining unpaid or unclaimed for 30 day or more shall be transferred to separate bank account known as unpaid dividend account with in 7days from the expiry of said period of thirty days. ***Prepare a statement containing name, their last known address and unpaid dividend, within 90 days of making above transfer to UDA, and place it on the website of company.*** **Interest** @ 12% payable by company for delay in making above transfer. Any Person claiming to be entitled to any money transferred to UDA may apply to the company for the payment of money claimed. Any money transferred to UDA remain unpaid or unclaimed for **7** year from the date of such transfer, including accrued interest, shall be transferred to **IEPF**(Investor Education Protection Fund) **Transfer of share to IEPF-** All shares in respect of which dividend has not been **paid or claimed** (after declaration) for 7 **consecutive** year or more, shall be transferred to IEPF. Provided that claimant of shares entitle to claim the transfer of share from IEPF. **In case if contravention-** The company shall be punishable with a fine which shall not less than 5,00,000 but which can be extend to 25,00,000 rupees, and every officer of company who is in default shall be punishable with a fine which shall not be less than 1,00,000 but which may extend to 5,00,000 rupees.
125	**Investor Education Protection Fund**
	Transfer to DADU GI SIR to IEPF if it remains unpaid for 7 year. **Deposits matured but remain unpaid** **Application money pending for refund.** **Debenture matured but remain unpaid.** **Unpaid dividend.** **Grant due for refund.** **Interest of DADU** **Sale proceeds of fraction share** **Interest or other income** **Redemption amount of preference share.**
126	**Dividend, etc to be held in abeyance**
	If transfer is pending and transferor has not authorised to transferee to receipt dividend it shall be kept in abeyance
127	**Failure to distribute dividend within 30 days.**

	Dividend shall be transfer to separate bank account in a scheduled bank within 5 days from date of declaration of dividend, and it should be paid within 30 days from date of declaration of dividend. If company failed to pay within 30 days then company would be liable to pay interest @ 18% pa. If director is knowingly a party of default then he would be liable for penalty not less than 1000 per day during which failure continues & imprisonment which may extend to 2 year. If dividend transferred to separate bank account remains unpaid for 30 days then transfer to unpaid dividend account within 7 days. If it remains unpaid for 7 year from unpaid dividend account then transfer it to IEPF. However there is no default if NODAD not paid within 30 days. **NODAD (Non- Payment without co. Default, Operation of any Law, Disputed, Adjusted against any due, Direction give to the companies but same has not been complied and it is communicated to shareholder)**

CHAPTER 2: ACCOUNTS (Sections 128-137)

ACCOUNTS OF COMPANIES	
128	**Location, manner, period of maintenance and inspection of books of accounts**
	The book of accounts shall be kept at registered office; however it may be kept at other place but should be informed to ROC within 7 days. The books of accounts shall be maintained on accrual basis and double entry accounting system should be followed. Maintained in a manner so as to give true and fair view. It shall be kept and maintain for 8 year. Book of accounts can be maintain in electronic mode in a manner as prescribed in rule- 3 **BRICKS** ➧ Books of accounts remain accessible in INDIA. ➧ Retain in a form in which it is originally generated. ➧ Information receipt from branches should not be altered. ➧ Capable of being displayed in a legible form. ➧ Keep proper system of storage, retrieval, Display and printout. ➧ Server should also be physically located in INDIA. Intimate to registrar **NIL** on annual basis. (**N**ame of service provider, **IP** Address, **L**ocation of Service provider) **Person responsible under section 128** 1. Managing director 2. Whole time director in charge of finance 3. Chief Executive Officer 4. Any other person charge by board with such duty. **INSPECTION OF BOOKS OF ACCOUNTS** The books of accounts can only be inspected by director during business hour. Member / shareholder is not entitle to inspect books of accounts even hold entire share capital unless authorised by board, member in general meeting or article of association provides.
129	**Financial Statement**
	It consist B/S, SPL, CFS, Statement of change in equity and annexure forming part of above. It should be complied with accounting standards, if departure from accounting standards then deviation, reasons and effect should be disclosed. It should be signed by Chairperson if he authorised otherwise two director one of whom shall be managing director and also by CEO,CFO and CS (if appointed). **Rule-6** Consolidated financial statement. Provided this rule shall not apply in respect of preparation of CFS by a company it meets ALL following condition:- 1. **It is a Wholly owned subsidiary or Partially owned subsidiary and other member intimated and such person not object to the company not presenting CFS;** 2. **Unlisted company or not in the process of listing. &** 3. **Immediate or ultimate HOLDING company files CFS with the registrar.**

130	**Re-opening of accounts on court or tribunal order**
	A company shall not **re-open** it books of accounts or **recast** its financial statement unless an application in this regard is made **TO the court or tribunal** by- (a) The central government (b) The income tax authority (c) The SEBI (d) Any other statutory regulatory body or authority or (e) any person concerned **and** **an order made by court of competent jurisdictional or the tribunal to the effect that-** **i. Relevant earlier account prepared in *fraudulent manner*; or** **ii. The affairs of the company were *mismanaged* during the relevant period, because of which casting a doubt on the reliability of financial statement.** Provided court or tribunal shall give a notice to the central government, Income tax authorities, SEBI and shall take in to consideration representation made by them.
131	**Voluntary revision of financial statement on obtaining approval from tribunal.**
	If appears to the director of company that financial statement or Board's report do not comply with section 129 or 134, they **may revise** financial statement or revised board report in respect of any of the **three preceding financial year** after obtaining **approval of tribunal** & an **order passed by tribunal shall be file with Registrar.** Reason for revision should be disclosed in board's report. Provided tribunal shall **give a notice** to the central government & Income tax authorities and shall **take in to consideration representation** made by them. Provided further that revision shall not be made more than once in a financial year.
133	**Central government to prescribe Accounting Standards**
	Provided until NFRA (National Financial Reporting Authority is constituted) Central Government may prescribed accounting standards on the recommendation of ICAI in consultation with and after examination by NACAS (National Advisory Committee on Accounting Standards)
134(1)	**Signing**
	Financial statement including consolidated financial statement if any shall be signed by least of the following before approval by borad. 5. Chairperson of the company where he is authorised. or 6. Two directors, one of whom should be managing director. and 7. Other Chief Executive Officer, if he is director in the company. 8. Chief Financial Officer and Company secretary of the company wherever they are appointed. Signing of Board report by - 1. Chairperson of the company where he is authorised. or 2. Two directors, one of whom should be managing director.

134 (3)

<u>Content of Boards report</u>

END FDN ELRS in RDMC & RCE

Mnemonics	E	N	D	F	D	N	E	L	R	S	R	D	M	C	R	C	E
clause	a	b	c	ca	d	e	f	g	h	i	j	k	l	m	n	O	p

(Extract of annual return, Number of board meeting, Director Responsibilities Statement, Fraud Reported by auditor, Declaration given by independent auditor, Nomination remuneration committee, Explanation on every qualification reservation or adverse remarks makes by auditor or CS, Loan-Guarantee or investment u/s 186 , Related parties, State of companies affairs, Reserve created, Dividend recommended, Material change and commitment, Conservation of energy-technology absorption-foreign exchange earnings and outgo, Risk management policy, Corporate Social Responsibilities, Evaluation by board it own performance in case of public company having paid up share capita 25 crore or more.)

134(5)

<u>Director Responsibilities Statements</u>

Director responsibilities statement shall disclose as to whether : AAJ PG *kal* ID

Mnemonics	A	AJ	P	G	I	D
Clause	a	b	c	D	e	f

Director responsibilities statement shall disclose as to whether

A-- Financial Statement complies with Accounting Standards.

AJ- Accounting policies is selected and applied consistently.
Judgments and estimates made are reasonable and prudent.

P- Proper and Sufficient care has been taken for
- **Maintenance of adequate accounting record.**
- **Safeguard of assets**
- **Prevention and detection of fraud and other irregularities.**

G- Annual account prepared on **Going concern basis.**

I-- Internal financial control followed by the company are adequate and operating effectively.

D- Devised proper systems to ensure compliance with all applicable law and regulation.

135

Corporate Social Responsibilities.

App- N/N/T-5/500/1000 Duties- FRMI, Not CSR-NPO_2

Responsibilities to expenses 2% percentage of Average net profit made during 3 immediate PFY for welfare of social, education, force, sports, technology, etc.

Applicability:-

If company have Net profit, Net worth or Turnover -5/500/1000 Crore respectively in any of the financial year. Ones applicable will continue to apply unless company cease to full all the above criteria for consecutive 3FY.

	Duties of CSR committee:- FRMI Formulate CSR policy, Recommend the amount to be expenses on CSR activity, Monitor CSR policy & Institute transparent monitoring policy. **Activity not amounting to CSR activity:- Rule 4&6 : NPO$_2$** Normal course of business, political party, outside INDIA, own employee. **Manner of implementing CSR activity** **CSR Activity can be undertaken** **i. By company it self.** **ii. By Company itself through trust, registered society, u/s 8 Company.** **iii. Through trust, registered society, u/s 8 Company established by CG/SG/ Entity established by act of parliament or state legislature.** **iv. Through any other entity other than above but should have track record of undertaking similar project or programme.**	
136	**Circulation of financial statement.**	**21/14 Days**
	Circulate FS, CFS, Auditor's report & Annexure thereto to every member, trustee and other who entitled to receipt within 21/14 days. *14 day for u/s 8 co, and for other 21 days.*	
137	**Filling of financial statement and other with the registrar.**	**30/180 Days**
	Every company shall file financial statement, Consolidated financial statement, account of subsidiary and annexure forming part of above. with the ROC within 30 days of AGM irrespective of AGM held, not held, adjourned, etc. If AGM adjourned then un adopted financial statement within 30 days & adopted financial statement within 30 days of AGM in which adopted. However in case of one person company it is 180 days of beginning of financial year.	
138	**Internal audit.**	**App- DPBT-25/50/100/200**
	DEFINITION Independent management function of examination of financial, operation and administrative aspect for evaluation of internal control, risk management, value addition to TCWG. **Applicability** For every listed company, every unlisted public company having DPBT-25/50/100/200 & for every unlisted private company have Borrowing / Turnover 100/200 *respectively* crore or more at any point of time during PFY. (DPBT (*D profit before tax*): Deposit, Paid up capital, borrowing, turnover) **Eligibility** Chartered accountant or cost accountant **Whether in practice or not.**	

CHAPTER 3: AUDIT (Sections 139-148)

AUDIT AND AUDITORS

139	**Appointment, Reappointment and rotation of auditor.**

Every company shall appoint an Auditor at first AGM and on subsequent AGM when previous auditor completed his tenure or on vacancies for every financial year.

Concept of rotation of auditor

Concept of rotation of auditor applicable on for listed company and ***certain prescribed company*** *(* **Rule-5 :** *all unlisted public company having PUSC of Rs. 10 crore of more; all private limited company having PUSC of Rs. 20 crore or more and company other than above but having borrowing from financial institution of Rs 50 core or more)*. Rotation of auditor means a company is required to change his auditor on completion of specified period of time for certain period of time. Currently, **Rule-6** maximum period for which an individual can be appointed as an auditor of a company is one term of 5 consecutive year and firm for two term of 5 consecutive year, there after such auditor (individual or firm) would not be eligible for appointment in the same company for 5 year, it is known as cooling period of 5 year.

Concept of rotation of auditor not applicable for one person company or small company (PUSC <50 lakhs, T/O < 2 Crore).

However appointment is not made for 5/10 year that is, it would be ratified by Ordinary Resolution at every AGM for every year but tenure of office of auditor doesn't expire on the last date on which AGM was due to be held, so if AGM is not held auditor can continue his office.

Procedure for appointment of auditor

Rule 3 Manner and Procedure of Selection and Appointment of Auditors

1. Qualification and experience of proposed auditor will be consider by board or audit committee (in case co. Require to constitute AC)
2. Board or audit committee shall regard to any order passed or proceeding pending for professional misconduct against the proposed Audior.
3. In case the company is not required to constitute audit committee board shall consider and recommend an individual or firm as auditor to member in AGM.
4. In case company is required to constitute to audit committee
   - Audit committee shall consider and recommend an individual or firm as auditor to board.
   - Board shall consider the recommendation of AC and make their own further recommendation if agrees.
   - If board disagree then refer back the recommendation to AC for consideration by citing reason.
   - If board continue to disagree then AC record reason for disagreement and send it own recommendation for consideration at

AGM.

- If board agrees then shall recommend the name of individual or firm at AGM as recommended by Audit committee.

Time period

Appointment of first auditor 139(6)				
	By CAG	**By BOD**	**By Share holder**	**Total**
Government Co.	Within **60** days	Next **30** days, Where CAG failed to do so.	Next **60** days	150 days,
Other then Govt. Co.	NA	Within **30** days,	Next **90** days	120 days,
The auditor so appointed shall hold the office till conclusion of first AGM.				

Appointment of Subsequent auditor 139(5)	
Company	**Time limit**
Government Co.	**Within 180 days from commencement of the financial year.**
Tenure- up to conclusion of next AGM.	
Other then Govt. Co.	**By Member in AGM**
Tenure- up to conclusion of 6th AGM Provided ratification by OR in intervening AGM. If no ratification by OR in intervening AGM, then BOD will appoint the Auditor. The tenure of whose is till conclusion of next AGM.	

Filling of casual vacancies.- 139(8)		
	By CAG	**By BOD**
Government Co.	Within 30 days	Next 30 days, Where CAG failed to do so.
Other than Govt. Co.	NA	Within 30 days,

For **Other than Govt. Co.**

In case casual vacancies arise due to resignation of auditor, the appointment by the board shall be approved by shareholder in general meeting convened within 3 month of the recommendation of board.

FURNISHING OF CERTIFICATE AND CONSENT BY AUDITOR ON APPOINTMENT.

1. Furnish written consent for such appointment. And
2. A certificate stating auditor satisfied criteria as prescribed in sec 141. & appointment is made in accordance with rule-4.

   Rule-4 LPP Eligible.

- **List of proceeding pending against the proposed auditor for professional misconduct disclosed in certificate.**
- **Proposed appointment is as per the term provide under the Act,**
- **Proposed appointment is within the limit laid down by or under the**

	authority of the Act, ◈ **Eligible for appointment and is not disqualified for appointment under this Act or CA Act,1949** **The company shall inform the auditor of his appointment and file notice of such appointment with the registrar in form no ADT – 1, within 15 days of meeting in which auditor is appointed.** **Transition period extended by other six month** Earlier it was 3 year (01.04.2014 -31.03.2017), Now a new provision inserted that comply with the act within first AGM after three year of the commencement of this Act.
140	**Removal, resignation of auditor and giving of Special notice.**
	140(1): removal **Rule 7** Removal of Auditor before expiry of his term For removal of auditor board shall pass a board resolution, then make application to CG for taking approval in form ADT-2, On receipt of approval from CG, within **60 days of approval** Hold general meeting pass Special resolution. However before taking any action of removal a ROOBH shall be given. *ROOBH(Reasonable opportunity of being heard)* **140(2)(3): resignation of auditor** **Rule 8** Resignation of Auditor An auditor is required to file ADT-3 on resignation within 30 days to Company, ROC , CAG (If govt, co). Failure to which auditor punishable with a fine which may extend to Rs. 50000 but shall not exceed Rs. 500000. **140(4): Special notice.** A special notice require to remove an auditor providing expressly that retiring auditor shall not appointed and appointing some other person in place of retiring auditor. However special notice not require if he has completed consecutive tenure of 5 year/ 10 year. **Right to make representation** Auditor entitle to make representation in writing and he may request to company to circulate representation to the member of the company. Company shall state the fact of representation in any notice of the resolution given to the member and shall send a copy of representation to every member to whom notice of the meeting is sent. If it is received too late the auditor may request to read out at the meeting Representation need not be read out if it is found that auditor abused his position. **140 (5) Direction by Tribunal to change auditor in case of fraud.** if it is satisfied to tribunal that auditor of the company acted in fraudulent manner or abetted or colluded in any fraud, tribunal may pass an order suo motu or on application by CG or other, direct the company to change the auditor. Such auditor shall not be eligible for appointment as auditor (or Firms of auditor) for 5 year.

141	**Eligibility, qualification and disqualification of auditor.**

Qualification – Chartered Accountant

Section 141(3) : Disqualification:- BOP & SIG *ne mil kar* **BRFC** *kar dia* **144** *laga kar*

Mnemonics	B	O	P	SIG	B	R	F	C	144
clause	a	b	c	d	e	f	g	h	i

a) **Body corporate** other than LLP

b) **Officer or employee** of the company

c) **Partner or person in employment** of such officer or employee of the company

d) Security, indebtedness and guarantee

- A person who or his relative or partner is holding any security of CHASS
  *(except share held by all **relative** up to face value of **Rs. 1 lakh,** if at any time after appointment share held by relative exceed **Rs. 1 lakh**, then take corrective action within next **60** days so as to maintain the limit.)*
- A person who or his relative or partner is indebted in excess of **Rs. 5 lakh** to CHASS.
- A person who or his relative or partner has given a guarantee or provided any security in respect of indeptedness of third parties in excess of **Rs. 1 Lakh** to CHASS.

(CHASS- Company, Holding company, Associate Company, Subsidiary, Subsidiary of such holding company.)

e) **Business relationship** in the nature of commercial transaction other than **(Rule 10)**

- Commercial transaction which are in the nature of professional services.
- Commercial transaction which are in ordinary course of business of the company at ALM(arm's length price) company engage in HATH(Hospital, Airline, telecommunication and hotel & such other similar business.

With CHASS including a subsidiary of such associate company.

f) **Relative** is director or key managerial person (CEO,CFO, CS, WTD)

g) A person who is in **full time employment** elsewhere. Or holding audit of more than 20 companies (excluding one person company, small company, dormant companies and private companies having paid up share capital less than Rs. 100 crore.)

h) A person who has been **convicted** by a court of an offence involving fraud and 10 year has not been elapsed from date of such conviction.

i) Any person (ca) whose subsidiary, associate company or any other form of entity is engaged as on the date of appointment in consulting and specialised services as provided in sec **144**. *(however section 144 restriction is for service to company, holding company & subsidiary company; so if on the date of appointment this service is being provided to other company there is no any objection)*

Relative means father, mother, brother, sister, son, daughter, wife of son and *husband of daughter, wife of brother, husband of sister including above step except step daughter.*

141(4) – If subsequent to appointment any disqualification occure then vacate his office.

