

Companies Formation & Conversion

Chapter Coverage

Basic Concepts related to Company	Given under Chapter I of Companies Act, 2013: Preliminary of Companies Act
Incorporation of Companies	Given under Chapter II of Companies Act, 2013: Incorporation of company & matters incidental thereto (Containing sections 3-22) of Companies Act
Conversion of LLP to Pvt /Public co. and vice versa	Given under section 366 of Companies Act, 2013 and Companies (Authorised to Registered) Rules, 2014.
Foreign Companies	Given under Chapter XXII of Companies Act, 2013: Companies Incorporated Outside India discussed later.

Meaning of Company

- ✓ A company is a voluntary association of persons registered with the Registrar of Companies (ROC) to achieve some common objective.
- ✓ According to Section 2(20), 'Company' means a company incorporated under Companies Act, 2013 or under any of the previous laws relating to companies.



Basics of Companies Act

- ✓ The Companies Act, 2013 contains 470 sections and seven schedules.
- ✓ The entire Act has been divided into 29 chapters.
- ✓ A substantial part of this Act is in the form of Companies Rules.
- ✓ The Companies Act, 2013 is an Act to consolidate and amend the Law relating to Companies. This was necessary for expansion and growth of economy of our Country. It received the assent of President on 29th August 2013 and was notified on 30th August 2013.

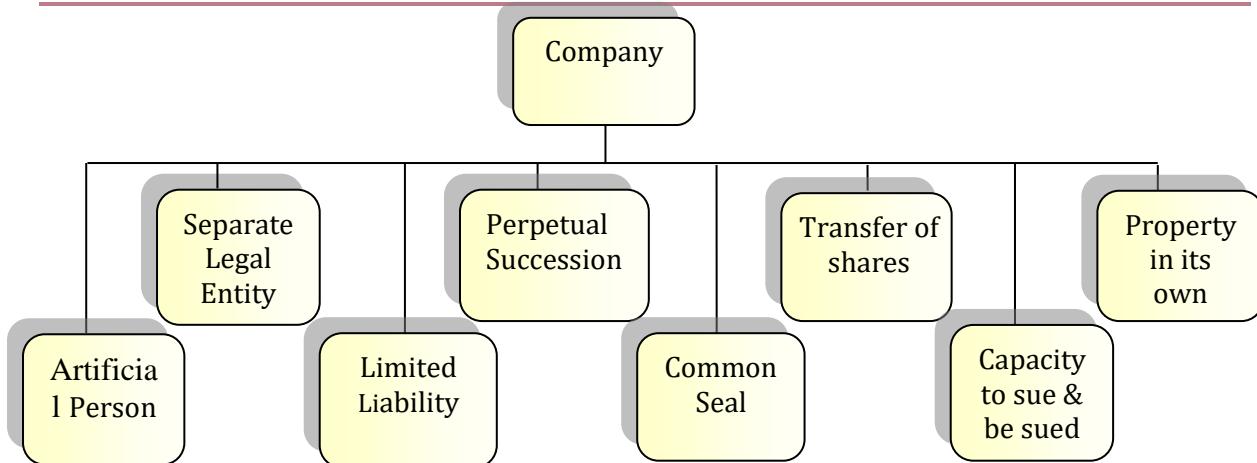
Administration

The Companies Act, 2013 is administered by the Central Government through the Ministry of Corporate Affairs (MCA) and the Offices of Registrar of Companies, Official Liquidators, Public Trustee, Director of Inspection, National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT), etc. The Registrar of Companies (ROC) controls the task of incorporation of new companies and the administration of running companies.

Applicability and Extent of Companies Act

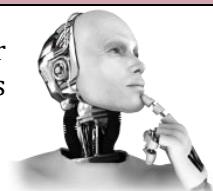
- ✓ The Companies Act, 2013 extends to the whole of India.
- ✓ The provisions of the Act shall apply to:-
 - Companies incorporated under this Act or under any previous company law.
 - Insurance companies (except where the provisions of the said Act are inconsistent with the provisions of the Insurance Act, 1938 or the IRDA Act, 1999)
 - Banking companies (except where the provisions of the said Act are inconsistent with the provisions of the Banking Regulation Act, 1949)
 - Companies engaged in the generation or supply of electricity (except where the provisions of the above Act are inconsistent with the provisions of the Electricity Act, 2003)
 - Any other company governed by any special Act for the time being in force.
 - Such body corporate which are incorporated by any Act for time being in force, and as the Central Government may by notification specify in this behalf.

Characteristics of Company



Artificial Person

- ✓ A company comes into existence by the operation of Law. After Incorporation, a company is granted certain rights and obligations as that of a person. Thus, Company is an artificial person.



Separate Legal Entity

- ✓ A registered company is regarded as legal entity separate from its members.
- ✓ A company can own property, have bank account, raise loans, incur liabilities and enter into contracts.
- ✓ Even members can contract with company, acquire right against it or incur liability to it.



Salomon vs Salomon and Co. Ltd.

Salomon had a prosperous business of leather and boot. He formed a limited liability company.

The shareholders of the company are:

- Salomon himself,
- His wife,
- His daughter and his four sons.

All shareholders were holding 1 share each and rest all shares were held by Salomon. He sold his business to the company for £38,782/- and the company had issued shares in favour of Salomon as purchase consideration.

The purchase consideration was as follows:

Shares - £20,000

Debentures - £10,000

And Balance Paid in Cash

Salomon was the MD and two of his sons were other directors of the Company. After one year, the company ran into financial difficulties and the debenture holders appointed a receiver and the company went into liquidation.

The assets of the company were not even sufficient to discharge the secured debentures which were held by the Salomon and nothing was left for unsecured creditors. The unsecured creditors claimed that the Company was a mere agent for Salomon and they were entitled to the payment of their unsecured debts in priority to the debenture holders.

They also pleaded that Salomon as primary beneficiary, was ultimately responsible for all the debts.

Judgement:

The said company comes into existence after its registration under the existing law.

The company had been validly constituted as per the requirement of the existing law like 7 members were required to form a public company.

Therefore, the company has its own existence or personality separate and distinct from its members and, as a result, a shareholder cannot be held liable for the acts of a company.

Limited Liability

A Company may be limited either by shares or by guarantee

Limited By shares

The liability of the members shall be limited to the extent of unpaid money on shares held by him.

Limited by guarantee

- ✓ Limited by Guarantee without share Capital- Member's liability is limited to amount guaranteed by him in the memorandum.
- ✓ Limited by Guarantee with share capital- Member's liability is limited to aggregate of guarantee amount and amount unpaid on shares.

Perpetual Succession



- ✓ An incorporated company never dies except when it is wound up as per law. A company, being a separate legal entity is unaffected by death or departure of any member or the change of members.
- ✓ "Members may change or die, but the company goes on forever."

Common Seal

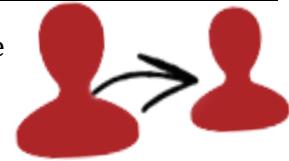
Companies Formation and Conversion

1.4

- ✓ Common seal is the official signature of a company, which is affixed by the officers and employees of the company on its every document.
- ✓ As per the Companies (Amendment) Act, 2015, the requirement of having a common seal has been made optional.

Transferability of Shares

- ✓ The capital of a company is divided into parts called shares. The shares are said to be movable property and subject to certain conditions, freely transferable for that.
- ✓ It may be noted that this right of shareholder is restricted in the case of a private company.



Separate Property

No member can claim himself to be owner of the company's properties either during its existence or in its winding up. A member does not even have an insurable interest in the property of the company.



Capacity to Sue and be Sued

A company, being a body corporate, can sue and be sued in its own name.



Corporate Veil

Meaning

A company is in law, distinct from its members. This principle is called as veil of Incorporation. The term Corporate Veil refers to the concept that members of a company are shielded from liability connected to the company's actions. If the company incurs any debts or contravenes any laws, the corporate veil concept implies that members should not be liable for those errors. In other words, they enjoy corporate insulation. Thus, the shareholders are protected from the acts of the company.



Lifting or Piercing the Corporate Veil

When the law disregards the corporate entity and instead pays regard to the individual members behind the legal façade, it is known as lifting the veil of corporate personality.

Under Judicial Interpretation

Protection of Revenue

In certain matters concerning the law of taxes, duties and stamps particularly where question of the controlling interest is in issue



Re. Dinshaw Maneckjee Petit

Determining enemy character of Company

In the law relating to trading with the enemy where the test of control is adopted.



Daimler Co. Ltd vs Continental Tyre & Rubber Co. Ltd.

Where companies form other companies as their subsidiaries to act as their agent. The application of the doctrine may operate in favour of such companies depending upon the facts of a particular case.

Suppose, a company acquires a partnership concern and registers it as a company, which becomes subsidiary of the acquiring company. In an action for compulsory acquisition of the business premises of the subsidiary, it was held that the parent company (which through itself and nominees held all the shares) was entitled to compensation, maintain action for the same



Smith, Stone and Knight Ltd. vs. Lord Mayor, etc., of Birmingham

Lifting of corporate veil could be done in the case of transfer of shares of company which actually was sale of land which the original allottee (company) was prohibited to do so.



Estate Officer UT Chandigarh v. Esys Information Technologies Limited

Company formed for fraud/Improper Conduct

Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent law, to defraud creditors or to avoid legal obligations.



Jones vs Lipman

Company avoiding legal obligations or welfare legislations

Where it was found that the sole purpose for the formation of the company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction



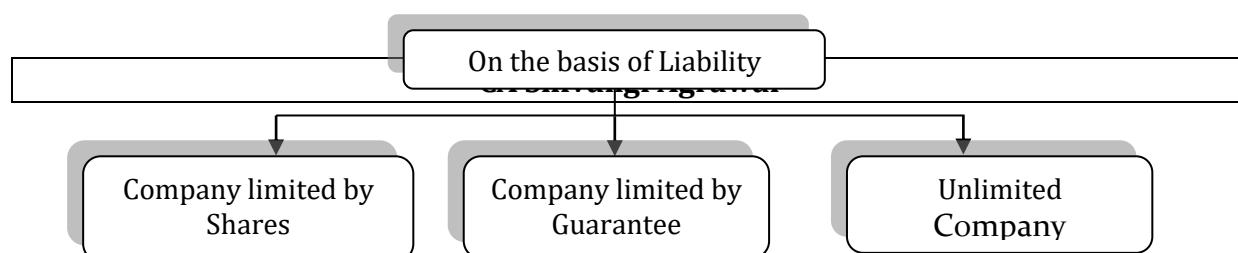
Workmen of Associated Rubber Industry Ltd vs Associated Rubber Industry Ltd

Classification of Companies

On the Basis of Incorporation

- ✓ **Registered Company:** As defined u/s 2(20)
- ✓ **Statutory Company:** A company constituted by special Act of Parliament or State Legislature.

On the Basis of Liability



✓ **Companies Limited by Shares**

A company limited by shares is a registered company having the liability of its members limited to the amount, if any, unpaid on the shares respectively held by them.

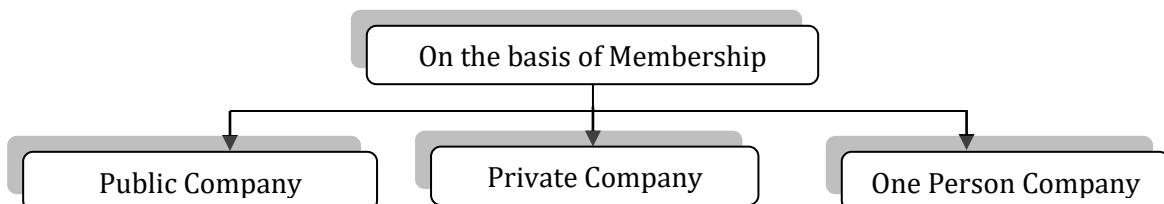
✓ **Companies Limited by Guarantee**

A company limited by guarantee or a “guarantee company” is a company having the liability of its members limited to such an amount as the members may respectively thereby undertake.

✓ **Unlimited Companies**

In the case of an unlimited company, there is no limit on the liability of its members. Thus, the maximum liability of the members of such a company could extend to their entire personal property to meet the debts and obligations of the company.

On the Basis of Members



Private Company [Section 2(68)]

Private Company means a company having a minimum paid-up share capital as may be prescribed and which by its articles:

- ✓ Restricts the right to transfer its shares;
- ✓ Except in case of One Person Company, limits the number of its members to 200;
- ✓ Prohibit any invitation to the public to subscribe for any securities of the company.

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

Provided further that—

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

Relevant Points of Private Company

- ✓ No minimum paid-up capital requirement.
- ✓ Minimum number of members – 2 (except if private company is OPC, where it will be 1).

- ✓ Maximum number of members – 200, excluding present employee-cum-members and erstwhile employee-cum-members.
- ✓ Right to transfer shares restricted.
- ✓ Prohibition on invitation to subscribe to securities of the company.
- ✓ Small company is a private company.
- ✓ OPC can be formed only as a private company.
- ✓ Private company need to have minimum two directors.

Public Company [Section 2(71)]

Public company means a company which:

- ✓ Is not a private company
- ✓ Has a minimum paid-up share capital as may be prescribed

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

Relevant Points of Public Company

- ✓ is not a private company (Articles do not have the restricting clauses).
- ✓ Shares freely transferable.
- ✓ No minimum paid up capital requirement.
- ✓ Minimum number of members – 7.
- ✓ Maximum numbers of members – No limit.
- ✓ Subsidiary of a public company is deemed to be a public company.
- ✓ Further, a private company which is a subsidiary of a public company shall also be deemed to be a public company for the purposes of this Act, even where such subsidiary company continues to be a private company in its articles.
- ✓ Minimum Number of directors- 3

One Person Company (OPC) [Section 2(62)]

One Person Company' means a company which has only one person as a member.

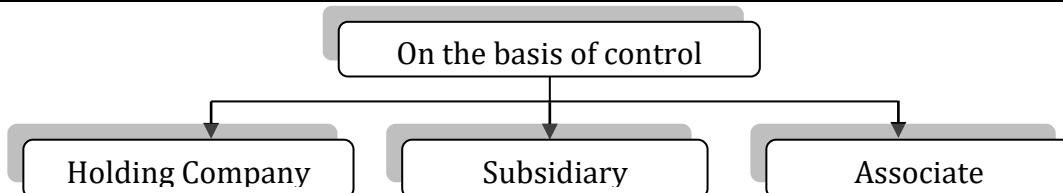
It is basically a private company with some unique features.

Relevant Points of OPC

- ✓ Only one person as member.
- ✓ Minimum paid up capital – no limit prescribed.
- ✓ The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
- ✓ The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.
- ✓ Such other person may be given the right to withdraw his consent.
- ✓ The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.
- ✓ Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
- ✓ Only a natural person who is an Indian citizen whether resident in India or not (person who has stayed in India for a period of not less than 120 days during the immediately preceding Financial Year is treated as Resident)-
 - shall be eligible to incorporate a OPC;
 - shall be a nominee for the sole member of a OPC.
- ✓ No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.

- ✓ No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
- ✓ Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public company.
- ✓ Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate.
- ✓ If One Person Company or any officer of such company contravenes the provisions, they shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

On the Basis of Control



Holding company [Section 2(46)]

In relation to one or more other companies, means a company of which such companies are subsidiary companies.

Subsidiary Company [Section 2(87)]

In relation to any other company (that is to say the holding company), means a company in which the holding company:

- ✓ Controls the composition of the Board of Director; or
- ✓ Exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Examples:

- ✓ A will be subsidiary of B, if B controls the composition of the Board of Directors of A, i.e., if B can, without the consent or approval of any other person, appoint or remove a majority of directors of A.
- ✓ A will be subsidiary of B, if B holds more than 50% of the share capital of A.
- ✓ B is a subsidiary of A and C is a subsidiary of B. In such a case, C will be the subsidiary of A. In the like manner, if D is a subsidiary of C, D will be subsidiary of B as well as of A and so on.

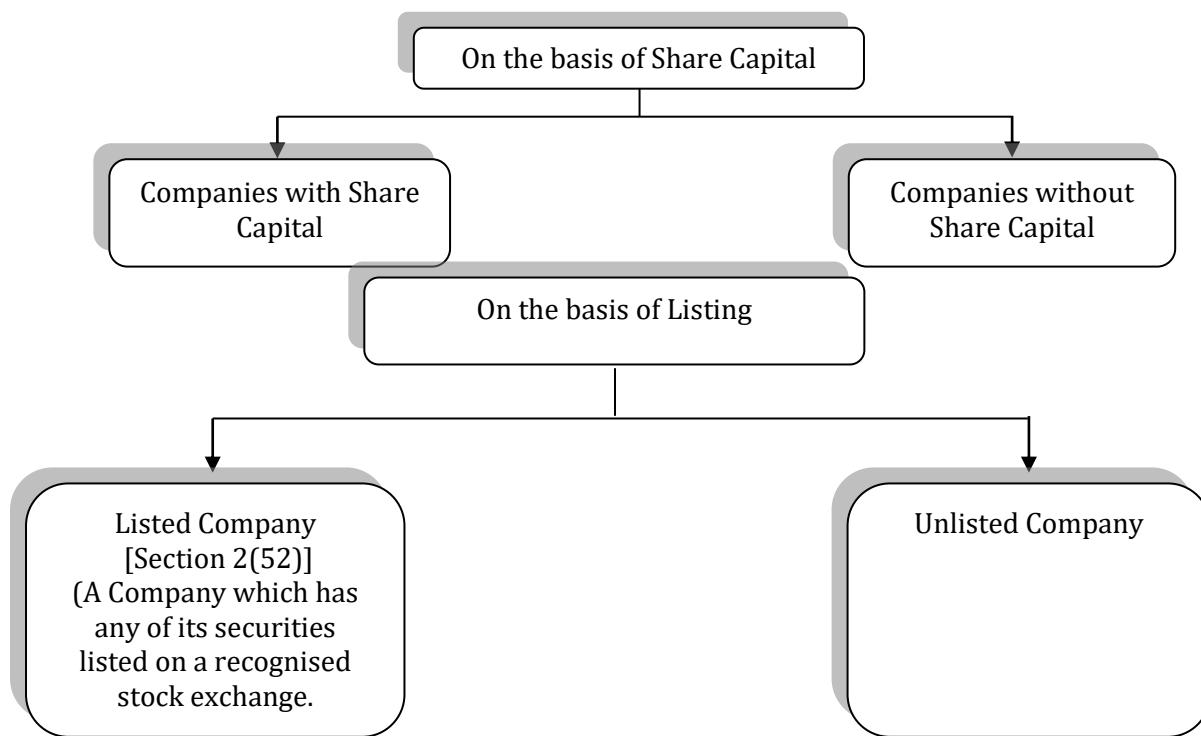
No company, other than following companies-

- ✓ Banking Company
- ✓ NBFC
- ✓ Insurance Company
- ✓ Government Company

shall have more than two layers of subsidiaries.

Associate Company [Section 2(6)]

In relation to another company, means a company in which that other company has significant influence but which is not a subsidiary company of the company having such influence and includes a Joint venture company.



Such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies

Rule 2A: Companies not to be considered as Listed Companies

(a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their

- (i)** non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
- (ii)** non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or
- (iii)** both categories of (i) and (ii) above.

(b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008

(c) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act."

Other Types of Companies**Small Company [Section 2(85)]**

Small company means a company, other than a public company.

- ✓ Paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

- ✓ Turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Provided that nothing in this clause shall apply to-

- ✓ A holding company or a subsidiary company;
- ✓ A company registered under section 8; or
- ✓ A company or body corporate governed by any special Act.

It is basically a private company meeting prescribed threshold.

Rules: Prescribed Amount

- ✓ Paid up share capital not to exceed 2 crore rupees
- ✓ Turnover not to exceed 20 crore rupees

Some of the advantages enjoyed by the small companies are:

- a) holding of two board meetings instead of four – one each in the first and second half years and the gap between the two meeting should not be more than 90 days. [section 173(5)]
- b) Not required to give cash flow statements with the financial statements [section 2(40)]

Section 8 Company

- ✓ It deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.
- ✓ Such company intends to apply its profit in promoting its objects and prohibiting the payment of any dividend to its members.

Nidhi Companies [Section 406]

"Nidhi" or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case may be.

Public financial institutions [Section 2(72)]

The following institutions are to be regarded as public financial institutions.

- ✓ The Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956;
- ✓ The Infrastructure Development Finance Company Limited.
- ✓ Specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;
- ✓ Institutions notified by the Central Government under section 4A(2) of the Companies Act, 1956 so repealed under section 465 of this Act;
- ✓ Such other institution as may be notified by the central Government in consultation with the Reserve Bank of India;

Government Companies [Section 2(45)]

'Government company' means any company in which not less than 51% of the paid-up share capital is held by

- ✓ The Central Government, or
- ✓ Any State Government or Governments,
- ✓ Partly by the Central Government and partly by one or more State Government, and includes a company which is a subsidiary company of such a Government company.

Explanation: "paid up share capital" shall be construed as "total voting power", where shares with differential voting rights have been issued

Dormant Company [Section 455]

The Act states that a company can be classified as dormant when it is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction.

Such a company or an inactive one may apply to the ROC in such manner as may be prescribed for obtaining the status of a dormant company.

"Inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns.

"Significant accounting transaction" means any transaction other than—

- ✓ payment of fees by a company to the Registrar;
- ✓ payments made by it to fulfil the requirements of this Act or any other law;
- ✓ allotment of shares to fulfil the requirements of this Act; and
- ✓ payments for maintenance of its office and records.

Joint Venture Company: The term "joint venture" has also been defined to mean "joint arrangement where the parties who have joint control of the arrangements have rights to the net assets or the arrangement.

Illegal Association**When Registration required?**

According to section 464, Any association consisting of not more than 100 persons (Currently, limit is 50 persons), shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain unless it is registered as a company under this Act or is formed under any other law for the time being in force.

Non- Applicability

Above stated provision shall not apply to –

- ✓ a Hindu undivided family carrying on any business; or
- ✓ An association or partnership, if it is formed by professionals who are governed by special Acts.

