LAW

CA-FINAL

AMENDMENTS RELEVANT FOR MAY 2019 EXAMS

By

CA ANKIT OBEROI

COMPANIES ACT, 2013

Independent Directors (Sec 149)

- **Qualification:-**An independent director in relation to a company, means a director other than a managing director or a whole-time director:
  - Who, is in the opinion of the board, is a person of integrity and possesses relevant expertise and experience;

MCA's Notification dated 5th June 2015
In case of Government Company, the above clause shall be read as follows "Who, is in the opinion of the Ministry of the Central Government which is administratively in charge of company, or as the case may be, the State Government, is a person of integrity and possesses relevant expertise and experience".

  - who is not / was not a promoter of the company or its holding, subsidiary or associate company;
  - who is not related to promoters or directors in the company, its holding, subsidiary or associate company;
  - who has / had no ~~pecuniary relationship~~ "pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed," with the company or holding or subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
  - none of whose relatives has or had any pecuniary (monetary) relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent or more of its gross turnover or total income or fifty lakh rupees, whichever is lower, during the two immediately preceding financial years or during the current financial year;

    *None of whose relatives—

    (*i*) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year:

    Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;

    (*ii*) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year;

    (*iii*) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or (*iv*) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (*i*), (*ii*) or (*iii*);";

Disqualifications of Director (Section 164)

Grounds for Disqualification [Sec 164(1)]

Following persons are disqualified to become a director of the company:-

A. A person who has been found to be **unsound mind** by a court of competent jurisdiction.
B. A person who is **undischarged insolvent**.
C. A person who has been applied to be adjudicated as **insolvent.**
D. A person who has been **convicted** by court*
    - He is convicted for an offence involving **moral turpitude**.
    - He is sentenced to imprisonment for 6 months or more.
    - 5 years have not elapsed from the expiry of the Sentence.

    The expression 'moral turpitude' is not defined in the Companies Act, 2013. It means anything done contrary to the justice, honesty and good morals.

    Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;
E. an order disqualifying him for appointment as a director has been passed by a Court or Tribunal and the order is in force*;
F. he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;
G. he has been convicted of the offence dealing with related party transactions under Section 188 at any time during the last preceding five years*.
H. he has not complied with provisions relating to Director Identification Number (DIN)

~~**The disqualifications referred above in sub-section (1) shall not take effect:*~~

- ~~*for thirty days from the date of conviction or order of disqualification;*~~
- ~~*where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or*~~
- ~~*where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of.*~~

*"Provided that the disqualifications referred to in clauses (*d*), (*e*) and (*g*) of sub-section (*1*) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification.".

Other Disqualification [Sec 164(2)]:-No person shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the former company:-

- has not filed financial statements or annual returns for any continuous period of three financial years; or

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

"Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.";

Vacation of Office of Director (Sec 167)

- **Vacation of Office:-**The office of a director shall become vacant in case:
  - he incurs any of the disqualifications specified in Section 164;
    **"Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.";*
  - he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;
  - 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;
  - 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;
  - he becomes disqualified by an order of a court or the Tribunal;
  - he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months. ~~*The office shall be vacated by the director even if he has filed an appeal against the order of such*~~ *court;*

    **"Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)—*

    (i) for thirty days from the date of conviction or order of disqualification;
    (ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or
    (iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of.".

  - he is removed in pursuance of the provisions of this Act *(Section 169)*
  - 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 *(Ex-Officio Position)***.**

Resignation of Directors (Sec 168)

- **Intimation to company and company will intimate to ROC:-**A director may resign from his office by giving a notice in writing addressed to the company and the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar within 30 days in specified form.

Rule 15 of The Companies (Appointment and Qualification of Directors) Rules, 2014

The company shall within 30 days of receipt of notice from the director, intimate the Registrar in form No. DIR-12 and post the information on its website, if any.

- **Disclosure in Director's Report:-**This fact shall also be disclosed in the next Directors' Report.

*A director ~~shall~~ *may also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.*

Meetings of Board [Sec 173(2)]

- **Participation either personally or video means [Sec 173(2)]:-**The participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.

  CG may specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means.