142 Remuneration of auditor

It shall be decided and **fixed only at general meeting**, however in case of first auditor it shall be fixed by board. It consists of audit fees, reimbursement of expenses and any facilities extended to auditor.

143 (1)

Powers of Auditors

(a) *Access to books of accounts and vouchers*: Every auditor of a company shall have a right of access at all times to the books of accounts and vouchers of the company, whether kept at the registered office of the company or at any other place.

(b) *Entitled to have necessary information and explanation*: He shall be entitled to require from the officers of the company such information and explanations as the auditor may consider necessary for the performance of his duties as auditor.

(c) *Matters of inquiry*: The auditor may also inquire into the following matters , namely:— **LTILPC**

Mnemonics	L	T	I	L	P	C
clause	a	b	c	d	e	f

a. **Loan and advance** made on the basis of securities properly secured, and term on which they have agreed not prejudicial to interest of company.
b. **Transactions represented merely by book entries are** prejudicial to interest of company.
c. **Investment-** if company is not an investment company or banking company whether so much of assets consisting of share, debenture or other securities sold at a price less than at which it has been purchased.
d. **Loan and advance** made by the company have been shown as deposit.
e. **Personal expenses** have been charged to revenue.
f. **Cash** is received for share allotted for cash, if not then account balance shown is correct and not misleading

d) Access to record of all its subsidiaries: 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.

143(3) Duties to make report **I B_2A_3D MIS**

Mnemonics	I	B	B	A	A	A	D	M	I	S
clause	a	b	c	d	e	f	g	h	i	j

a) **Information and explanation-** whether he has sought and obtained all the information and explanation which to the best of his knowledge and belief were necessary for the purpose of audit and if not, the detail there of and affect of such information on the financial statement.
b) **Books of accounts-** whether in his opinion proper books of accounts as required by law have been kept by the company so far it appear from examination of those books and proper return adequate for the purpose of

	his audit have been received from branch not visited by him. c) **Branch office-** Whether the report on the accounts of any branch office of the company audited by a person other than company's auditor has been sent to him and the manner in which he has dealt with it in preparing his report. d) **Agreement-** Whether the company's balance sheet and profit and loss account dealt with in report are in agreement with the books of account and returns. e) **Accounting Standards-** Whether in his opinion the financial statement complies with the accounting standards. f) **Adverse effect-** the observation or comment of the auditors on financial transaction or matter which have any adverse effect on the functioning of the company. g) **Disqualified –** Whether any director is disqualified from being appointed as a director under section 164(2). h) **Maintenance of books of accounts-** any qualification, reservation or adverse remarks relating to the maintenance of accounts and other matters connected therewith. i) **Internal financial control-** whether the company has adequate internal financial controls system in place and the operating effectiveness of such control. j) **S**uch other matter as may be prescribed. Rule 11 1. Disclosure of **impact of pending litigations on financial position**. 2. **Provisions for Material Forseeable losses on long term contracts** made. 3. Any **delay in transferring amounts to IEPF.**
143(12)	**Reporting of fraud by auditor**
	Rule 13 Reporting of Frauds by auditor When an auditor comes to knowledge or reason to believe that fraud has been committed or is being committed against the company by any employee of officer, the auditor is required report immediately but not later than 2 days **to the board or audit committee**. Board or audit committee will submit their reply or observation within 45 days to auditor. Then Auditor shall report **to central government** in form ADT-4 within 15 days of receipt of reply from board or audit committee, by speed post or Registered post with acknowledgment due. However if fraud amount is less than Rs. 1 crore then report only it to Board/ Audit committee & disclosure require in board report. Report consists of following particular: **NPA** **1.** **N**ature of fraud with description **2.** **P**arties involved. **3.** **A**pproximate amount involved. AND such disclosure would not amount breach of any of his duties. **4.** Remedial Action taken

<table>
<tr><td>144</td><td>Auditor not to render certain cervices</td><td>IAD AI IMRAN</td></tr>
<tr><td></td><td colspan="2">The auditor shall not provide any of the following services directly or indirectly to company, holding company or subsidiary company.
Investment advisory services.
Actuarial services.
Design and implementation of any financial information system
Accounting and book keeping service.
Internal audit
Investment banking service
Management service
Rendering of outsources financial services.
Any other as may be prescribe
Not prescribed any service yet.</td></tr>
<tr><td>145</td><td colspan="2">Auditor to sign audit report.</td></tr>
<tr><td></td><td colspan="2">Audit report shall be signed by the person who is appointed as auditor.</td></tr>
<tr><td>146</td><td colspan="2">Auditor to attend general meeting.</td></tr>
<tr><td></td><td colspan="2">It is compulsory for an auditor to attend general meeting either himself or through his representative (ca in practice that should be qualified to be an auditor).</td></tr>
<tr><td>147</td><td colspan="2">Punishment for contravention</td></tr>
<tr><td></td><td><u>FOR AUDITOR</u> for contravention of section 139,143,144 or 145 i.e for (ARNS- Appointment, Reporting, Not to render certain services, Signature)
25,000-5,00,000
If knowingly
1,00,000-25,00,000
And maximum imprisonment may be 1 year.
The auditor shall be liable to refund remuneration received from the company.</td><td>FOR <u>COMPANIES & OFFICER IN DEFAULT</u>
<u>Section 139-146</u>
<table><tr><td>Company</td><td>Officer in default.</td></tr><tr><td>25,000-5,00,000</td><td>10,000-1,00,000 and maximum imprisonment may be one year</td></tr></table></td></tr>
</table>

CHAPTER 4: APPOINTMENT & QUALIFICATION OF DIRECTORS (149-172)

APPOINTMENT AND QUALIFICATIONS OF DIRECTORS	
Introduction	According to section 2(10) of the Companies Act, 2013, "Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company. According to section 2(34) "director" means a director appointed to the Board of a company.
149(1) & (2)	**NUMBER OF DIRECTORS**
	(a) minimum number of directors: (A) in the case of Public company-**3**, (B) in the case of Private Company-**2,** and (C) in case of One person company (OPC)-**1** **(b) maximum number of directors:** 15 If the company wants to appoint more than 15 directors, it can do so after passing a special resolution.
149(1)	**INDEPENDENT DIRECTOR/ WOMEN DIRECTOR**
	At least one woman director shall be on the Board in following company- (1) every listed company; (2) 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. within a period of six months from the date of its incorporation. Further, 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. *As per as on the last date of latest audited financial statements
149(3)	Resident Director
	Every company shall have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year.
149(4)	Independent Director
	Every listed public company shall have at least **one-third** of the total number of directors as independent directors. following class or classes of companies shall have **at least 2 directors** as independent directors: (1) the Public Companies having paid up share capital of 10 crore rupees or more; or (2) the Public Companies having turnover of 100 crore rupees or more; or (3) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees. However, in case a company covered as under the above 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. As per section 177(2) of the Companies Act, 2013, the Audit Committee shall consist of a **minimum of three directors with independent directors forming a majority**
149(6)	Who can become the Independent Director
	(1) who, in the opinion of the Board, is a person of **integrity and possesses relevant expertise and experience;**

	(2) (A) who is or was **not a promoter** of the company or its holding, subsidiary or associate company; (B) who is **not related to promoters or directors** in the company, its holding, subsidiary or associate company; (3) 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**; (4) **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 2% or more of its gross turnover or total income or 50 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**; (5) who, **neither himself nor any of his relatives**— (A) 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 3 financial years immediately preceding the financial** year in which he is proposed to be appointed; (B) 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— (i) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or (ii) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten percent. or more of the gross turnover of such firm; (C) holds together with his relatives 2% or more of the total voting power of the company; or (D) is a Chief Executive or director, by whatever name called, of any non- profit 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 2% or more of the total voting power of the company; or (6) who possesses such other qualifications as may be prescribed. According to the Companies (Appointment and Qualification of Directors) Rules, 2014, 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.
150	**MANNER OF SELECTION OF INDEPENDENT DIRECTOR AND MAINTENANCE OF DATABANK OF INDEPENDENT DIRECTOR.**
151	**APPOINTMENT OF DIRECTOR BY SMALL SHAREHOLDERS.**
	In Listed company SSD (Small Shareholder Director) will be elected by small shareholder (holding nominal value of share not exceeding **₹20000** & VP not exceeding **2%**). Company will appoint either Suo motu (OR in GM) or on notice by Small shareholder if notice given by lower of following - **1000** small shareholders; or - **1/10th** small shareholder At least **14 days'** notice is required. Such SSD considered as independent & Non rotational director, tenure of office of SSD not exceeding **3 year.**

152	**FIRST DIRECTOR, GENERAL PROVISION RELATING TO DIRECTOR,**
152(6) &(7)	**ROTATIONAL AND NON- ROTATIONAL DIRECTOR**
	2/3rd of total number of director (excluding Nominee director, Small shareholder director, independent director, ~~M director~~) of public company shall be rotational, out of such, 1/3rd shall be liable to retire by rotation in the first AGM and in every subsequent AGM. Method – FIFO, Agreement or draw of lots.
160	**APPOINTMENT OF A PERSON OTHER THAN RETIRING DIRECTOR.**
	By giving at least 14 days' notice and on deposit of ₹ 1 Lakhs, such shall be refunded if secure more than 25% of vote.
161(1)	**APPOINTMENT OF ADDITIONAL DIRECTOR.**
	Additional director can be appointed by board, if AOA provides, a person who fails to get appointed in GM cannot be appointed as additional director, **he can hold the office up to the last date of next AGM, or the last day on which AGM should have been held, which ever earlier.**
161(2)	**APPOINTMENT OF ALTERNATE DIRECTOR.**
	In place of original director during absence of original director for period of 3 month or more. **A person can hold only 1 alternate directorship.** **Board must be authorise by article or resolution at GM.** **An alternate director shall not hold the office beyond the term permissible to original director**
161(3)	**NOMINEE DIRECTOR.**
	Nominated by government by virtue of their shareholding. Nominee director shall be rotational director. Maximum number of nominee director is 3.
161(4)	**FILLING OF CASUAL VACANCIES BY BOARD**
	In Public company casual vacancies of director appointed in GM can be filled by Board only. No express power in the article is required. Such director shall hold office only upto the date upto which the director in whose place he is appointed would have held office if it had not been vacated.
162	**APPOINTMENT OF DIRECTOR TO BE VOTED INDIVIDUALLY**
	No two or more director can be appointed by single resolution unless a resolution is passed that appointment of two or more director can be made by single resolution without any vote being cast against it.
163	**APPOINTMENT OF DIRECTOR BY PROPORTIONAL REPRESENTATION**
164(1)	**QUALIFICATION AND DISQUALIFICATION OF DIRECTOR** — **UUACOLON**
	(i) A person cannot be appointed as director of a company in any of the following cases: (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 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence. However, if a person has been convicted of any offence and sentenced in respect thereof

	to imprisonment for a period of 7 years or more, he shall not be eligible to be appointed as a director in any company (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 6 months have elapsed from the **last day fixed for the payment of the call**; (g) he has been convicted of the **offence of dealing with related party transactions under section 188 at any time during the last preceding 5 years**; or (h) he has **not complied with sub-section (3) of section 152 which requires a director to have a Director Identification Number** under section 154.	
164(2)	**DISQUALIFICATION FOR DEFAULT MADE BY COMPANY**	- **failed to file F.st , annual return for continuous period of 3 year** - **failed to repay D/D/D 1 year**
	(ii**) 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 3 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 1 year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for period of **5 years** from the date on which the said company fails to do so. [Section 164(2)]	
165	**NUMBER OF DIRECTORSHIP.**	**20/10**
166	**DUTIES OF DIRECTOR.**	
	(i) He shall **act in accordance with the articles** of the company, subject to the provisions of this Act. (ii) He 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. (iii) He shall **exercise his duties with due and reasonable care**, skill and diligence and shall exercise independent judgment. (iv) He 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**. (v) He 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. (vi) He shall **not assign his office** and if any assignment so made, it shall be void. 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 ₹ 1,00,000 but which may extend to ₹ 5,00,000.	
167(1)	**VACATION OF OFFICE BY DIRECTOR.**	**DACF DCRA**
	According to section 167 of the Companies Act, 2013: (i) The office of a director shall become vacant in case [Section 167(1)]- (a) he incurs any of the **disqualifications specified in section 164**; Office of all the director in defaulting company shall be vacated, however if director of defaulting company is also a director in other company, his office of director in such other company shall not be vacated. (b) he **absents himself from all the meetings of the Board of Directors held during a period of 12months 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 6month**s. It is further 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.**
168	**RESIGNATION OF DIRECTOR.** — **DIR 11, DIR 12**
	Provisons regarding resignation of directors has been provided for the first time under the Companies Act, 2013.According to this section: (i) a director may resign from his office **by giving a notice in writing** to the company. (ii) The Board shall on receipt of such notice take note of the same. (iii) The **company shall within 30 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. (iv) The company shall also place the fact of such resignation **in the report** of **directors** laid in the immediately following general meeting by the company. (v) Such **director** shall also **forward a copy of** his resignation along with detailed reasons for the **resignation to the Registrar within 30days** from the date of resignation in Form *DIR-11* along with the prescribed fee. (vi) 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.** (vii) It is further provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure. (viii) 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 DIRECTOR**
	A person holding nominal value of share not less than ₹5,00,000 or VP not less than 1%, may give notice before 14 days of GM to company. Company shall give SCN to director. Director shall give written representation. If representation found by the Tribunal defamatory then representation need not be circulated, otherwise it can be circulated and GM would be held if OR is passed to remove director then director is removed and his office is vacated, If OR fails director continues.
170	**REGISTER OF DIRECTOR AND KMP.**
	(i) Every company shall **keep at its registered office** a register containing such particulars of its directors and key managerial personnel as may be prescribed and which shall include details of securities held by each of them in the company or its holding, subsidiary, subsidiary of its holding companies or associate companies. [Section 170(1)] (ii) Section 170(2) provides that 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** (a) **within 30 days from the appointment** of every director and key managerial personnel, as thecase may be, and (b) **within 30 days of any change taking place**
171	**MEMBER RIGHT TO INSPECT THE REGISTER OF DIRECTORS AND KMP AND THEIR SHAREHOLDING.**

CHAPTER 5: MEETINGS OF BOARD AND ITS POWER (Sections 173 – 195)

Meeting of Board and its powers		
173	***NUMBER OF BOARD MEETING AND NOTICE OF BOARD MEETING.*** 1ST BM within 30 days of incorporation. Normally 4BM in a year gap between two BM not exceeding 120 days For NPO 1 in each half calendar year For One Person Company, Dormate Company, Small Company 1 in each half calendar year but gap not exceeding 90 days.	
174(1)	**QUORUM FOR A BOARD MEETING** (In case of number of **interested directors** less than two- thirds of the total strength)	1/3d or 2 w.i.h, For u/s 8 co. lower of 8 or 25% of total strength
174(3)	Where at any time the number of **interested directors** exceeds or is equal to two- thirds of the total strength of the Board of Directors, the **quorum shall be the number of directors who are present at the meeting and not interested directors and are not be less than 2**.	
	Where board meeting could not held for the want of quorum, it shall be adjourned on same day on next week (or it that day is a national holiday, till the next succeeding days which is not a national holiday), same time and same place.	
96	AGM shall be held on a day which is not a national holiday. AGM shall be held during business hour only. Board meeting can be held even on national holiday. Board meeting can be held even beyond business hour. However adjourned board on same day on next week (or it that day is a national holiday, till the next succeeding days which is not a national holiday), same time and same place.	
175	**PASSING OF RESOLUTION BY CIRCULATION**	If 1/3d decides at BM no, then NOPRBC
	(i) The Act allows the Board of directors to pass resolution by Circulation also. No resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation unless: (a) 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, (b) at their addresses registered with the company in India, (c) by hand delivery or by post or by courier, or through such electronic means as may be prescribed, and (d) and has been approved by a majority of the directors or members, who are entitled to vote on the resolution. If at least 1/3rd 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 (instead of being decided by circulation). Not applicable for **161(4), 179, 182, 186, 188, 203**	
176	**VALIDITY OF ACT OF DIRECTOR**	
	(i) 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. (ii) 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.	

	However, the acts done by a director in his capacity as managing director are not validated under section, 176, except the act done in the capacity of a director. Where a managing director ceases to hold office his entire subsequent act invalid.	
177	**AUDIT COMMITTEE**	10/50/100, >3 director majority independent
	Responsibilities of an Audit Committee: (a) the recommendation for appointment, remuneration and terms of appointment of auditors of the company; (b) review and monitor the auditor's independence and performance, and effectiveness of audit process; (c) examination of the financial statement and the auditors' report thereon; (d) approval or any subsequent modification of transactions of the company with related parties; (e) scrutiny of inter-corporate loans and investments; (f) valuation of undertakings or assets of the company, wherever it is necessary; (g) evaluation of internal financial controls and risk management systems; (h) Monitoring the end use of funds raised through public offers and related matters.	
177	**VIGIL MECHANISM FOR DIRECTOR AND EMPLOYEE.**	For listed co, Co. Accepting deposit, Borrowed > 50 crores
	(ii) **Objective of formation of vigil mechanism**: (a) A vigil mechanism shall be formed **for directors and employees to report genuine concerns** in such manner as may be prescribed. (b) The vigil mechanism 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. It is imperative for the company to disclose the details of the establishment of vigil mechanism on the website of the company and in Board's report.	
178	**NOMINATION AND REMUNERATION COMMITTEE**:	
	Every listed company, and all public companies with a paid up capital / turnover / outstanding loans or borrowings or debentures or deposits of 10/50/100 respectively, This committee shall consist of 3 or more non-executive directors out of which not less than one-half shall be independent directors. The Chairman (whether executive or non-executive) of the company shall not chair such a committee. However, he may be appointed as a member to the committee.	
178	**STAKEHOLDERS RELATIONSHIP COMMITTEE**	
	(i) Formation and constitution of stakeholder's relationship committee: The Board of Directors of a company which consists of **more than 1000 shareholders, debenture holders, deposit-holders and any other security holders** at any time during a financial year shall constitute a Stakeholders Relationship Committee. (ii) **Objective of the committee**: The Stakeholders Relationship Committed shall **consider and resolve the grievances of security holders** of the company. This committee shall protect the interests of all security holders, not merely the equity investors. (iii) **Chairperson of stakeholder's relationship committee**: It shall be headed by a chairperson who shall be a non-executive director and consist of such other members as may be decided by the Board. Provided that the non-consideration of a resolution of any grievance by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of section 178.	
179	**POWER OF BOARD**	Power that can be exercise by company may exercise by board, whatever a company can do board can do.
	179(3) Powers of the Board to be exercised by the Board by means of the resolution passed at a duly convened Board meeting (a) to **make calls** on shareholders in respect of money unpaid on their shares; (b) to authorise **buy-back of securities** (up to 10%, beyond that require prior approval of article or SR) under section 68;	

<table>
<tr><td></td><td colspan="2">(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

Power to delegate certain powers of the Board: The Board may, by a resolution passed at a meeting, delegate the powers specified in points (d) to (f) above, on such conditions as it may specify to:
1. any committee of directors,
2. the managing director,
3. the manager or any other principal officer of the company, or
4. the principal officer of the branch office (in the case of a branch office of the company).</td></tr>
<tr><td>180</td><td>RESTRICTION ON POWER OF BOARD.</td><td><u>RBI Sale</u>
Remission of debt due to director,
Borrowing money if money already borrowed and proposed to borrow exceeds aggregate of paid up share capital and free reserve.
Invest compensation received on any merger or amalgamation
Sale of undertaking.</td></tr>
<tr><td></td><td colspan="2">(i) 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. "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; 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. 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.
"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.