Formation of Company**Section 3**

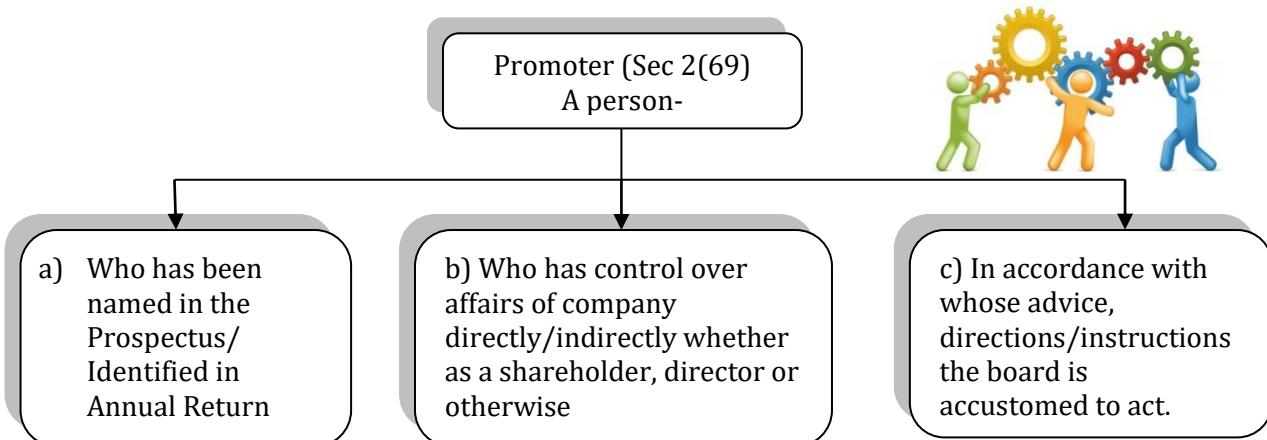
A company may be formed for any lawful purpose by—

- ✓ seven or more persons, where the company to be formed is to be a public company;
- ✓ two or more persons, where the company to be formed is to be a private company; or
- ✓ one person, where the company to be formed is to be One Person Company that is to say, a private company,

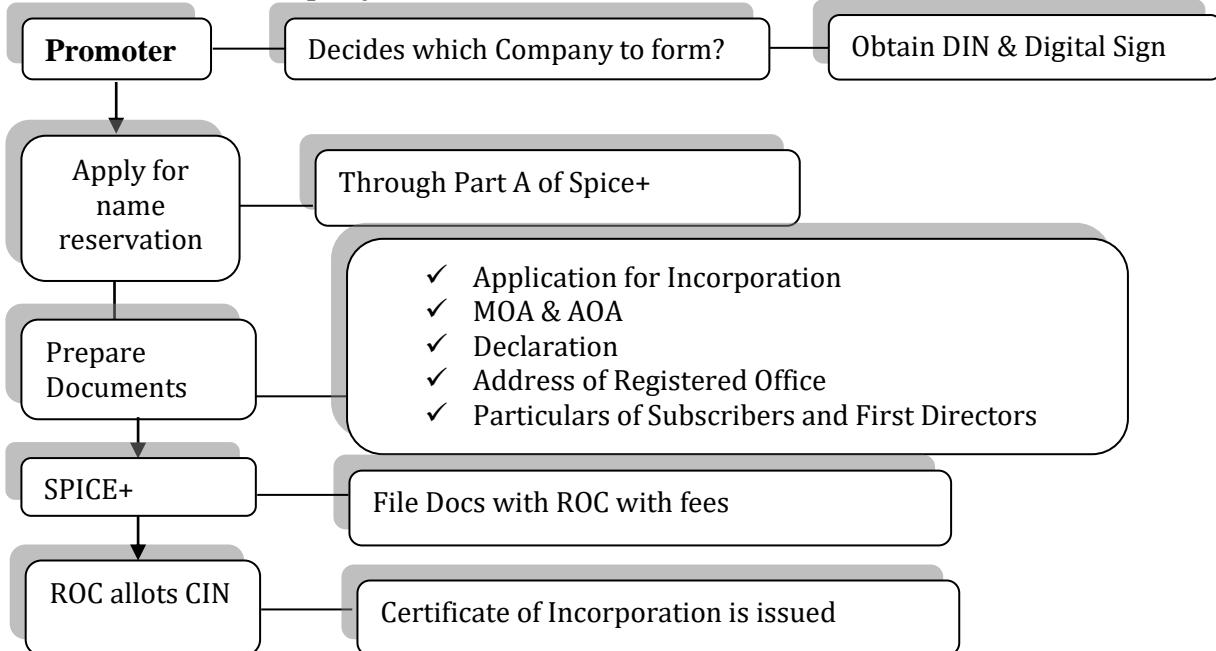
by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration

**Promoters**

Promotion refers to the preliminary steps undertaken by Promoters to bring a company into existence



Formation of a Company- Overview



Steps of Incorporation

Step 1: Filing of the documents and information with the registrar

For the registration of the company following documents and information are required to be filed with the registrar within whose jurisdiction the registered office of the company is proposed to be situated

- ✓ the memorandum and articles of the company duly signed by all the subscribers to the memorandum.
- ✓ a declaration by person who is engaged in the formation of the company (an advocate, a chartered accountant, cost accountant or company secretary in practice), and by a person named in the articles (director, manager or secretary of the company), that all the requirements of this Act and the rules made there under in respect of registration and matters precedent or incidental thereto have been complied with.
- ✓ a declaration from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles stating that-
 - he is not convicted of any offence in connection with the promotion, formation or management of any company, or

- he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years,
 - and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;
- ✓ the address for correspondence till its registered office is established
 - ✓ the particulars (names, including surnames or family names, residential address, nationality) of every subscriber to the memorandum along with proof of identity, and in the case of a subscriber being a body corporate, such particulars as may be prescribed.
 - ✓ the particulars (names, including surnames or family names, the Director Identification Number, residential address, nationality) of the persons mentioned in the articles as the subscribers to the Memorandum and such other particulars including proof of identity as may be prescribed; and
 - ✓ the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.

Step 2: Issue of certificate of incorporation on registration

The Registrar on the basis of documents and information filed, shall register all the documents and information in the register and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.

Step 3: Allotment of Corporate Identity Number (CIN)

On and from the date mentioned in the certificate of incorporation, the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate.

Maintenance of Copies of all Documents and Information

The company shall maintain and preserve at its registered office copies of all documents and information as originally filed, till its dissolution under this Act.

Furnishing of False or Incorrect Information or Suppression of Material Fact at the time of Incorporation

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

Company Already Incorporated by Furnishing Any False or Incorrect Information or Representation or by Suppressing any Material Fact

Where, at any time after the incorporation of a company, it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action, the promoters, the persons named as the first directors of the company and the persons making declaration under this section shall each be liable for action for fraud under section 447.

Order of the Tribunal

Where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants,—

- ✓ pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
- ✓ direct that liability of the members shall be unlimited; or
- ✓ direct removal of the name of the company from the register of companies; or
- ✓ pass an order for the winding up of the company; or
- ✓ pass such other orders as it may deem fit:

Provided that before making any order,—

- ✓ the company shall be given a reasonable opportunity of being heard in the matter; and
- ✓ the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

Effect of Registration**Section 9**

According to section 9, from the date of incorporation (mentioned in the certificate of incorporation), the subscribers to the memorandum and all other persons, who may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum.

Such a registered company shall be capable of exercising all the functions of an incorporated company under this Act and having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.

Members Severally Liable In Certain Cases**Section 3A**

If at any time the number of members of a company is reduced,

- ✓ in the case of a public company, below seven,
- ✓ in the case of a private company, below two,
- ✓ and the company carries on business for more than six months while the number of members is so reduced,

every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time and may be severally sued therefore.

Commencement of Business

Section 10A

This section is read with Rule 23A.

A company incorporated after the commencement of the Companies (Amendment) Act, 2019 [After 2.11.2018] and having a share capital shall not commence any business or exercise any borrowing powers unless—

- ✓ a declaration (Form 20A) is filed by a director within a period of 180 days of the date of incorporation of the company in such form and verified by CA/CS/Cost Accountant in practice with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and
- ✓ The company has filed with the Registrar a verification of its registered office as provided in section 12.

Penalty

Particulars	Person Liable	Punishment
Non-compliance of provisions of this section	Company	Penalty 50,000
	Every officer in default	Penalty one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees
No declaration has been filed with the Registrar within a period of one hundred and eighty days of the date of incorporation		Registrar has reasonable cause to believe that the company is not carrying on any business or operations initiate action for the removal of the name of the company from the register of companies

Publication of Name and Registered Office

Section 12

Every company shall—

- ✓ paint or affix its name, and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, and if the characters employed therefore are not those of the language or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages;
- ✓ have its name engraved in legible characters on its seal if any
- ✓ "One Person Company" shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

Memorandum of Association**Definition [Section 2 (56)]**

"Memorandum" means memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act.

Meaning of Memorandum

The memorandum of association is a document, which contains the fundamental provision of the company's constitution. It contains the essential conditions upon which alone the company can be incorporated. It not only shows the objects of formation but also determines the utmost possible scope of its operations beyond which its action cannot go.

Purpose of Memorandum

- ✓ Firstly, the intending shareholder who contemplates the investment of his savings should know the field in, or the purpose for which it is going to be used and what risk he is taking in making the investment.
- ✓ The second purpose is that anyone dealing with the company will know without reasonable doubt whether the contractual relation into which he contemplates entering with the company is one relating to a matter within its corporate objects.

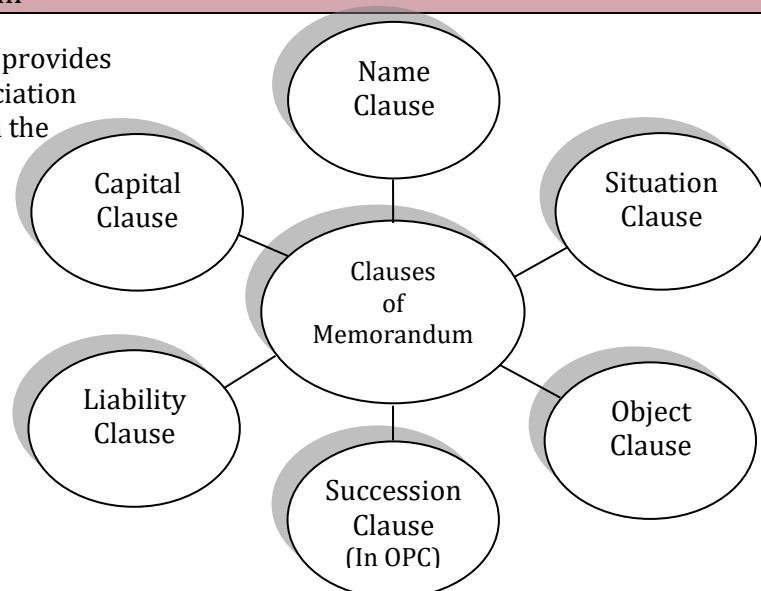
Form of Memorandum

Memorandum of a company shall be drawn up in such form as is given in Tables in Schedule I

Table A	form for memorandum of association of a company limited by shares.
Table B	form for memorandum of association of a company limited by guarantee and not having a share capital.
Table C	form for memorandum of association of a company limited by guarantee and having a share capital.
Table D	form for memorandum of association of an unlimited company.
Table E	form for memorandum of association of an unlimited company and having share capital

Contents of Memorandum

Section 4 of the Companies Act provides that the memorandum of association of every company must contain the following clauses:-

**✓ Name Clause**

The name of the company with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company. This clause is not applicable on the companies formed under section 8 of the Act.

The name stated in the memorandum must be after consideration of the restrictions.

✓ Situation or Registered Office Clause

The name of the State in which the registered office of the company is to be situated must be given in the memorandum. But the exact address of the registered office is not required to be stated therein.

✓ **Objects Clause**

The object clause of memorandum shall state "the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof".

✓ **Liability Clause**

The liability of members of the company, whether limited or unlimited, and also state that -

- In the case of a company limited by shares- The liability of its members is limited to the amount unpaid, if any, on the shares held by them; and
- In the case of a company limited by guarantee, the amount up to which 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, as the case may be; and
 - ⦿ To the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves;

✓ **Capital Clause (only in the case of a company having a share capital)**

The amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount.

The number of shares each subscriber to the memorandum intends to take, indicated opposite his name;

✓ **Succession Clause (only in the case of OPC)**

This clause shall state the name of the person who, in the event of the death or incapacity to contract of the subscriber, shall become the member of the company.

Other Points of Memorandum

- ✓ The memorandum of association must be printed, divided into paragraphs, numbered consecutively and signed by each subscriber in the presence of at least one witness who shall attest the signatures of the subscribers.
- ✓ Each subscriber must state his address, occupation and the number of shares he takes opposite his name. Only a person capable of entering into contract on his own can subscribe to the memorandum. Both artificial and natural persons can subscribe to memorandum.

Alteration of the Memorandum [Section 13]

Company may alter the provisions of its memorandum with the approval of the members by a special resolution.

Alteration to Name Clause

Rectification in Name Clause

CA Shivangi Agrawal

Central Government to Issue Direction

According to Section 16 of the Companies Act, 2013, the Central Government is empowered to give direction to the company to rectify its name (Where the name is identical with or too nearly resembles the name by which a company in existence had been previously registered, or the name is identical with or too nearly resembling to a registered trade mark) within a period of 3 months or 6 months, as the case may be, from the issue of such direction by passing an ordinary resolution.

Notice of Change to The Registrar

Where a company changes its name or obtains a new name, it shall within a period of 15 days from the date of such change, give notice of the change to the Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and the memorandum.

Default in Compliance With The Direction

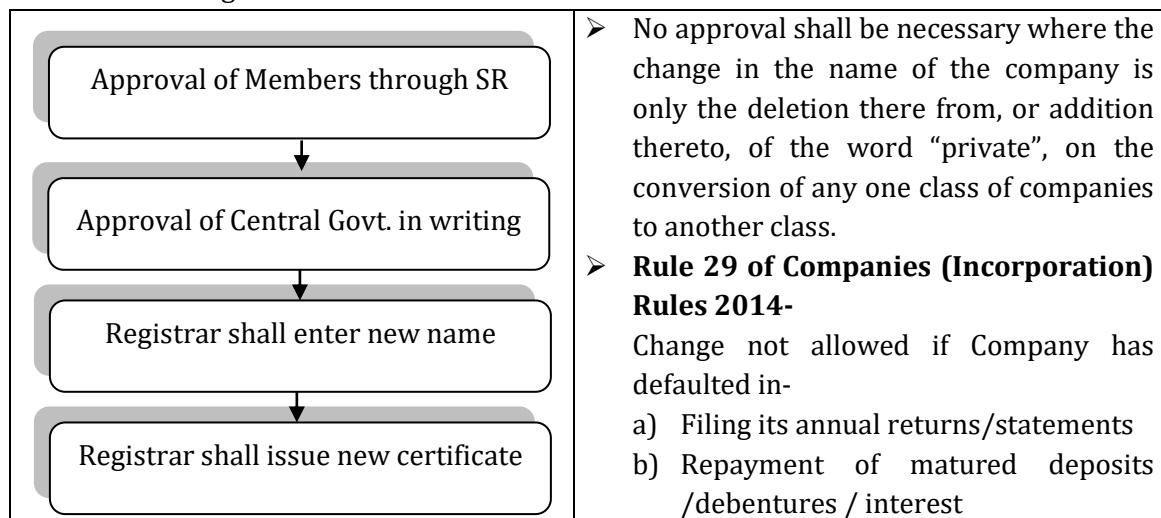
If a company makes default in complying with any direction:

Liable Person Penalty/Punishment

Company Fine of 1,000 rupees for every day during which the default continues Every Officer who is in default Fine varying from 5,000 rupees to 1 lakh rupees.

Voluntary Alteration

Any change in the name of a company shall be effected only with the approval of the Central Government in writing.



Alteration to Situation Clause

- ✓ Section 12 provides that a company shall, on and from the 30th day of its incorporation shall have a registered office.
- ✓ The company shall furnish to the Registrar verification of its registered office within a period of 30 days of its incorporation in Form INC.22.

Change within Local limits of same city, town/village

- ✓ By passing a Board Resolution and intimating the notice of change to ROC in Form INC-22.
- ✓ No alteration to MOA

Change from one city, town/village to another within same ROC

- ✓ By passing a Special Resolution at General Meeting

Change from one Jurisdiction of ROC to another within same State

seeking confirmation from the Regional Director for shifting the registered office within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies, shall be filed by the company with the Regional Director

Change from one State or Union Territory to another state

An application for the purpose of seeking approval for alteration of memorandum with regard to the change of place of the registered office from one State Government or Union territory to another, shall be filed with the Central Government.

The Central Government shall dispose of the application of change of place of the registered office within a period of sixty days. Before passing of order, Central Government may satisfy itself that:

- ✓ the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company, or
- ✓ the sufficient provision has been made by the company either for the due discharge of all its debts and obligations, or
- ✓ adequate security has been provided for such discharge.

Alteration to Object Clause

Special Resolution needs to be passed (Through Postal Ballot in case of Company having more than 200 members) which must be filed with Registrar within 30 days.

A company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and –

- ✓ The details, in respect of such resolution shall also be published in the newspaper which is in circulation at the place where registered office is situated & on website of Company indicating justification of change.
- ✓ The dissenting shareholders shall be given an opportunity to exit.

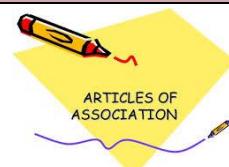
Alteration of Liability Clause

The liability of a member of a company cannot be increased unless the members agree by passing SR.

No alteration made under this Section shall have any effect until it has been registered in accordance with the provisions of this Section.

Articles of Association**Definition [Section 2(5)]**

'Articles' means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act.



Meaning and form of AOA [Section 5]

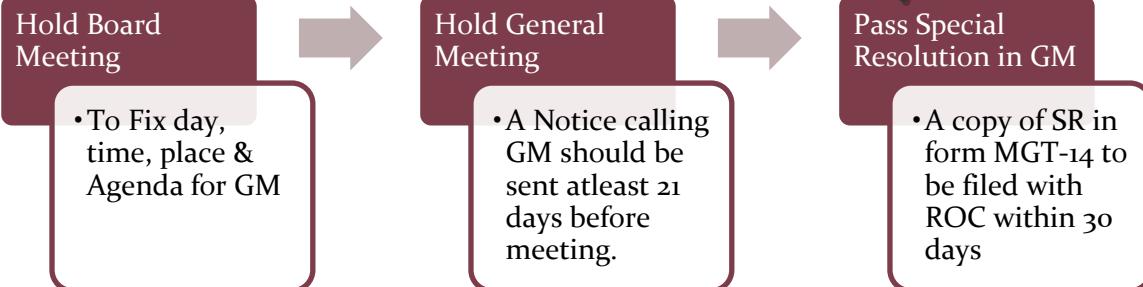
- ✓ Articles are the regulations framed by a company for its own governance.
- ✓ Articles shall be printed, divided into paragraphs, numbered consecutively.
- ✓ The Articles shall be signed by each subscriber of the memorandum of association who shall add his address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise add his address, description and occupation, if any.
- ✓ Every private limited Company, a Company limited by guarantee and an unlimited Company must have its articles of Association which must be registered along with the Memorandum. However, It is not obligatory for Public Company limited by shares to have its own Articles. It may adopt the rules and regulations contained in Table F of schedule I of the Companies Act
- ✓ A Company may adopt all or any of the provisions contained in the Model Articles applicable to it.

Form of Articles

Table F	Articles of a Company limited by Shares
Table G	Articles of a Company limited by Guarantee & having Share Capital
Table H	Articles of a Company limited by Guarantee & having No share Capital
Table I	Articles of an Unlimited Company having share Capital
Table J	Articles of an Unlimited Company having No share Capital

Alteration of AOA

Section 14

**Effect of Memorandum and Articles**

Section 10

Where the memorandum and articles when registered, shall bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and an agreement to observe all the provisions of the memorandum and of the articles. All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company

Copies of MOA, AOA Etc. to be Given to Members

Section 17

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

- the memorandum;
 - the articles; and
 - every agreement and every resolution referred to in sub-section (1) of section 117, if and in so far as they have not been embodied in the memorandum or articles.
- ✓ If a company makes any default in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable for each default, to a penalty of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

Doctrine of Ultra Vires

The meaning of the term 'ultra vires' is 'beyond the powers of.'

Anything which is-

- ✓ Not permitted by Companies Act, 2013
- ✓ outside the specified objects and powers
- ✓ or not reasonably incidental to or necessary for the attainment of objects of the company



is ultra vires the company and therefore is void. No rights and liabilities, on the part of the company, arise out of such transaction and it remains nullity even if every member assents to it. Consequently, an act, which is ultra vires the company, does not bind the company and neither the company nor the other contracting party can sue on it.

Effects of Ultra Vires Act

- ✓ Such transaction is void.
- ✓ No ratification is possible.
- ✓ Injunction order from court against company can be obtained by any member.
- ✓ If Company's funds are misappropriated then directors will be personally liable for breach of trust.
- ✓ If Company has acquired Ultra Vires Property, then it has the right to hold property and protect it against damages.



Ashbury Railway Carriage and Iron Co. Ltd. v. Riche

Company's Object Clause

- ✓ To make, sell or lend or hire railway carriage & wagons.
- ✓ To carry on business of mechanical engineers & General Contractors.
- ✓ To purchase, lease, work & sell mine, minerals, land & Buildings.

The company entered into a contract with M/S. Riche, a firm of railway contractors to finance the construction of a railway line in Belgium. On subsequent repudiation of this contract by the company on the ground of its being 'ultra vires', Riche brought a case for damages on the ground of breach of contract, as according to him the words "general contractors" in the objects clause gave power to the company to enter into such a contract and therefore, it was within the powers of the company. More so, because the contract was ratified by majority of shareholders.