  **"Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso.".*

Quorum for meetings of Board (Sec 174)

- **Quorum when interested directors are present:-**Where at any time there are interested directors (present in the Board Meeting), exceeds or is equal to 2/3rd of total strength, then the the quorum during such time, shall be higher of:-
  - Number of directors who are not interested directors and present at the meeting; or
  - two

  Interested directors will be counted in Quorum if they have disclosed his interest as per Section 184

Nomination and remuneration Committee (Sec 178)

- **Recommendation to Board:-**NRC shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and ~~shall carry out evaluation of every director's performance~~ *shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance

- NRC shall ensure that:
  - the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;

- relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and
- remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long term performance objectives appropriate to the working of the company and its goals.
  ~~Such policy shall be disclosed in the Board's report~~.
  *"Provided that such policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report.";

Stakeholders relationship Committee (Sec 178)

- **Role:-**It shall consider and resolve the grievances of security holders of the company.

- **Penalty:-**The company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

  *~~Non-consideration of resolution of any grievance~~ *inability to resolve or consider any grievance by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of this section.*

Loan to Directors, etc. (Sec 185)

- **Prohibition on Loan [Sec 185(1)]:-**No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,—
  (*a*) any director of company, or of a company which is its holding company or any partner or relative of any such director; or
  (*b*) any firm in which any such director or relative is a partner.

- **Permission on Loan subject to conditions [Sec 185(2)]**:-A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that-
  (*a*) a special resolution is passed by the company in general meeting:
  Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and
  (*b*) the loans are utilised by the borrowing company for its principal business activities.

Person in which director is interested
(*a*) any private company of which any such director is a director or member; (*b*) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or

(*c*) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

- **Exceptions [Sec 185(*3*)]**:-Nothing contained in sub-sections (*1*) and (*2*) shall apply to—
  (*a*) the giving of any loan to a managing or whole-time director—
  (*i*) as a part of the conditions of service extended by the company to all its employees; or
  (*ii*) pursuant to any scheme approved by the members by a special resolution; or
  (*b*) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three year, five year or ten year Government security closest to the tenor of the loan; or
  (*c*) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or
  (*d*) any guarantee given or security provided by a holding company in respect of loan made by any bank
  or financial institution to its subsidiary company:

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

- **Penalty [Sec 185(4)]:-**If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section,—
  (*i*) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees;
  (*ii*) 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 five lakh rupees but which may extend to twenty-five lakh rupees; and
  (*iii*) the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.

Loans and investments by company (Sec 186)

- **Restriction on Investment:-**No company shall directly or indirectly —
  - give any loan to any person or other body corporate;
  - give any guarantee or provide security in connection with a loan to any other body corporate or person; and
  - acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,

  exceeding sixty per cent. of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more.

'Explanation.—For the purposes of this sub-section, the word "person" does not include any individual who is in the employment of the company.';

Author's Interpretation

- Paid-up capital includes equity share capital as well as preference share capital.

- Free reserves include
  - General reserves
  - Profit and loss a/c
  - Securities premium ac
  - Dividend equalization reserve

Rule 11 of Companies (Meetings of Board and its powers) Rules, 2014

- Where a loan / guarantee / security has been provided by a company to its wholly owned subsidiary company or a joint venture company, then it shall be exempted.
- Provided that the company shall disclose the details in its financial statements.
- No listed company shall take any inter-corporate loan or deposits, in excess of the limits specified unless it complies with special limits prescribed by Securities and Exchange Board of India.

- ~~**Special Resolution:-**Where the giving of any loan or guarantee or providing any security or the acquisition exceeds the limits specified above, prior approval by means of a special resolution passed at a general meeting shall be necessary.~~

  *Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under sub-section (*2*), no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting:

  Provided that where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of this sub-section shall not apply:

  Provided further that the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement as provided under sub-section (*4*).".

~~**Exceptions / Exemptions:-**Nothing contained in this section, except sub-section (*1*), shall apply—~~
~~(*a*) to a loan made, guarantee given or security provided by a banking company or an insurance company or a housing finance company in the ordinary course of its business or a company engaged in the business of financing of companies or of providing infrastructural facilities;~~

~~(*b*) to any acquisition—~~
~~(*i*) made by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities:~~
~~Provided that exemption to non-banking financial company shall be in respect of its investment and lending activities;~~

~~(*ii*) made by a company whose principal business is the acquisition of securities;~~

~~(*iii*) of shares allotted in pursuance of clause (*a*) of sub-section (*1*) of section 62.~~