(ii) Every special resolution passed by the company in general meeting in relation to the exercise of the powers referred to in point (c) above shall specify the total amount up to which monies may be borrowed by the Board of Directors.

(iii) Nothing contained in above point (a) shall affect— (1) the title of a buyer or other person who</td></tr>
</table>

	buys or takes on lease any property, investment or undertaking as is referred to in that clause, in good faith; or (2) 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. (iv) Any special resolution passed by the company consenting to the transaction as is referred to in above point (a) 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 . (v) **No debt** incurred by the company in excess of the limit imposed by above point (c) **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 FUND.**	5% of average net profit made during 3 immediately preceding FYs.
182	**PROHIBITION AND RESTRICTION REGARDING POLITICAL CONTRIBUTION**	The aggregate of the amount which may be so contributed by the company in any financial year shall not exceed 7.5% of average net profit made during 3 immediately preceding FYs. Prohibited for govt. Co and Company in existence for less than 3 year
183	**CONTRIBUTION TO NATIONAL DEFENCE FUND**	
	(i) 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. (ii) Every company shall disclose in its profits and loss account the total amount or amounts contributed by it to the Fund referred to in point (i) as specified above, during the financial year to which the amount relates.	
185	**LOAN TO DIRECTOR**	
	No company shall directly or indirectly Advance any loan to specified person, give any guarantee or provide any security in respect of loan taken by specified person. Specified person is 1. Director of lending company and holding company or partner or relative of such director. 2. Firm in which such director or relative is partner. 3. Private company in which such director is director or member. 4. Body corporate at a GM of which not less than 25% of VP may be exercised by any such director, or by two or more such director together. 5. Body corporate the BOD accustomed to act in accordance with the direction or instruction of the Board or any of director or directors, of the lending company. (ii) **Exceptions:** The above restriction does not apply in the following circumstances: (a) the giving of any loan to a managing or whole-time director— (1) as a part of the conditions of service extended by the company to all its employees; or (2) 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 any loan made by any bank or financial institution to its subsidiary company: Provided that the loans made under clauses(c) and (d) are utilized by the subsidiary company for its principal business activities. [Inserted by the Companies(Amendment) Act, 2015]*~~
186(1)	LAYERS OF INVESTMENT COMPANIES:
	This section is applicable on both public as well as private company. (i) According to section 186(1), without prejudice to the provisions contained in this Act, a company shall unless otherwise prescribed, **make investment through not more than 2 layers of investment companies**: However, the provisions of sub-section (1) shall not affect,— (a) 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; (b) 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. (ii)
186(2)	**LOAN AND INVESTMENT BY COMPANIES**
	According to section 186 (2) of the Companies Act, 2013, 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, Unless unanimous board resolution is passed in board meeting. However special resolution should also pass if exceed following limit. Higher of 60% of (Paid-up capital + free reserve + security premium), or **100% of (free reserve + security premium)** (vii) **Rate of interest on loan**: A loan under this section shall not be given at a rate of interest lower than the prevailing yield of one year, 3 year, 5 year or 10 year Government Security closest to the tenor of the loan. [Section 186 (7)] ***Vide General circular no. 06/2015 dated 9th April, 2015 ministry has clarified that in cases where effective yield (effective rate of return) on tax free bonds is greater than the prevailing yield of one year, three year, five year or ten year, Government Security closest to the tenor of the loan, there is no violation of sub-section(7) of this section of the Companies Act, 2013.*** **Maintenance of register** in *Form MBP 2* of each such transaction within 7 days of making such loan or giving guarantee or providing security or making acquisition.
187	**INVESTMENT OF COMPANIES TO BE HELD IN ITS OWN NAME**
	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. Exception However, the company may hold any shares **in its subsidiary company in the name of any nominee or nominees** of the company, if it is necessary to do so, to ensure that the number of members of the subsidiary company is not reduced below the statutory limit. (ii) **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 6 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. Every company shall, from the date of its registration, maintain a register in Form ***MBP3*** 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
184	**DISCLOSURE OF INTEREST BY DIRECTOR**
	Section 184 is applicable on all directors of the company and all types of Companies. **(i) When to disclose**: Every director shall disclose his **concern or interest**: (a) At the **First meeting of the Board** in which he participates as a director, and (b) Thereafter, at the first meeting of the Board **in every financial year**, or (c) Whenever there is any **change in** the disclosures already made, then at the first Board meeting held after such change. (ii) **What to disclose**: Every director shall disclose his **concern or interest in any company or companies or bodies corporate, firms, or other association of individual**s which shall include the shareholding, in such manner as may be prescribed. Interested director shall not participate in such board meeting. (however nothing prevent him from participating and vote in general meeting) ***Exemption for Private company and u/s 8 companies.*** (iii) **Circumstances in which disclosure is necessary:** Whenever any director of a company who is in any way, whether **directly or indirectly** (Through relative, etc.), **concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into** shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and **shall not participate in such meeting**. **Following are the circumstances where disclosure is necessary**: Whenever any director of the 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. However, 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. (iv) **Consequences of non-disclosure**: (a) ***Voidable at the option of company***: A contract or arrangement entered into by the company without disclosing 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. (b) ***Penalty***: If a director of the company contravenes the provisions of sub-section (1) or subsection (2) of section 184, 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**. (c) Vacation of office u/s 167. (v) **Exception**: Section 184 shall not apply to any contract or arrangement entered into or to be entered into between 2 companies where any of the directors of the one company or two or more of them together holds or **hold not more than 2% of the paid-up share capital** in the other company.
188	**RELATED PARTY TRANSACTION**

Except with the **consent of BOD by resolution at BM** no company shall enter into any contract or arrangement with **related parties*** with respect to following & **also require prior approval of member by an ordinary resolution** (**No voting by related member)** if exceed following limit.

Any goods	Sale, purchase or supply	10% of turnover, or ₹ 100 crore, Whichever is lower.
Property of any kind	Bying and selling	10% of net worth, or ₹ 100 crore, Whichever is lower.
Poperty of any kind	Leasing	10% of turnover, or 10% of net worth, or ₹ 100 crore, Whichever is lower.
Any service	Availing or rendering	10% of turnover, or ₹ 50 crore, Whicheve is lower.
Appointment of OPP	In the company, its subsidiary company or associate company.	Monthly remuneration up to ₹ 2.4 Lakh(Yearly - ₹30 lakhs)
Underwriting	Subscription of any securities	1% of net worth

Transaction to be at arm's length prices: Nothing as provided above 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 –

1. The **Turnover or Net Worth** referred in the above sub-rules shall be computed on the basis of the Audited Financial Statement of the preceding financial year.
2. In case of a wholly owned subsidiary, the special resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between the wholly owned subsidiary and the holding company.

(a) the expression —**office or place of profit** means any office or place—

(1) 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;

(2) 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

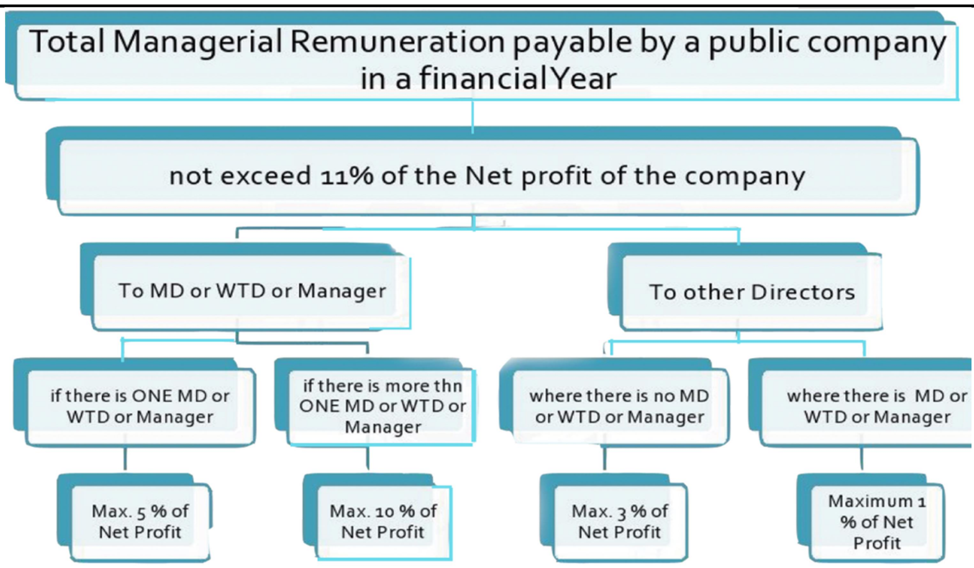
	that is conducted as if they were unrelated, so that there is no conflict of interest. * **'Related Party'** means (i) a director or his relative; (ii) a key managerial personnel or his relative; (iii) a firm, in which a director, manager or his relative is a partner; (iv) a private company in which 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 2% of its paid-up share capital; *The Companies 1st (Removal of Difficulties) Order, 2014* clarifies that a Public Company in which a director or manager is a director and holds along with his relatives, more than 2% of its paid-up share capital shall be a related party. (vi) any body corporate of which a director or manager of the company is a shadow director; (vii) any shadow director of the company (i.e., any person on whose advice, directions or instructions a director or manager of the company is accustomed to act) ; (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. Legal requirement under section 188 1. **Consent of board meeting should be obtained by passing a resolution at a BM.** 2. **The agenda of board meeting shall contain particular prescribed in sub-rule (1) of rule 15 of the companies (Meeting of board and its power, 2014)** 3. **In any director is interested in such contract or arrangement, he shall not be present at a board meeting.** 4. **Also require prior approval of member by an ordinary resolution** (**No voting by member who is related parties)** if exceed prescribed limit.
189	**REGISTER OF CONTRACTS IN WHICH DIRECTOR ARE INTERESTED.**
	It is mandatory for all companies to keep one or more registers giving separately the particulars of all contracts or arrangements as required under: (a) section 184(2) [interested director] or (b) section 188 [related party]. **Exceptions [Section 189(5)]:** Nothing contained in section 189(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 5,00,000 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.
190	**CONTRACT OF EMPLOYMENT WITH MD/WTD**
	(i) 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. (ii) The copies of the contract or the memorandum shall be open to inspection by any member of the company without payment of fee.
191	**PAYMENT TO DIRECTOR FOR LOSS OF OFFICE.**
192	**RESTRICTION ON NON-CASH TRANSACTIONS INVOLVING DIRECTORS**
	(i) **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 shall also be required to be obtained by passing a resolution in general meeting of the holding company

CHAPTER 6: APPOINTMENT & REMUNERATION OF MANAGERIAL PERSON (Sections 196-205)

Appointment and Remuneration of Managerial Personnel	
196	**APPOINTMENT OF MD, WTD OR MANAGER**
	(i) Prohibition of simultaneous appointment of MD and manager: A company shall not appoint or employ a managing director and a manager at the same time. [Section 196(1)] (ii) **Tenure [section 196(2)]:** (a) **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**. (b) It is further provided that no re-appointment shall be made earlier than one year before the expiry of his term. (iii) **Disqualification [section 196(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 21 years or has attained the age of 70 years.** Provided that a person who has attained the **age of seventy years may be appointed** to such office **by the passing of 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**; or (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.** (iv) **Schedule V** to the Companies Act, 2013, has prescribed **additional conditions** for **managing or whole-time director or a manager** to be eligible for appointment: (1) 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 16 (finance related) Acts as specified under **Part I of Schedule V.** (2) he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974: **Provided that where the Central Government has given its approval** to the appointment of a person convicted or detained under para (1) or para (2), 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. (v) **Procedure of appointment [section 196(4)]***:* (1) 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**. (2) The terms and conditions and remuneration approved by Board of Directors as above

	shall be subject to the **approval of shareholders by a resolution at the next general meeting of the company.** (3) In case such appointment is at **variance to the conditions specified in the Schedule V of the Companies Act, 2013, the appointment shall be approved by the Central Government**. (4) The 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. (5) A return in the prescribed form (*Form No. MR.1)* along with the prescribed fee shall be filed with the Registrar within sixty days of such appointment. (vi) **Validity of acts [Section 196(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 deemed to be valid. **Managing Director [Section 2(54)]:** Section 2(54) of the Companies Act, 2013 defines a "Managing Director" as a director who is entrusted with substantial powers of management of the affairs of the company by: (i) virtue of the articles of a company or (ii) an agreement with the company or (iii) a resolution passed in its general meeting, or by its Board of Directors, and includes a director occupying the position of the managing director, by whatever name called. Explanation to Section 2 (54) clarifies that *substantial powers of the management* shall not be deemed to include the power to do such administrative acts of a routine nature when so authorised by the Board such as: (i) the power to affix the common seal of the company to any document or (ii) to draw and endorse any cheque on the account of the company in any bank or (iii) to draw and endorse any negotiable instrument or (iv) to sign any certificate of share or (v) to direct registration of transfer of any share. **Whole Time Director [Section 2(94)]:** "Whole-time director" includes a director in the whole-time employment of the company. **Manager [Section 2(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. ***Note: (i) In case of Government Companies, section 196(2), (4) and (5) shall not apply (Notification No. G.S.R. 463(E) dated 5th June, 2015).*** ***(ii) In case of Private companies section 196(4)/(5) shall not apply (Notification No. G.S.R. 464(E) dated 5th June, 2015).***
197	**MANAGERIAL REMUNERATION**
	Schedule V

Part – II		**For section 197**
	Section I	A company **having profits** in a financial year may pay remuneration to a managerial person or persons not exceeding the limits specified in section 197



The limit can be increased by the approval of the company in general meeting *, Sitting fees paid to directors is not considered while computing the above limit*

Sitting fees

Sitting fees amount may be decided by the **BOD** or the Remuneration Committee

- Which shall not exceed the **sum of rupees 1 lakh per meeting** of the Board or committee thereof.
- The Board may decide different sitting fee payable to independent and non-independent directors **other than WTD.**

Section II

Remuneration payable by companies having no profit or inadequate profit without Central Government approval for MD /WTD & Manager

pay remuneration to the managerial person not exceeding the **higher of the limits under (*A*) and (*B*) given below**:—

(A) Based on effective capital*	
Effective capital	**Maximum yearly remuneration**
<₹5 Crore	**₹60 Lakhs**
≥₹5 but < ₹100 Crore	**₹84 Lakhs**
≥₹100 Crore < 250 Crore	**₹120 Lakhs**
≥₹250 Crore	**₹120 Lakhs + .01% of effective capital**

(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

*"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.**
		Section III	**Remuneration payable by companies having no profit or inadequate profit without Central Government approval in certain special circumstances** (a) either a foreign company or has got the approval of its shareholders in general meeting to make such payment (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 (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
		Section IV	**Perquisites not included in managerial remuneration:**
		Section V	**Remuneration payable to a managerial person in two companies:** Where he is a managerial person in more than one company, he draws remuneration from one or more companies, total remuneration drawn from both the companies shall not exceed the higher of maximum amount admissible from any one of such companies
	Part – III		**Provisions applicable to Parts I and II of this Schedule** Shall be subject to approval by a resolution of the shareholders in general meeting.
	Part – IV		**Exemption by the Central Government to** any class or classes of companies by CG.

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**
201	**FORMS OF, AND PROCEDURE IN RELATION TO, CERTAIN APPLICATIONS**
202	**COMPENSATION FOR LOSS OF OFFICE OF MD, WTD AND MANAGER.**
	For lower of 3 year or unexpired period @ Average Salary of 3year or expired period (ii) No payment of compensation shall be made in the following cases: (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**.
203	**APPOINTMENT OF KMP FOR LISTED CO, PUBLIC CO. PUSC_10 CRORES**
	(i) Who is KMP [section 203(1)]: Every company belonging to such class or classes of companies as may be prescribed, shall have the following whole time key managerial personnel:- (a) Managing Director, or Chief Executive Officer or Manager and in their absence, a Whole-time Director; (b) Company Secretary; and (c) Chief Financial Officer According to Rule 8 of the *Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014* **every listed company and every other public company having a paid-up share capital of ₹ 10 crore or more shall have whole-time key managerial personnel.** Further, as per *the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2014*, **a company other than a company covered under Rule 8 above, which has a paid up share capital of ₹ 5 crore or more shall have a whole-time company secretary.**
204	**SECRETARIAL AUDIT FOR BIGGER COMPANIES**
	Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides that for the purposes of section 204 (1), the other class of companies shall be as under: (a) Every public company having a paid up share capital of ₹ 50 crore or more; **or** (b) Every public company having a turnover of ₹ 250 crore or more. The format of the Secretarial Audit Report shall be in Form No. *MR 3.*

CHAPTER 7: INSPECTION, INQUIRY & INVESTIGATION (Sections 206-229)

Inspection, inquiry and investigation

206	**POWER TO CALL FOR INFORMATION, INSPECT BOOKS AND CONDUCT SURVEYS**
	Information-On Perusal of document file or on receipt of information, 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. **Inspection- ground GPF (Grievance not addressed, provision not complied, Fraudulent manner)** **Person making inspection survey shall have the same power as vested in civil court DSI**
207	**CONDUCT OF INSPECTION AND INQUIRY.**
	Duty of director, officer or employee- (GPF) (a) to **produce all such documents** to the Registrar or inspector; and (b) to **furnish him with such statements, information or explanations** in such form as the Registrar or inspector may require; and (c) to **give all assistance** to the Registrar or inspector in connection with such inspection. **Powers of the Registrar or inspector** (1) make or cause to be made copies of books of account and other books and papers; or (2) place or cause to be placed any marks of identification in such books in token of the inspection having been made Person making inspection survey shall have the same power as vested in civil court (DSI) (1) 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; (2) **summoning and enforcing the attendance of persons** and examining them on oath; and (3) **inspection of any books, registers and other documents** of the company at any place
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**
	Circumstances for seizure- If books of account of CACDK (Company, Auditor, Company Secretary, Director, KMP) likely to be MDFAS (mutilated, destroyed, falsified, altered or secreted). **Period of seizure-** *Original period of seizure is 180 days and Further Extension period of seizure is 180.* **Taking of copies, placing identification marks -** Registrar/ Inspector empower to enter/search/seize/make copies, extract/Place identification marks/ deal with as necessary.