The House of Lords held that the contract was 'ultra vires' the company and, therefore, null and



void. The term "general contractor" was interpreted to indicate as the making generally of such contracts as are connected with the business of mechanical engineers. Further, the Court held that the company cannot make an "ultra vires" act to be valid, even if every shareholder of the company assents to it.

Doctrine of Constructive Notice

When the memorandum and articles of association of a company are registered, they become public documents and are open to inspection by anyone on payment of nominal fee. Hence, every person dealing with the company is under an obligation to know the contents of these documents. This doctrine prevents any person dealing with the Company from alleging that he did not know provisions contained in Articles/Memorandum.



KotlaVenkataSwamy v. Ramamurthy

The articles required that all deeds etc, should be signed by the managing director, working Director and the secretary but the plaintiff accepted the deed not signed by the managing director.

It was held that the plaintiff could not claim under this deed and thus every person dealing with the company is deemed to have notice of the contents of its memorandum and articles and also to have understood them according to their proper meaning.

Doctrine of Indoor Management

This doctrine is opposite to the doctrine of "Constructive notice".

If a person deals with a company having satisfied themselves that the proposed transactions are not inconsistent with the memorandum and articles of the company, are not bound to inquire the regularity of any internal proceedings of the company. It protects an innocent outsider from any irregularity present in working of the company.



Royal British Bank v. Turquand

As per articles of Royal British Bank, the Board of Directors of the Bank were authorized by the Articles to borrow funds on bonds provided the Board of Directors were authorized by the shareholders in General Meeting. The directors gave a bond to Turquand without the authority of any resolution passed by the shareholders.

It was held that Turquand could sue the Bank and that Outsiders are bound to know the external positions of the Company, but are not bound to know its indoor management".

Exceptions to the Doctrine of Indoor Management

Knowledge of Irregularity:

Where the person dealing with the company had knowledge of irregularity.



Howard vs Patent Ivory Manufacturing Company

The Directors of the Company could borrow upto 1000 pounds without the sanction of members in GM. The directors themselves lent 3500 pounds to the company. It was held that the directors had the notice of the internal irregularity and therefore the company was liable to them only for 1000 pounds.

No knowledge of memorandum and articles:

This rule cannot be invoked in favour of a person who did not consult the memorandum and articles.



Rama Corporation vs Proved Tin & General Investment Company Ltd

The articles of the investment Company provided that the Directors could delegate their powers to one of them. T was a director in Investment Company who purported to act on behalf of Company entered into a Contract with the Corporation and received cheque from it. Rama Corporation had never read the articles. Later it was found that Company had never delegated powers to T. It was held that Corporation did not know that Power could be delegated and hence the benefit of Doctrine of Indoor Management was not available.

Forgery:

The rule of indoor management does not extend to transactions involving forgery or to transactions which are otherwise void or illegal ab initio.



Ruben vs Great Fingall Consolidated Company

On share certificate of a Company, signature of 2 directors and secretary were required. The secretary signed it but forged the other two signatures. The holder of the share certificate contended that he was not aware of forgery and it was not possible for him to determine the authenticity of signatures.

The court held that in case of forgery, there is not a defect in consent but absence of consent. Therefore, the certificate issued by way of forgery is void and certificate invalid.

Negligence:

The 'doctrine of Indoor management' in no way, rewards those who behave negligently.



Underwood vs Bank of Liverpool

A director of the Company paid into his own account cheques drawn in favour of Company. It was held that bank could not claim the benefit of this doctrine as it ought to have made enquiry to see whether Director was authorized to do so or not.

Section 8 Company

- ✓ It deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.
- ✓ Such company intends to apply its profit in promoting its objects and prohibiting the payment of any dividend to its members.

Issue of License

- ✓ The Central Government may grant a licence if it satisfies the conditions of section 8(1), to register as a Limited Company.
- ✓ After obtaining license, application for incorporation is made in a similar way to ROC.
- ✓ The Registrar shall register such Person or Association of Persons as a Company u/s 8, and issue a Certificate of Incorporation. The Company shall have to comply with such additional conditions as may be contained in the license issued by CG

Revocation of License

CG may revoke license issued to the Company if-

- ✓ Contravention with any of the requirements of Sec.8, or
- ✓ Contravention with any of the conditions subject to which a licence is issued, or
- ✓ Fraudulent conduct of the affairs of the Company, or
- ✓ Conduct in a manner violative of the objects of the Company, or
- ✓ Conduct of affairs in a manner prejudicial to public interest.

Consequences of Revocation

- ✓ CG shall direct the company to convert its status and change its name to add the word "Limited" or the words "Private Limited"
- ✓ Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up.
- ✓ A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.

Penalty

Particulars	Person Liable	Punishment	
Non-compliance of provisions of Section 8	Company	Fine Only	Minimum: 10 lakhs Maximum: 1 crore
	Directors and every officer in default	With Fine	Fine: Minimum: 25000 Maximum: 25 lakhs
when it is proved that the affairs of the company were conducted fraudulently	every officer in default	liable for action under section 447	

Other Relevant Points of Section 8 Company

- ✓ Formed for the promotion of commerce, art, science, religion, charity, protection environment, sports, etc.
- ✓ Requirement of minimum share capital does not apply.
- ✓ Uses its profits for the promotion of the objective for which formed.
- ✓ Does not declare dividend to members.
- ✓ Operates under a special licence from Central Government.
- ✓ Need not use the word Ltd./ Pvt. Ltd. in its name and adopt a more suitable name such as club, chambers of commerce etc.
- ✓ Licence revoked if conditions contravened.
- ✓ On revocation, Central Government may direct it to
 - Converts its status and change its name
 - Wind – up
 - Amalgamate with another company having similar object.
- ✓ Can call its general meeting by giving a clear 14 days notice instead of 21 days.

A partnership firm can be a member of Section 8 company.

Conversion of Companies**Section 18**

- ✓ A company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of this Chapter.
- ✓ Where the conversion is required to be done under this section, the Registrar shall on an application made by the company, after satisfying himself that the provisions of this Chapter applicable for registration of companies have been complied with, close the former registration of the company and after registering the documents, issue a certificate of incorporation in the same manner as its first registration.

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

Conversion

Choosing form of business is voluntary for the entrepreneur subject to restrictions of law.

- ✓ Conversion may take place as under-
- ✓ Conversion of a private company into a public company
- ✓ Conversion of a public company into a private company
- ✓ Conversion of one person company to private company/ public company
- ✓ Conversion of private company to one person company
- ✓ Conversion of section 8 company into any other kind of company
- ✓ Conversion of LLP into company
- ✓ Conversion from private company into limited liability partnership
- ✓ Conversion from unlisted public company into limited liability partnership

However, we have to read only Conversion of LLP to company and Company to LLP

Conversion of LLP into Company

An LLP can be converted into a Pvt. Ltd. company as per the provisions contained in Section 366 of the Companies Act, 2013 and the Companies (Authorised to Registered) Rules, 2014.

The following process is to be followed:

Approval of Name	<ul style="list-style-type: none">✓ Hold a meeting of the partners to decide the name of the company business can be run under the same name as that of the LLP except that in addition to the name of the LLP the words 'limited' or 'private limited' has to be added. The name once accepted by the authority will be valid for 60 days.✓ To authorize partners to take all steps necessary and to execute all papers, deeds, documents etc. pursuant to registration of the LLP as a Company.
Securing DSC and DIN	In case all 2 or 7 members, as the case may be, who are future directors of the company after conversion, do not have the Digital Signature Certificate (DSC) and Director Identification Number (DIN) for all the future directors of the company must be obtained. For obtaining the DIN, an application form must be filed on MCA portal. DIN application is processed & approved by central government via the office of regional director, the ministry of corporate affairs.
Filing form no. URC - 1	the provision of Chapter II of the Act relating to incorporation of company and matters incidental thereto shall be applicable mutatis mutandis for such registration. <ul style="list-style-type: none">✓ Min 2 members to form Private Company✓ Min 7 members to form Public Company
Attachments with URC-1	<ul style="list-style-type: none">✓ a list showing the names, addresses, and occupations of all persons named therein as partners with details of shares held by them respectively, showing separately shares allotted for consideration in cash and for consideration other than cash along-with the source of consideration and distinguishing, in cases where the shares are numbered, each share by its number, who on a day, not being more than six clear days before the day of seeking registration, were

	<p>partners of the Limited Liability Partnership or firm as the case may be;</p> <ul style="list-style-type: none"> ✓ a list showing the particulars of persons proposed as the first directors of the company, along with Director Identification Number (DIN), passport number, if any, with expiry date, residential addresses and their interests in other firm or body corporate along with their consent to act as directors of the company; ✓ in case of a firm, deed of partnership, bye-laws or other instrument constituting or regulating the firm and in case the deed of partnership was revised at any time in the past, copies of the principal and all subsequent deeds including the latest deed, along with the certificate of the registration issued by the Registrar of Firms, in case the firm is registered; ✓ written consent or No Objection Certificate from all the secured creditors of the applicant; ✓ written consent, from the majority of members whether present in person or by proxy at a general meeting, agreeing for such registration, provided that there shall be two or more members for the purposes of registration of a company
--	---

Conversion of Company into LLP

Any existing private company or existing unlisted public company can be converted into LLP by complying with the Provisions of clause 58 and Schedule III and IV of the LLP Act

Resolution	Pass Resolution for Conversion of Company into LLP and to authorize any director to file all the necessary forms with MCA. Take the written consent of all the shareholders for conversion of Company into LLP.
Name Availability approval	File web based Form RUN-LLP with ROC. Board Resolution Board resolution passed by the Company approving the conversion into LLP shall be attached with the aforesaid form.
Agreement	<p>Limited liability partnership agreement shall have the following</p> <p>Name of Partners & Designated Partners</p> <p>Form of contribution</p> <p>Profit Sharing ratio</p> <p>Rights & Duties of Partners</p> <p>Proposed Business</p> <p>Rules for governing the LLP</p> <p>It is not necessary to have the LLP Agreement signed at the time of incorporation, as the details of the same needs to be filed in e-form 3 within 30 days of incorporation but in order to avoid any dispute between the partners as to the terms & conditions of the agreement after the conversion into LLP, it is required to be drafted various documents to authenticate registered office and other statements etc. are to be filed.</p>
Filling of application for conversion	<p>File E-FORM- 18 with ROC along with following Attachments:</p> <ul style="list-style-type: none"> ✓ Statement of shareholders. It is the document given by each shareholders giving their consent and statement. ✓ Statement of Assets and Liabilities of the company duly certified as true and correct by the auditor. ✓ In case all 2 or 7 members, as the case may be, who are future directors of the company after conversion, do not have the Digital Signature Certificate (DSC) and Director Identification Number (DIN) for all the future directors

- | | |
|--|---|
| | <p>✓ of the company must be obtained. For obtaining the DIN, an application form must be filed on MCA portal. DIN application is processed & approved by central government via the office of regional director, the ministry of corporate affairs.</p> |
|--|---|

Investment and Loans

Chapter Coverage

Procedure for inter-corporate loans, investments, giving off guarantee and security

- Given under Section 186 & 187 of Companies Act which is discussed in the Chapter of Board Meetings.

Acceptance of deposits, renewal, repayment, default and remedies

- Given under Chapter V (containing sections 73-76A) of Companies Act, 2013 as discussed in this Chapter.

Definition of Deposit

Section 2(31)

What is a Deposit?	"Deposit" includes any receipt of money by way of Deposit or Loan or in any other form, by a Company.	
What is not a Deposit?	<p>Deposit does not include categories of amount prescribed in consultation with RBI.</p> <ol style="list-style-type: none"> any amount received from the Central Government or a State Government, or any amount received from any other source whose repayment is guaranteed by the Central Government or a State Government, or any amount received from a local authority, or any amount received from a statutory authority constituted under an Act of Parliament or a State Legislature. any amount received from foreign Governments, foreign or international banks, multilateral financial institutions (including, but not limited to, International Finance Corporation, Asian Development Bank, Commonwealth Development Corporation and International Bank for Industrial and Financial Reconstruction), foreign Governments owned development financial institutions, foreign export credit agencies, foreign collaborators, foreign bodies corporate and foreign citizens. any amount received as a loan or facility from any banking company any amount received as a loan or financial assistance from Public Financial Institutions notified any amount received against issue of commercial paper or any other instruments any amount received by a company from any other company; any amount received in pursuance to any securities, including 	

	<p>share application money or advance towards allotment of securities pending allotment, so long as such amount is appropriated only against the amount due on allotment of the securities applied for.</p> <p>If the securities for which application money or advance for such securities was received cannot be allotted within sixty days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within fifteen days from the date of completion of sixty days, such amount shall be treated as a deposit under these rules.</p> <p>viii. any amount received from a director of the company or a relative of the director of the Private company if at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others is given by director and the company shall disclose the details of money so accepted in the Board's report</p> <p>ix. any amount raised by the issue of bonds or debentures secured by a first charge or a charge ranking pari passu with the first charge on any assets referred or compulsorily convertible into shares within 10 years.</p> <p>Provided that the amount of such bonds or debentures shall not exceed the market value of such assets as assessed by a registered valuer</p> <p>ixa. any amount raised by issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India.</p> <p>x. any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit;</p> <p>xi. any non-interest bearing amount received and held in trust</p> <p>xii. any amount received in the course of, or for the purposes of, the business of the company,-</p> <ul style="list-style-type: none"> a) as an advance for the supply of goods or provision of services accounted for in any manner whatsoever b) as advance, accounted for in any manner whatsoever, received in connection with consideration for an immovable property under an agreement or arrangement , provided that such advance is adjusted against such property in accordance with the terms of agreement or arrangement; c) as security deposit for the performance of the contract for supply of goods or provision of service d) as advance received under long term projects for supply of capital goods except those covered above e) as an advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the
--	--

	<p>period prevalent as per common business practice or five years, from the date of acceptance of such service whichever is less;</p> <p>f) as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;</p> <p>g) as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications.</p> <p>Provided that if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules</p>
xiii.	<p>any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to fulfillment of the following conditions, namely</p> <ul style="list-style-type: none"> a) the loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance; b) the loan is provided by the promoters themselves or by their relatives or by both; and c) the exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter
xiv.	any amount accepted by a Nidhi company in accordance with the rules made
xv.	any amount received by way of subscription in respect of a chit under the Chit Fund Act
xvi.	any amount received by the company under any collective investment scheme in compliance with regulations framed by the Securities and Exchange Board of India
xvii.	an amount of twenty five lakh rupees or more received by a start-up company, by way of a convertible note (convertible into equity shares or repayable within a period not exceeding ten years from the date of issue) in a single tranche, from a person.
xviii.	any amount received by a company from Alternate Investment Funds, Domestic Venture Capital Funds, "Infrastructure Investment Trusts, Real Estate Investment Trusts and Mutual Funds registered with the Securities and Exchange Board of India in accordance with regulations made by it.

Meaning of Depositor

- ✓ any member of a private or public company who has deposited money with his company is a 'depositor'.
- ✓ any person (even if not a member of the company) who has deposited money with a public company is also a 'depositor'.

Deposits

Section 73

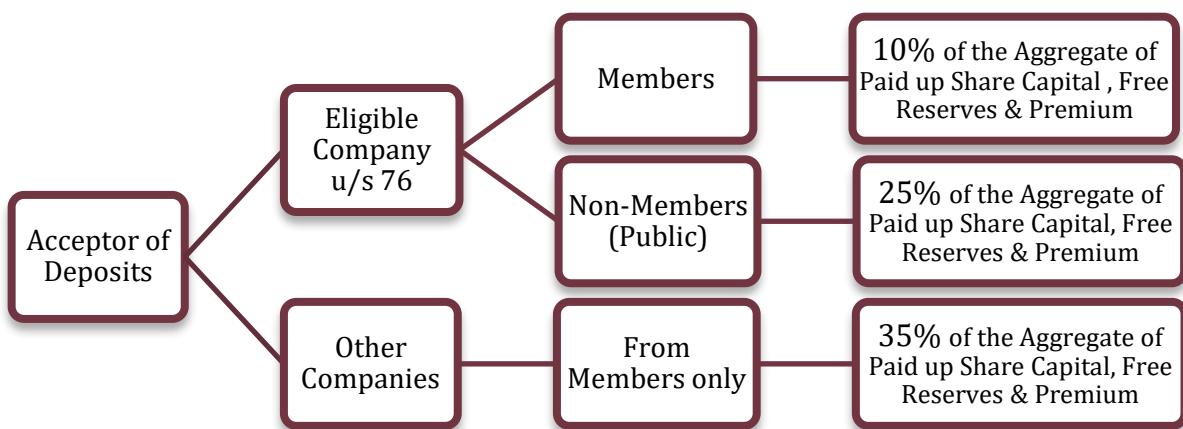
On and after the commencement of this Act, no company shall invite, accept or renew deposits under this Act from the public except in a manner provided under this Chapter

Exemption

This sub-section with respect to the acceptance of deposits from public shall not apply to the following company:

- ✓ Banking company
- ✓ Non-banking financial company as defined in the Reserve Bank of India Act, 1934.
- ✓ A housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987 and
- ✓ And such other company as the central Government may specify, after consultation with the Reserve Bank of India.

Maximum Amount of Deposits that can be accepted [Rule 3 of Companies (Acceptance of Deposits) Rules, 2014]

**Ceiling for Government Company**

In case of Government Company being eligible u/s 76, the overall ceiling limit is 35%.

Ceiling for Private Company**A private company and specified IFSC Public company-**

- ✓ may accept from its members monies not exceeding 100% of aggregate of the paid up share capital, free reserves and securities premium account without complying to conditions relating to issuance of circular.
- ✓ However, details should be informed to registrar in prescribed manner.

Non Applicability of Ceiling

The maximum limit in respect of deposits to be accepted from members shall not apply to following classes of private companies, namely:-

- ✓ a private company which is a start-up, for five years from the date of its incorporation.
- ✓ a private company which fulfils all of the following conditions, namely:-
 - which is not an associate or a subsidiary company of any other company
 - the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is less and
 - such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73

Tenure of Deposits

[Rule 3 of Companies (Acceptance of Deposits) Rules, 2014]

Less than 3 Months	Above 3 months but less than 6 months	Above 6 months but less than 36 Months	More than 36 Months
<ul style="list-style-type: none"> • Not allowed 	<ul style="list-style-type: none"> • Upto 10% of its paid up capital, free reserves and securities premium account 	<ul style="list-style-type: none"> • This is normal tenure allowed for acceptance of deposits 	<ul style="list-style-type: none"> • Not allowed

Other Points

- ✓ Company cannot accept Demand Deposits.
- ✓ The Company has no right to alter terms and conditions which is disadvantageous after circular is issued and deposits are accepted.
- ✓ The Security shall be created in favour of a trustee for the depositors on specific movable or immovable property of the company

Conditions for acceptance of Deposits from its members

A company may accept deposits from its members by complying to the following-
The same conditions are also applicable if Eligible Company accepts deposits from Public in accordance with provisions of section 76.

- ✓ Passing of Special Resolution in General Meeting
- ✓ Filing of Circular to ROC: The filing a copy of the circular along with such statement with the ROC within thirty days before the date of issue of the circular.
- ✓ Issuance of a circular: Issuance of a circular to its members including
 - a statement showing the financial position of the company,
 - the credit rating obtained,
 - the total number of depositors and
 - the amount due towards deposits in respect of any previous deposits accepted by the company.

Rule 3:

- ✓ Circular shall be issued by registered post with acknowledgement due or speed post or by electronic mode in Form DPT-1
- ✓ In addition to issue of such circular, it may also be published in English language in an English newspaper and in vernacular language in a vernacular newspaper having wide circulation in the State in which the registered office of the company is situated
- ✓ In case of Eligible Company accepting deposits from Public, this circular is issued in the form of an advertisement.
- ✓ A certificate of the statutory auditor of the company shall be attached in Form DPT-1, stating that the company has not committed default in the repayment of deposits or in the payment of interest and in case a company had committed a statement that the company had made good the default and a period of five years has lapsed since the date of making good the default as the case may be
- ✓ A circular shall be valid until the expiry of six months from the date of closure of the financial year in which it is issued or until the date on which the financial statement is laid before the company in annual general meeting or, where the annual general meeting for any year has not been held, the latest day on which that meeting should have been held in accordance with the provisions of the Act, whichever is earlier.

- ✓ Creation of Deposit Repayment Reserve: The Company has to create a Deposit Repayment Reserve (DRR) by depositing not less than 20% of total deposits maturing during a financial year and be kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account on or before 30th April of each year.
- ✓ Providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company.
- ✓ The charge will be created of an amount not less than the amount of secured deposits accepted in favour of the deposit holders within 30 days of such acceptance.
- ✓ In respect of creation of security Rule 6 states that the company accepting secured deposits shall create security by way of charge on its tangible assets only.

A private Company accepting deposits within limit of 100% or startup company for five years or complying with specified conditions is not required to follow above stated provisions related to-

- ✓ Issue and Filing of Circular
- ✓ Creation of DRR
- ✓ Certificate of No default.

Unsecured Deposits to Be Stated

In case where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as "unsecured deposits" and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.

Terms of Repayment

Every deposit accepted by a company shall be repaid with interest in accordance with the terms and conditions of the agreement referred to in that sub-section.

Use of Reserve

The deposit repayment reserve account shall not be used by the company for any purpose other than repayment of deposits.

Failure to Repay

Where a company fails to repay the deposit or part thereof or any interest thereon, the depositor concerned may apply in Form NCLT-11 to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

Acceptance of Deposits from Public by Eligible Company**Section 76****Eligible Company**

It means a Company

- ✓ has a net worth of not less than 100 crore or
- ✓ a turnover of not less than 500 crore.

and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits



an eligible company, which is accepting deposits within the limits specified under clause (c) of sub-section (1) of section 180, may accept deposits by means of an ordinary resolution

Additional conditions for accepting Deposits

Eligible Company shall accept deposits from Public by complying with the following-

- ✓ The Company shall obtain rating with respect to its deposits from a recognised rating agency every year.
- ✓ The rating obtained shall be sent to ROC along with the return of Deposits
- ✓ In case of secured deposits from Public, charge should be created within 30 days in favour of depositors on assets of company and the value of charge shall not be less than the amount of deposits.