*"(*11*) Nothing contained in this section, except sub-section (*1*), shall apply—
(*a*) to any loan made, any guarantee given or any security provided or any investment made by a banking company, or an insurance company, or a housing finance company in the ordinary course of its

business, or a company established with the object of and engaged in the business of financing industrial enterprises, or of providing infrastructural facilities;

(*b*) to any investment—
(*i*) made by an investment company;
(*ii*) made in shares allotted in pursuance of clause (*a*) of sub-section (*1*) of section 62 or in shares allotted in pursuance of rights issues made by a body corporate;
(*iii*) made, in respect of investment or lending activities, by a non-banking financial company registered under Chapter III-B of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities.";

(iv) in the Explanation, in clause (a), after the words "other securities" the following shall be inserted, namely:—
"and a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent. of its total assets, or if its income derived from investment business constitutes not less than fifty per cent. as a proportion of its gross income.".

Appointment of Managing Director, Whole time Director or Manager (Sec 196)

- **Disqualifications [Section 196(3)]:-**No company shall appoint or continue the employment of any person as managing director, whole-time director or manager who:
  - is below the age of twenty-one years or has attained the age of seventy years.

    But appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person;

    **"Provided further that where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.";*

***Amended as per Companies (Amendment) Act, 2017**

  - is an undischarged insolvent or has at any time been adjudged as an insolvent;
  - has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or
  - has at any time been convicted by a court of an offence and sentenced for a period of ***more than six months.***

Managerial Remuneration (Sec 197)

- **Maximum remuneration [Sec 197(1)]:-**Total Managerial Remuneration Payable by a Public Company, to its Directors, Including MANAGING DIRECTOR/WHOLE TIME DIRECTOR/Manager can be Maximum 11% of Net Profits for that Financial year.

❖ **Remuneration exceeding 11% [Sec 197(1)]:-**The company ~~may, *with Central Government's~~ approval, authorize payment exceeding eleven per cent of the net profits of the company, subject to the provisions of Schedule V.

❖ **Maximum remuneration to MANAGING DIRECTOR, WHOLE TIME DIRECTOR or Manager [Sec 197(1)]:-**

MANAGING DIRECTOR or WHOLE TIME DIRECTOR or Manager (1)	**Max 5 % of NP**
MANAGING DIRECTOR or WHOLE TIME DIRECTOR or Manager (more than 1)	**Max 10 % of NP**

Any higher percentage will require approval of company in general Meeting *by a special resolution

**"Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.";*

❖ **Maximum remuneration to Non MP (who are not MANAGING DIRECTOR, WHOLE TIME DIRECTOR or Manager) [Sec 197(1)]:-**

If there is any MANAGING DIRECTOR or WHOLE TIME DIRECTOR or MANAGER	**Max 1 % of NP**
No MANAGING DIRECTOR or WHOLE TIME DIRECTOR or MANAGER	**Max 3 % of NP**

Any higher percentage will require approval of company in general Meeting *by a special resolution

**"Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.";*

❖ **Remuneration to be exclusive of sitting fees [Sec 197(2)]:-**Sitting fees will not be included in the Remuneration mentioned under sub-section 1.

❖ **Remuneration on case of no profits or inadequate profits [Sec 197(3)]**:-If, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole-time director or manager, by way of remuneration any sum, except with the previous approval of the Central Government.
~~*No approval of Central Government will be required if the provisions of Schedule V are complied with by the company.*~~

❖ ~~**Refund of excess amount to the company [Sec 197(9)]:-**If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company.~~

*If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company.

- **No waiver by company [Sec 197(10)]:-**The company shall not waive the recovery of any sum refund~~able unless *permitted by the Central~~ Government approved by the company by special resolution within two years from the date the sum becomes refundable

  **"Provided that where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver.";*

- **Increase in remuneration to be in accordance with schedule V or approval of CG [Sec 197(11)]:-:-**
  - In case of no profits or inadequate profits, if schedule V is applicable, then, no provision which has the effect of increasing the remuneration of any director shall have any effect unless:-
    - Such increase is in accordance with the conditions specified in schedule V
    - ~~*The approval of the central government is obtained, if such increase is not in accordance with the conditions specified in Sched~~ule V.