	Order of Special court is necessary; it must be obtained
210	**INVESTIGATION IN TO AFFAIR OF COMPANY.**
	Investigation in the opinion of Central Government on the following- TRIPS ➢ Tribunal order/ court order ➢ Registrar of companies report. ➢ Inspector's report ➢ Public interest consideration. ➢ Special resolution passed by companies for investigation. **Inspector Report under section 208/Special Resolution/Public interest** Appointment of inspectors Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon. According to the Companies (Inspection, investigation and inquiry) Rules, 2014: (i) The Central Government may before appointing an inspector under sub-section (3) of Section 210, require the **applicant to give a security not exceeding 25,000 rupees** for payment of the costs and expenses of investigation as per the criteria given in the said rule. (ii) Further, the above referred security shall be **refunded to the applicant if the investigation results in prosecution**.
211	**ESTABLISHMENT OF SERIOUS FRAUD INVESTIGATION OFFICER.**
212	**INVESTIGATION IN TO AFFAIR OF COMPANY BY SERIOUS FRAUD INVESTIGATION OFFICER**
	(i) According to section 212(1), without prejudice to the provisions of section 210, where the **Central Government** - (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, **is of the opinion that it is necessary to investigate into the affairs of a company by the SFIO, the Central Government may, by order, assign the investigation into the affairs of the said company to the SFIO**. On receipt of such order, the Director, SFIO may designate such number of inspectors, as he may consider necessary for the purpose of such investigation. (ii) Where any case has been assigned by the Central Government to the SFIO 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. 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 SFIO [Sub section (2)]. (iii) As per sub-section (6), **offences covered under 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**— (a) the Public Prosecutor has been given an opportunity to oppose the application for such release; and (b) 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. **However, 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 in point (iii) except upon a complaint in writing made by—

	(a) the Director, SFIO; or (b) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.
213	**INVESTIGATION IN TO THE AFFAIR OF COMPANY ON ORDER MADE BY THE TRIBUNAL**
	Cognizance of offence by Tribunal: 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. (b) **Punishment in case of guilty**: 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 COST AND EXPENSES OF INVESTIGATION**
	Where an investigation is ordered by the Central Government in pursuance of clause (b) of subsection (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 sub-section (3) of section 210 or clause (b) of section 213, require the applicant to give such security **not exceeding 25,000 rupees** as may be prescribed, as it may think fit, for payment of the costs and expenses of the investigation. **Such security shall be refunded to the applicant if the investigation results in prosecution**.

Turnover as per previous year fiancial statement (₹)	**Amount of security(₹)**
Turnover up to ₹ 50 Crore	**10,000**
Turnover more than ₹ 50 Crore and upto 200 crore	**15,000**
Turnover more than ₹ 200 Crore	**25,000**

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**
	To identify true person, who financially interested or able to control **Inspector right may be extended for** 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, POWER, ETC OF INSPECTOR**
	1. **Duty of all officers and other employees** and agents including the former officers, employees and agents of a company (a) **to preserve and to produc**e 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. Power of inspector to Keep in custody book of account for 180 day + further period of 180 days. 3. Person making inspection survey shall have the same power as vested in civil court DSI.

4. 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 25,000 rupees but which may extend to 1 lakh rupees**

5. As per sub-section (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 point (i) or point (ii) to produce;
(b) to furnish any information which is his duty under point (ii) to furnish;
(c) to appear before the inspector personally when required to do so under point (iv) or to answer any question which is put to him by the inspector in pursuance of that point; or
(d) to sign the notes of any examination referred to in sub section (7) above,

he shall be punishable with imprisonment for a term which may extend to **6 months and with fine which shall not be less than 25,000 rupees but which may extend to 1 lakh rupees, and also with a further fine which may extend to 2,000 rupees for every day** after the first during which the failure or refusal continues.

218 TEMPORARY PROTECTION OF EMPLOYEE.

Approval of tribunal to take action against the employee require during the course of any investigation of the affairs made u/s 210/212/213/216/219 & during the pendency of any proceeding u/s 241/245.
(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,

<table>
<tr><td colspan="2">Tribunal entitle to make objection On the action Proposed by Company/ Body corporate/Person within 30 days</td></tr>
<tr><td>Objection not Made by tribunal</td><td>Objection made by tribunal</td></tr>
<tr><td>Company can terminate / punish the employee</td><td>Company / Employee can apply to the Appellate Tribunal</td></tr>
<tr><td colspan="2">The decision of Appellate Tribunal shall be Final.</td></tr>
</table>

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

Investigation On obtaining approval from CG
(i) Investigation into affairs of related companies: 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, **can also investigate 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 manage**r, 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**.
(ii) Report of inspector: The inspector 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 DOCUMENT BY INSPECTOR

Circumstances for seizure- If books of account of CACDK (Company, Auditor, Company Secretary, Director, KMP) likely to be MDFAS (mutilated, destroyed, falsified, altered or secreted).

	Registrar/ Inspector empower to enter/search/seize/make copies, extract/Place identification marks/ deal with as necessary **Time period for keeping books and papers**- not later than the conclusion of the investigation
221	**FREEZING THE ASSETS OF COMPANY ON INQUIRY AND INVESTIGATION**
	Order of the tribunal : CLT may order on reference of - Central Government - such number of members as specified under sub-section (1) of section 244 - a creditor having one lakh amount outstanding against the company - any other person **freezing for not exceeding 3 year if R**emoval Transfer Disposal of Fund Assets Property **likely to take place prejudicial to interest of Company, shareholder, creditor, public interest .** **Punishment in case of contravention of order of tribunal:** 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 RESTRICTION UPON SECURITIES.**
	(1) Tribunal may by order put restrictions upon securities:
223	**INSPECTOR REPORT**
	Inspector Prepare report and submit to CG
224	**ACTION TO BE TAKEN IN PURSUANCE OF INSPECTOR REPORT.**
225	**EXPENSES OF INVESTIGATION**
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.** 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.** 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	**SAVING OF LEGAL ADVISOR AND BANKER-** NON-DISCLOSURE OF CERTAIN INFORMATION BY CERTAIN PERSONS.
	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	**INQUIRY, INSPECTION AND INVESTIGATION OF FOREIGN COMPANIES. -** MUTATIS MUTANDIS SAME.
229	**PENALTY OF FURNISHING FALSE STATEMENT MUTILATION,**

	DESTRUCTION OF DOCUMENTS
	he shall be punishable for fraud in the manner as provided in section 447.
Companies (Inspection, Investigation and Inquiry) Rules, 2014	

CHAPTER 8: COMPROMISES, ARRANGEMENTS AND RECONSTRUCTIONS (Sections 230-240)

Chapter XV (230-240)

COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

230 Power to compromise or make arrangements with creditors and members.

1. **Application by company, creditor, member or liquidator to Tribunal for CA**.
2. **Disclosures by applicant**: The company or any other person, by whom an application is made, 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 capita**l 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;
      v. and 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. **Notice** Of such meeting shall be sent **to all** creditor, member and debenture holder individually at their registered address.

Annexure with Notice

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 as prescribed under Rule 6 of the Companies (Compromises, arrangements and amalgamations) Rules, 2016.

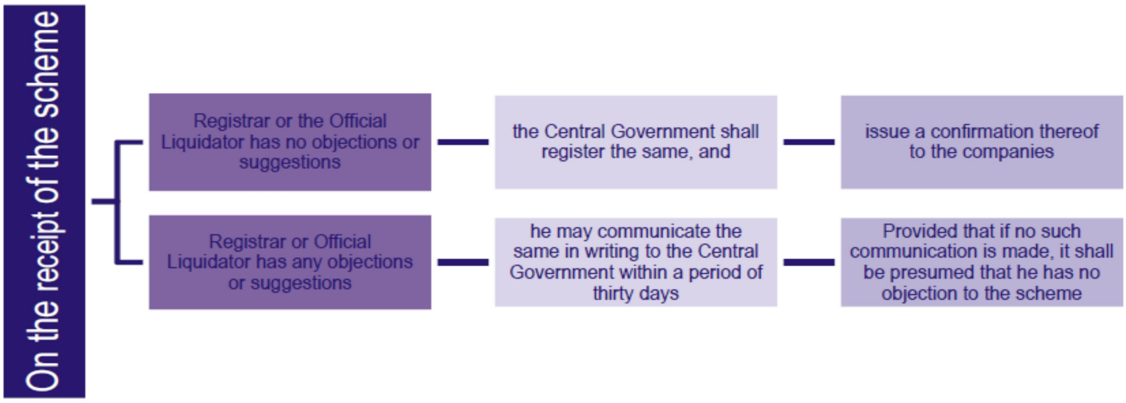
4. **Vote** in the meeting either themselves or proxies or postal ballot within one month from the date of such notice.
   Provided objection can be made by member holding not less than 10% of VP or by outstanding debt not less than 5% of total outstanding debt.
5. **Notices to sectorial regulators** (SEBI, RBI, ITA, CG, CCI, Official liquidator) to make representation, if likely to be affected by the compromise or arrangement, they shall make representation within period of 30 days, failure to which it is presumed that they have no representation.
6. **Approval of scheme by majority of person representing not less than 3/4th in value** of creditor/ member.
   And **Sanctioned by the tribunal**. (Now scheme of CA effective and Binding on the

	company, all the creditors, or class of creditors or members or class of members. No variation by any agreement. 7. **Filing of order of tribunal with registrar:** 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. 8. **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
231	POWER OF TRIBUNAL TO ENFORCE COMPROMISE OR ARRANGEMENT.
	1. **Power of tribunal to enforce the order: to supervise the implementation & give such Directions** as it may consider necessary, power to make modification. 2. **Winding up order by tribunal – if CA Scheme cannot be implemented satisfactorily and the company is unable to pay debt.** 3. **Retrospective effect of order as** made before the commencement of this Act.
232	MERGER AND AMALGAMATION OF COMPANIES – By sale of undertaking.
	1. **Application** by company and other person **to Tribunal** for reconstruction of the company or companies involving merger, the amalgamation of any two or more companies or transfer of undertaking, property etc. 2. **Notice** / Circulation of information of such meeting shall be sent to **all** creditor, member and debenture holder individually at their registered address **by the merging companies / the companies in respect of which a division is proposed** 3. **Vote** in the meeting either themselves or proxies or postal ballot within one month from the date of such notice. Provided objection can be made by member holding not less than 10% of VP or by outstanding debt not less than 5% of total outstanding debt. 4. **Notices to sectorial regulators** (SEBI, RBI, ITA, CG, CCI, Official liquidator) to make representation, if likely to be affected by the compromise or arrangement, they shall make representation within period of 30 days, failure to which it is presumed that they have no representation. 5. **Approval of scheme by majority of person representing not less than 3/4th in value** of creditor/ member. 6. **Order of tribunal on the agreement of compromise or arrangement** (Now scheme of reconstruction of the company or companies involving merger or the amalgamation of any two or more companies effective and Binding on the company, make provision for the following matters, namely- i. **the transfer to the transferee company** of the whole or any part of the undertaking, property or liabilities of the transferor company ii. **Allotment of share.** iii. **the continuation by or against the transferee company of any legal proceedings** pending by or against any transferor company on the date of transfer; iv. **dissolution, without winding-up**, of any transferor company; v. **the transfer of the employees of the transferor company** to the transferee company 7. **Effect of an order of tribunal – Assets and Liabilities shall vest to Transferee Company.** 8. **Filing of order of tribunal with registrar:** 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
233	MERGER OR AMALGAMATION OF CERTAIN COMPANIES. / AMALGAMATION BY SALE OF SHARE – for transferor (for transferee applicable section is 179/186)

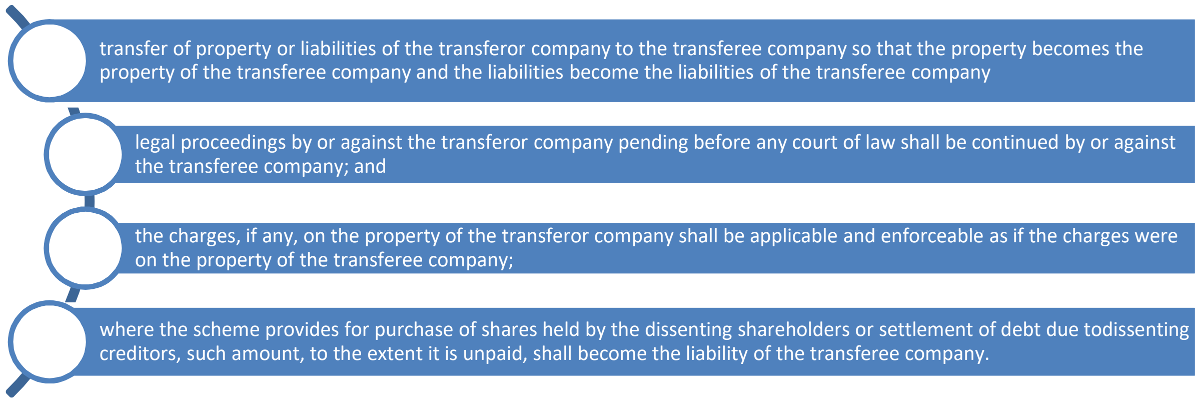
(1)**Eligible companies**- Companies who may enter into scheme of merger or amalgamation: A scheme of merger or amalgamation may be entered into between two or more small companies or between a holding company and its wholly-owned subsidiary company or such other class or classes of companies as given in Rule 25 of the Companies. subject to the following, namely:—

a) a notice of the proposed scheme inviting objections or suggestions,
b) the objections and suggestions received are considered by the companies
c) files a declaration of solvency,
d) the scheme is approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies

(2) Filing of copy of scheme with the Central Government, Registrar and the Official Liquidator:

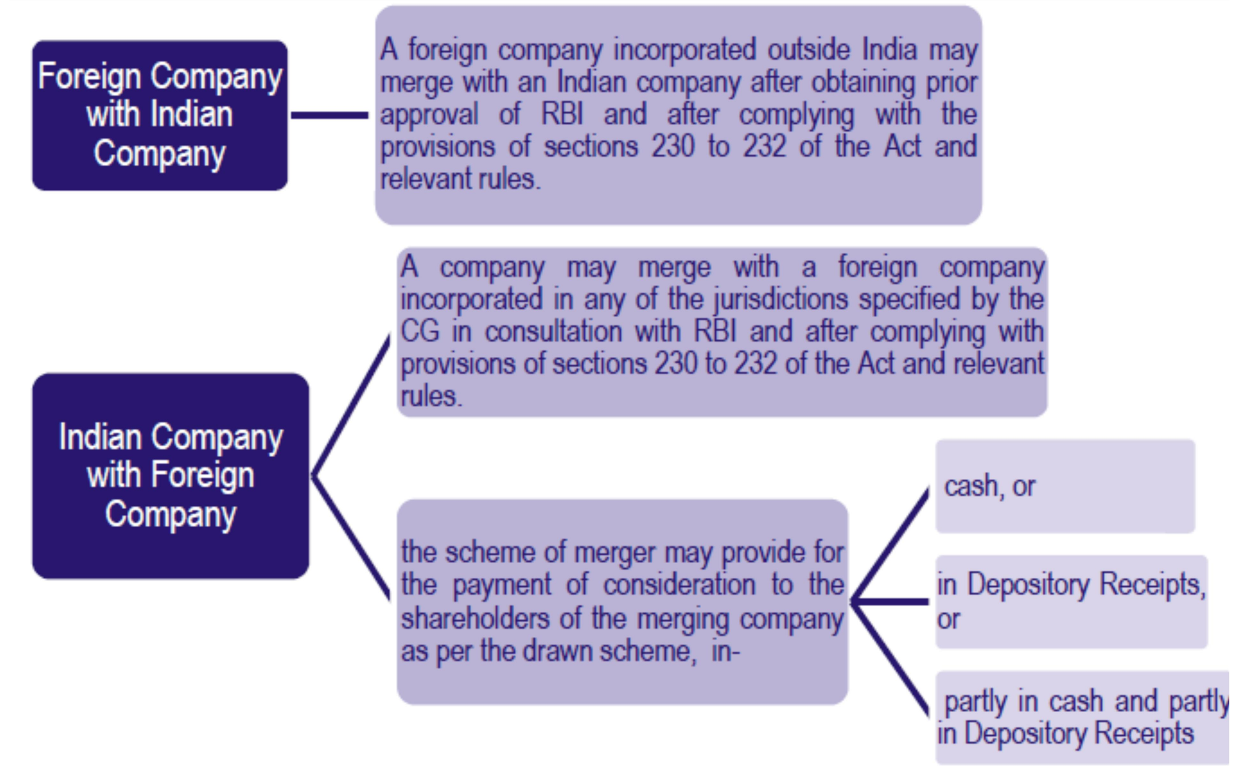


(4) Filing of application by Central government with Tribunal within a period of sixty days of the receipt of the scheme.
(5) Passing of an order of Tribunal
(6) Communication of an order to registrar
(7) The registration of the scheme shall be deemed to have the effect of dissolution of the transferor company without process of winding-up.
(8) Effect of Registration of Scheme: The registration of the scheme shall have the following effects, namely:—



(9) Effect of merger and amalgamation on transferee: 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.
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.
(10) Filing of an application by transferee company with the Registrar:

234	MERGER OR AMALGAMATION OF COMPANY WITH FOREIGN COMPANY./ CROSS BORDER MERGER.
	Now Merger is Possible between Foreign Company with Indian Company & Indian Company with Foreign Company.