Deposit in Joint Names

In case the depositors so desire, deposits may be accepted in joint names not exceeding three. A joint deposit may be accepted with or without any of the clauses, namely, "Jointly", "Either or Survivor", "First named or Survivor", "Anyone or Survivor". These clauses operate on maturity.

Nomination

- ✓ Every depositor may nominate any person at any time.
- ✓ The nominee shall be the person to whom his deposits shall vest in the event of his death.

Return of Deposits

Return of Deposits shall be filed with the Registrar on or before 30th June of every year stating position as on 31st March of that year certified by Auditor in Form DPT-3

Deposit Receipt

- ✓ Deposit receipt shall be furnished within a period of 21 days from the date of receipt of money and signed by officer of the Company duly authorized by Board.
- ✓ The receipt shall be signed by the duly authorised officer and state the date of deposit, the name and address of the depositor, the amount of deposit, the rate of interest and the maturity date.

Deposit Trustee [Rule 7]

No Company shall issue a circular or advertisement inviting deposits unless company has appointed one or more trustees for depositors for creating security.

Procedure for Appointment

- ✓ A written consent shall be obtained from the deposit trustees before their appointment and a statement shall appear in the circular or advertisement that the trustees have given consent.
- ✓ The Company shall execute a Deposit Trust Deed in form DPT-2 atleast 7 days before issuing circular

Disqualifications

Following persons can't be appointed as trustees-

- ✓ If he is a director, Key managerial person or any officer or employee of the company, its holding or subsidiary or associate.
- ✓ If he is indebted to the company, its subsidiary or its holding or associate or a subsidiary of such holding.
- ✓ If he has material pecuniary relationship with the company
- ✓ If he has entered into any guarantee arrangement
- ✓ If he is related to any person in 1st Point

Removal of Deposit Trustee

Deposit trustee cannot be removed after issue of advertisement and before expiry of his term without consent of all directors present at board meeting and presence of atleast one independent director if company is required to appoint independent director.

Register of Deposits [Rule 14]

Every company accepting deposits shall maintain at its registered office a register of Deposit containing the following particulars-

- ✓ Name, address and PAN of Depositor
- ✓ Particulars of Nominee
- ✓ Particulars of Deposit Receipt
- ✓ Date and Amount of Deposit
- ✓ Rate of Interest



Investment and Loans**2.9**

- ✓ Duration of Deposit
- ✓ Particulars of charge

All the details shall be entered within 7 days and preserved for 8 years from the date of entry. It shall be authorized by Director or Secretary or any other person authorized by Board.

Repayment of Deposits accepted before Commencement of the Companies Act, 2013**Section 74**

Where in respect of any deposit accepted by a company before the commencement of this Act, the amount of such deposit or part thereof or any interest due thereon remains unpaid on such commencement or becomes due at any time thereafter, the company shall—

- ✓ file, within a period of three months from such commencement or from the date on which such payments, are due, with the Registrar a statement of all the deposits accepted by the company and sums remaining unpaid on such amount with the interest payable thereon along with the arrangements made for such repayment, notwithstanding anything contained in any other law for the time being in force or under the terms and conditions subject to which the deposit was accepted or any scheme framed under any law; and
- ✓ repay within three years from such commencement or on or before expiry of the period for which the deposits were accepted, whichever is earlier.

The Tribunal may on an application made by the company, after considering the financial condition of the company, the amount of deposit or part thereof and the interest payable thereon and such other matters, allow further time as considered reasonable to the company to repay the deposit.

Penalty

Particulars	Person Liable	Punishment	
A company fails to repay the deposit or part thereof or any interest thereon within the original or extended time	Company	Fine Only	Minimum: 1 crore Maximum: 10 crores
	every officer of the company who is in default	Fine and/or Imprisonment	Minimum: 25 lakhs Maximum: 2 crores Imprisonment: Upto 7 years

Damages for Fraud [Section 75]

It is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors.

Prepayment of Deposits [Rule 15]

After the expiry of six months but before the actual date of maturity, if a depositor requests for premature repayment, the rate of interest payable shall be one percent less than the rate which would be payable for the period for which the deposit has actually run.

For the purposes of this rule, where the period for which the deposit had run contains any part of a year, then, if such part is less than six months, it shall be excluded and if such part is six months or more, it shall be reckoned as one year.

Punishment for Contravention

Section 76A

Particulars	Person Liable	Punishment	
A company accepts or invites or allows any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules or fails to repay the deposit or interest within time.	Company	Fine Only	Minimum: Lower of: 1 crore or twice the amount of deposits Maximum: 10 crores
	Every officer in default	Fine and/or Imprisonment	Minimum: 25 lakhs Maximum: 2 crores Imprisonment: Upto 7 years.

Liability u/s 447 in Case of Fraud

Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.

Interest and Brokerage

Normal Rates	The Rate of Interest or Brokerage shall not exceed the Maximum Rate of Interest or Brokerage prescribed by RBI, for acceptance of deposits by Non-Banking Financial Companies (NBFC's).
Penal Rate of Interest	Every Company shall pay a Penal Rate of Interest of 18% p.a. for the overdue period in case of Deposits, (whether Secured or Unsecured), matured and claimed but remaining unpaid.
Brokerage Payable	Brokerage can be paid only to a Person – who is authorised, in writing, by a Company to solicit Deposits on its behalf, and through whom Deposits are actually procured. Note: Payment of Brokerage to any other person for procuring deposits constitutes violation of Rules.

Dividends

This is covered under chapter VIII of Companies Act, 2013 containing sections 123 to 127 and is read with Companies (Declaration and Payment of Dividend) Rules, 2014

Section Summary

Sec 123	Declaration of Dividend
Sec 124	Unpaid Dividend Account
Sec 125	Investor Education and Protection Fund
Sec 126	Right to Dividend, Right shares, Bonus to be held in abeyance
Sec 127	Punishment for failure to distribute Dividends

Definition of Dividend

Section 2(35)

Dividend includes Interim Dividend'. Interim dividend is declared between two AGMs.

Meaning of Dividend

Dividend is the return on investment made by shareholders in the shares of company. Only profits can be distributed as dividend. Dividend is portion of profit which is distributed to shareholders.

Classification of Shares and respective Dividend

Shares can be classified into two categories *i.e.* preference shares and equity shares.

- ✓ Shareholders holding preference shares are assured of a preferential dividend at a fixed rate during the life of the company.
- ✓ Equity shareholders do not enjoy any preferential rights in the matter of payment of dividend or repayment of capital. The rate of dividend on equity shares is recommended by the Board of Directors and may vary from year to year.
- ✓ Preference dividend unless otherwise agreed is Non-cumulative in nature and need not be paid in any year where there is deficiency of profits.

Cumulative Preference Shares	Non-Cumulative Preference Shares
A cumulative preference share is one in respect of which dividend gets accumulated and any arrears of such dividend arising due to insufficiency of profits during the current year is payable from the profits earned in the later years.	A non-cumulative preference share is one where the dividend is payable only in a year of profit. There is no accumulation of profit as in the case of cumulative preference shares. In case no dividend is declared in a year due to any reason, the right to receive such dividend for that year expires

The Chapter deals with the provisions with respect to Equity Dividend broadly.

Dividends

3.2

Essentials and Types of Dividend

<p>Types of Dividend</p> <pre>graph TD; A[Types of Dividend] --> B[Final Dividend which is recommended by Board and declared by members by passing OR.]; A --> C[Interim dividend which is declared by Board]</pre>	<p>In case of Final Dividend</p> <p>Members may reduce the rate or amount recommended by Board but they cannot increase it. (Clause 80 of Table F in AOA)</p>
<p>Essentials of Dividend</p> <ul style="list-style-type: none">✓ Dividend is not a liability unless it is declared✓ Dividend is Declared as a proportion of Nominal or Face Value of a share	
<p>Prohibition on Dividend</p> <p>The companies having licence under Section 8 of the Act [Formation of companies with charitable objects etc.,] are prohibited by their constitution from paying any dividend to its members. They apply the profits in promoting the objects of the company.</p>	
<p>Dividend Provisions under AOA</p> <p>Articles of Association companies usually contain provisions with regard to declaration of dividend on the pattern of regulations 80 to 85 of Table F to Schedule I of the Companies Act, 2013. Under regulation 80, the power to declare a dividend vests with the general meeting but not even all the shareholders have the power to declare a dividend exceeding the amount recommended by the Board of Directors.</p>	

Interim Dividend

Section 123(3)

It is declared only when the articles specifically permit the declaration.	
Who may declare?	The Board of Directors of a company may declare interim dividend
When?	during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting
Sources	<ul style="list-style-type: none">✓ out of the surplus in the profit and loss account or✓ out of profits of the financial year for which such interim dividend is sought to be declared or✓ out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend
In case of Loss	In case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, Maximum Rate of Dividend in above case such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

Dividends**3.3**

All provisions which are applicable to the payment of dividend shall also apply in case of interim dividend.

Other Provisions of Dividend**Section 123**

Sources of Payment of Dividend [Section 123(1)]	<p>a) Profits of the current financial year arrived at after providing for depreciation in accordance with Schedule II</p> <p>b) Profits of any previous financial year(s) arrived at after providing for depreciation in accordance with Schedule II and remaining undistributed</p> <p>c) Both</p> <p>d) Money provided by CG or SG in pursuance of any guarantee given by it.</p> <p>"Provided that in computing profits any amount representing unrealised gains, notional gains or revaluation of assets and any change in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair value shall be excluded.</p> <p>A Company may voluntarily transfer any amount to reserves as it may deem fit.</p> <p>Only free reserves and no other reserves are to be used for declaration or payment of dividend.</p> <p>No company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.</p>
Depreciation [Sec 123(2)]	For the purposes of clause (a) of sub-section (1), depreciation shall be provided in accordance with the provisions of Schedule II.
Deposit in separate A/c [Sec 123(4)]	The amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within five days from the date of declaration of such dividend
Payment to Registered Holder [Sec 123(5)]	<p>Dividend can be paid to the registered shareholder of such share or to his order or to his banker</p> <p>Nothing in this sub-section shall be deemed to prohibit the capitalisation of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company</p> <p>Dividend will not be paid in kind. It may be paid by cash, cheque, dividend warrant, electronic mode etc.</p> <p>For a nidhi company, Dividend in cash can be credited to the account of the member, if dividend is not claimed within 30 days of Declaration of dividend.</p>
No Dividend in default [Sec 123(6)]	A company which fails to comply with the provisions of sections 73 and 74 (Deposits) shall not, so long as such failure continues, declare any dividend on its equity shares.

Other Conditions

- ✓ Dividend once declared must be paid within 30 days of declaration.
- ✓ For a nidhi company, Dividend in cash can be credited to the account of the member, if dividend is not claimed within 30 days of Declaration of dividend.

Dividends

3.4

Deposit in Separate Bank Account

Dividend out of Reserves

Proviso to Section 123(1)(b)

This topic is read with Rule 3 of Companies (Declaration & Payment of Dividend) Rules, 2014:

Rate of Dividend	Amount to be drawn	Utilisation of amount drawn	Balance of Reserves
<ul style="list-style-type: none">Not to exceed average of last 3 years	<ul style="list-style-type: none">Not to exceed 1/10th of PUC+Reserves	<ul style="list-style-type: none">First to set off losses	<ul style="list-style-type: none">not to fall below 15% of PUC after withdrawal

Dividend in Case of Inadequate Profits

In the event of inadequacy or absence of profits in any year, a company may declare dividend out of out of the accumulated profits earned by it in previous years and transferred by the company to the free reserves subject to the fulfillment of the following conditions, namely:-

Maximum Rate of Dividend	The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the three years immediately preceding that year: <div style="border: 1px solid black; padding: 5px; display: inline-block;">This shall not apply to a company, which has not declared any dividend in each of the three preceding financial year.</div>
Maximum amount of withdrawal	The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.
Utilization of amount withdrawn	The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.
Balance after withdrawal	The balance of reserves after such withdrawal shall not fall below fifteen per cent of its paid up share capital as appearing in the latest audited financial statement.
Non Applicability	The conditions prescribed by Rule 3 are not applicable to a Government company in which the entire paid up share capital is held by the Central Government, or State Government

Unpaid Dividend Account

Section 124

Transfer to Unpaid Dividend Account [Sec 124(1)]	Where a dividend has been declared by a company but has not been paid or claimed within thirty days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account
---	---

Dividends	3.5						
Preparation and uploading of Statement Details [Sec 124(2)]	The company shall, within a period of ninety days of making any transfer of an amount to the Unpaid Dividend Account, prepare a statement containing the <ul style="list-style-type: none"> ✓ names, ✓ their last known addresses and ✓ the unpaid dividend to be paid to each person and place it on the web-site of the company, if any, and also on any other web-site approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed. 						
Interest in case of Default [Sec 124(3)]	If any default is made in transferring the total amount referred or any part thereof to the Unpaid Dividend Account of the company, it shall pay, from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of twelve per cent per annum and the interest accruing on such amount shall ensure to the benefit of the members of the company in proportion to the amount remaining unpaid to them.						
Application for claims [Sec 124(4)]	Any person claiming to be entitled to any money transferred to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed.						
Transfer of Unclaimed money to IEPF [Sec 124(5)]	Any money transferred to the Unpaid Dividend Account of a company in pursuance of this section which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company along with interest accrued, if any, thereon to the Fund established under section 125 and the company shall send a statement in the prescribed form of the details of such transfer to the authority which administers the said Fund and that authority shall issue a receipt to the company as evidence of such transfer.						
Transfer of shares to IEPF [Sec 124(6)]	All shares in respect of which dividend has not been paid or claimed for seven consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed <p style="margin-left: 20px;">Provided that any claimant of shares transferred above shall be entitled to claim the transfer of shares from Investor Education and Protection Fund in accordance with such procedure and on submission of requisite documents</p>						
Punishment for Contravention [Section 124(7)]	If a company fails to comply with requirements of this section, <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">Company</td> <td style="padding: 5px;">Fine</td> <td style="padding: 5px;">Minimum- 1 lakh Maximum- 10 Lakhs Continuing default- 500/day</td> </tr> <tr> <td style="padding: 5px;">Officer default</td> <td style="padding: 5px;">Fine</td> <td style="padding: 5px;">Minimum- 25000 Maximum- 2 Lakhs Continuing default- 100/day</td> </tr> </table>	Company	Fine	Minimum- 1 lakh Maximum- 10 Lakhs Continuing default- 500/day	Officer default	Fine	Minimum- 25000 Maximum- 2 Lakhs Continuing default- 100/day
Company	Fine	Minimum- 1 lakh Maximum- 10 Lakhs Continuing default- 500/day					
Officer default	Fine	Minimum- 25000 Maximum- 2 Lakhs Continuing default- 100/day					

Investor Education and Protection Fund

Section 125

CG to establish Fund [Section 125(1)]	The Central Government shall establish a Fund to be called the Investor Education and Protection Fund
Credits to the Fund [Section 125(2)]	There shall be credited to the Fund— <ul style="list-style-type: none"> ✓ the amount given by the Central Government by way of grants

Dividends	3.6
	<p>after due appropriation made by Parliament by law in this behalf for being utilised for the purposes of the Fund;</p> <ul style="list-style-type: none"> ✓ donations given to the Fund by the Central Government, State Governments, companies or any other institution for the purposes of the Fund; ✓ the amount in the Unpaid Dividend Account of companies transferred to the Fund ✓ the amount lying in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956; ✓ the interest or other income received out of investments made from the Fund; ✓ the application money received by companies for allotment of any securities and due for refund; ✓ matured deposits with companies other than banking companies; ✓ matured debentures with companies; ✓ interest accrued on the amounts referred above ✓ sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years; ✓ redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and ✓ such other amount as may be prescribed
Utilisation of Fund [Section 125(3)]	<ul style="list-style-type: none"> ✓ the refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon; ✓ promotion of investors' education, awareness and protection; ✓ distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement; ✓ reimbursement of legal expenses incurred in pursuing suits by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and ✓ any other purpose incidental thereto,
Application to IEPF for claims [Section 125(4)]	Any person who claims to be entitled to any amount transferred to the Fund, may apply to the Authority for the payment of the money claimed.
Constitution of Authority [Section 125(5)]	CG shall constitute an authority for administration of fund consisting of a Chairperson, such other members not exceeding 7 and a Chief Executive Officer
Administration of Fund [Section 125(6)]	The Authority shall administer fund
Employees under Authority [Section 125(7)]	The Central Government may provide to the Authority such offices, officers, employees and other resources in accordance with the prescribed rules of IEPF.
Maintenance of Accounts [Sec 125(8)]	and maintain separate accounts in the form prescribed by CG in consultation with CAG.
Power to spend [Section 125(9)]	Authority shall have the power to spend money out of the Fund
Audit of Accounts [Section 125(10)]	The Accounts shall be audited by CAG and Audited accounts along with Audit report shall be forwarded manually by the Authority to CG.

Dividends	3.7
Annual Report [Section 125(11)]	Authority is also required to prepare an Annual report giving full account of its activities during the FY. A copy of Annual Report shall also be forwarded to CG and shall be laid before each House of Parliament.

Right to Dividend, Rights Shares and Bonus Shares to be Held in Abeyance Pending Registration of Transfer of Shares

Section 126

Where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, it shall, notwithstanding anything contained in any other provision of this Act,—	
Dividend to Unpaid Dividend Account	transfer the dividend in relation to such shares to the Unpaid Dividend Account unless the company is authorised by the registered holder of such shares in writing to pay such dividend to the transferee and
Hold Rights/Bonus	keep in abeyance in relation to such shares, any offer of rights and any issue of fully paid-up bonus shares

Failure to Distribute Dividends

Section 127

Contravention	Where a dividend has been declared by a company but has not been paid within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend Posting of dividend warrants within 30 days absolves the company from any punishment irrespective of whether it is received by the shareholder concerned within this time or not.	
Punishment	Who shall be liable?	every director of the company shall, if he is knowingly a party to the default
	Imprisonment & Fine	be punishable with Imprisonment- Max- 2 Years and with Fine- Minimum- 1000/day during which such default continues and
		The company shall be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.
Exceptions where not liable	<ul style="list-style-type: none"> ✓ where the dividend could not be paid by reason of the operation of any law ✓ where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him ✓ where there is a dispute regarding the right to receive the dividend ✓ where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder or ✓ where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company 	
Exemption to Nidhis	In case the dividend payable to a member is Rs. 100 or less, it shall be sufficient compliance of the provisions of the section 127, if the declaration of the dividend is announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhis for at least 3 months.	

Other Points**Revocation of Dividend**

- ✓ Ordinarily A dividend once declared cannot be revoked except where it is Ultra Vires or Company ceases to be going concern.
- ✓ If a dividend is declared and the amount is paid or credited to the shareholders as dividend, the character of the credit or payment as dividend cannot be altered by a subsequent resolution. [Kishanchand Chellaram v CIT]

Transfer to Reserves before declaring Dividend

Transfer of profits to reserves for any financial year has been left to the discretion of the company. Therefore, a company is free to transfer any portion of its profit to reserves as it may deem fit. It may also decide not to transfer any amount to reserves.

Accounts and Audit

Chapter Coverage

Maintenance of Books of Accounts	Statutory Auditor, Special Auditor and Cost Auditor	CARO
<ul style="list-style-type: none"> Given under Chapter IX (containing sections 128-138) of Companies Act, 2013 as discussed in this Chapter. 	<ul style="list-style-type: none"> Given under Chapter X (containing sections 139- 148) of Companies Act, 2013 as discussed in this Chapter. 	<ul style="list-style-type: none"> Given under Companies Auditor Report Order (CARO) Rules, 2020 as discussed in this Chapter.

Accounts of Companies

This chapter IX of Companies Act, 2013 is read with Companies (Accounts) Rules, 2014

Section No.	Topics Covered
128	Books of accounts etc. to be kept by Company
129	Financial Statement
130	Re-opening of Accounts on court's or Tribunal's order
131	Voluntary Revision of Financial Statements or Board's Report
132	Constitution of NFRA
133	Central Government to prescribe Accounting Standards
134	Financial Statement, Board's Report etc
135	Corporate Social Responsibility
136	Right of Member to copies of Audited Financial Statement
137	Copy of Financial Statement to be filed with Registrar
138	Internal Audit

Relevant Definitions for this Chapter

Books of Account [Section 2(13)]

It includes records maintained in respect of—

- ✓ all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
- ✓ all sales and purchases of goods and services by the company
- ✓ the assets and liabilities of the company; and
- ✓ the items of cost as may be prescribed in the case of a company which belongs to any class of companies specified under that section

Book and Paper [Section 2(12)]

"Book and paper" and "book or paper" includes books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form

Financial Statement [Section 2(40)]

It includes-

- ✓ a balance sheet as at the end of the financial year;
- ✓ a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- ✓ cash flow statement for the financial year;
- ✓ a statement of changes in equity, if applicable; and
- ✓ any explanatory note

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

Books of Accounts to be kept by Company

Section 128

Maintenance of Books by every company	Every company shall prepare and keep <ul style="list-style-type: none"> ✓ books of account and ✓ other relevant books and papers and ✓ financial statement 	
Where?	at its registered office	
Period	for every financial year. For all companies- 1 st April to 31 st March For New Companies incorporated in Jan/Feb/March- Year ending on 31 st March of following year.	
Other Requirements	<ul style="list-style-type: none"> ✓ which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and ✓ explain the transactions effected both at the registered office and its branches and ✓ such books shall be kept on accrual basis and ✓ according to the double entry system of accounting. 	
Mode of Keeping	Physical/Electronic The company may keep such books of account or other relevant papers in electronic mode in such manner as may be prescribed. Manner of Books of Account in Electronic Mode [Rule 3 Of Companies (Accounts) Rules, 2014] <ul style="list-style-type: none"> ✓ The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference. From F.Y. 1st day of April, 2022, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such 	

	<p>changes were made and ensuring that the audit trail cannot be disabled</p> <ul style="list-style-type: none"> ✓ The books shall be retained completely in the original format or in a format which shall present accurately the information generated, sent or received and the information contained in the electronic records shall remain complete and unaltered. ✓ The information received from branch offices shall not be altered and shall be kept in a manner where it shall depict what was originally received from the branches. ✓ The information in the electronic record of the document shall be capable of being displayed in a legible form. ✓ There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law ✓ Provided that the back-up, if any, shall be kept in servers physically located in India on a periodic basis.
	<p>Intimation to Registrar The company shall intimate to the Registrar on an annual basis at the time of filing of financial statement-</p> <ul style="list-style-type: none"> • the name of the service provider • the internet protocol address of service provider • the location of the service provider • where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider.
Can Books be kept at any other Place?	All or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide Procedure of keeping books at other place- Where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing in form AOC-5 giving the full address of that other place
Books of Branch [Sec 128(2)]	If company has branch office, books relating to branch office may be kept there only and proper summarized returns must be periodically sent and quarterly returns in case of foreign branch.