  - It is immaterial as to whether the provision which has the effect of increasing the remuneration of any director, is contained in:-
    - The company's memorandum or articles;
    - Any agreement entered into by the company;
    - Any resolution passed by the company in the general meeting or by the Board

- **Disclosure by listed companies [Sec 197(12)]:-**Every listed company shall disclose in the Board's report , the ratio of the remuneration of each director to the median employee's remuneration and such other details as may be prescribed.

- **Insurance Premium will not be treated as remuneration [Sec 197(13)]:-**Where any insurance is taken by company on behalf of Managing director/Whole time Director/Manager/Company Secretary/Chief Financial Officer etc. for indemnifying them against liability in respect of any negligence, default etc. for which they may be guilty in relation to the company, the premium paid on such insurance shall not be treated as part of the remuneration payable. But if such person is proved to be guilty, the premium paid on such insurance shall be treated as part of the remuneration.

- **Penalty [Sec 197(15)]:-**If any person contravenes the provisions of this section, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

- **Repoting by Auditor [Sec 197(16)]**:-The auditor of the company shall, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed.

- **Transitional Period [Sec 197(17)]:-**On and from the commencement of the Companies (Amendment) Act, 2017, any application made to the Central Government under the provisions of this section [as it stood before such commencement], which is pending with that Government shall abate, and the company shall, within one year of such commencement, obtain the approval in accordance with the provisions of this section, as so amended.".

Calculation of Profits (Sec 198)

In computing the net profits of a company in any financial year for the purpose of section 197:

- credit **SHALL** be given for bounties/subsidies which are received from Government or any public authority.
- credit **SHALL NOT** be given for:

  profits, by way of premium on shares or debentures of the company, which are issued or sold by the company, *unless the company is an investment company as referred to in clause (*a*) of the *Explanation* to section 186.

  × profits on sales by the company of forfeited shares;

  × profits of a capital nature including profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof;

  × profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets.

  × any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.

  × *any amount representing unrealised gains, notional gains or revaluation of assets.”.

Central Government or company to fix limit with regard to Remuneration (Sec 200)

Notwithstanding anything contained in this Chapter, ~~the *Central Government~~ or a company may, while according its approval under section 196, to any appointment or to any remuneration under section 197 in respect of cases where the company has inadequate or no profits, fix the remuneration within the limits specified in this Act, at such amount or percentage of profits of the company, as it may deem fit and while fixing the remuneration, *~~the Central Government~~ or the company shall have regard to—

(a) the financial position of the company;

(b) the remuneration or commission drawn by the individual concerned in any other capacity;

(c) the remuneration or commission drawn by him from any other company;

(d) professional qualifications and experience of the individual concerned;

(e) such other matters as may be prescribed.

***Amended as per Companies (Amendment) Act, 2017**

Powers of, and procedure in relation to, certain applications (Sec 201)

(1) Every application made to the Central Government under ~~this Chapter~~ *Section 196 shall be in such form as may be prescribed.

(2)
(a) Before any application is made by a company to the Central Government under ~~any of the sections aforesaid~~ *Section 196 there shall be issued by or on behalf of the company a general notice to the members thereof, indicating the nature of the application proposed to be made.

(b) Such notice shall be published at least once in a newspaper in the principal language of the district in which the registered office of the company is situate and circulating in that district, and at least once in English in an English newspaper circulating in that district.

(c) The copies of the notices, together with a certificate by the company as to the due publication thereof, shall be attached to the application.

Investigation of ownership of Company (Sec 216)

- **CG may order investigation determine ownership or financial interest:-**Where it appears to the Central Government that there is a reason so to do, it may appoint one or more inspectors to investigate and report on matters relating to the company, and its membership for the purpose of determining the true persons:-
  - who are or have been financially interested in the success or failure, whether real or apparent, of the company; or
  - who are or have been able to control or to materially influence the policy of the company.
  - #who have or had beneficial interest in shares of a company or who are or have been beneficial owners or significant beneficial owner of a company.".

Companies capable of being registered (Sec 366)

- **Inclusion in Company:-**For the purposes of this Part, the word "company" includes any partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law for the time being in force which applies for registration under this Part.