235 POWER TO **ACQUIRE SHARES OF SHAREHOLDERS DISSENTING** FROM SCHEME OR CONTRACT APPROVED BY MAJORITY. ACQUISITION / TAKEOVER BY SALE OF SHARE.

1. **Basic requirements as to acquisition of shares:**

- Contract / Scheme involves transfer of share by a company to another company, has been accepted by not less than 9/10th in value of the shares.
- The approval from 9/10th shareholders in value shall be received **within four months** after making of an offer in that behalf by the transferee company
- The shares already held shall not be counted for this purpose
- The transferee company shall express his desire to **acquire the remaining shares of dissenting shareholders within two months after the expiry of the said four months** and shall give notice to dissenting shareholder.

2. Compulsory acquired share of dissenting shareholder unless such dissenting shareholder make an application to the Tribunal, within one month from the date on which the notice given.
3. If dissenting shareholder make an application the after that application has been disposed of or Rejected

The transferor company shall—

a. hereupon 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.

236 PURCHASE OF **MINORITY SHAREHOLDING.**

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
2. **Continuation by or against the transferee company of any legal proceedings**
3. **Determination of compensation by central government same shall be published in**

	official Gazette. Same Interest Rights or Compensation of every member or creditor. 4. **Appeal by aggrieved person on assessment of compensation within period of 30 days from date of publication.** 5. **Passing a final order of amalgamation if no legal proceeding pending same shall be published in official gazette.**
238	REGISTRATION OF OFFER OF SCHEMES INVOLVING TRANSFER OF SHARES.
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.

CHAPTER 9: PREVENTION OF OPPRESSION AND MISMANAGEMENT (Sections 241-245)

Prevention of oppression and mismanagement

Introduction

'Foss v. Harbottle - 'Rule of Majority'

It states that the ones who hold majority of shares "rule" the Company. The judgment held that if the majority shareholders have made a decision to take or not to take a certain action, it shall be respected. Also, the courts are not expected to ordinarily intervene to protect the minority interest affected by resolution.

the said rule has **4 exceptions**, which are as follows –

- Ultra-vires or illegal acts;
- Transactions requiring special majorities;
- Personal Rights; and
- The "fraud on the minority" exception

Oppression

Elder v. Elder & Watson Ltd.

He said that the conduct of complained of, should at least involve a visible departure from the standards of their dealing, and violations of conditions of fair play on which every shareholder who entrusts his money to company, is entitled to rely.

It was observed in **Rao (V.M.) v. Rajeshwari Ramakrishnan** that the oppression complained off must affect a person in his capacity or character as a member of the company; harsh or unfair treatment in other capacity, e.g., as a director or a creditor is outside the purview of this chapter.

241 CLAIMING RELIEF FROM OPPRESSION

An application may be made to the Tribunal by any member of a company or by the Central Government for relief in cases of oppression and mismanagement in the affairs of the company.

(1) Right to apply by **member**: Any member of a company who complains that—

Affair of the company conducted in a manner oppressive to any member & prejudicial to the interest of public And such should continue as on the date of application.

Or

Material changes 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**.

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

244 THE FOLLOWING MEMBERS OF A COMPANY SHALL HAVE THE RIGHT TO APPLY UNDER SECTION 241, NAMELY:—

(a) Member

Company having share capital	*Company not having share capital*
Lower of 100 member; or 1/10th of **issued** share capital; or 1/10th of total number of member	1/5th of total number of member

Eligibility should be looked on the date of application subsequent withdrawal is of no significance.

Only unpaid of calls share & share warrant holder cannot make application.

242 **POWER OF TRIBUNAL**

(1) Order passed by the tribunal:
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 winding 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) **Powers:**
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.

243 CONSEQUENCES OF TERMINATION OR MODIFICATION OF CERTAIN AGREEMENTS

	(1) Consequence of termination or modifications of certain agreements by an order passed by the Tribunal: 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) Penalty: 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.**
245	CLASS ACTION Class action suits in India have been recognised under the Code of Civil Procedure, 1908, under Rule 8 which permits the filing of a representative suit by one or more persons, having an interest in the matter on behalf of the rest. **245(1)** (1) **Filing of application** before the Tribunal on behalf of the members or depositors: **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 misstatement 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 r**estrain 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.**

245(2)	
(a) Member	**(b) Depositor**
Company having share capital **Lower** of 100 member; or 1/10th of **issued** share capital; or 1/10th of total number of member	**Lower** of 100 depositor 1/10th of **issued** share capital 1/10th of total number of member
Company not having share capital 1/5th of total number of member	
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.	

In case of admission of application
(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 proceeding from applicant 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.

1. Sindhri Iron Foundry (P) Ltd.-1. And such should continue as on the date of application . 2.Oppressed majority may also apply for relieve u/s 241
2. Needle industries india Ltd. Vs Needle industries Newey India Holding Ltd.- Oppression should be damaging or cohesive.
3. Seth mohan lal ganpat ram vs. Sayaji jubilee cotton & jute mil company.- illegal, invalid or irregular act not necessarily an operession, legal act never an oppression.
4. Chander Krishna gupta Vs pannala girdharil lal- non declaration of dividend not amount to oppression. But non- payment of dividend after declaration is amount to oppression.
5. Shanti Prasad Vs kalinga tube ltd _
6. Rashmi seth Vs kemin- minority coverting in to majority amount to oppression.
7. SM ram Krishna rao.- violation of condition of MOA by person incharge is mismanagement.
8. Suresh kumar sanghai Vs supermen motor ltd- Dispute among director resulting in seriour prejudice is to the interest of the company is mismanagement.
9. RS Mathur Vs HS Mathur _ present or future change in management.
10. Rajamundhry electric corporation- Eligibility to make application should be reckoned as on date of application subsequent withdrawal is of no significance. It shall not affect maintainability of petition.
11. *Ashok Betelnut Co. P. Ltd. vs. M.K. Chandrakanth- As regards obtaining relief from Tribunal, CONTINUOUS losses cannot, by itself, be regarded as oppression*
12. Thomas Veddon V.J. (v) Kuttanad Robber Co. Ltd- Similarly, failure to declare dividends or payment of low dividends also does not amount to oppression

CHAPTER 10: REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES (Sections 248-252)

Chapter XVIII (248-252)

REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES

248 POWER OF REGISTRAR TO REMOVE NAME OF COMPANY FROM REGISTER OF COMPANIES.

(1**) Power of registrar to remove name:** Where the Registrar has reasonable cause to believe that—
(a) a company has **failed to commence its business within one year of its incorporation, or;**
(b) 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 f**rom the date of the notice.

(2) **Filing of application to registrar by company for removal of name:** 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:

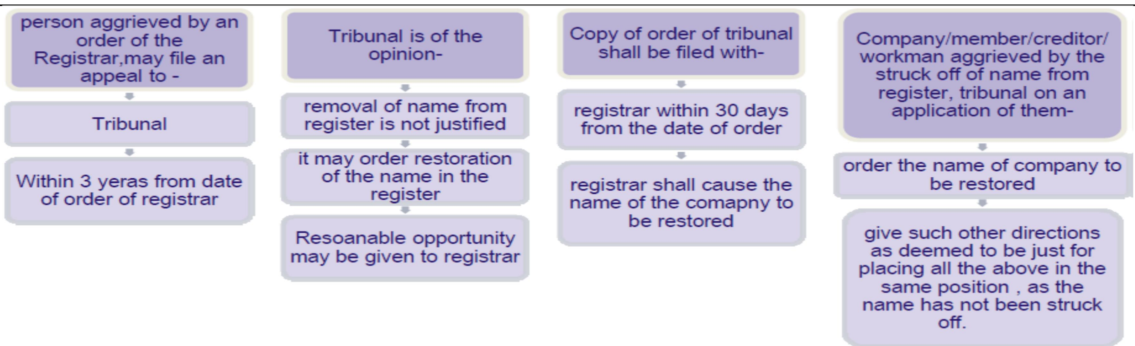
Approval of the regulatory body, **in case of a company regulated under a special Act:** enclosed with the application.

(3) **Exemption to section 8 companies:** Nothing in sub-section (2) shall apply to a company registered under section 8.

(4) **Publishing of notice for general public:** A notice issued under sub-section (1) or subsection (2) shall be published in the prescribed manner and also in the Official Gazette for the information of the general public.

(5) **Strike off of names from register of companies**: At the expiry of the time mentioned in the notice, 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) **Provisions for realisation of amount:** The Registrar, before passing an order under subsection (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) **Persistence of the liability**: 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) **Not affecting on the power of tribunal:** 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.
	An application under section 248 on behalf of a company shall not be made if, at any time in the **previous three months**, the company— • has **changed its name or** shifted its registered office • has made a **disposal** for value of property or rights held by it • has **engaged in any other activity** except the one which is necessary or expedient • has made an **application to the Tribunal for the sanctioning of a compromise or arrangement** • is being **wound up**
250	EFFECT OF COMPANY NOTIFIED AS DISSOLVED.
	- cease to operate as a company, and - the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date.,
251	FRAUDULENT APPLICATION FOR REMOVAL OF NAME.
	-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.
252	APPEAL TO TRIBUNAL.
	

Chapter XX (270-365)

WINDING UP

270. Modes of winding up.

"270. The provisions of Part I shall apply to the winding up of a company by the Tribunal under this Act."

PART I.— Winding up by the Tribunal

271. Circumstances in which company may be wound up by Tribunal.

272. Petition for winding up.

273. Powers of Tribunal.

274. Directions for filing statement of affairs.

275. Company Liquidators and their appointments.

276. Removal and replacement of liquidator.

277. Intimation to Company Liquidator, provisional liquidator and Registrar.

278. Effect of winding up order.

279. Stay of suits, etc., on winding up order.

280. Jurisdiction of Tribunal.

281. Submission of report by Company Liquidator.

282. Directions of Tribunal on report of Company Liquidator.

283. Custody of company's properties.	
284. Promoters, directors, etc., to co-operate with Company Liquidator.	
285. Settlement of list of contributories and application of assets.	
286. Obligations of directors and managers.	
287. Advisory Committee.	
288. Submission of periodical reports to Tribunal	
290. Powers and duties of Company Liquidator.	
291. Provision for professional assistance to Company Liquidator.	
292. Exercise and control of Company Liquidator's powers.	
293. Books to be kept by Company Liquidator.	
294. Audit of Company Liquidator's accounts.	
295. Payment of debts by contributory and extent of set-off.	
296. Power of Tribunal to make calls.	
297. Adjustment of rights of contributories.	
298. Power to order costs.	
299. Power to summon persons suspected of having property of company, etc.	

PART III.—Provisions applicable to every mode of winding up

336. Offences by officers of companies in liquidation.	
337. Penalty for frauds by officers.	
338. Liability where proper accounts not kept.	
339. Liability for fraudulent conduct of business.	
340. Power of Tribunal to assess damages against delinquent directors, etc.	
341. Liability under sections 339 and 340 to extend to partners or directors in firms or companies.	
342. Prosecution of delinquent officers and members of company.	
343. Company Liquidator to exercise certain powers subject to sanction.	
344. Statement that company is in liquidation.	
345. Books and papers of company to be evidence.	
346. Inspection of books and papers by creditors and contributories.	
347. Disposal of books and papers of company.	
348. Information as to pending liquidations.	
349. Official Liquidator to make payments into public account India.	
350. Company Liquidator to deposit monies into scheduled bank.	

351. Liquidator not to deposit monies into private banking account.

352. Company Liquidation Dividend and Undistributed Assets Account.

353. Liquidator to make returns, etc.

354. Meetings to ascertain wishes of creditors or contributories.

355. Court, Tribunal or person, etc., before whom affidavit may be sworn.

356. Powers of Tribunal to declare dissolution of company void.

357. Commencement of winding up by Tribunal.

358. Exclusion of certain time in computing period of limitation.

PART IV.—Official liquidators

359. Appointment of Official Liquidator.

360. Powers and functions of Official Liquidator.

361. Summary procedure for liquidation.

362. Sale of assets and recovery of debts due to company.

363. Settlement of claims of creditors by Official Liquidator.

364. Appeal by creditor.

365. Order of dissolution of company.

CHAPTER 13: COMPANIES AUTHORISED TO REGISTER UNDER COMPANIES ACT, 2013 (Sections 366-374)

Chapter XXI (366-378)
PART I.—Companies authorised to register under this Act

366. COMPANIES CAPABLE OF BEING REGISTERED.

(1) **Meaning of company:**

- ✓ Partnership firm
- ✓ LLP
- ✓ Cooperative society
- ✓ society
- ✓ any other business entity

(2) **Registration of companies**

company formed, 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,

Provided that—

(i) **Company registered under the previous company law:** shall not register in pursuance of this section;

(ii) **Limited liability of member** : shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;

(iii) **Company can be registered as a company limited by shares only:** 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) **Companies can be registered with the assent of the majority:**

(v) **Company to register as a limited company requires majority to assent:** 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) **Company is about to register as a company limited by guarantee , assent to be accompanies by resolution:**

3**) Computation of majority:** 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 prescribed fees

- the Registrar shall certify under his hand that the company applying for registration is incorporated as a company
- 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 vest in the company as incorporated under this Act.

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,** continued in the same manner as if the registration had not taken place.
371. EFFECT OF REGISTRATION UNDER THIS PART.	
	Provision of companies act will apply.
372. POWER OF COURT TO STAY OR RESTRAIN PROCEEDINGS.	
	The provisions of this Act or of the Insolvency and Bankruptcy Code, 2016 shall apply with respect to staying and restraining suits and other legal proceedings against a company / contributory.
373. SUITS STAYED ON WINDING UP ORDER.	
	Where an order has been made for winding up, or a provisional liquidator has been appointed for 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.
374. OBLIGATION OF COMPANIES REGISTERING UNDER THIS PART.	
	(a) **Consent given by secured creditors to company's registration** (b) **Publication of notice of registration** (c) **Affidavit of the submission of necessary documents** (d) **comply with such other conditions** as may be prescribed

PART II.—WINDING UP OF UNREGISTERED COMPANIES

375. WINDING UP OF UNREGISTERED COMPANIES.

Unregistered companies means following consisting of 7 or more member at the time of presenting petition to tribunal.

- ✓ Partnership firm
- ✓ LLP
- ✓ Cooperative society
- ✓ society
- ✓ any other business entity

(1) **Application of provisions of winding up on unregistered companies :** all the provisions of this Act, with respect to winding up shall apply to an unregistered company.

(2) **No voluntary winding up of unregistered companies**

(3) **Circumstances of winding up of unregistered companies:**
(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) **When unregistered company is unable to pay 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 demand notice on the company and company neglected to pay within **3 weeks.**
(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,** 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** 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**

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.

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., INCERTAIN CASES.	

CHAPTER 14: COMPANIES INCORPORATED OUTSIDE INDIA (Sections 379-393)

Chapter XXII (379-393)

COMPANIES INCORPORATED OUTSIDE INDIA

Foreign Company [Section 2(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.

According to the *Companies (Registration of Foreign Companies) Rules, 2014*, "electronic mode" means carrying out electronically based, **whether main server is installed in India or not**, including, but not limited to –

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

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

(c) financial settlements, web based marketing, advisory and transactional services, data base services and products, supply chain management;

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

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

379. APPLICATION OF ACT TO FOREIGN COMPANIES.

By a person holding not less than **50% of the paid-up share capital**, whether equity or preference or partly equity and partly preference, of a foreign company **is held by**:

(i**) one or more citizens of India**; or

(ii) by **one or more companies or bodies corporate incorporated in India**; or

(iii) 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 Chapter XXII

380. DOCUMENTS, ETC., TO BE DELIVERED TO REGISTRAR BY FOREIGN COMPANIES.

File with the Registrar **within 30 days of the establishment of its place of business in India**, in **Form *FC-1.*** *Document to be file given below;*

(a) **a certified copy of the charter, statutes or memorandum and articles, of the company**.

(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 prescribed particulars.

(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.**

(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.