Illustration:

A Ltd has its registered office at New Delhi. During the current accounting year, it has shifted its corporate Head Office to Indore, though it has retained the Registered Office at New Delhi. The MD of the Company wants to shift its books of accounts to Indore from New Delhi as he feels that there is no legal bar in doing so. Comment.

Hint: The BOD may decide to keep books at any other place according to section 128.

Preservation and Inspection of Books of Accounts

Section 128

Inspection of Books of Company [Sec 128(3) and Sec 128(4)]

The books of account and other books and papers maintained by the company within India

Place of Inspection	shall be open for inspection at the registered office of the company or at such other place in India
----------------------------	--

Accounts & Audit		4.4
Who can inspect?	by any director during business hours	
Books outside India	and in the case of financial information, if any, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director subject to such conditions as may be prescribed	
Inspection of Books of Subsidiary	Inspection in respect of any subsidiary of the company shall be done only by the person authorised in this behalf by a resolution of the Board of Directors.	
Assistance in Inspection	Where an inspection is made, the officers and other employees of the company shall give to the person making such inspection all assistance in connection with the inspection which the company may reasonably be expected to give.	
Preservation of Books [Sec 128(5)]		
Tenure of Preservation	<p>The books of account of every company relating to a period of not less than eight financial years immediately preceding a financial year, or where the company had been in existence for a period less than eight years, in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order</p>  <p>Provided that where an investigation has been ordered, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.</p>	

Penalty for Contravention of Sec 128	
Who shall be liable?	<ul style="list-style-type: none"> ✓ Managing director, ✓ The whole-time director in charge of finance, ✓ The Chief Financial Officer or ✓ Any other person of a company charged by the Board with the duty of complying with the provisions of this section, contravenes such provisions
Fine	Minimum- 50000 Maximum- 5 Lakhs

Financial Statements		Section 129
Compliance of Financial Statements with AS and Schedule III [Sec 129(1)]	<p>The financial statements shall</p> <ul style="list-style-type: none"> ✓ give a true and fair view of the state of affairs of the company ✓ comply with the accounting standards notified under section 133 and ✓ shall be in the form or forms as may be provided for different class or classes of companies in Schedule III. ✓ Items contained in such financial statements shall be in accordance with the accounting standards 	
Non- Applicability of above schedule	Nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of	

Accounts & Audit		4.5		
	electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company			
Laying of financials [Sec 129(2)]	The financial statements shall be laid at every AGM			
Disclosure in Case of Deviation [Sec 129(5)]	Where the financial statements of a company do not comply with the accounting standards referred <ul style="list-style-type: none"> ✓ the company shall disclose in its financial statements, ✓ the deviation from the accounting standards, ✓ the reasons for such deviation and the financial effects, if any, arising out of such deviation. 			
Consolidated financial statements [Sec 129(3)]				
What is consolidation?	Consolidated financial statements are the financial statements of a group of entities that are presented as being those of a single economic entity. Eg. Reliance group			
When?	Where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements			
Manner of Preparation	prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards. <div style="border: 1px solid black; padding: 5px;">Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed</div>			
Laying of CFS	which shall also be laid before the annual general meeting of the company along with the laying of its financial statement.			
Other Attachment with CFS	The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries and associate company or companies in such form as may be prescribed. (AOC-1)			
Applicability of other Provisions	The provisions of this Act applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, apply to the consolidated financial statements			
Exemption from preparation of CFS	Nothing in this rule shall apply in respect of preparation of consolidated financial statements by a company if it meets the following conditions:- <ul style="list-style-type: none"> ✓ it is a wholly-owned subsidiary, or is a partially-owned subsidiary of another company and all its other members, including those not otherwise entitled to vote, having been intimated in writing and for which the proof of delivery of such intimation is available with the company, do not object to the company not presenting consolidated financial statements; ✓ it is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India; and ✓ its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards 			
Powers of Central Government to grant exemption [Sec 129(6)]				
The Central Government may, on its own or on an application by a class or classes of companies, by notification, exempt any class or classes of companies from complying with any of the				

Accounts & Audit**4.6**

requirements of this section or the rules made there under, if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.

Punishment for Contravention [Sec 129(7)]

Who shall be liable?	<ul style="list-style-type: none"> ✓ Managing director, ✓ The whole-time director in charge of finance, ✓ The Chief Financial Officer or ✓ Any other person of a company charged by the Board with the duty of complying with the provisions of this section, contravenes such provisions 		
Imprisonment and/or Fine	Imprisonment - Max- 1 year	OR Fine- Minimum- 50000 Maximum- 5 Lakhs	OR Both

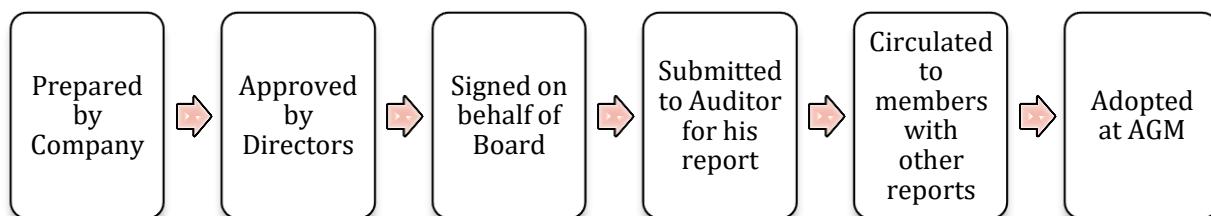
Periodical Financial Results- Unlisted Companies

Section 129A

Central Government may, require prescribed class of unlisted companies-	
Periodic Reporting of financial results	to prepare the financial results of the company on such periodical basis and in form as prescribed
Obtaining Approval	to obtain approval of the Board and complete audit or limited review of such periodical financial results in manner prescribed; and
Filing with ROC	file a copy with the ROC within 30 days of completion of the relevant period with fees as prescribed

Signing of Financial Statements

Section 134(1)



Section 134 contains

- ✓ Provisions w.r.t.- Signing of Financial Statements [As discussed below] and
- ✓ Board's Report, Director's responsibility statement, Signing of Board's Report, Other attachments [Discussed later]

Approval by whom?	The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board.
--------------------------	---

Signing by whom?	<ul style="list-style-type: none"> ✓ Sign by the chairperson of the company where he is authorised by the Board or ✓ by two directors out of which one shall be managing director, if any, and ✓ the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or ✓ in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.
-------------------------	--

Right of Members to get Audited Financial Statement

Section 136

Circulation of Financial Statements others	of and	A copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to
	To whom?	<ul style="list-style-type: none"> ✓ every member of the company, ✓ to every trustee for the debenture-holder of any debentures issued by the company, and ✓ to all persons other than such member or trustee, being the person so entitled,
	When?	not less than twenty-one days before the date of the meeting. [14 days in case of sec 8 company]
Shorter Duration		Provided that if the copies of the documents are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by members— <ul style="list-style-type: none"> ✓ holding, if the company has a share capital, majority in number entitled to vote and who represent not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or ✓ having, if the company has no share capital, not less than ninety five per cent. of the total voting power exercisable at the meeting
Abridged form of Financial statement for listed Companies.		In the case of a listed company, the provisions shall be deemed to be complied with, if <ul style="list-style-type: none"> ✓ the copies of the documents are made available for inspection at its registered office during working hours for a period of twenty-one days before the date of the meeting and ✓ a statement containing the salient features of such documents in the AOC-3A or copies of the documents, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than twenty-one days before the date of the meeting unless the shareholders ask for full financial statements.
Manner of Circulation [Rule 11]	of	In case of all listed companies and such public companies which have a net worth of more than one crore rupees and turnover of more than ten crore rupees, the financial statements may be sent- <ul style="list-style-type: none"> ✓ by electronic mode to such members whose shareholding is in dematerialised format and whose email Ids are registered with Depository for communication purposes; ✓ where Shareholding is held otherwise than by dematerialised format, to such members who have positively consented in writing for receiving by electronic mode; and ✓ by despatch of physical copies through any recognised mode of delivery as specified under section 20 of the Act, in all other cases.
Documents on Website for Listed Companies		A listed company shall also place its financial statements including consolidated financial statements, if any, and all other documents required to be attached thereto, on its website, which is maintained by

	<p>or on behalf of the company.</p> <p>Provided also that every listed company having a subsidiary or subsidiaries shall place separate audited accounts in respect of each of subsidiary on its website, if any</p> <p>Provided also that a listed company which has a subsidiary incorporated outside India</p> <ul style="list-style-type: none"> ✓ where such foreign subsidiary is statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, the requirement of this proviso shall be met if consolidated financial statement of such foreign subsidiary is placed on the website of the listed company ✓ where such foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed company may place such unaudited financial statement on its website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website 						
Inspection by every member/Debenture Trustee	<p>A company shall allow every member or trustee of the holder of any debentures issued by the company to inspect the documents stated at its registered office during business hours.</p> <p>Provided that every company having a subsidiary or subsidiaries shall provide a copy of separate audited or unaudited financial statements, as the case may be, as prepared in respect of each of its subsidiary to any member of the company who asks for it.</p>						
Penalty for Non Compliance	<table border="1"> <tr> <td>Company</td><td>Fine</td><td>Maximum-25000</td></tr> <tr> <td>Officer in Default</td><td>Fine</td><td>Maximum- 5000</td></tr> </table>	Company	Fine	Maximum-25000	Officer in Default	Fine	Maximum- 5000
Company	Fine	Maximum-25000					
Officer in Default	Fine	Maximum- 5000					

Reopening of Accounts on Orders

Section 130

	<ul style="list-style-type: none"> ✓ A company cannot lay more than one set of annual accounts for a particular financial year unless it has reopened/revised such annual accounts after their adoption in the Annual General Meeting. ✓ A company is allowed to reopen the books of accounts or recast its financial statements only on the order of court of competent jurisdiction or the Tribunal made upon application of specified persons.
Who can apply to Tribunal for reopening of Accounts?	<p>A company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the</p> <ul style="list-style-type: none"> ✓ Central Government, ✓ the Income-tax authorities, ✓ the Securities and Exchange Board, ✓ any other statutory regulatory body or authority or any person concerned
Grounds of Reopening	<p>and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—</p> <ul style="list-style-type: none"> ✓ the relevant earlier accounts were prepared in a fraudulent manner; or ✓ the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements

Accounts & Audit
4.9

Procedure adopted by NCLT	The court or the Tribunal, as the case may be, shall give notice to the Central Government, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned or any other person concerned and shall take into consideration the representations, if any, before passing any order.
Period of reopening: Not more than 8 Preceding Years	No order shall be made in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year Provided that where a direction has been issued by the Central Government for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such longer period.
Revision to be final	The accounts so revised or re-cast shall be final.

Voluntary Revision of Board's Report
Section 131

Grounds of Voluntary Revision	If it appears to the directors of a company that— ✓ the financial statement of the company; or ✓ the report of the Board, do not comply with the provisions of section 129 or section 134
Permission of Tribunal to be obtained	they may prepare revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining approval of the Tribunal on an application made by the company in such form and manner as may be prescribed Procedure by NCLT Provided that the Tribunal shall give notice to the Central Government and the Income tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section
Filing with ROC	and a copy of the order passed by the Tribunal shall be filed with the Registrar
Revision allowed only once	Provided further that such revised financial statement or report shall not be prepared or filed more than once in a financial year
Reasons to be disclosed	Provided also that the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.
Sending copies to members	Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to— ✓ the correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and ✓ the making of any necessary consequential alteration.

Content of Board's Report

Section 134

- a) the web address, if any, where annual return has been placed
- b) Number of meetings of the Board
- c) Directors' Responsibility Statement
 - ✓ in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures
 - ✓ the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period
 - ✓ the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities
 - ✓ the directors had prepared the annual accounts on a going concern basis
 - ✓ the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.
“internal financial controls” means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company’s policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information
 - ✓ the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.
- ca) details in respect of frauds reported by auditors other than those which are reportable.
- d) A statement on declaration given by independent directors
- e) In case of a company covered under sub-section (1) of section 178, company’s policy on directors’ appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made—
 - f) by the auditor in his report; and
 - g) by the company secretary in practice in his secretarial audit report;
 - h) Particulars of loans, guarantees or investments under section 186
 - i) particulars of contracts or arrangements with related parties the state of the company’s affairs
 - j) the amounts, if any, which it proposes to carry to any reserves
 - k) the amount, if any, which it recommends should be paid by way of dividend
 - l) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report
 - m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed

Conservation of energy-

- the steps taken or impact on conservation of energy;
- the steps taken by the company for utilising alternate sources of energy;
- the capital investment on energy conservation equipments;

Technology absorption-

- the efforts made towards technology absorption;
- the benefits derived like product improvement, cost reduction, product development or import substitution;
- in case of imported technology (imported during the last three years reckoned from the beginning of the financial year)-
 - ❖ the details of technology imported;
 - ❖ the year of import;
 - ❖ whether the technology been fully absorbed;
 - ❖ if not fully absorbed, areas where absorption has not taken place, and the reasons thereof; and
- the expenditure incurred on Research and Development.

Foreign exchange earnings and Outgo-

The Foreign Exchange earned in terms of actual inflows during the year and the Foreign Exchange outgo during the year in terms of actual outflows.

- n) a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company
- o) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year
- p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation of the performance of the Board, its Committees and of individual directors has been made
- q) such other matters as may be prescribed.

The report of the Board shall also contain -

- ✓ the financial summary or highlights;
- ✓ the change in the nature of business, if any;
- ✓ the details of directors or key managerial personnel who were appointed or have resigned during the year;
- ✓ the names of companies which have become or ceased to be its Subsidiaries, joint ventures or associate companies during the year;
- ✓ the details relating to deposits, covered under Chapter V of the Act,-
 - accepted during the year;
 - remained unpaid or unclaimed as at the end of the year;
 - whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved-
 - ❖ at the beginning of the year;
 - ❖ maximum during the year;
 - ❖ at the end of the year;
- ✓ the details of deposits which are not in compliance with the requirements of Chapter V of the Act;
- ✓ the details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future;
- ✓ the details in respect of adequacy of internal financial controls with reference to the Financial Statements.
- ✓ a disclosure, as to whether maintenance of cost records as specified by the Central Government under sub-section (1) of section 148 of the Companies

Accounts & Audit**4.12**

- | | |
|--|--|
| | <p>Act, 2013, is required by the Company and accordingly such accounts and records are made and maintained,</p> <p>✓ a statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace</p> |
|--|--|

Content of Board's Report of OPC and Small Company [Abridged Board's Report]

The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by One Person Company or small company.

The Board's Report of One Person Company and Small Company shall be prepared based on the stand alone financial statement of the company, which shall be in abridged form and contain the following:-

- ✓ the web address, if any, where annual return has been placed;
- ✓ number of meetings of the Board;
- ✓ Directors' Responsibility Statement
- ✓ details in respect of frauds reported by auditors other than those which are reportable to the Central Government;
- ✓ explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report;
- ✓ the state of the company's affairs;
- ✓ the financial summary or highlights;
- ✓ material changes from the date of closure of the financial year in the nature of business and their effect on the financial position of the company;
- ✓ the details of directors who were appointed or have resigned during the year;
- ✓ the details or significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future.
- ✓ particulars of contracts or arrangements with related parties

The report of the Board of Directors to be attached to the financial statement under this section shall, in case of a One Person Company, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of—

- ✓ any notes annexed to or forming part of such financial statement
- ✓ the auditor's report; and
- ✓ the Board's report referred to in sub-section

Filing of Documents with registrar**Section 137**

Filing of Documents	When Statements are adopted at AGM.	
	What?	
		A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, [Form AOC-4 and AOC-4

CA Shivangi Agrawal

Accounts & Audit
4.13

		CFS (For consolidated Financial Statements)]
	When?	within thirty days of the date of annual general meeting in such manner, with such fees or additional fees as may be prescribed
	To Whom?	shall be filed with the Registrar
When Statements are adopted at adjourned AGM		
Financial statements adopted in the adjourned annual general meeting shall be filed with the Registrar within thirty days of the date of such adjourned annual general meeting with such fees or such additional fees as may be prescribed		
When Statements are not adopted at AGM		
where the financial statements are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose		
Time limit of filing by OPC	A One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within one hundred eighty days from the closure of the financial year.	
Other Attachments	<p>A company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.</p> <p>In the case of foreign subsidiary which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.</p>	
Case where AGM not held	Where the annual general meeting of a company for any year has not been held, the financial statements along with the documents required to be attached duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held and in such manner, with such fees or additional fees as may be prescribed	
Contravention of Section 137		
Company	Penalty	Minimum- 10000 Maximum-2 Lakh Continuing failure- 100/day
✓ MD and CFO if any; OR ✓ Director charged by Board with such responsibility; OR ✓ All Directors	Penalty	Minimum- 10000 Maximum- 50000 Continuing failure- 100/day

Accounting Standards

Section 133

The Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority

Corporate Social Responsibility

Section 135

Corporate Social Responsibility ('CSR') was introduced in the Companies Act, 2013 and has already been discussed in the Chapter of Corporate Governance. However, Basics are reproduced as under-

Companies which are required to incur CSR Expenditure	<ul style="list-style-type: none"> ✓ Having net worth of 500 Crores or more; OR ✓ Having turnover of 1000 Crores or more; OR ✓ Having net profits of 5 Crores or more in any financial year
Amount of Expenditure	<p>Company requires spending of at least 2% of its average net profit (Profit before taxes) for the immediately preceding 3 financial years on CSR activities in India as specified in Schedule VII</p> <p>The above companies are required to constitute CSR committee if the expenditure exceeds 50 Lakh.</p>

Internal Audit

Section 138

It is read with Rule 13 of Companies (Accounts) Rules, 2014.