- **Registration as Unlimited Company:-**With the exceptions and subject to the provisions contained in this section, any company formed, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act or of any other law for the time being in force or being otherwise duly constituted according to law, and consisting of ~~seven or more~~ members *two or more members may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee, in such manner as may be prescribed and the registration shall not be invalid by reason only that it has taken place with a view to the company's being wound up:

  Provided that—
  - *a company registered under the Indian Companies Act, 1882 or under the Indian Companies Act, 1913 or the Companies Act, 1956, shall not register in pursuance of this section;*
  - *a company having the liability of its members limited by any Act of Parliament other than this Act or by any other law for the time being inforce, shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;*

- *a company shall be registered in pursuance of this section as a company limited by shares only if it has a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in the one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons;*
- *a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person, or where proxies are allowed, by proxy, at a general meeting summoned for the purpose;*
- *where a company not having the liability of its members limited by any Act of Parliament or any other law for the time being in force is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person, or where proxies are allowed, by proxy, at the meeting;*
- *where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.*
- *a company with less than seven members shall register as a private company.”.

Obligation of companies registered under this part (Sec 374)

- Every company which is seeking registration under this Part shall,—
  - ensure that secured creditors of the company, prior to its registration under this Part, have either consented to or have given their no objection to company's registration under this Part;
  - publish in a newspaper, advertisement one in English and one in vernacular language in such form as may be prescribed giving notice about registration under this Part, seeking objections and address them suitably;
  - file an affidavit, duly notarised, from all the members or partners to provide that in the event of registration under this Part, necessary documents or papers shall be submitted to the registering or other authority with which the company was earlier registered, for its dissolution as partnership firm, limited liability partnership, cooperative society, society or any other business entity, as the case may be.
  - comply with such other conditions as may be prescribed.

    **“Provided that upon registration as a company under this Part a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008 shall be deemed to have been dissolved under that Act without any further act or deed.”.*

Fee for filing etc. (Sec 403)

- **Submission of document along with fees:-**Any document, required to be submitted, filed, registered or recorded, or any fact or information required or authorised to be registered under this Act, shall be submitted, filed, registered or recorded within the time specified in the relevant provision on payment of such fee as may be prescribed:

**"Provided that where any document, fact or information required to be submitted, filed, registered or recorded, as the case may be, under section 92 or 137 is not submited, filed, registered or recorded, as the case may be, within the period provided in those sections, without prejudice to any other legal action or liability under this Act, it may be submitted, filed, registered or recorded, as the case may be, after expiry of the period so provided in those sections, on payment of such additional fee as may be prescribed, which shall not be less than one hundred rupees per day and different amounts may be prescribed for different classes of companies :*

**Provided further that where the document, fact or information,as the case may be, in cases other than referred to in the first proviso, is not submitted, filed, registered or recorded, as the case may be, within the period provided in the relevant section,it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded as the case may be, on payment of such additional fee as may be prescribed and different fees may be prescribed for different classes of companies:*

**Provided also that where there is default on two or more occasions in submitting, filing, registering or recording of the document, fact or information, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded, as the case may be, on payment of a*
higher additional fee, as may be prescribed and which shall not be lesser than twice the additional fee provided under the first or the second proviso as applicable.";

- ***Penalty in case of default:-** Where a company fails or commits any default to submit, file, register or record any document, fact or information under sub-section (*1*) before the expiry of the period specified in the relevant section, the company and the officers of the company who are in default, shall, without prejudice to the liability for the payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default.

Establishment of Special Courts (Sec 435)

(1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

(2) A Special Court shall consist of—
- a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and
- a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences,

who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

Application of Code to Proceedings before Special Courts (Sec 438)

Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court sha~~ll be *deemed to be a Court of~~ Session deemed to be a Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

Offences to be non-Cognizable (Sec 439)

- **Non-Cognizable Offence:-**Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in sub-section (*6*) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.

- **Court will take regard of written complaints:-**No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder *or a Member of the company, or of a person authorised by the Central Government in that behalf:

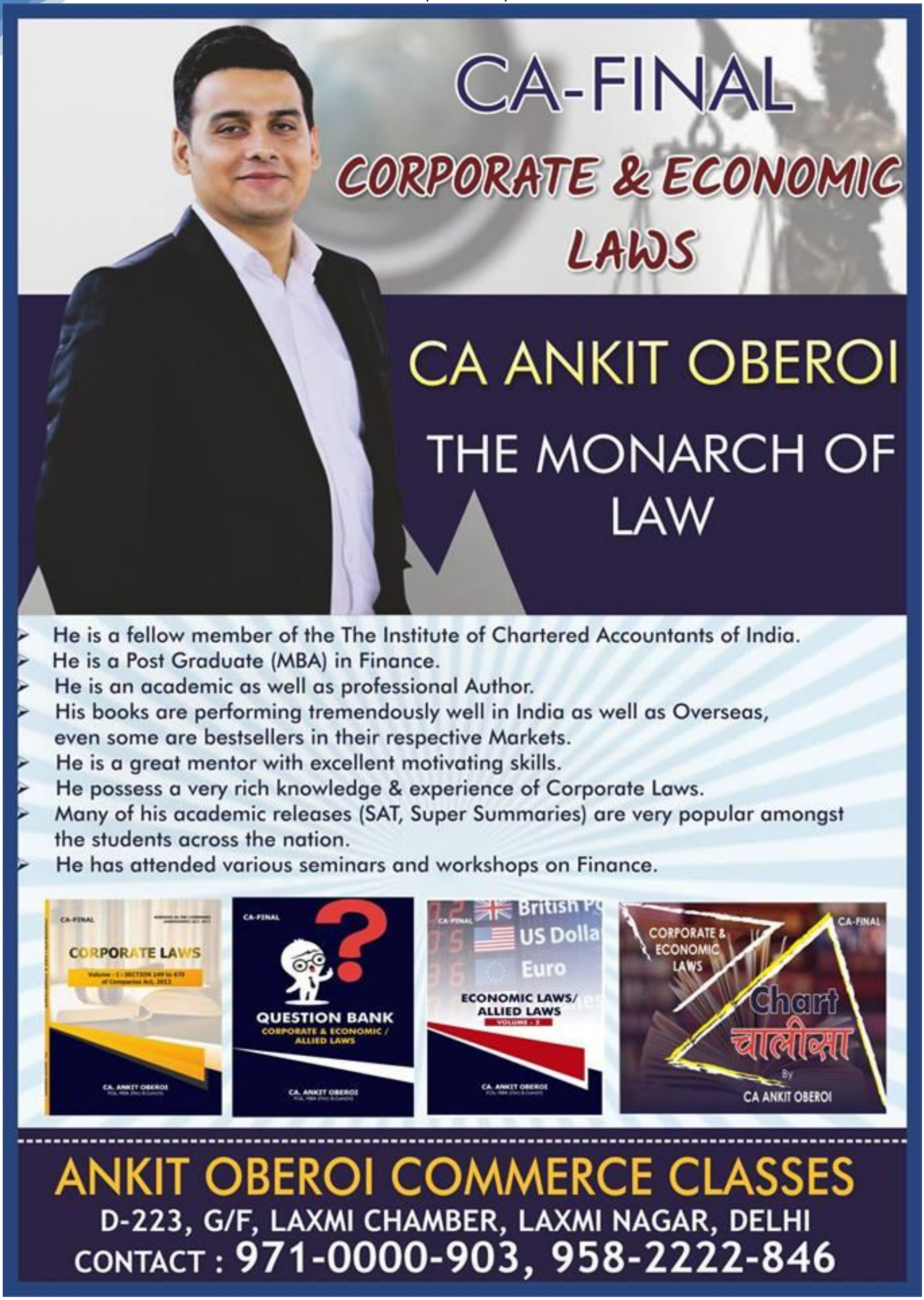
Transitional Provisions (Sec 440)

Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be tried by a *~~Court of Session~~ Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code to transfer any case or class of cases taken cognizance ~~by a *Court of Session~~ Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be under this section.

IBC, 2016

For Amendments in IBC, 2016, Please Refer my videos posted in my Youtube Channel as Amendments introduced in IBC, 2016 will be complex for the students to co-relate with the Main provisions.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CORPORATE & ECONOMIC LAWS
CA ANKIT OBEROI
THE MONARCH OF LAW
He is a fellow member of the The Institute of Chartered Accountants of India.
He is a Post Graduate (MBA) in Finance.
He is an academic as well as professional Author.
His books are performing tremendously well in India as well as Overseas, even some are bestsellers in their respective Markets.
He is a great mentor with excellent motivating skills.
He possess a very rich knowledge & experience of Corporate Laws.
Many of his academic releases (SAT, Super Summaries) are very popular amongst the students across the nation.
He has attended various seminars and workshops on Finance.
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ANKIT OBEROI COMMERCE CLASSES
D-223, G/F, LAXMI CHAMBER, LAXMI NAGAR, DELHI
CONTACT : 971-0000-903, 958-2222-846