If any alteration within 30 days of such alteration file return containing the particulars of the alter in form *FC-2*

381. ACCOUNTS OF FOREIGN COMPANY.

	Prepare **financial statement** of its Indian business operations in accordance with **Schedule III.** If any of the specified documents are not in the English language, a certified translation thereof in the English language shall be annexed. 381(2) file with the Registrar, along with the financial statement, in Form FC.3 attach thereto the following documents; namely:- (1) Statement of related party transaction (2) Statement of repatriation of profits (3) Statement of transfer of funds (including dividends, if any) **Audit of accounts of foreign company by chartered accountant practicing in india.**
382. DISPLAY OF NAME, ETC., OF FOREIGN COMPANY.	
	(a) conspicuously exhibit on **the outside of every office or plac**e 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) **exhibit in all business letters, bill- heads and letter paper, and in all notices, and other official publications of the company**
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. APPLICABILITY OF OTHER PROVISION ON FOREIGN COMPANY w.r.t DEBENTURES, ANNUAL RETURN, REGISTRATION OF CHARGES, BOOKS OF ACCOUNT AND THEIR INSPECTION.	
	All provision of companies Act, 2013 mutatis mutandis shall apply
385. FEE FOR REGISTRATION OF DOCUMENTS.	
	As provided in the *Companies (Registration Offices and Fees) Rules, 2014*.
386. INTERPRETATION.	
	(a) “Certified” means certified in the prescribed manner to be a true copy or a correct translation; (b) “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) **“Place of business” includes a share transfer or registration office**.
387. DATING OF PROSPECTUS AND PARTICULARS TO BE CONTAINED THEREIN.	
	Prospectus to be dated and signed and contained following particular; (1) the **instrument constituting or defining the constitution of the company** (2) The **enactments** or provisions by or under which the incorporated. (3) **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; (4) the **date** on which and the country in which the company would be or was **incorporated**; and 5) whether the company has established a place of business in India and, if so, the address of its **principal office in India;**
388. PROVISIONS AS TO EXPERT'S CONSENT AND ALLOTMENT.	
	Prospectus should include a statement purporting to be made by an expert
389. REGISTRATION OF PROSPECTUS.	
	Before issue of prospectus 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 following. (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 2 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.
390. OFFER OF INDIAN DEPOSITORY RECEIPTS.	
	Should comply with the conditions mentioned under *Companies (Registration of Foreign Companies) Rules, 2014,* 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
391. APPLICATION OF SECTIONS 34 TO 36 AND CHAPTER XX.	
	(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 IDR by a foreign company. Section 34 deals with **criminal liability** for mis-statements in prospectus Section 35 deals with **Civil Liability** for mis-statement in prospectus Section 36 deals with **punishment for fraudulently** inducing persons to invest money
392. PUNISHMENT FOR CONTRAVENTION.	
	the foreign company shall be punishable with fine which shall not be less than ₹ 1,00,000 but which may extend to ₹ 3,00,000 and in the case of a continuing offence, with an additional fine which may extend to ₹50,000 for every day after the first during which thecontravention continues and Every officer of the foreign company who is in default shall be punishable with imprisonment for a term which may extend to 6 months or with fine which shall not be less than ₹25,000 but which may extend to ₹5,00,000, or with both.
393. COMPANY'S FAILURE TO COMPLY WITH PROVISIONS OF THIS CHAPTER NOT TO AFFECT VALIDITY OF CONTRACTS, ETC.	
Companies (Registration of Foreign Companies) Rules, 2014	

CHAPTER 15: GOVERNMENT COMPANIES (Sections 394-395)

Chapter XXIII(394-395)

GOVERNMENT COMPANIES

As per section 2(45) of the Companies Act, 2013, "Government Company" means any company in which not less than **51% 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.

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 are 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 repor**t 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 above.

395. ANNUAL REPORTS WHERE ONE OR MORE STATE GOVERNMENTS ARE MEMBERS OF COMPANIES.

One or more state governments who is a member of a company where no Central government is a member shall prepare annual reports on the working and affairs of the company **within three months of its annual general meeting** and to be **laid before the House or both Houses of the State Legislature**

CHAPTER 16: REGISTRATION OFFICE & FEES (SECTIONS 396-404)

Chapter XXIV (396-404)	
REGISTRATION OFFICES AND FEES	
396. REGISTRATION OFFICES.	
	Establishment of offices- The office of the Registrar 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. **Powers and duties of officers-** The Registrars shall exercise such powers and discharge such duties as are conferred on them by the Act or the rules made there under or delegated to them by the Central Government, **Seal for authentication-** the Registrar shall have a seal and such seal shall bear the words "Registrar of Companies, ________(Place and State)".
397. ADMISSIBILITY OF CERTAIN DOCUMENTS AS EVIDENCE.	
	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.	
399. INSPECTION, PRODUCTION AND EVIDENCE OF DOCUMENTS KEPT BY REGISTRAR.	
400. ELECTRONIC FORM TO BE EXCLUSIVE, ALTERNATIVE OR IN ADDITION TO PHYSICAL FORM.	
401. PROVISION OF VALUE ADDED SERVICES THROUGH ELECTRONIC FORM.	
402. APPLICATION OF PROVISIONS OF INFORMATION TECHNOLOGY ACT, 2000.	
	Information Technology Act, 2000. 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.	
	(i) **Submission within time**: specified in the relevant provision on payment of such fee (ii) **Submission after the time specified in relevant provision:** within a period of 270 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 as per the rule 12 and 13 of *the Companies (Registration Offices and Fees) Rules, 2014.* (iii) **Submission after the expiration of above 270 days also**:* 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 the expiration of above mentioned 270 days, on payment of fee and additional fee specified under this section. (iv) **Penalty or punishment on submission after the expiration of above 270 days also**:
404. FEES, ETC., TO BE CREDITED INTO PUBLIC ACCOUNT IN THE RESERVE BANK OF INDIA.	
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Companies (Registration Offices and Fees) Rules, 2014 (amendments incorporated)	

CHAPTER 17: COMPANIES TO FURNISH INFORMATION OR STATISTICS (SECTIONS 405)

Chapter XXV(405)	
COMPANIES TO FURNISH INFORMATION OR STATISTICS	
405. POWER OF CENTRAL GOVERNMENT TO DIRECT COMPANIES TO FURNISH INFORMATION OR STATISTICS.	
	(i) 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. (ii) If any company fails to comply with an order made above 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**.
Chapter XXVI	

CHAPTER 18: NIDHI (SECTION 406)

(406)NIDHIS	
406. POWER TO MODIFY ACT IN ITS APPLICATION TO NIDHIS.	
	(i) **Definition**: Here, "Nidhi" means a company which has been incorporated as a Nidhi with the **object of**: (a) **cultivating the habit of thrift and savings** amongst its members, (b) **receiving deposits from, and lending to, its members only, for their mutual benefit**, and (c) which complies with such rules as are prescribed by the Central Government for regulation of such class of companies. (ii) **Incorporation and incidental matters**.— (a) A Nidhi to be incorporated under the Act shall be a public company and shall have a **minimum paid up equity share capital of 5 lakh rupees.** (b) On and after the commencement of the Act, **no Nidhi shall issue preference shares**. (c) 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. (d) 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.** Exception as provided under the proviso to sub-rule (e) to rule 6: Nidhis 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. (e) **Every Company incorporated as a "Nidhi" shall have the last words 'Nidhi Limited'** as part of its name. (iii) **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 section 2(27) of the Act; e. **carry on any business other than the business of borrowing or lending in its own name**: However Nidhis 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 any body 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: However 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.

(iv) **Membership—**

a. A Nidhi shall **not admit a body corporate or trust as a member**.
b. Except as otherwise permitted under the rules, every Nidhi shall ensure that its **membership is not reduced to less than 200 members at any time.**
c. A **minor shall not be admitted as a member of Nidhi:**
However, 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.

(v) **Rules relating to Directors—**

a. The Director shall be a **member of Nidhi.**
b. The Director of a *Nidhi* shall **hold office for a term up to 10 consecutive years** on the Board of *Nidhi*.
c. The Director shall be **eligible for re-appointment only after the expiration of 2 years** of ceasing to be a Director.
d. 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.
e. The person to be appointed as a Director shall comply with the requirements of subsection (4) of Section 152 of the Act and shall not have been disqualified from appointment as provided in section 164 of the Act.

(vi) **Dividend-** A Nidhi shall **not declare dividend exceeding 25%** 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 Nidhis**.

(vii) **Auditor**—

a. No Nidhi shall appoint or re-appoint an individual as auditor for more than one term of 5 consecutive years.
b. No Nidhi shall appoint or re-appoint an audit firm as auditor for more than 2 terms of 5 consecutive years:

Provided that an auditor (whether an individual or an audit firm) shall be **eligible for subsequent appointment after the expiration of 2 years from the completion of his or its term**:

(viii) **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.

(ix) **Penalty for non-compliance**—If a company to which *the Nidhi Rules, 2014* applies contravenes any of the provisions of the prescribed rules, the company and every officer of

	the company who is in default shall be punishable with fine which may extend to **5,000 rupees**, and where the contravention is a continuing one, with a further fine which may extend **to 500 rupees for every day** after the first during which the contravention continues.
Nidhi Rules, 2014	

Chapter XXVII(407-434)	
NATIONAL COMPANY LAW TRIBUNAL AND APPELLATETRIBUNAL	
407. Definitions.	
408. Constitution of National Company Law Tribunal.	
	Central government constituted on 1st June 2016
409. Qualification of President and Members of Tribunal.	
410. Constitution of Appellate Tribunal.	
411. Qualifications of Chairperson and members of AppellateTribunal.	
412. Selection of Members of Tribunal and Appellate Tribunal.	
413. Term of office of President, Chairperson and other Members.	
414. Salary, allowances and other terms and conditions of service ofMembers.	
415. Acting President and Chairperson of Tribunal or AppellateTribunal.	
416. Resignation of Members.	
417. Removal of Members.	
418. Staff of Tribunal and Appellate Tribunal.	
419. Benches of Tribunal.	
420. Orders of Tribunal.	
421. Appeal from Orders of Tribunal.	
422. Expeditious disposal by Tribunal and Appellate Tribunal.	
423. Appeal to Supreme Court.	
424. Procedure before Tribunal and Appellate Tribunal.	

425. Power to punish for contempt.	
426. Delegation of powers.	
427. President, Members, officers, etc., to be public servants.	
428. Protection of action taken in good faith.	
429. Power to seek assistance of Chief Metropolitan Magistrate, etc.	
430. Civil court not to have jurisdiction.	
431. Vacancy in Tribunal or Appellate Tribunal not to invalidate acts or proceedings.	
432. Right to legal representation.	
433. Limitation.	
434. Transfer of certain pending proceedings.	

Chapter XXVIII(435-446)	
SPECIAL COURTS	
435. Establishment of Special Courts.	
436. Offences triable by Special Courts.	
437. Appeal and revision.	
438. Application of Code to proceedings before Special Court.	
439. Offences to be non-cognizable.	
440. Transitional provisions.	
441. Compounding of certain offences.	
442. Mediation and conciliation penal.	
443. Power of Central Government to appoint company prosecutors.	
444. Appeal against acquittal.	
445. Compensation for accusation without reasonable cause.	
446. Application of fines.	

CHAPTER 21: MISCELLANEOUS PROVISIONS OF THE COMPANIES ACT-2013 (Sections 447-470)

Chapter XXIX (447-470)

MISCELLANEOUS PROVISION

447. PUNISHMENT FOR FRAUD.

(i) 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 *6 months* but which may extend to *10 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 *3 times* the amount involved in the fraud.**

(ii) Where the fraud in question involves public interest, **the term of imprisonment shall not be less than *3 years.***

Explanation.— For the purposes of this section—

(a) "fraud" in relation to affairs of a company or anybody 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;

(b) "wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;

(c) "Wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled.

448. PUNISHMENT FOR FALSE STATEMENTS.

According to section 448 of the Companies Act, 2013 , 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.

According to section 449 of the Companies Act, 2013, 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 3 years but which may extend to 7 years and with fine which may extend to 10 lakh rupees**.

450. PUNISHMENT WHERE **NO** SPECIFIC PENALTY OR PUNISHMENT IS PROVIDED.

(a) shall be punishable with fine which may extend **to 10,000 rupees**, and

(b) Where the contravention is continuing one, with a further fine which may extend to **1,000 rupees for every day** after the first during which the contravention continues.

451. PUNISHMENT IN CASE OF REPEATED DEFAULT.

As per the section, 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 3 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.

he shall be punishable with fine which shall not be less than **1 lakh rupees but which may extend to 5 lakh rupees.**

The Court may also order such officer or employee to deliver up or refund, may also order such officer or employee to deliver up or refund, in default, to undergo **imprisonment for a term which may extend to 2 years.**

453. PUNISHMENT FOR IMPROPER USE OF "LIMITED" OR "PRIVATE LIMITED".

Punishable with fine which shall not be less than **500 rupees but may extend to 2,000 rupees for every day f**or which that name or title has been used.

454. ADJUDICATION OF PENALTIES.

CG may 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

Manner of adjudication of Penalties

(i) **Appointment of Adjudicating officers**: by CG.

(ii**) Issue of written notice by an adjudicating officer:**

- 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 day**s 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 hall clearly indicate the nature of non-compliance or default.

(iii) **Adjudicating officer can held inquiry:**

(iv) **Passing of an order by the adjudicating officer:**

(v) Every order passed shall be dated and signed by the adjudicating officer.

(vi) **Forwarding of copy of an order to** the concerned company or officer who is in default and to the Central Government.

(vii) **Powers of Adjudicating Authority:**

(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,

(viii**) Failure to be present before the adjudicating authority:** adjudicating officer may proceed with the inquiry

(ix) **Consideration to following factors while levying penalty:**

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.

(x) **Sum to be credited to the Consolidation Fund of India:** All sums realised by way of penalties under the Act shall be credited to the Consolidated Fund of India.

455. DORMANT COMPANY.

Ones obtained the status of dormant company allowed to retain their name in spite of not carrying business, for five year. Application filed in Form *MSC-1 for obtaining status of dormant*, issue a certificate in Form *MSC-2* allowing the status of a Dormant Company to the applicant.

Inactive 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; A company shall be eligible to apply under this rule only, if- (a) **no inspection, inquiry or investigation has been ordered** or taken up or carried out against the company; (b) **no prosecution** has been initiated and pending against the company under any law; (c) **the company is neither having any public deposits** which are outstanding nor the company is in default in payment thereof or interest thereon; (d) the company is **not having any outstanding loan, whether secured or unsecured**: However 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*; (e) there is **no dispute in the management** or ownership of the company and a certificate in this regard is enclosed with Form *MSC-1*; (f) 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.; (g) the company has **not defaulted in the payment of workmen's dues**; (h) the securities of the company are **not listed** on any stock exchange within or outside India. (iv) **Consequences of non-filing of annual returns or financial statements:** According to the Rule 7 of the *Companies (Miscellaneous) Rules, 2014,* 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 30 days from the end of each financial year. (v) **Directors of dormant company**: According to Rule 6 of the *Companies (Miscellaneous) Rules, 2014,* a dormant company shall have a minimum number of 3 directors in case of a public company, 2 directors in case of a private company and 1 director in case of a One Person Company. **Rotation of auditors**: According to Rule 6 the *Companies (Miscellaneous) Rules, 2014,* the provisions of the Act in relation to the rotation of auditors shall not apply on dormant companies **Application for seeking status of an active company**: An application 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: However, 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 5 years.** (vi) **Striking off the name by the Registrar:** 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.	
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.	

459. POWERS OF CENTRAL GOVERNMENT OR TRIBUNAL TO ACCORD APPROVAL, ETC., SUBJECT TO CONDITIONS AND TO PRESCRIBE FEES ON APPLICATIONS.	
460. CONDONATION OF DELAY IN CERTAIN CASES.	
461. ANNUAL REPORT BY CENTRAL GOVERNMENT.	
462. POWER TO EXEMPT CLASS OR CLASSES OF COMPANIES FROM PROVISIONS OF THIS ACT.	
463. POWER OF COURT TO GRANT RELIEF IN CERTAIN CASES.	
	(i) If it appears to the court hearing the case that an **officer of a company** is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust but he has acted honestly and reasonably, he ought fairly to be excused having regard to all the circumstances of the case, including those connected with his appointment, the court may relieve him, either wholly or partly, from his liability on such term, as it may think fit. (ii) In a **criminal proceeding, 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. (iii) Where any **such officer** has reason to apprehend that any proceeding will or might be brought against him in respect of x`**h 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. (iv) No court shall grant any relief to any officer 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. It should be noted that the Court has powers under Section 463 to grant relief only to a director/officer of a company, and is not applicable to the company. Hence, the company cannot claim relief under section 463 of the Companies Act, 2013
464. PROHIBITION OF ASSOCIATION OR PARTNERSHIP OF PERSONS EXCEEDING CERTAIN NUMBER.	
	No association or partnership consisting of more than **50 persons** (as provided under the Rules) 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. Further, the Act has put a **cap of maximum 100 persons**. Thus, the number of persons as provided in the Rule 10 cannot exceed the maximum cap of 100 persons, however currently under rule 10 is 50. **(iii) Penalty:** Every member of an association or partnership carrying on business in contravention of section 464(1) shall **be punishable with fine which may extend to 1 lakh** rupees and shall also be personally liable for all liabilities incurred in such business.
465. REPEAL OF CERTAIN ENACTMENTS AND SAVINGS.	
466. DISSOLUTION OF COMPANY LAW BOARD AND CONSEQUENTIAL PROVISIONS.	
	NCLT now comes in existence.
467. POWER OF CENTRAL GOVERNMENT TO AMEND SCHEDULES.	

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468. POWERS OF CENTRAL GOVERNMENT TO MAKE RULES RELATING TO WINDING UP.	
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469. POWER OF CENTRAL GOVERNMENT TO MAKE RULES.	
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470. POWER TO REMOVE DIFFICULTIES.	
	i. 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. ii**. No such order shall be made after the expiry of a period of 5 years from the date of commencement of section 1 of this Act**. iii. Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

UNIT – II: ALLIED LAWS

The foreign exchange management Act,1999

2(h)	**CURRENCY**
	"Currency" includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers cheques, letters of credit, bills of exchange and promissory notes, credit cards, **Debit card, ATM card, Other instrument to create financial liabilities** or such other similar instruments, as may be notified by the Reserve Bank;
2(l)	**EXPORT**
	"Export", means; (i) the **taking out of India** to a place outside India any goods. (ii) provision of services from India to any person outside India; Include **by way of sale, lease, hire-purchase,** or under any other arrangement by whatever name called, & in the case of **software,** also includes **transmission through any electronic media**.
2(m)	**FOREIGN CURRENCY- CURRENCY OTHER THAN INDIAN CURRENCY**
2(u)	**PERSON**
	"Person" includes: (i) an individual, (ii) a Hindu undivided family, (iii) a company, (iv) a firm, (v) an association of persons or a body of individuals, whether incorporated or not, (vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and; (vii) **any agency, office or branch owned or controlled by such person;**
2(v)	**PERSON RESIDENT IN INDIA.**
	"Person resident in India" means: **(i) a person residing in India for more than one hundred and eighty-two (>182) days during the course of the *preceding* financial year but does not include—** Residing/ came/ gone during the current financial will not be considered. Only in preceding FY *(A) a person who has gone out of India or who stays outside India, in either case—* (a) for or on **taking up employment** outside India, or (b) for **carrying on outside India a business or vocation outside India**, or (c) for **any other purpose**, in such circumstances as would indicate his **intention to stay outside India for an uncertain period**; So, >182 concept not applicable for them, from the first day they left india will be considered as PROI, However such status of PROI will be applicable only for the next year. *(B) a person who has come to or stays in India, in either case, otherwise than:* (a) for or on **taking up employment in India**, or (b) for **carrying on in India a business or vocation in India**, or (c) for **any other purpose**, in such circumstances as would indicate his **intention to stay in India for an uncertain period**; So, >182 concept not applicable for them, from the first day they enters into India will be considered as PRI, However such status of PRI will be applicable only for the next year.