Internal Audit is mandatory for which companies?	<p>The following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate, namely:-</p> <ul style="list-style-type: none"> a. every listed company; b. every unlisted public company having- <ul style="list-style-type: none"> • paid up share capital of fifty crore rupees or more during the preceding financial year; or • turnover of two hundred crore rupees or more during the preceding financial year; or • outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or • outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year; and c. every private company having- <ul style="list-style-type: none"> • turnover of two hundred crore rupees or more during the preceding financial year; or • outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year
	<p>Provided that an existing company covered under any of the above criteria shall comply with the requirements of section 138 and this rule within six months of commencement of such section.</p>
Explanation:-	<ul style="list-style-type: none"> ✓ the internal auditor may or may not be an employee of the company;

Accounts & Audit**4.15**

For the purposes of this rule –	<ul style="list-style-type: none"> ✓ the term “Chartered Accountant” or “Cost Accountant” shall mean a “Chartered Accountant” or a “Cost Accountant”, as the case may be, whether engaged in practice or not ✓ The Audit Committee of the company or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.
---------------------------------	---

Audit and Auditors

This chapter X of Companies Act, 2013 is read with Companies (Audit and Auditors) Rules, 2014

Section No.	Topics Covered
139	Appointment of Auditors
140	Removal, Resignation of Auditor and giving of special notice
141	Eligibility, Qualifications and Disqualifications of Auditors
142	Remuneration of Auditors
143	Powers and Duties of Auditors & Auditing Standards
144	Auditor not to render certain services
145	Auditor to sign Audit reports etc.
146	Auditors to attend General Meeting
147	Punishment for Contravention
148	Central Government to specify Audit of items of cost in respect of certain companies

Qualifications & Disqualifications of Auditors

Section 141

An audit is an unbiased examination and evaluation of the financial statements of an organization.	
Audit under Companies Act is called as Statutory Audit. A statutory audit is a mandatory audit of a company's financial records by an external Independent person known as Auditor.	
Who can be the Auditor? [Sec 141(1)]	<p>A person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant.</p> <p>Provided that a firm whereof majority of partners practising in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company.</p> <p>Where a firm including a limited liability partnership is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm.</p>

Basics of Auditor

Ceiling Number of Audits	Maximum limit of Audit of Companies is 20 excluding one person company, small company, dormant company having paid up capital less than 100 crores.
--------------------------	---

Disqualification of Auditor	The following persons shall not be eligible for appointment as an auditor of a company, namely:—
-----------------------------	--

CA Shivangi Agrawal

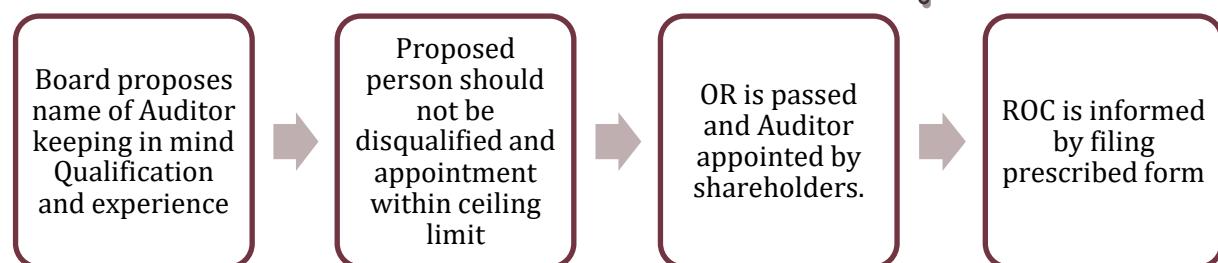
Accounts & Audit**4.16**

[Sec 141(3)]	a) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008
	b) an officer or employee of the company
	c) a person who is a partner, or who is in the employment, of an officer or employee of the company
	d) a person who, or his relative or partner— <ul style="list-style-type: none">• is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:<p style="border: 1px solid black; padding: 5px;">Provided that the relative may hold security or interest in the company of face value not exceeding one thousand rupees or such sum as may be prescribed (Rs. 1,00,000)</p>• is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed (Rs. 5,00,000)• has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed(Rs. 1,00,000)
	e) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed <p style="border: 1px solid black; padding: 5px;">“Business relationship” shall be construed as any transaction entered into for a commercial purpose, except–<ul style="list-style-type: none">✓ commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the regulations made under those Acts;✓ commercial transactions which are in the ordinary course of business of the company at arm's length price like sale of products or services to the auditor as customer by the companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.</p>
	f) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel
	g) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies
	h) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction
	i) a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company.
Vacation of	Where a person appointed as an auditor of a company incurs any of the

Office [Sec 141(4)]	disqualifications mentioned after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.
---------------------	--

Appointment of Auditors

Section 139



Recommendation in Case of Audit Committee

- ✓ In case of a company that is required to constitute an Audit Committee under section 177, the committee, and, in cases where such a committee is not required to be constituted, the Board, shall take into consideration the qualifications and experience of the individual or the firm proposed to be considered for appointment as auditor and whether such qualifications and experience are commensurate with the size and requirements of the company
- ✓ The Audit Committee or the Board, as the case may be, may call for such other information from the proposed auditor as it may deem fit.
- ✓ where a company is required to constitute the Audit Committee, the committee shall recommend the name of an individual or a firm as auditor to the Board for consideration and in other cases, the Board shall consider and recommend an individual or a firm as auditor to the members in the annual general meeting for appointment.
- ✓ If the Board agrees with the recommendation of the Audit Committee, it shall further recommend the appointment of an individual or a firm as auditor to the members in the annual general meeting.
- ✓ If the Board disagrees with the recommendation of the Audit Committee, it shall refer back the recommendation to the committee for reconsideration citing reasons for such disagreement.
- ✓ If the Audit Committee, after considering the reasons given by the Board, decides not to reconsider its original recommendation, the Board shall record reasons for its disagreement with the committee and send its own recommendation for consideration of the members in the annual general meeting; and if the Board agrees with the recommendations of the Audit Committee, it shall place the matter for consideration by members in the annual general meeting.
- ✓ the Audit Committee or the Board shall have regard to any order or pending proceeding relating to professional matters of conduct against the proposed auditor before the Institute of Chartered Accountants of India or any competent authority or any Court

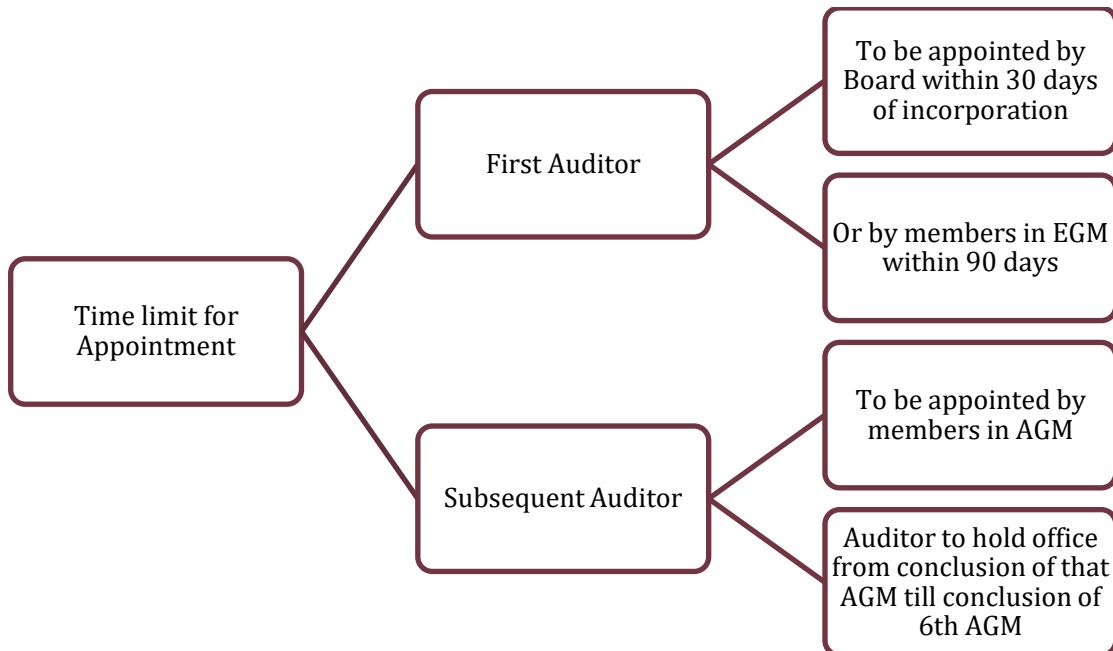
When appointed?	Every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor	
Tenure of Appointment	who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting & thereafter till the conclusion of every	

	sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such as may be prescribed	
Conditions preceding Appointment	<ul style="list-style-type: none"> ✓ Before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained from the auditor ✓ Certificate shall also indicate whether the auditor satisfies the criteria provided in section 141 	

Appointment of First Auditor

Type of Company	Government Company/ Company owned or controlled directly/Indirectly by Government [Sec 139(7)]	Others [Sec 139(6)]
By Whom?	The first auditor shall be appointed by the Comptroller and Auditor-General of India	The first auditor shall be appointed by the Board of Directors
When?	within sixty days from the date of registration of the company and	within thirty days from the date of registration of the company and
Failure in Appointment	in case the Comptroller and Auditor-General of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next thirty days	in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within ninety days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.
Further Failure	and in the case of failure of the Board to appoint such auditor within the next thirty days, it shall inform the members of the company who shall appoint such auditor within the sixty days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting.	

Subsequent Auditor



- ✓ In case of Government or controlled by Government companies, CAG shall in respect of a FY appoint the auditor within 180 days from the commencement of the FY.
- ✓ The Auditor shall hold office till conclusion of the AGM.

Reappointment of Retiring Auditor

Appointment includes Re appointment	
When re-appointment may happen?	A retiring auditor may be re-appointed at an annual general meeting, if— <ul style="list-style-type: none"> ✓ he is not disqualified for re-appointment ✓ he has not given the company a notice in writing of his unwillingness to be re-appointed; and ✓ a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.
Failure in appointment or re-appointment at GM	Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.
In case of Audit Committee	Where a company is required to constitute an Audit Committee under section 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.

Rotation of Auditors

Limit on Tenure of Auditors	No listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint— a) an individual as auditor for more than one term of five consecutive years and
-----------------------------	---

	b) an audit firm as auditor for more than two terms of five consecutive years
Prescribed Companies	
Following classes of companies excluding one person companies and small companies:-	
	<ul style="list-style-type: none"> ✓ all unlisted public companies having paid up share capital of rupees ten crore or more; ✓ all private limited companies having paid up share capital of rupees fifty crore or more; ✓ all companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees fifty crores or more.
Other cases of restriction	<ul style="list-style-type: none"> ✓ An individual auditor who has completed his term shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term ✓ An audit firm which has completed its term shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term
Other Points and Rules Relating To Auditors	<ul style="list-style-type: none"> ✓ As on the date of appointment, no Audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years. ✓ Every company, existing on or before the commencement of this Act which is required to comply with the provisions of this sub-section, shall comply with requirements of this sub-section within a period which shall not be later than the date of the first annual general meeting of the company held, within the period specified under sub-section (1) of section 96, after three years from the date of commencement of this Act. ✓ Nothing contained in this sub-section shall prejudice the right of the company to remove an auditor or the right of the auditor to resign from such office of the company ✓ Members of a company may resolve to provide that— <ul style="list-style-type: none"> a) In the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or b) the audit shall be conducted by more than one auditor
Manner of Rotation of Auditors by the Companies on Expiry of Their Term	<p>(1) The Audit Committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent.</p> <p>(2) Where a company is required to constitute an Audit Committee, the Board shall consider the recommendation of such committee, and in other cases, the Board shall itself consider the matter of rotation of auditors and make its recommendation for appointment of the next auditor by the members in annual general meeting.</p>

	<p>(3) For the purpose of the rotation of auditors-</p> <p>(i) in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of five consecutive years or ten consecutive years, as the case may be;</p> <p>(ii) the incoming auditor or audit firm shall not be eligible if such auditor or audit firm is associated with the outgoing auditor or audit firm under the same network of audit firms.</p> <p>For the purpose of rotation of auditors,-</p> <p>(a) a break in the term for a continuous period of five years shall be considered as fulfilling the requirement of rotation;</p> <p>(b) if a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.</p>
--	---

Illustration Explaining Rotation In Case Of Individual Auditor

Illustration 1:-

Number of consecutive years for which an individual auditor has been functioning as auditor in the same company [in the first AGM held after the commencement of provisions of section 139(2)]	Maximum number of consecutive years for which he may be appointed in the same company [in the first AGM held after the transitional period]	Aggregate period which the auditor would complete in the same company in view of column I and II (including)
I	II	III
5 years (or more than 5 years)	3 years	8 years or more
4 years	3 years	7 years
3 years	3 years	6 years
2 years	3 years	5 years
1 year	4 years	5 years

Note: 1. Individual auditor shall include other individuals or firms whose name or trade mark or brand is used by such individual, if any.

2. Consecutive years shall mean all the preceding financial years for which the individual auditor has been the auditor until there has been a break by five years or more.

Illustration Explaining Rotation in Case of Audit Firm

Illustration 2:-

Number of consecutive years for which an audit firm has been functioning as auditor in the first AGM held after the commencement of provisions of section 139(2)]	Maximum number of consecutive years for which the firm may be appointed in the same company [in the first AGM held after the transitional period]	Aggregate period which the firm would complete in the same company in view of column I and II (including)

Accounts & Audit**4.22**

I	II	III
10 years (or more than 10 years)	3 years	13 years or more
9 years	3 years	12 years
8 years	3 years	11 years
7 years	3 years	10 years
6 years	4 years	10 years
5 years	5 years	10 years
4 years	6 years	10 years
3 years	7 years	10 years
2 years	8 years	10 years
1 year	9 years	10 years

Casual Vacancy

Any casual vacancy in the office of an auditor shall—

- ✓ In the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors within thirty days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting
- ✓ In the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Comptroller and Auditor-General of India within thirty days

Provided that in case the Comptroller and Auditor-General of India does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next thirty days.

Conditions for Appointment and Notice to Auditor

- ✓ The auditor appointed under rule 3 shall submit a certificate that -
 - the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made there under
 - the proposed appointment is as per the term provided under the Act
 - the proposed appointment is within the limits laid down by or under the authority of the Act
 - the list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.
- ✓ The notice to Registrar about appointment of auditor shall be in Form ADT-1.

Removal of Auditor before Expiry of his Term

Section 140

- ✓ The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the

previous approval of the Central Government in Form ADT-2 within 30 days of passing of Board Resolution

- ✓ The Company thereafter holds GM within 60 days of receipt of approval of CG for passing Special Resolution.
- ✓ Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

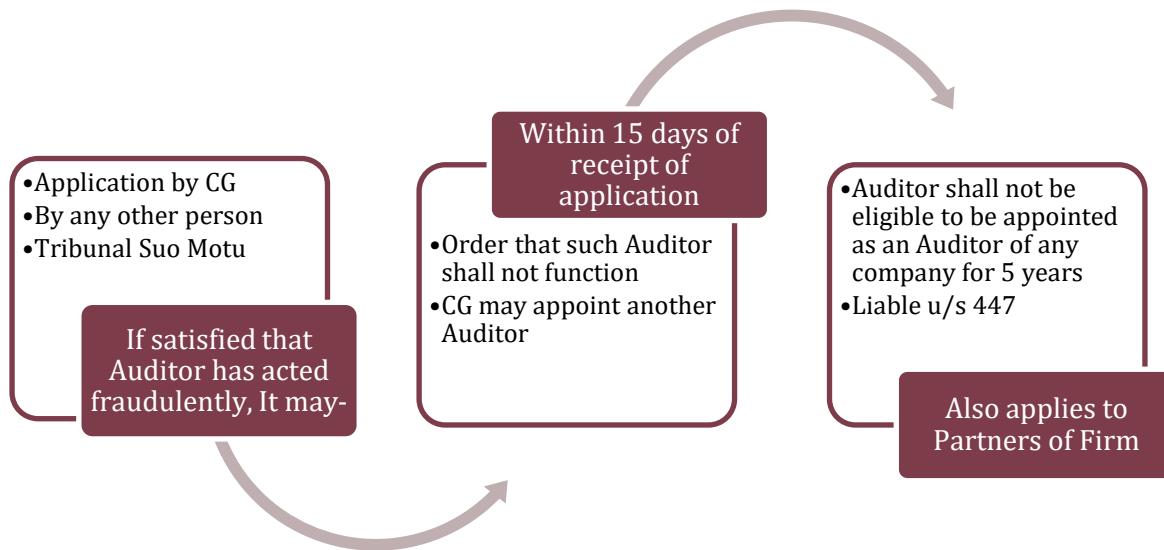
Resignation by Auditor

- ✓ The auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the ADT-3 with the company and the Registrar, the auditor shall also file such statement with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation.
- ✓ If the auditor does not comply with above provisions, he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees

Special Notice

- ✓ Special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-appointed, except where the retiring auditor has completed a consecutive tenure of five years or, as the case may be, ten years, as provided under sub-section (2) of section 139.
- ✓ On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor.
- ✓ Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so,—
 - in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
 - send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company,
- ✓ If a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may require that the representation shall be read out at the meeting
- ✓ Provided that if a copy of representation is not sent as aforesaid, a copy thereof shall be filed with the Registrar
- ✓ Provided further that if the Tribunal is satisfied on an application either of the company or of any other aggrieved person that the rights conferred by this sub-section are being abused by the auditor, then, the copy of the representation may not be sent and the representation need not be read out at the meeting.

Power of Tribunal to Order Change of Auditor



Remuneration of Auditors

Section 142

Remuneration by Whom? [Section 142(1)]	The remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein Provided that the Board may fix remuneration of the first auditor appointed by it.
Other Payments [Section 142(2)]	The remuneration shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

Powers and Duties of Auditors and Auditing Standards

Section 143

Rights of Auditor [Section 143(1)]	
Access to books of accounts	Every auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place and shall be
Get Information and explanation	entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor and amongst other matters
Inquire into certain matters	inquire into the following matters, namely:- <ul style="list-style-type: none"> ✓ whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members ✓ whether transactions of the company which are represented merely by

	<ul style="list-style-type: none"> ✓ book entries are prejudicial to the interests of the company ✓ where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company ✓ whether loans and advances made by the company have been shown as deposits ✓ whether personal expenses have been charged to revenue account ✓ where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading:
Access to records of subsidiary etc.	Provided that the auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries and associate companies in so far as it relates to the consolidation of its financial statements with that of its subsidiaries and associate companies

Report of Auditors to Members [Section 143(2)]

Audit Report by Auditor	The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statements which are required by or under this Act to be laid before the company in general meeting and the report shall after taking into account the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report and to the best of his information and knowledge, the said accounts, financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.
-------------------------	--

Other Matters of Reporting [Section 143(3)]

Information and explanation necessary	The auditor's report shall also state—whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements
Maintenance of Books of Company and Branch	whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him
Receipt of Report of Branch	whether the report on the accounts of any branch office of the company audited by a person other than the company's auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report
Agreement of financials with books	whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns
Compliance with Accounting standard	whether the financial statements comply with the accounting standards the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company
Disqualification	whether any director is disqualified from being appointed as a director

Accounts & Audit		4.26
of Director	any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith	
Internal Control	whether the company has adequate internal financial controls with reference to financial statements in place and the operating effectiveness of such controls	
Others	such other matters as may be prescribed (Given under Rule 11 about Pending litigations, foreseeable losses on derivative contracts, delay to transfer to IEPF)	
Qualified Report [Section 143(4)]		
Where any of the matters required to be included in the audit report under this section is answered in the negative or with a qualification, the report shall state the reasons therefore		
Audit of Government Companies		
When?	In the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Government, or partly by the Central Government and partly by one or more State Government,	
Who shall appoint auditor?	the Comptroller and Auditor-General of India shall appoint the auditor and direct such auditor the manner in which the accounts of the company are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor-General of India which, among other things, include the directions, if any, issued by the Comptroller and Auditor-General of India, the action taken thereon and its impact on the accounts and financial statement of the company.	
Other Audits within 60 days	<p>The Comptroller and Auditor-General of India shall within sixty days from the date of receipt of the audit report under have a right to- conduct a supplementary audit of the financial statement of the company by such person or persons as he may authorise in this behalf; and for the purposes of such audit, require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor-General of India may direct;</p> <p>comment upon or supplement such audit report</p> <p>The Comptroller and Auditor General of India may, if he considers necessary, by an order, cause test audit to be conducted of the accounts of such company and the provisions of section 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit.</p>	
Sending of such new copies to entitled persons	Provided that any comments given by the Comptroller and Auditor-General of India upon, or supplement to, the audit report shall be sent by the company to every person entitled to copies of audited financial statements under sub section (1) of section 136 and also be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.	

Branch Audit

Section 143(8)

- ✓ Where a company has a branch office, the accounts of that office shall be audited either by the auditor appointed for the company (herein referred to as the company's auditor)

under this Act or by any other person qualified for appointment as an auditor of the company under this Act and appointed as such u/s 139, or where the branch office is situated in a country outside India, the accounts of the branch office shall be audited either by the company's auditor or by an accountant or by any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country and the duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be such as may be prescribed:

Provided that the branch auditor shall prepare a report on the accounts of the branch examined by him and send it to the auditor of the company who shall deal with it in his report in such manner as he considers necessary

Compliance with Auditing Standards

- ✓ The Central Government may prescribe the standards of auditing or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority;
- ✓ Provided that until any auditing standards are notified, any standard or standards of auditing specified by the Institute of Chartered Accountants of India shall be deemed to be the auditing standards.

Reporting of Fraud by Auditor

If an auditor of a company, in the course of the performance of his duties as statutory auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of rupees one crore or above, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government.

The auditor shall report the matter to the Central Government as under:-

- ✓ the auditor shall report the matter to the Board or the Audit Committee, as the case may be, immediately but not later than two days of his knowledge of the fraud, seeking their reply or observations within forty-five days;
- ✓ on receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within fifteen days from the date of receipt of such reply or observations;
- ✓ in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of forty-five days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations;
- ✓ the report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same;

- ✓ the report shall be on the letter-head of the auditor containing postal address, e-mail address and contact telephone number or mobile number and be signed by the auditor with his seal and shall indicate his Membership Number; and
- ✓ The report shall be in the form of a statement as specified in Form ADT-4.

In case of a fraud involving lesser than the amount specified in sub-rule (1), the auditor shall report the matter to Audit Committee constituted under section 177 or to the Board immediately but not later than two days of his knowledge of the fraud and he shall report the matter specifying the following:-

- ✓ Nature of Fraud with description;
- ✓ Approximate amount involved; and
- ✓ Parties involved.

The following details of each of the fraud reported to the Audit Committee or the Board under sub-rule (3) during the year shall be disclosed in the Board's Report:-

- ✓ Nature of Fraud with description;
- ✓ Approximate Amount involved;
- ✓ Parties involved, if remedial action not taken; and
- ✓ Remedial actions taken.