	(ii) any person or body corporate registered or incorporated in India, **(iii) an office, branch or agency in India owned or controlled by a person resident outside India,** **(iv) an office, branch or agency outside India owned or controlled by a person resident in India;**
2(w)	**PERSON RESIDENT OUTSIDE INDIA.**
	"Person Resident Outside India" means a person who is not resident in India;
2(y)	**REPATRIATE TO INDIA**
	means bringing in to India realised foreign exchange and **i. the selling such foreign currency to and Authorised Person in India in exchange for Rupees.** **ii. the holding of realised amount in an account with an Authorised Person in India to the extent notified by RBI.**
5	**CURRENT ACCOUNT TRANSACTION**
	"Current Account Transaction" means a transaction **other than a capital account transaction** and without prejudice to the generality of the foregoing such transaction includes, **FILMFE** (i) payments due in connection with **foreign trade**, other current business, services, and short-term banking and credit facilities **in the ordinary course of business**. (ii) payments due as **interest** on loans and as net income from investments. (iii) remittances for **living expenses** of parents, spouse and children residing abroad, and (iv) expenses in connection with **medical care, foreign travel** and **education** of parents, spouse and children; **Rule-3 PROHIBITED** **NCLT** **prohibit CDR** Payment for travel to **Nepal, Bhutan**. Payment of **commission** on exports made towards equity investment in Joint Ventures/Wholly Owned Subsidiaries abroad of Indian companies. Remittance out of **lottery winnings, racing/riding,** etc **Transaction** with Nepal, Bhutan. Payment related to "**Call Back Services**" of telephones. Remittance of **dividend** by any company to which the requirement of dividend balancing is applicable. **Remittance** for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes etc. Remittance of interest income on funds held in Non-resident Special Rupee Scheme a/c. **Rule-4 Permitted with the approval of central government—Commercial nature** **(i) Cultural Tours,** (ii) **Advertisement** in foreign print media for the purposes other than promotion of tourism, foreign investments and international bidding (**exceeding US$ 10,000**) by a State Government and its Public Sector Undertakings. (iii) Remittance of **freight of vessel** charted by a PSU (iv) Payment of **import** through Ocean Transport Multi-modal transport operators making remittance to their agents abroad (v) Remittance of **hiring charges of transponders** by (a) TV Channels (b) Internet service providers

	(vi) Remittance of **container detention charges** exceeding the rate prescribed by Director General of Shipping **(vii)** Remittance of **prize money/sponsorship** of sports activity **exceeds US $ 100,000.**No restriction if payment is made by International/National/State Level sports bodies. (viii) Remittance for membership of P & I Club **However central government approval not require if payment is made out of funds held in Resident Foreign Currency (RFC) or Exchange Earner's Foreign Currency (EEFC) Account**.
	Rule-5 Permissible with the approval of RBI-
	Special Scheme for resident Individuals:- Personnel or Private type transaction The resident individuals can make remittances up to USD **2,50,000 per annum** for any transaction without approval/ permission of RBI, whether **capital** or **current account,** or both, under the "Liberalised Remittance Scheme'. **Only individuals** can avail this facility. Other persons cannot avail this facility. Any additional remittance in excess of the said limit for the following purposes shall requires prior approval of the reserve bank of India. i. Private visits to any country (except Nepal and Bhutan) ii. Gift or donation in the personnel nature. iii. Going abroad for employment. iv. Emigration. v. Maintenance of close relatives abroad. vi. Travel for business or attending a conference or specialized training or for meeting expenses for meeting medical expenses or check-up abroad or for accompanying as attendant to a patient going abroad for medical treatment/ check-up. vii. Expenses in connection with the medical treatment abroad. viii. Studies abroad. ix. Any other current account transaction. Provided for emigration, medical expenses & studies abroad may avail exchange facility for an amount in excess of limit prescribed under the LRS, if it so required by country of emigration, Medical institute offering treatment or the university respectively. **Special Scheme for other than Individuals:- CDR$_2$** **C- Commission for sale of plot/ flat- higher of US$ 25000 or 5% of inward remittance.** **D- Donation for creating chair in or to educational institution- Lower of 1% of foreign exchange in earning in 3PFY or US$ 5,000,000.** **R- Remittance for consultancy service in respect of infrastructural project US$ 10,000,000.** **Remittance for other consultancy service & US$1,000,000.** **R- Remittance for FDI – Higher of 5% of investment brought to India or US$1,00,000 by way of pre-incorporation expenses.**
6	**CAPITAL ACCOUNT TRANSACTION.**
	Transaction other than current account transaction which alter the assets or liabilities.
	Prohibited for PROI
	Chit fund, Nidhi company, Agricultural Plantation Activity, Real estate, Farm house, Transferable development right.
	Permissible, No restriction for PROI
	Investment, guarantee, deposit, remittance o/s india their capital assets, Acquisition transfer of immovable property, import-export of currency notes.

	Permissible for person resident in India. The resident individuals can make remittances up to USD **2,50,000 per annum** for any transaction, whether **capital** or **current account,** or both, under the "Liberalised Remittance Scheme'. Only individuals can avail this facility. Other persons cannot avail this facility. All capital account transaction prohibited unless it is permitted.
7	**EXPORTS OF GOODS SERVICES**
	FOREIGN EXCHANGE MANAGEMENT (EXPORT OF GOODS & SERVICES) REGULATIONS, **2015** **R-3** In case of exports to any place outside India, other than Nepal and Bhutan, PRI shall furnish to the **specified authority (commissioner of custom)**, a declaration in EDF(Export Declaration Form) /SOFTEX containing true and correct material particulars including the amount representing- (i) the full export value of the goods or software; or (ii) if the full export value is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions expects to receive on the sale of the goods or the software in overseas market. Following information should be given in declaration- - the destination stated on the declaration is the final place of the destination of the goods exported; - Evidence of Value - Evidence of PRI. - **Amount shall be** realised through an authorised dealer **R-5** Mention Import- Export Code number **R-6 Authority to whom declaration is to be furnished and the manner of dealing with the declaration:-** **A. Declaration in Form EDF** (i) The declaration in form EDF shall be submitted **in duplicate to the Commissioner of Customs**. (ii) After duly verifying and authenticating the declaration form, **the Commissioner of Customs shall forward the original declaration form/data to the nearest office of the Reserve Bank and hand over the duplicate form to the exporter for being submitted to the authorised dealer.** **B. Declaration in Form SOFTEX** (i) The declaration in Form SOFTEX in respect of export of computer software and audio/video/ television software shall be submitted **in triplicate to the designated official of Ministry of Information Technology,** Government of India at the Software Technology Parks of India (STPIs) or at the Free Trade Zones (FTZs) or Special Economic Zones (SEZs) in India. (ii) After certifying all three copies of the SOFTEX form, **the said designated official shall forward the original directly to the nearest office of the Reserve Bank and return the duplicate to the exporter. The triplicate shall be retained by the designated official for record.** **C. Duplicate Declaration Forms to be retained with Authorised Dealers** On the realisation of the export proceeds, the duplicate copies of export declaration forms viz. EDF and SOFTEX and Exchange Control copies of the shipping bills shall be retained by the Authorised Dealers. **9. Period within which export value of goods/software/ services to be realised:-** (1) The amount representing the full export value of goods / software/ services exported shall be **realised and repatriated to India within nine months** from the date of export, provided a. that where the goods are exported to a **warehouse established outside India** with the permission of the Reserve Bank, the amount representing the full export value of goods exported shall be paid to the authorised dealer as soon as it is realised and in any case within **fifteen months** from the date of shipment of goods; b. further that the Reserve Bank, or subject to the directions issued by that Bank in this behalf, the authorised dealer may, for a sufficient and reasonable cause shown, extend the period of nine months or fifteen months, as the case may be. (2) In case of Special Economic Zones (SEZ) / Status Holder exporter / Export Oriented Units (EOUs)

	and units in Electronics Hardware Technology Parks (EHTPs), may extend the period **further by 9 month** for a sufficient and reasonable cause shown. **10. Submission of export documents:-** The **documents** pertaining to export shall be submitted **to the authorised dealer** mentioned in the relevant export declaration form, **within 21 days** from the date of export, or from the date of certification of the SOFTEX form: Provided that, subject to the directions issued by the Reserve Bank from time to time, the authorized dealer may accept the documents pertaining to export submitted after the expiry of the specified period of 21 days, for reasons beyond the control of the exporter. 12. Payment for the Export:- **No authority shall initiate any action for Sale proceeds realisation full or part with in permissible period of time unless such period expired.** **14. Delay in receipt of payment** Reserve Bank may give such directions to any person who has sold the goods or software or who is entitled to sell the goods or software or procure the sale thereof, as appear to it to be expedient, for the purpose of securing - the **payment** therefor if the goods or software has been sold and - the **sale of goods** and payment thereof, if goods or software has not been sold or **re-import** thereof into India. **15. Advance payment against exports:-** **(1)** Where an exporter receives advance payment the exporter shall ensure that:- (i) the shipment of goods is made within **one year** from the date of receipt of advance payment; (ii) the **rate of interest**, if any, payable on the advance payment does **not exceed the rate of interest London Inter-Bank Offered Rate (LIBOR) + 100 basis points** and (iii) the documents covering the shipment are routed through the authorised dealer through whom the advance payment is received; Provided that in the event of the exporter's inability to make the shipment, partly or fully, within one year from the date of receipt of advance payment, no remittance towards refund of unutilized portion of advance payment or towards payment of interest, shall be made after the expiry of the period of one year, without the prior approval of the Reserve Bank. **(2)** Notwithstanding anything contained in clause (i) of sub-regulation (1), **an exporter may receive advance payment where the export agreement itself duly provides for shipment of goods extending beyond the period of one year from the date of receipt of advance payment.** **17. Project exports:-** (1) Where an export of goods or services is proposed to be made on **deferred payment** terms or in execution of a **turnkey project or a civil construction contract**, the exporter shall, before entering into any such export arrangement, submit the proposal for **prior approval of the approving authority**, which shall consider the proposal in accordance with the guidelines issued by the Reserve Bank of India from time to time. Here 9 or 15 month concept not applicable. (2) In case a guarantee is required to be given prior to post award approval, the same may be issued by an authorized dealer bank/ a person resident in India being an exporting company, for performance of a project outside India, or for availing of credit facilities, whether fund-based or non-fund based, from a bank or a financial institution outside India in connection with the execution of such project, provided that the contract / Letter of Award stipulates such requirements. **Explanation:** For the purpose of this Regulation, 'approving authority' means the EXIM Bank of India or the authorised dealer
	FOREIGN EXCHANGE MANAGEMENT (REALISATION, REPATRIATION AND SURRENDER OF FOREIGN EXCHANGE) REGULATIONS, 2015

	(a) Period for surrender of realised foreign exchange: **PROI** shall surrender Acquired foreign exchange as a result of **Remuneration for service rendered, within 7 days/ In other case within 90 days.** (b) Period for surrender in certain cases :- - **PROI Acquire for the purpose mentioned in declaration not used** within the specified period of time then he shall surrender **within 60 days** from the date of acquisition or purchase by him. - **PROI Acquired foreign exchange for travel then unspent balance** shall surrender within **90 days** from the date of return to traveller to India. However if it is in the form of **travellers cheques then return within 180 days.** (c) Period for surrender of received/ realised/ unspent/ unused foreign exchange by **Resident individuals.- within 180 days** from the date of such receipt/realisation/purchase/acquisition or date of his return to India, as the case may be.
8	**REALISATION AND REPATRIATION OF FOREIGN EXCHANGE**
	Where any amount of foreign exchange is due or has accrued to PRI, such PRI shall take all reasonable steps to realise and repatriate to India - the whole amount of such foreign exchange - within the period specified by RBI - in the manner specified by RBI.
9	**FOREIGN EXCHANGE MANAGEMENT (ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY OUTSIDE INDIA) REGULATIONS, 2015**
	1. A **person resident in India** may acquire immovable property outside India, - (a) **by way of gift or inheritance** from a person referred to in sub-section (4) of Section 6 of the Act, or referred to in clause (b) of regulation 4 (acquired by a person resident in India on or before 8th July 1947 and continued to be held by him with the permission of the Reserve Bank.) (b) **by way of purchase out of foreign exchange held in Resident Foreign Currency (RFC) account** maintained in accordance with the Foreign Exchange Management (Foreign Currency accounts by a person resident in India) Regulations, 2015; (c) **jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India;** **2.** A person resident in India may acquire immovable property outside India, by way of inheritance or gift from a person resident in India who has acquired such property in accordance with the foreign exchange provisions in force at the time of such acquisition. **3.** A **company incorporated in India having overseas offices, may acquire immovable property outside India for its business and for residential purposes of its staff,** in accordance with the direction issued by the Reserve Bank of India from time to time. 'relative' in relation to an individual means husband, wife, brother or sister or any lineal ascendant or descendant of that individual

CHAPTER 2: THE COMPETITION ACT, 2002

The Competition Act, 2002

2	**DEFINITION- ACQUISITION, AGREEMENT, CARTEL, CONSUMER, GOODS, SERVICES, PERSON, ENTERPRISES**
	Acquisition [Section 2(a)] "Acquisition" means, directly or indirectly, acquiring or agreeing to acquire— (i) shares, voting rights or assets of any enterprise; or (ii) control over management or control over assets of any enterprise; **Agreement [Section 2(b)]** "Agreement" includes any arrangement or understanding or action in concert,— (i) whether or not, such arrangement, understanding or action is formal or in writing; or (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings; **Cartel [Section 2 (c)]** "Cartel" includes an association of producers, sellers, distributors, traders or service providers (PSDTS) who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services; **Consumer [Section 2(f)]** "Consumer" means any person who— (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use; (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use; **Goods [Section 2(i)]** "Goods" means goods as defined in the Sale of Goods Act, 1930 (8 of 1930) and includes— (A) products manufactured, processed or mined; (B) **debentures, stocks and shares after allotment;** (C) in relation to goods supplied, distributed or controlled in India, goods imported into India; (Section 2(7) of the Sale of Goods Act, 1930 defines goods as "every kind of movable property other than actionable claims and money; and include stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale",) **Person [Section 2(l)]** "Person" includes—

	(i) an individual; (ii) a Hindu undivided family; (iii) a company; (iv) a firm; (v) an association of persons or a body of individuals, whether incorporated or not, in India or outside India; (vi) **any corporation established by or under any Central, State or Provincial Act or a Government company** as defined in section 617 of the Companies Act, 1956 (1 of 1956); (vii) any body corporate incorporated by or under the laws of a country outside India; (viii) a co-operative society registered under any law relating to cooperative societies; (ix) a local authority; (ix) every artificial judicial person, not falling within any of the preceding sub-clauses; **Enterprise [Section 2(h)]** "Enterprise" means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the **control, Acquisition, storage, distribution, supply, production of article or goods,(CA Store DSP) or provision of services** of any kind,
3	**FACTORS DETERMINING APPRECIABLE ADVERSE EFFECT ON COMPETITION:**
	The Competition Commission of India (CCI), while determining whether an agreement is anti-competitive under section 3 of the competition Act, 2002, will take into account the following factors. (a) creation of barriers to new entrants in the market (b) driving existing completions out of the market. (c) foreclosure of competition by hindering entry into the market. (d) accrual of benefits to consumers. (e) improvements in production or distribution of goods or provision of services and (f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.
8,9,10	**COMPOSITION**
	1 Chairperson, 2-6 member, appointed by selection commission for maximum period of 5 year & Maximum age is 65 year.
15	**VALIDITY OF ACT- VACANCY, ETC. NOT TO INVALIDATE PROCEEDINGS OF COMMISSION**
	No any act or proceeding of the Commission shall be invalidated merely on the ground of: (a) any **vacancy in, or any defect** in the constitution of, the Commission; or (b) any **defect in the appointment** of a person acting as a Chairperson or as a Member; or (c) any **irregularity in the procedure** of the Commission not affecting the merits of the case.
11	**REMOVAL BY CG**
	As per Sub-section 2, the Central Government may, by order, **remove** the Chairperson or any other Member from his office if such Chairperson or Member, as the case may be,— (a) is, or at any time has been, **adjudged as an insolvent**; or (b) has **engaged** at any time, during his term of office, **in any paid employment,** or (c) has been **convicted of an offence** which, in the opinion of the Central Government, involves **moral turpitude**; or (d) has **acquired such financial or other interest** as is likely to **affect prejudicially his functions** as a Member; or

	(e) has so **abused his position** as to render his continuance in office prejudicial to the public interest; or (f) has become **physically or mentally incapable** of acting as a Member. However, provisions of Section 11(3) of the said Act put some restrictions on such power of the Central Government. According to this Section, the Central Government has to make a reference to the Supreme Court of India. The Supreme Court shall hold an enquiry in accordance with the procedure formulated by it and then report that the member in question ought to be removed from his office on such ground.
12	**RESTRICTION ON EMPLOYMENT OF CHAIRPERSON AND OTHER MEMBERS IN CERTAIN CASES**
	(Section 12) The Chairperson and other Members **shall not, for a period of two years** from the date on which they cease to hold office, **accept any employment** in, or be connected with the management or administration of, **any enterprise which has been a party to a proceeding** before the Commission. However, nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956.
3	**ANTI COMPETITIVE AGREEMENT**
	No enterprise or association of enterprises or person or association of persons shall 'enter' into an agreement in respect of **control, Acquisition, storage, distribution, supply, production of article or goods or provision of services,(CA Store DSP)** which causes or is likely to cause an **appreciable adverse effect on competition (AAEC)** within India. All such agreements entered into in contravention of the aforesaid prohibition shall be **void.** **Agreement at different stages in different markets** Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services shall be a **void agreement if it causes or is likely to cause an appreciable adverse effect on competition in India including—** (a) **tie-in arrangement -** includes any agreement requiring a purchaser of goods, as a condition of such purchase, **to purchase some other goods**; (b) **exclusive supply agreement -** includes any agreement **restricting** in any manner the **purchaser** in the course of his trade **from acquiring** or otherwise **dealing in any goods other than those of the seller** or any other person; (c) **exclusive distribution agreement-** includes any agreement to limit, **restrict** or withhold the output or **supply of any goods** or allocate any **area or market** for the disposal or sale of the goods; (d) **refusal to deal -** includes any agreement which **restricts**, or is likely to restrict, by any method the persons or classes of persons **to whom goods are sold or from whom goods are bought**; (e) **resale price maintenance -** includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.
5,6	COMBINATION
	The **acquisition** of one or more enterprises by one or more persons or **merger or amalgamation** of enterprises shall be a **combination** of such enterprises and persons or enterprises, if it cross the below limit, in such case, Sec-6: notify to CCI **within 30 days** of approval of merger & amalgamation by the board. Such combination shall take affect only when it is approved by CCI within **210 days**.