The provision of this rule shall also apply, mutatis mutandis, to a Cost Auditor and a Secretarial Auditor during the performance of his duties

Certain Services can't be rendered by Auditors

Section 144

Prohibited services in the same company of which person is a statutory Auditor	An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, but which shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company, namely:— <ul style="list-style-type: none"> ✓ accounting and book keeping services ✓ internal audit ✓ design and implementation of any financial information system ✓ actuarial services ✓ investment advisory services ✓ investment banking services ✓ rendering of outsourced financial services ✓ management services and ✓ any other kind of services as may be prescribed
Transitional tenure to comply with new provisions	Provided that an auditor or audit firm who or which has been performing any non-audit services on or before the commencement of this Act shall comply with the provisions of this section before the closure of the first financial year after the date of such commencement
Other Relevant Points	<ul style="list-style-type: none"> ✓ The Central Government may, in consultation with the National Financial Reporting Authority, by general or special order, direct, in respect of such class or description of companies, as may be specified in the order, that the auditor's report shall also include a statement on such matters as may be specified therein. ✓ The person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the

	<p>company in accordance with the provisions of sub-section (2) of section 141, and the qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company (Section 145)</p> <p>✓ All notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company, and the auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorised representative, who shall also be qualified to be an auditor, any general meeting and shall have right to be heard at such meeting on any part of the business which concerns him as the auditor. (Section 146)</p>
--	--

Punishment for Contravention

Section 147

Contravention of Sections	Who shall be liable?	Penalty
Contravention of provisions of sections 139 to 146	Company: Fine	Minimum- 25000 Maximum- 5 Lakh
	Officer in Default: Fine	Minimum- 10000 Maximum- 1 Lakh
Contravention of Provisions of Section 139, 144 and 145	Auditor: Fine	Minimum- 25000 Maximum- Lower of ✓ 5 lakh ✓ 4 times of Auditor's remuneration
	Wilful / Intention to deceive the company or its shareholders or creditors or tax authorities: Imprisonment and Fine	Imprisonment: Max- 1 year Fine Minimum- 50000 Maximum- Lower of ✓ 25 lakh ✓ 8 times of Auditor's remuneration
	If Auditor Convicted: Refund	Where an auditor has been convicted, he shall be liable to refund the remuneration received by him to the company and pay for damages to the company, statutory bodies or authorities or to members or creditors of the company for loss arising out of incorrect or misleading statements of particulars made in his audit report.
Authority for prompt payment of damages	The Central Government shall, by notification, specify any statutory body or authority or an officer for ensuring prompt payment of damages and such body, authority or officer shall after payment of damages to such company or persons file a report with the Central Government in respect of making such damages in such manner as may be specified in the said notification.	
Contravention by partner of an Audit	Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted	

Firm	<p>in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in this Act or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally</p> <p>Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable</p>
------	---

Cost Audit**Section 148**

Cost Audit by Whom? [Section 148(3)]	The audit under sub-section (2) shall be conducted by a Cost Accountant who shall be appointed by the Board on such remuneration as may be determined by the members in such manner as may be prescribed
Other Relevant Points	<ul style="list-style-type: none"> ✓ The Central Government may, by order, in respect of such class of companies engaged in the production of such goods or providing such services as may be prescribed, direct that particulars relating to the utilisation of material or labour or to other items of cost as may be prescribed shall also be included in the books of account kept by that class of companies ✓ If the Central Government is of the opinion, that it is necessary to do so, it may, by order, direct that the audit of cost records of class of companies, which are covered under sub-section (1) and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order. ✓ Provided that no person appointed under section 139 as an auditor of the company shall be appointed for conducting the audit of cost records ✓ Provided further that the auditor conducting the cost audit shall comply with the cost auditing standards. ✓ The qualifications, disqualifications, rights, duties and obligations applicable to auditors under this Chapter shall, so far as may be applicable, apply to a cost auditor appointed under this section and it shall be the duty of the company to give all assistance and facilities to the cost auditor appointed under this section for auditing the cost records of the company: ✓ Provided that the report on the audit of cost records shall be submitted by the cost accountant to the Board of Directors of the company in Form CRA-3 within 180 days from close of F.Y. ✓ A company shall within thirty days from the date of receipt of a copy of the cost audit report prepared and other documents using XBRL taxonomy in e-form CRA-4 and furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein. ✓ If, after considering the cost audit report referred to under this section and the information and explanation furnished by the company under sub-section (6), the Central Government is of the opinion that any further information or explanation is necessary, it

	may call for such further information and explanation and the company shall furnish the same within such time as may be specified by that Government.
--	---

What is NFRA?

	<ul style="list-style-type: none">✓ The National Financial Reporting Authority (NFRA) is a body constituted under the provisions of Section 132 of the Companies Act, 2013.✓ the need for this authority arose as a response to various corporate scams✓ chairperson and a maximum of 15 members.
Functions	Make recommendations on accounting and auditing policies and standards
	Monitor and enforce its compliance
	Oversee the quality of service of the professionals such as auditors
	Perform such other related functions

What is XBRL?

	<p>XBRL stands for eXtensible Business Reporting Language.</p> <p>XBRL is a language for the electronic communication of business and financial data</p> <p>XBRL enables producers and consumers of financial data to switch resources away from costly manual processes, typically involving time-consuming comparison, assembly and re-entry of data.</p>
Companies required to report on XBRL	<ul style="list-style-type: none">✓ Companies listed with stock exchanges in India and their Indian subsidiaries;✓ Companies having paid up capital of five crore rupees or above;✓ Companies having turnover of one hundred crore rupees or above;✓ All companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015
Exemptions	<ul style="list-style-type: none">✓ Non-banking financial companies,✓ Housing finance companies and✓ Companies engaged in the business of Banking and Insurance sector

Companies Audit Report Order

MCA has notified now Companies (Auditor's Report) Order, 2020 on 25th February, 2020 which replaced CARO, 2016. it is a new format of reporting of statutory audit having additional reporting requirements decided in consultation with National Financial Reporting Authority (NFRA) CARO, 2020 is applicable for all statutory audits commencing on or after 1.4.2020 corresponding of Financial Year 2019-20. However, by notification, applicability of CARO has been deferred by one year. Now, CARO will be applicable for the accounts of financial year 2020- 21.

CARO 2020 is applicable to every company including a foreign company as defined in clause (42) of Section 2 of the Companies Act 2013.

Non-Applicability

- ✓ Banking company as defined under Section 5 (c) of the Banking Regulation Act, 1949.
- ✓ Insurance company as defined under the Insurance Act 1938.
- ✓ Company licensed to operate under Section 8 of the Companies Act 2013 (companies registered with charitable object).
- ✓ A one person company (OPC) as defined under clause (62) of Section 2 of Companies Act 2013 (OPC means a company which has only one person as a member).
- ✓ A small company under Section 2 (85) of the Companies Act, 2013.

As per sec 2(85) of Companies Act 2013 small company means a company, other than a public company:

- Paid up share capital of which does not exceed Rs. 50 lacs or such higher amount as may be prescribed(2 crore) which shall not be more than Rs.10 crore, and
- Turnover of which as per its last profit and loss account does not exceed Rs. 2 crore or such higher amount as may be prescribed (20 crore) which shall not be more than Rs. 100 crore.

The following company shall not qualify as a small company:

- A holding company or a subsidiary company.
- A company registered under Section 8 of the Act.
- A company or body corporate governed by any special act.

- ✓ The auditor of following type of Private Companies are not required to comment on the matter prescribed under CARO 2020:
 - A private company which is not holding or subsidiary company of a public company,
 - A private company having a paid up capital and reserve and surplus not more than Rs. 1 crore as on the balance sheet date, and
 - A private company which does not have total borrowing exceeding Rs. 1 crore from any bank and financial institution at any point of time during the financial year, and
 - A private company which does not have total revenue exceeding Rs. 10 crore during the financial year.

Such revenue means revenue as disclosed in scheduled III to the Companies Act, 2013 and includes revenue from discontinuing operation.

Example 1: 'Educating Child' is a limited company registered under section 8 of the Companies Act, 2013.

In the given case, 'Educating Child' is licensed to operate under section 8 of the Companies Act, 2013. Therefore, CARO, 2020 shall not be applicable to 'Educating Child' accordingly.

Example 2: Ashu Pvt. Ltd. has fully paid capital and reserves of Rs. 50 lakh. During the year, the company had borrowed Rs. 70 lakh each from a bank and a financial institution independently. It has the turnover of Rs. 900 lakh.

In the given case of Ashu Pvt. Ltd., it has paid capital and reserves of Rs. 50 lakh i.e. less than 1 crore, turnover of Rs. 9 crore i.e. less than Rs. 10 crore. However, it has maximum outstanding borrowings of Rs. 1.40 crore (Rs. 70 lakh + Rs. 70 lakh) collectively from bank and financial institution.

Therefore, it fails to fulfill the condition relating to borrowings. Thus, CARO, 2020 shall be applicable to Ashu Pvt. Ltd. accordingly.

Clause	Particulars	Matters
clause 3 (i)	Property, Plant & Equipment	<ul style="list-style-type: none"> ✓ Whether the company is maintaining proper records showing full particulars including quantitative details and situation of Property, Plant & Equipment. ✓ Whether these Property, Plant & Equipment have been physically verified by management at reasonable interval. ✓ Whether any material discrepancies were noticed on such verification and if so, whether the same have been properly dealt with in the books of account. ✓ matters relating to title deeds not in the name of the company, revaluation and effects thereof etc.
Clause 3 (ii)	Inventory	<ul style="list-style-type: none"> ✓ Whether physical verification of inventory has been conducted at reasonable interval by the management. ✓ Whether coverage of such verification by Management is appropriate. ✓ Whether any material discrepancies of 10% or more has been noticed on such verification and if so, whether the same has been properly dealt with in the books of account ✓ Whether Working Capital Limits in excess of 5 crores ✓ Whether quarterly returns filed by company with Banks w.r.t. working capital loans are in agreement with books of company
Clause 3 (iii)	Repayment of Investments, guarantee, security and loans granted by the company	<p>Whether the company has made investments in, provided any guarantee or security or granted any loans or advances in the nature of Loans, secured or unsecured to companies, firms, LLP or other parties covered in the registered maintained under Section 189 of the Companies Act, 2013.</p> <ul style="list-style-type: none"> ✓ Whether company has given loan/Guarantee/security (N.A. to companies with principal business of giving loan), then indicate: <ul style="list-style-type: none"> a) Aggregate amount during the year and Balance O/S at B/S date of L/G/S/I to subsidiaries, Joint ventures and associates b) Aggregate amount during the year and Balance O/S at B/S date of L/G/S/I to parties other than subsidiaries, Joint ventures and associates ✓ Whether terms and conditions of the grant of such loan are not prejudicial to the company's interest. ✓ Whether the schedule of repayment of principal and payment of interest has been stipulated and whether the repayments and receipts are regular ✓ If the amount is overdue, state the total amount overdue, state the total amount overdue for more than 90 days and whether reasonable steps have been taken by the company for recovery of principal. ✓ whether any loan or advance has been renewed/Extended/settled, if so, specify amount and percentage [not applicable to companies whose principal business is to give loans] ✓ whether the company has granted any loans or advances in

Accounts & Audit
4.34

		the nature of loans either repayable on demand or without specifying terms, if so, specify amount and percentage.
Clause 3(iv)	Loan to director and investment by the co.	In respect of loan, investment, guarantees and security whether provision of Sections 185 and 186 of the Companies Act, 2013 has been complied with. If not, provide the details thereof.
Clause 3(v)	Deposits	In case, the company has accepted deposits or amounts which are deemed to be deposits , whether the following has been complied with: Directives issued by the reserve bank of India <ul style="list-style-type: none"> ✓ The provision of sec 73 to 76 or any other relevant provision of Companies Act, 2013 and the rules framed there under ✓ If the order has been passed by company law board (CLB) or National company law tribunal (NCLT) or RBI or any court or any other tribunal. ✓ However, if any of the above not complied with, the nature of contraventions should be stated.
Clause 3 (vi)	Cost Records	If Central Government has specified maintenance of cost records under sec 148 (1) of Companies Act, 2013 whether such accounts and records have been made and maintained
Clause 3 (vii)	Statutory Dues	<ul style="list-style-type: none"> ✓ Whether the company is regular in depositing undisputed statutory dues with the appropriate authorities including Goods & Service Tax, Provident fund, Employees State Insurance fund, income tax, sales tax, service tax, duty of custom, duty of excise, value added tax, cess or any other statutory dues. If the company is not regular in depositing such statutory dues, the extent of arrears of outstanding statutory dues as at the last day of the financial year concerned for a period of more than six months from the date they become payable, shall be indicated by the auditor. ✓ In case disputed statutory dues the amount involved and the forum where dispute is pending
Clause 3 (viii)	Disclosure of transactions not recorded in the books	
Clause 3(ix)	Repayment of Loan	<ul style="list-style-type: none"> a) Whether the company has defaulted in repayment of loans and borrowing to any lender. If yes, the period and the amount of default to be reported as per the prescribed format. b) Whether company declared as wilful defaulter? c) Whether loans diverted? d) Whether funds of short term utilized for long term? e) Whether funds obtained to meet obligations of its subsidiaries, associates or joint ventures? f) Whether funds obtained on the pledge of securities held in its subsidiaries, joint ventures or associate companies
Clause 3 (x)	Utilisation of IPO and further public offer	<ul style="list-style-type: none"> a) Whether money raised by way of initial public offer or further public offer (including debt instruments) during the year were applied for the purpose for which those are raised. If not, the details together with delays and defaults and subsequent rectification, if any, as may be applicable, be reported b) whether the company has made any preferential allotment

Accounts & Audit
4.35

		or private placement of shares or convertible debentures (fully, partially or optionally convertible) during the year and if so, whether the requirements of section 42 and section 62 of the Companies Act, 2013 have been complied with
Clause 3 (xi)	Reporting of Fraud and whistle blower complaint	<p>a) Whether any fraud by the company or any fraud on the company by its officers and employees has been noticed or reported during the year: if yes, the nature and the amount involved is to be indicated.</p> <p>b) whether any report under sub-section (12) of section 143 of the Companies Act has been filed by the auditors in Form ADT-4 (Fraud ≥1 crore)</p> <p>c) whether the auditor has considered whistle-blower complaints, if any, received during the year by the company</p>
Clause 3 (xii)	Nidhi Company	<p>a) Whether the Nidhi company has complied with the net owned funds to deposit in the ratio of 1:20 to meet out the liability and</p> <p>b) whether the Nidhi company is maintain 10% unencumbered term deposit as specified in the Nidhi rules 2014 to meet out the liability.</p> <p>c) Details of any default in payment of interest on deposits or repayment.</p>
Clause 3 (xiii)	Related Party Transaction	Whether all transaction with the related party is in compliance with Section 188 of the Companies Act, 2013 in respect of related party transactions and with appropriate disclosure.
Clause 3 (xiv)	Internal Audit System	
Clause 3 (xv)	Non Cash Transaction	Whether the company has entered into any non-cash transaction with the director or person concerned with this and if so, whether the provision of Section 192 of Companies Act, 2013 has been complied with.
Clause 3 (xvi)	Register under RBI Act 1934	<p>a) Whether the company is required to be registered under Section 45 IA (Registration by NBFC) of Reserve Bank of India Act, 1934 and if so, whether the registration has been obtained.</p> <p>b) whether the company has conducted any Non-Banking Financial or Housing Finance activities without a valid Certificate of Registration</p> <p>c) whether the company is a Core Investment Company (CIC) as defined in the regulations made by the Reserve Bank of India</p> <p>d) whether the Group has more than one CIC as part of the Group</p>
Clause 3 (xvii)	Cash Losses	
Clause (xviii)	Resignation of Statutory Auditors	
Clause (xix)	Capability of company of meeting its liabilities existing at the date of balance sheet	
Clause (xx)	Transfer of amount remaining unspent section 135 to Fund specified in Schedule VII	

CA Shivangi Agrawal

Accounts & Audit		4.36
Clause (xxi)	Report with Adverse remarks to be indicated	Whether there have been any qualifications or adverse remarks by the respective auditors in the Companies (Auditor's Report) Order (CARO) reports of the companies included in the consolidated financial statements, if yes, indicate the details of the companies and the paragraph numbers of the CARO report containing the qualifications or adverse remarks.

Appointment & Qualification of Directors

Section Summary

This chapter XI of Companies Act, 2013 is read with Companies (Appointment and Qualification of Directors) Rules, 2014

Section No.	Topics Covered
149	Company to have Board of Directors
150	Manner of Selection of Independent Directors and Maintenance of Databank of Independent Directors
151	Appointment of Director Elected by Small Shareholders
152	Appointment of Directors
153	Application for Allotment of Director Identification Number
154	Allotment of Director Identification Number
155	Prohibition to obtain more than One Director Identification Number
156	Company to intimate Director Identification Number
157	Company to inform Director Identification Number to Registrar
158	Obligation to Indicate Director Identification Number
159	Penalty for Default of Certain Provisions
160	Right of Persons other than Retiring Directors to stand for Directorship
161	Appointment of Additional Director, Alternate Director and Nominee Director
162	Appointment of Directors to be voted Individually
163	Option to Adopt Principle of Proportional Representation for Appointment of Directors
164	Disqualifications for Appointment of Director
165	Number of Directorships
166	Duties of Directors
167	Vacation of Office of Director
168	Resignation of Director
169	Removal of Directors
170	Register of Directors and Key Managerial Personnel and their Shareholding
171	Members' Right to Inspect
172	Punishment

Directors

Section 2(34)

"director" means a director appointed to the Board of a company

Analysis-

- ✓ A person will be regarded as Director only if he is appointed to Board
- ✓ If he performs all the functions but is not designated, he will not be a director as the definition is exhaustive.

Board of Directors

Section 2(10)

"Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company.



The terms 'Board of Directors', 'Board' and 'Directors' are **synonymous** & used interchangeably.

Why Directors?

The Company has a **separate identity but only in contemplation of Law**. It has no eyes to see, ears to hear or mind to think and take decisions. Hence the decision making powers are vested in the following-

- ✓ Members of the Company
- ✓ Board of Directors who are accountable to Members and can also delegate their functions.

Furthermore, the Act in **section 149 prescribes the requirement of Directors**.

Types of Directors

Executive Directors

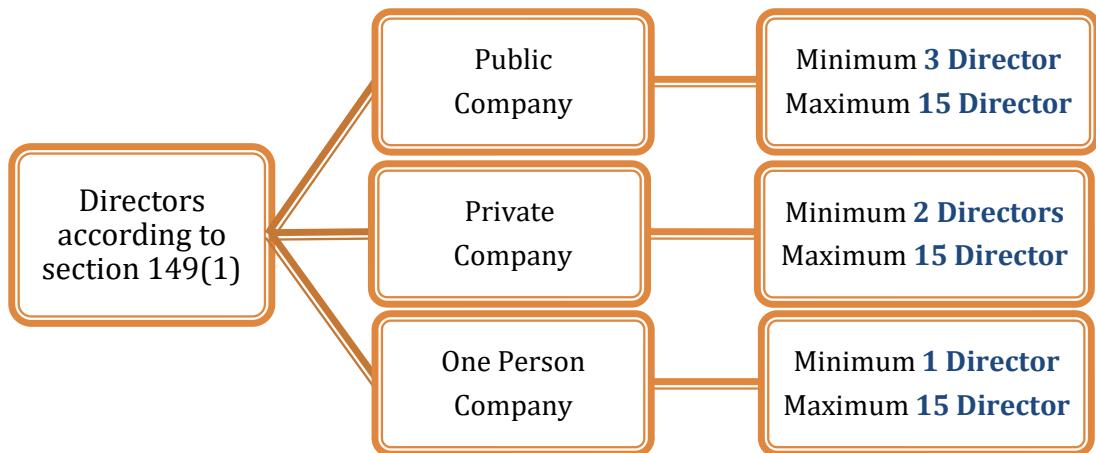
- ✓ The directors who are **in the employment of the company** are called as Executive Directors.
- ✓ They possess **in-depth knowledge of affairs** of the Company.
- ✓ To become executive Director a person should be in **whole time employment** of the Company.
- ✓ They are connected with policy formulation and take active part in the day-to-day affairs of the company.
- ✓ Eg. MD, WTD

Non-Executive Directors

- ✓ Directors who are **not in employment** of the company are called as Non-executive Directors
- ✓ They generally have **diverse experience** and provide **independent perspective** and knowledge to the Company.
- ✓ They are not appointed to work full time but under a contract of service.
- ✓ They attend meetings and contribute by giving unbiased opinions to the working of Company.
- ✓ Eg. Independent Directors

Company to have Board of Directors

Section 149



Section 149(1)	Every company shall have a Board of Directors consisting of individuals as directors. Thus, any person other than individuals like a body corporate, firm or association of persons cannot be appointed as a director.
1st Proviso to Section 149(1)	Provided that a company may appoint more than fifteen directors after passing a special resolution.
Exemptions	
Limit of Maximum directors and their increase by passing SR is not applicable to- ✓ Government Companies ✓ Section 8 Companies Provided they have not committed a default in filing of their financial statements u/s 137 or Annual return u/s 92 with the Registrar.	

Woman Director

2nd Proviso to Section 149(1)	Provided further that such class or classes of companies as may be prescribed, shall have at least one woman director.
Rule 3 of companies (Appointment & Qualification of directors) rules, 2014	The following class of companies shall appoint at least one woman director- (i) every listed company ; (ii) every other public company having - a) paid-up share capital of one hundred crore rupees or more ; or b) turnover of three hundred crore rupees or more as on the last date of latest audited financial statements .

New Company

Provided that a company, which has been incorporated under the Act and is covered under provisions of second proviso to sub-section (1) of section 149 shall comply with such provisions within a period of six months from the date of its incorporation.

Provided further that any **intermittent vacancy** of a woman director shall be **filled-up by the Board** at the earliest but not later than

- ✓ immediate **next Board meeting or**
- ✓ **three months** from the date of such vacancy
- ✓ **whichever is later.**

"Intermittent" means something occurring in between. Intermittent Vacancy means a vacancy arising between the dates of two general meetings.

Resident Director

Section 149(3)	Every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year	
----------------	--	---

Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated.

Independent Director

Section 149(4) to 149(13)	The provisions relating to independent directors are discussed later.
---------------------------	---

Requirements to become a Director

Section No.	Requirement	
152	Every Proposed Director must furnish consent	In Form DIR-2
153	Every Proposed Director must either have DIN or apply for the same	In Form DIR-3
164	Every Proposed Director must not be disqualified u/s 164 and file declaration of the same	In Form DIR-8
160	Must deposit 100000 with Company and Give 14 days' Notice to the Company	If a New Candidate wants to become Director
165	Directorship should be within limit stated	20 (Including 10 Public Companies)
184	Every Proposed Director must disclose his/her interest in other enterprises	In Form MBP-1

Appointment of Directors

Section 152

Sec 152(2)	Appointment in General Meeting only	Save as otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting
Sec 152(3)	Requirement of DIN	No person shall be appointed as a director of a company unless he has been allotted the Director Identification

APPOINTMENT & QUALIFICATION OF DIRECTORS

5.5

		Number under section 154 or any other number as may be prescribed under section 153
Sec 152(4)	Declaration that Not Disqualified (DIR-8)	Every person proposed to be appointed as a director by the company in general meeting or otherwise, shall furnish his Director Identification Number or such other number as may be prescribed under section 153 and a declaration that he is not disqualified to become a director under this Act
Sec 152(5)	Requirement of Consent	A person appointed as a director shall not act as a director unless he gives his consent in DIR-2 to hold the office as director and such consent has been filed with the Registrar within thirty days of his appointment in Form DIR-12.
		Provided that in the case of appointment of an independent director in the general meeting, an explanatory statement for such appointment, annexed to the notice for the general meeting, shall include a statement that in the opinion of the Board, he fulfils the conditions specified in this Act for such an appointment.
	Exemptions: (only if the company has not committed a default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar.)	<ul style="list-style-type: none"> ✓ Section 152 (5) regarding 'furnishing of consent to act as a director' shall not apply in case of Government company where appointment of the director is done by the Central Government or State Government ✓ Similar exemption from Section 152(5) is also applicable to a section 8 company

First Directors [Section 152(1)]

As mentioned in Articles of Association	
If Not	
According to provision made in the articles	
If Not	
According to Regulation 60 of Table F (Articles of Company limited by shares)	
If Not	
the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed	



In case of a One Person Company an **individual** being **member** shall be **deemed to be its first director** until the director or directors are duly appointed by the member in accordance with the provisions of this section.