		Assets	Turnover	
Enterprises Level	In India	2000	6000	Rupees in Crore
	In India or outside India	1 billion US$	3 billion US$	
Group	In India	8000	24000	Rupees in Crore
	In India or outside India	4 billion US$	12 billion US$	
Minimum Indian capital	Enterprises/group Level	1000	3000	Rupees in Crore

Exemption from section 5 if on acquisition assets value doesn't exceed Rupees 350 crore & Turnover Rupees 1000 crore in INDIA.

CHAPTER 3: OVERVIEW OF BANKING REGULATION ACT, 1949,

The banking regulation Act, 1949	
7	**THE WORD BANK, BANKER, BANKING CAN ONLY BE USED BY BANKING COMPANIES.**
	No company other than banking company shall use as part of its name or, in connection with the business any of the words bank, banker or banking. And No company shall carryon the business of banking in India unless it uses any of parts of its name at least one of such word.
9	**DISPOSAL OF NON- BANKING ASSETS WITHIN 7 YEAR AND MAXIMUM 5 YEAR EXTENSION CAN BE BY RBI.**
	Maximum period for which any immovable property can be held is **7 year** from the date of acquisition. Extension of period can be granted for maximum for **5 year** by the permission of RBI. If property is held for own use- condition for disposal within 7 year and extension upto 5 year is not applicable.
17	**TRANSFER OF PROFIT TO RESERVE FUND**
	Every Banking Company incorporated in India must **create a Reserve Fund** and transfer a sum equal to not less than **20 % of its net profits**. However, the Central Government is empowered to exempt from this requirement on the recommendation of the RBI. Such **exemption** will be allowed only:- - when the amounts in the **reserve fund and the share premium account are not less than the paid-up capital** of the banking company - when the Central Govt. feel that **its paid-up capital and reserves are adequate to safe guard the interest of the depositors** If a banking company appropriates any sum from the Reserve fund or the share premium account, it must be **reported to RBI within 21 days** explaining the circumstances leading to such appropriation
30	**AUDIT-ADDITIONAL DISCLOSURE**
	the auditor is required to state in his report: **ITR p/l** • Whether or not the **information and explanation** required by him have been found to be *satisfactory*; • The **transactions of the bank** which have come to his notice have been *within the powers of the bank or not*; • The **return** received from branch offices have been *found adequate* for the purpose of his audit; • Whether the **profit and loss account** shows a *true balance of profit or loss* for the period covered by such account; and • Any other matter which he considers should be brought to the notice of the share holders of the company;
31	**PUBLISH AND SUBMISSION OF RETURN.**
	The accounts and balance sheet along with auditor's report shall be published in prescribed manner and **three copies** thereof shall be furnished as returns to RBI within **three months** from the end of the period to which they refer. The **RBI may extend** the period by a further period of **not exceeding three months**.
36AA 36AB	REMOVAL OF DIRECTOR ADDITIONAL DIRECTOR
	Section 36AA:- Power of Reserve Bank to remove managerial and other persons from office:- **RBI can terminate / remove** any chairman, Director, Chief Executive, other officials or any employee of the bank where it considers desirable to do so particularly when RBI is of the opinion that **conduct of**

	such person is detrimental to the interest of the depositors or for securing proper management of the banking company. Before such termination concerned person should be **given opportunity to be heard** of. Such terminated officials can make appeal to the Central Govt. **within 30 days** from the date of communication of such termination order. . Contravention of the above provision shall be punishable with a fine, which may extend to Rs 250 per day. . Section 36AB:- RBI is empowered to appoint **additional Directors** for the banking company with effect from the date to be specified in the order, in the interest of the bank or that of depositors. Such additional directors **shall hold office for a period not exceeding three years** or such further periods not exceeding three years at a time.

The Securitisation and reconstruction of financial assets and enforcement of securities interest Act, 2002

2	**DEFINITION- OBLIGOR, ORIGINATOR, FINANCIAL ASSETS, ASSETS RECONSTRUCTION, SECURITIES RECEIPT.**
	"**asset reconstruction**" means acquisition by any securitisation company or reconstruction company of any right or interest of any bank or financial institution in any financial assistance for the purpose of realization of such financial assistance. "**financial asset"** means debt or receivables and includes- (i). a claim to any debt or receivables or part thereof, whether secured or unsecured; or (ii). any debt or receivables secured by, mortgage of, or charge on, immovable property; or (iii). a mortgage, charge, hypothecation or pledge of movable property; or (iv). any right or interest in the security, whether full or part underlying such debt or receivables; or (v). any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or (vi). any financial assistance [section 2(l)] **"non-performing asset"** means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset,
3	**REGISTRATION – PREREQUISITES AND CONDITION.**
	Such a company can commence or carry on the business of securitisation or asset reconstruction only after obtaining a certificate of registration granted under this section and having net owned fund of not less than **two crore (200)** rupees or **such other higher amount as the Reserve Bank, may, by notification, specify** the following conditions should be fulfilled before obtaining registration, namely:- (a) that the securitisation company or reconstruction company has **not incurred losses in any of the three preceding financial years**; (b) that such securitisation company or reconstruction company has made **adequate arrangements for realisation of the financial assets** acquired for the purpose of securitisation or asset reconstruction and shall be **able to pay periodical returns and redeem on respective due dates on the investments made in the company by the qualified institutional buyers or other persons;** (c) that the **directors** of securitisation company or reconstruction company have **adequate professional experience** in matters related to finance, securitisation and reconstruction; (d) omitted (e) that any of its **directors has not been convicted of any offence involving moral turpitude;** (f) that a sponsor of an asset reconstruction company is a **fit and proper person** in accordance with the criteria as may be specified in the guidelines issued by the Reserve Bank for such per-sons; (g) that securitisation company or reconstruction company has **complied with or is in a position to comply** with prudential norms specified by the Reserve Bank. Require prior permission of RBI for 1. Change in name 2. Change in location of registered office.

	3. **Substantial change** in management including appointment of any director on board of directors of the ARC or managing director or chief executive officer thereof. The expression "substantial change in management" means the change in the management by way of transfer of shares or **change affecting the sponsorship in the company by way of transfer of shares** or amalgamation or transfer of the business of the company.
4	**CANCELLATION OF CERTIFICATION OF REGISTRATION.**
	The Reserve Bank may **cancel a certificate of registration** granted to a securitization company or a reconstruction company, if such company- (a) **ceases to carry on the business** of securitisation or asset reconstruction; or (b) **ceases to receive or hold any investment** from a qualified institutional buyer; or (c) has **failed to comply with any conditions subject to which the certificate of registration has been granted to it**; or (d) at any time **fails to fulfil any of the conditions referred to in clauses (a) to (g) of subsection (3) of section 3;** or (e) **fails to** (i) **comply with any direction** issued by the Reserve Bank under the provisions of this Act; or (ii) **maintain accounts** in accordance with the requirements of any law or any direction or order issued by the Reserve Bank under the provisions of this Act; or (iii) **submit or offer for inspection** its books of account or other relevant documents when **so demanded by the Reserve Bank**; or (iv) obtain prior approval of the Reserve Bank required under sub-section (6) of section 3:
5	**ACQUISITION OF RIGHTS OR INTEREST IN FINANCIAL ASSETS**
	Any securitisation company or reconstruction company may acquire financial assets of any bank or financial institution- 1.) **by issuing a debenture or bond or any other security** in the nature of debenture, for consideration **agreed upon between such company and the bank or financial institution,** incorporating therein such terms and conditions as may be agreed upon between them; "(1A) Any **document executed by any bank or financial institution** under sub-section (1) in favour of the asset reconstruction company acquiring financial assets for the purposes of asset reconstruction or securitisation shall **be exempted from stamp duty** in accordance with the provisions of section 8F of the Indian Stamp Act, 1899: Provided that the provisions of this **sub-section shall not apply** where the acquisition of the financial assets by the asset reconstruction company is **for the purposes other than asset reconstruction or securitisation**."; or (2.) **by entering into an agreement** with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them. "(2A) If the bank or **financial institution is holding any right, title or interest upon any tangible asset or intangible asset** to secure payment of any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire the tangible asset or assignment or licence of intangible asset, such right, title or interest **shall vest in the asset reconstruction company on acquisition of such assets under sub-section** (1)." - Right in relation to such financial assets would be the same as that of bank, Eg. If bank is lender in respect of financial assets then S& R co, Shall also have right of lender.
6	**NOTICE TO OBLIGOR AND DISCHARGE OF OBLIGATION OF SUCH OBLIGOR.**
	Notice of acquisition of financial assets should be given to concerned obligor by bank. Obligor on receipt of such notice would be liable to pay to securitisation and reconstruction company.

	Where no notice has been given by the bank and bank receipt any money from obligor, such money held under trust on behalf of securitisation and reconstruction company.
9	**MEASURES FOR ASSETS RECONSTRUCTION**
	1. A securitisation company or reconstruction company may, provide for any one or more of the following measures, for the purposes of asset reconstruction provide for any one or more of the following measures, namely:— (a) the proper management of the business of the borrower, by **change in, or takeover** of, the management of the business of the borrower; (b) the **sale or lease** of a part or whole of the business of the borrower; (c) **rescheduling of payment** of debts payable by the borrower; (d) **enforcement of security interest** in accordance with the provisions of this Act; (e) **settlement of dues** payable by the borrower; (f) **taking possession of secured assets** in accordance with the provisions of this Act; (g) **conversion of any portion of debt into shares of a borrower company**: Provided that conversion of any part of debt into shares of a borrower company shall be deemed always to have been valid (Restrospectively), as if the provisions of this clause were in force at all material times. 2. The Reserve Bank shall, for the purposes of sub-section (1), determine the policy and issue necessary directions including the direction for regulation of management of the business of the borrower and fees to be charged. 3. The asset reconstruction company shall take measures under sub-section (1) in accordance with policies and directions of the Reserve Bank determined under sub-section (2).
13	**ENFORCEMENT OF SECURITY INTEREST**
	Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any installment thereof, and his account in respect of such debt is classified by the secured creditor **as non-performing asset (on expiry of 90 days)**, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within **sixty days** from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4) of Section 13 13 (4) the secured creditor may take recourse to one or more of the following measures to recover his secured debt:- (a) **take possession of the secured assets** of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset; (b) **take over the management** of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale and realise the secured asset; (c) **appoint any person** (hereafter referred to as the manager), **to manage** the secured assets the possession of which has been taken over by the secured creditor; (d) require at any time by **notice in writing**, **any person (third party other than borrower) who has acquired any of the secured assets from the borrower** and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt. 13(2) "Provided that— (a) the requirement of classification of secured debt as non-performing asset under this sub-

	section shall not apply to a borrower who has raised funds through issue of debt securities; and (b) **in the event of default**, the **debenture trustee (issuer of debenture which was owned by borrower and lend to secured creditor) shall be entitled to enforce security interest** in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee; 13(8) "**Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered (offered for payment by borrower) to the secured creditor** at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,— (a) **the secured assets shall not be transferred** by way of lease assignment or sale by the secured creditor; and (b) **in case, any step has been taken by the secured creditor** for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, **no further step shall be taken by such secured creditor** for transfer by way of lease or assignment or sale of such secured assets."
15	**MANNER AND AFFECT OF TAKEOVER OF MANAGEMENT.**
	When the management of business of a borrower is taken over by a secured creditor, the secured creditor may, by publishing a notice in a newspaper on publication - **all persons holding office as directors** of the company (if the borrower is a company) and in any other case, all persons holding any office having power of superintendence, direction and control of the business of the borrower immediately before the publication of the above notice, shall be **deemed to have vacated** their offices. - **Resolution passed shall have no effect unless approved by secured creditor.** **Secured creditor will restore the office after realisation of debt in full.** "Provided that if any **secured creditor** jointly with other secured creditors or any asset reconstruction company or financial institution or any other assignee has **converted part of its debt into shares of a borrower company** and thereby acquired controlling interest in the borrower company, such secured creditors shall **not be liable to restore the management** of the business to such borrower."
17	APPLICATION AGAINST MEASURE TO RECOVER SECURED DEBTS
	1. Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may prefer an appeal to the **Debts Recovery Tribunal** having jurisdiction in the matter **within forty-five days** from the date on which such measure had been taken. If the appeal is preferred by a borrower, such appeal is not entertained by the Debts Recovery Tribunal unless the borrower has deposited with the Debts Recovery Tribunal **Fifty per cent** of the amount claimed in the notice referred to in sub-section (2) of section 13. However, the Debts Recovery Tribunal may, waive or reduce this amount to be deposited, for reasons to be recorded in writing, "(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction— (a) the cause of action, wholly or in part, arises; (b) where the secured asset is located; or (c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.";

	"(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or **other aggrieved person**, it may, by order,— (a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and (b) restore the possession of secured assets or management of secured assets to the borrower **or such other aggrieved person, who has made an application under sub- section (1), as the case may be;** and (c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13."; "(4A) Where— (i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,— (a) has expired or stood determined; or (b) is contrary to section 65A of the Transfer of Property Act, 1882 or (c) is contrary to terms of mortgage; or (d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of section 13 of the Act; and (ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.".
20A	**INTEGRATION** OF REGISTRATION SYSTEMS WITH CENTRAL REGISTRY
	(1) The **Central Government** may, **for the purpose of providing a Central database**, in consultation with State Governments or other authorities operating registration system for recording rights over any **property or creation, modification or satisfaction of any security interest on such property, integrate the registration records** of such registration systems with the records of Central Registry established under section 20, in such manner as may be prescribed. **Explanation**- For the purpose of this sub-section, the registration records includes records of registration under the Companies Act, 2013, the Registration Act, 1908, the Merchant Shipping Act, 1958, the Motor Vehicles Act, 1988, the Patents Act, 1970, the Designs Act, 2000 or other such records under any other law for the time being in force. (2) The Central Government shall after integration of records of various registration systems referred to in sub-section (1) with the Central Registry, by notification, declare the date of integration of registration systems and the date from which such integrated records shall be available; and with effect from such date, security interests over properties which are registered under any registration system referred to in sub-section (1) shall be deemed to be registered with the Central Registry for the purposes of this Act.

20B	DELEGATION OF POWERS.
	The Central Government may, by notification, delegate its powers and functions under this Chapter, in relation to establishment, operations and regulation of the Central Registry to the Reserve Bank, subject to such terms and conditions as may be prescribed
30A	Where Reconstruction fails to comply with the direction of RBI then penalty shall be higher of - Not exceeding Rs.1 crore - 2 times of amount involved in such failure. If such default continue then Rs 1 lac per day.

CHAPTER 4: PREVENTION OF MONEY LAUNDERING ACT, 2002

The prevention of money laundering Act, 2002	
2	**DEFINITION – MONEY LAUNDERING**
	Money Laundering - whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering. "**Proceeds of crime"** as any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property.
4	**PUNISHMENT FOR MONEY LAUNDERING**
	Section 4 provides for the punishment for Money-Laundering. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than **three years** but which may extend to **seven years** and shall also be liable to **fine (without any limit)**. But where the proceeds of crime involved in money-laundering relate to any offence specified under Narcotic Drugs and Psychotropic Substances Act,1985 the maximum punishment may extend to **ten years** instead of seven years and shall also be liable to **fine (without any limit)**.
12	**BANKING COMPANIES FINANCIAL INSTITUTION TO MAINTAIN, FURNISH AND VERIFY RECORDS.**
	Section 12 provides for the obligation of Banking Companies, Financial Institutions and Intermediaries of securities market. Every banking company, financial institution and intermediary shall – (a) maintain a record of all transactions, the nature and value of which may be prescribed, Such records shall be maintained for a period of **five year** from the date of cessation of the transactions. (b) furnish information of the above transactions within the prescribed time to the Director appointed under section 49 for the purposes of the Act, (c) verify and maintain the records of the identity of all its clients, in the prescribed manner. (d) Identify the be beneficial owner.
13	POWER OF THE DIRECTOR TO IMPOSE FINE
	If the books are not maintained for 5 year or the reports are not furnished properly then the penalty is applicable.
26	**APPEAL TO APPELLATE TRIBUNAL**
	The Director or **any person aggrieved by an orde**r made by the **Adjudicating Authority** under this Act may prefer an **appeal to the Appellate Tribunal** within a period of **forty-five days** from the date on which a copy of the order made by the Adjudicating Authority or Director is received and it shall be in such form and be accompanied by such fee as may be prescribed. The **Appellate Tribunal** may, **after giving an opportunity of being heard, entertain an appeal after the expiry of the said period of forty-five days** if it is satisfied that there was sufficient cause for not filing it within that period & Pass such order as it think fit. The **Appellate Tribunal** constituted under section 12(1) of **the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 shall be the Appellate Tribunal for hearing appeals against the orders of the Adjudicating Authority and the other authorities under this Act**."
45	**CERTAIN OFFENCE TO BE COGNIZABLE AND NON-BAIL ABLE.**
	offences under the Act shall be cognizable and non-bailable.

	Special Courts Sections 43 – 47 deals with provision relating to Special Courts. Section 43 empowers the Central Government (in consultation with the Chief Justice of the High Court) for trial of offence of money laundering, to notify one or more Courts of Sessions as Special Court or Special Courts for such area or areas or for such cases as may be prescribed in the notification to this effect. Section 44 clearly provides for the offences triable by Special Courts. It overrides the provisions of the Code of Criminal Procedure, 1973 and provides that – (i) the scheduled offence and the offence punishable under section 4 shall be triable only by the Special Court constituted for the area in which the offence has been committed; (ii) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of the offence for which the accused is committed to it for trial. The requirement of police report of the facts which constitute an offence under this Act is no more applicable.