Rotation of Directors in case of Public Company [Section 152(6)]

If articles provide for the retirement of all directors at every annual general meeting	All Directors shall retire [Stricter Provisions than Companies Act- Hence no need for Rotation]
--	--

[Sec 152(6)(a)]	If articles do not provide for the retirement of all directors at every annual general meeting [Sec 152(6)(b)] 	Not less than two-thirds of the total number of directors of a public company shall—	<ul style="list-style-type: none"> ✓ be persons whose period of office is liable to determination by retirement of directors by rotation (ie. Shall be Rotational Directors) and ✓ save as otherwise expressly provided in this Act, be appointed by the company in general meeting.
		Remaining directors	shall, in default of, and subject to any regulations in the articles of the company, also be appointed by the company in general meeting.

Retirement of Rotational Directors [Sec 152(6)(c)]	<p>At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed and at every subsequent annual general meeting,</p> <ul style="list-style-type: none"> ✓ one-third of such of the directors for the time being as are liable to retire by rotation, ✓ or if their number is neither three nor a multiple of three, then, the number nearest to one-third, ✓ shall retire from office.
Sequence of Retirement [Sec 152(6)(d)]	The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day , those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.
Filling up of Vacancy [Sec 152(6)(e)]	At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.

Points to be Noted:

- ✓ "Total number of directors" shall not include independent directors, whether appointed under this Act or any other law for the time being in force, on the Board of a company.
- ✓ Thus, independent directors are not liable to retire by rotation and therefore, they are non-rotational directors.
- ✓ Any person appointed as a nominee director being nominated by any institution in pursuance of the provisions of any law or any agreement (like when a financial institution that has been created by an Act of Parliament nominates a person as its nominee director on the Board of a company which has availed financial assistance from such institution) cannot be considered as a director liable to retire by rotation.
- ✓ Nominee director may also be appointed by the Central Government or the State Government by virtue of its shareholding in a Government company.

Filling Of Vacancy [Section 152(7)]

Adjournment of Meeting in case vacancy not filled [Sec 152(7)(a)]	If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week , at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.
Deemed Re-appointment in adjourned meeting if vacancy yet not filled [Sec 152(7)(a)]	If at the adjourned meeting also , the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy , the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless — <u>Exceptions to Deemed Re-appointment:</u> <ul style="list-style-type: none"> ✓ At that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost ✓ the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed ✓ he is not qualified or is disqualified for appointment ✓ a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or ✓ section 162 is applicable to the case.

For the purposes of Section 152, the “retiring director” means a director retiring by rotation

Exemption

Section 152(6) and 152 (7) of the Act of 2013, shall not apply to: (only if such a company has not committed a default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar)

- (a) Unlisted Government Company
- (b) a subsidiary of such a Government company

Penalty for Non-Compliance of Section 152

Given u/s 159

Right of Persons Other than Retiring Directors to Stand for Directorship

Section 160

Section 160 of the Act and Rule 13 of the Companies (Appointment and Qualifications of Directors) Rules, 2014

A person who is not a retiring director is also eligible to stand for directorship.

A **person who is not a retiring director** in terms of section 152 shall, subject to the provisions of this Act,

Requirement of Written Notice [Section 160(1)]

- ✓ be **eligible for appointment** to the office of a director at any general meeting,
- ✓ **if he, or some member intending to propose** him as a director
- ✓ **has, not less than fourteen days before the meeting, left at the**

	<p>registered office of the company,</p> <ul style="list-style-type: none"> ✓ a notice in writing under his hand signifying his candidature as a director or, as the case may be, ✓ the intention of such member to propose him as a candidate for that office, 								
Requirement of Deposit [Section 160(1)]	<ul style="list-style-type: none"> ✓ along with the deposit of one lakh rupees or such higher amount as may be prescribed ✓ which shall be refunded to such person or, as the case may be, to the member, ✓ if the person proposed gets elected as a director or ✓ gets more than 25% of total valid votes cast either on show of hands or on poll on such resolution. 								
	<p><u>Proviso to Section 160(1)</u></p> <p>Provided that requirements of deposit of amount shall not apply in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, if any, constituted under sub-section (1) of section 178 or a director recommended by the Board of Directors of the Company, in the case of a company not required to constitute Nomination and Remuneration Committee.</p>								
Action by the company [Section 160(2) read with Rule 13]	<p>The company shall, at least seven days before the general meeting, inform its members of the candidature of a person for the office of a director or the intention of a member to propose such person as a candidate for that office-</p> <ul style="list-style-type: none"> ✓ by serving individual notices, on the members through electronic mode to such members who have provided their email addresses to the company for communication purposes, and in writing to all other members; and ✓ by placing notice of such candidature or intention on the website of the company, if any <p>Provided that it shall not be necessary for the company to serve individual notices if the company advertises such candidature not less than seven days before the meeting at least once in a vernacular newspaper and at least once in English language in an English newspaper.</p>								
Exemption (only if concerned company has not committed a default in filing its financial statements u/s 137 or Annual return u/s 92 with the Registrar)	<table border="1"> <tr> <td>Private Company</td> <td>Section 160 not Applicable</td> </tr> <tr> <td>Section 8 company</td> <td>Section 160 shall not apply to companies whose articles provide for election of directors by ballot</td> </tr> <tr> <td>Nidhi company</td> <td>In sub-section (1) of Section 160, for the words "one lakh rupees", the words "ten thousand rupees" shall be substituted</td> </tr> <tr> <td>Government Company</td> <td>Section 160 shall not apply to: 100% Government Company A 100% subsidiary of such Government Company</td> </tr> </table>	Private Company	Section 160 not Applicable	Section 8 company	Section 160 shall not apply to companies whose articles provide for election of directors by ballot	Nidhi company	In sub-section (1) of Section 160, for the words "one lakh rupees", the words "ten thousand rupees" shall be substituted	Government Company	Section 160 shall not apply to: 100% Government Company A 100% subsidiary of such Government Company
Private Company	Section 160 not Applicable								
Section 8 company	Section 160 shall not apply to companies whose articles provide for election of directors by ballot								
Nidhi company	In sub-section (1) of Section 160, for the words "one lakh rupees", the words "ten thousand rupees" shall be substituted								
Government Company	Section 160 shall not apply to: 100% Government Company A 100% subsidiary of such Government Company								

Directors Identification Number

Section 153-159

Meaning of DIN

- ✓ "Director Identification Number" (DIN) means an identification number allotted by the Central Government to any individual, intending to be appointed as director or to any existing director of a company, for the purpose of his identification as a director of a company.
- ✓ "Director Identification Number" (DIN) shall include the Designated Partnership Identification Number (DPIN) issued under section 7 of the Limited Liability Partnership Act, 2008 and the rules made thereunder.



Section 153 read with Rule 9 [Application for DIN]	<p>Every individual intending to be appointed as director of a company</p> <ul style="list-style-type: none"> ✓ shall make an application for allotment of Director Identification Number ✓ to the Central Government in ✓ DIR-3 or SPICe+ and along with such fees as may be prescribed. <p>It is provided that in case of proposed directors not having DIN, the particulars of maximum three directors shall be mentioned in Form No.INC-32 (SPICe) and DIN may be allotted to maximum three proposed directors through Form INC-32 (SPICe).</p>
	<p>Applicant shall download the form and after attaching following documents, scan, and sign and file the entire set electronically using DSC and shall be verified digitally by CS in full time employment of Company, MD or CEO or CFO of the Company in which applicant is intended to be appointed as director in an existing company.</p> <ul style="list-style-type: none"> ✓ photograph ✓ proof of identity ✓ proof of residence ✓ board resolution proposing his appointment as director in an existing company ✓ Specimen signature duly verified
	<p>In case the name of a person does not have a last name, then his or her father's or grandfather's surname shall be mentioned in the last name along with the declaration in Form No. DIR-3A</p>
	<p>Provided that the Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of this Act and in case any individual holds or acquires such identification number, the requirement of this section shall not apply or apply in such manner as may be prescribed</p>
Section 154 read with Rule 10 [Allotment of DIN]	<p>The Central Government shall, within one month from the receipt of the application under section 153, allot a Director Identification Number to an applicant in such manner as may be prescribed.</p>

	<ul style="list-style-type: none"> ✓ On the submission of the Form DIR-3 an application number shall be generated by the system automatically ✓ If the CG, on examination, finds such application to be defective or incomplete, it shall give intimation by placing it on the website and by email to the applicant directing him to rectify such defects by resubmitting the application within a period of fifteen days of such placing on the website and email Central Government shall - ✓ reject the application where the defect has been rectified partially or the information given is still defective ✓ treat and label such application as invalid in case defects are not removed within given time ✓ inform the applicant either by way of letter by post or electronically or in any other mode. ✓ In case of rejection or invalidation the fee so paid will not be refunded or adjusted ✓ DIN allotted by CG before the commencement of these rules shall be deemed to have been allotted under these rules. <p>DIN is valid for the life-time of the applicant.</p>												
Section 155 [Prohibition to Obtain More than One DIN]	No individual, who has already been allotted a Director Identification Number under section 154, shall apply for, obtain or possess another Director Identification Number												
Section 156 [Intimation of DIN]	<p>Every existing director shall, within one month of the receipt of Director Identification Number from the Central Government, intimate his Director Identification Number to the company or all companies wherein he is a director.</p> <p>Every director, functioning as a director in one or more companies on or before the 30th June, 2007 and who has not yet intimated his DIN to such company or companies shall, within one month of the receipt of Director Identification Number from the Central Government, intimate his Director Identification Number to the company or all companies wherein he is a director as per Form DIR-3B.</p>												
Section 157 read with Rule 10A [Company to Inform DIN]	<p>Every company shall, within fifteen days of the receipt of intimation under section 156, furnish the Director Identification Number of all its directors to the Registrar or any other officer or authority as may be specified by the Central Government with such fees as may be prescribed or with such additional fees as may be prescribed and every such intimation shall be furnished in such form and manner as may be prescribed. [in Form DIR-3C]</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="3" style="text-align: left;">Failure by Company to furnish DIN</th> </tr> </thead> <tbody> <tr> <td style="width: 33%;">Company and Officer in default liable</td> <td style="width: 33%;">Penalty</td> <td style="width: 33%;">25000</td> </tr> <tr> <td></td> <td>Continuing Contravention</td> <td>100/ day after the first during which such failure continues</td> </tr> <tr> <td></td> <td>Maximum Penalty</td> <td>1 lakh</td> </tr> </tbody> </table>	Failure by Company to furnish DIN			Company and Officer in default liable	Penalty	25000		Continuing Contravention	100/ day after the first during which such failure continues		Maximum Penalty	1 lakh
Failure by Company to furnish DIN													
Company and Officer in default liable	Penalty	25000											
	Continuing Contravention	100/ day after the first during which such failure continues											
	Maximum Penalty	1 lakh											
Section 158	Every person or company, while furnishing any return, information												

[Obligation indicate DIN]	to	or particulars as are required to be furnished under this Act, shall mention the Director Identification Number in such return, information or particulars in case such return, information or particulars relate to the director or contain any reference of any director
Section 159 [Penalty]		If any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one , with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues.

Intimation of Changes in Particulars Specified in DIN Application [Rule 12]

Intimation of change to Central Government	Every individual shall, in the event of any change in his particulars as stated in Form DIR-3, intimate such changes to the Central Government within a period of thirty days of such changes in Form DIR-6 in the following manner, namely:- <ul style="list-style-type: none"> ✓ The applicant shall download Form DIR-6 from the portal, fill in the relevant changes, verify the form and attach duly scanned copy of the proof of the changed particulars and submit electronically ✓ the form shall be digitally signed by a chartered accountant in practice or a company secretary in practice or a cost accountant in practice; ✓ the applicant shall submit the Form DIR-6
Applicant to be informed of change in the electronic database:	The Central Government, upon being satisfied, after verification of such changed particulars from the enclosed proofs, shall incorporate the said changes and inform the applicant by way of a letter by post or electronically or in any other mode confirming the effect of such change in the electronic database maintained by the Ministry.
Intimation to concerned Registrar	The DIN cell of the Ministry shall also intimate the change(s) in the particulars of the director submitted to it in Form DIR-6 to the concerned Registrar(s) under whose jurisdiction the registered office of the company(s) in which such individual is a director is situated.
Individual to inform change in particulars to the company	The concerned individual shall also intimate the change(s) in his particulars to the company or companies in which he is a director within 15 days of such change.

Cancellation or Surrender or Deactivation of DIN [Rule 11]

When can DIN be	The Central Government or Regional Director (Northern Region), Noida or any officer authorised by the Regional Director may cancel
-----------------	--

cancelled?	<p>or deactivate the DIN in case -</p> <ul style="list-style-type: none"> ✓ the DIN is found to be duplicated in respect of the same person provided the data related to both the DIN shall be merged with the validly retained number ✓ the DIN was obtained in a wrongful manner or by fraudulent means <ul style="list-style-type: none"> • the term "wrongful manner" means if the DIN is obtained on the strength of documents which are not legally valid or incomplete documents are furnished or on suppression of material information or on the basis of wrong certification or by making misleading or false information or by misrepresentation. • the term "fraudulent" means if the DIN is obtained with an intent to deceive any other person or any authority including the Central Government. <ul style="list-style-type: none"> ✓ of the death of the concerned individual ✓ the concerned individual has been declared as a person of unsound mind by a competent Court ✓ if the concerned individual has been adjudicated an insolvent ✓ on an application made in Form DIR-5 by the DIN holder to surrender his or her DIN along with declaration that he has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority, the Central Government may deactivate such DIN. However, before deactivation, the Central Government shall verify e-records.
Deactivation of DIN in case KYC not submitted	The Central Government or Regional Director (Northern Region), or any officer authorized deactivate the Director Identification Number (DIN), of an individual who does not intimate his particulars in e-form DIR-3-KYC 3 or the web service DIR-3-KYC-WEB as the case may be within stipulated time in accordance with rule 12A
Reactivation of DIN	The de-activated DIN shall be re-activated only after e-form DIR-3-KYC 3 or the web service DIR-3-KYC-WEB as the case may be is filed along with fee as prescribed under Companies (Registration Offices and Fees) Rules, 2014.

Directors KYC [Rule 12A]

KYC	Every individual who holds a Director Identification Number (DIN) as on 31st March of a financial year as per these rules shall, submit e-form DIR-3-KYC or through web service DIR-3 KYC-WEB for the said financial year to the Central Government on or before 30th, September of immediate next financial year
Verification	Provided further that where an individual who has already submitted e-form DIR-3 KYC in relation to any previous financial year, submits web-form DIR-3 KYC-WEB through the web service in relation to any subsequent financial year it shall be deemed to be compliance of the provisions of this rule for the said financial year

Updating of Details	Provided also that in case an individual desires to update his personal mobile number or the e-mail address, as the case may be, he shall update the same by submitting e-form DIR-3 KYC only
Fees	Provided also that fee for filing e-form DIR-3 KYC or web-form DIR-3 KYC-WEB through the web service, as the case may be, shall be payable as provided in Companies (Registration Offices and Fees) Rules, 2014.

Number of Directorships

Section 165

Sec 165(1)	Maximum Number of Directorships	A person shall not hold office as a director, including any alternate directorship, in more than twenty companies at the same time.
		Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.
		For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included . For reckoning the limit of directorships of twenty companies , the directorship in a dormant company shall not be included .
Sec 165(2)	Lesser Directorships	The members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors.
Sec 165(3)	Resignation from Directorship of excess companies	Any person holding office as director in companies more than the limits as specified immediately before the commencement of this Act shall, within a period of one year from such commencement- <ol style="list-style-type: none"> choose companies in which he wishes to continue to hold the office of director; resign his office as director in the other remaining companies; and intimate the choice made by him to each of the companies in which he was holding the office of director before such commencement and to the Registrar having jurisdiction in respect of each such company.
Sec 165(4)	Effective date of resignation	Any resignation shall become effective immediately on the despatch thereof to the company concerned
Sec 165(5)	Time limit for maintaining directorships	No such person shall act as director in more than the specified number of companies,— <ul style="list-style-type: none"> ✓ after despatching the resignation of his office as director or non-executive director; or ✓ after the expiry of one year from the commencement of this Act, whichever is earlier.
Sec 165(6)	Punishment for Contravention	If a person accepts an appointment as a director in contravention of sub-section (1), he shall be liable to- Penalty- 2000/day [Maximum- 200000]

Exemption	In case of section 8 company - Section 165 (1) shall not apply
-----------	--

Who can be a Director?

Section 164



- ✓ Only Individuals who are not disqualified u/s 164, competent to contract and have DIN can be appointed as Directors.
- ✓ Law does not specify any professional or educational qualifications of a director or requires him to hold requisite number of qualification shares.

General Disqualifications u/s 164(1)

A person shall not be eligible for appointment as a director of a company, if —	
Unsound Mind	a) he is of unsound mind and stands so declared by a competent court
Undischarged Insolvent	b) he is an undischarged insolvent
Applied for Insolvency	c) he has applied to be adjudicated as an insolvent and his application is pending
Convicted for Offence	<p>d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company</p> <p style="border: 1px solid black; padding: 5px;">or otherwise" means any offence in respect of which he has been convicted by a Court under the Act or under the Companies Act, 1956.</p>
Disqualified by Court	e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force
Pending calls in arrear	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
Convicted for Related Party Transactions offence	g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years ; or
No DIN	h) he has not complied with sub-section (3) of section 152.
Directorships limit exceeded	i) he has not complied with the provisions of sub-section (1) of section 165
Provided that the disqualifications referred to in clauses (d), (e) and (g) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification	

Disqualifications on Ground of Default by Company [Section 164(2)]

The director concerned shall not be eligible to be re-appointed as a director of such defaulting company or appointed in some other company for period of 5 years from the date on which the said company has committed default in both cases of default as under-

Defaults	No person who is or has been a director of a company which— a) has not filed financial statements or annual returns for any continuous period of three financial years ; or b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more , shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so
Benefit to New Director	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.

Exemption

Section 164(2) is not applicable to a Government company provided it has not committed a default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar.

Additional Grounds of Disqualification in Private Company [Section 164(3)]

A **private company may by its articles provide for any disqualifications** for appointment as a director in addition to those specified.

Vacation of Office of Director

Section 167

The office of a director shall become vacant in case—
[Section 167(1)]



Disqualification u/s 164	a) 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.
Absent from Board Meetings	b) he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board
Contravention of Sec 184	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
Disqualified by Court	e) he becomes disqualified by an order of a court or the Tribunal
Convicted by Court for 6 months atleast	f) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months
Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)-	
for thirty days from the date of conviction or order of disqualification;	
<ul style="list-style-type: none"> ✓ 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. 	
Removed under Act	g) he is removed in pursuance of the provisions of this Act ;
Cessation of office on which appointed	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.

Penalty for Non Compliance [Section 167(2)]

If a person, functions as a director even when he knows that the office of director held by him has become vacant	Fine Only	
	Minimum- 1 lakh	Maximum- 5 lakhs

Consequences in case all Directors vacate [Section 167(3)]

Where **all the directors** of a company **vacate** their **offices** under any of the disqualifications specified,

- ✓ the **promoter** or, in his absence,
- ✓ the Central Government
- ✓ **shall appoint** the required number of directors **who shall hold office till the directors are appointed by the company in the general meeting.**

Additional Grounds of Vacation in Private Company [Section 167(4)]

- ✓ A **private company may**, by its articles, **provide any other ground for the vacation** of the office of a director in addition to those specified.

Duties of Directors**Section 166**

The foremost duty of the directors is to act honestly and diligently and in the best interest of the company so that the objective of wealth maximization is achieved for the stakeholders.

However, list of duties is not exhaustive.

Duties as given u/s 166	Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company. A director of a company shall act in good faith in order to promote the
----------------------------	---

	<p>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.</p> <p>A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment</p> <p>A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.</p> <p>A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.</p> <p>A director of a company shall not assign his office and any assignment so made shall be void.</p>
Penalty for Non Compliance of Section 166	If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees .
Other Duties under the Act	<p>To file various documents</p> <p>It is the duty of the directors to file various documents required to be filed with the Registrar within the specified time limits. Similarly, wherever required, the requisite documents must also be filed with other statutory bodies.</p> <p>To convene General Meetings</p> <p>As and when required, Annual General Meeting (AGM)²⁹ and extraordinary general meetings (EGMs)³⁰ need to be convened by the directors.</p> <p>To attend Board Meetings</p> <p>Board meetings is the platform where collective decisions are taken for managing the company profitably. It is statutorily required of a company to hold at least four board meetings every year³¹ and the gap between two board meetings must not exceed 120 days. However, a company may, as per the exigencies, hold more meetings than statutorily required and every director is duty-bound to attend them. A director, though, may not attend all the Board meetings held in a year but in case he remains absent from all such meetings held within a period of twelve months either with or without seeking leave of absence, he shall be deemed to have vacated his office</p> <p>To disclose interest</p> <p>In the ordinary course, it is required of a director that his interest should not clash with the interests of the company <i>i.e.</i> he should not get himself benefitted from a transaction, the profit of which belongs to the company. If it happens and a director gets interested in a transaction belonging to the company, it his duty to disclose such interest at the very first Board meeting he attends after becoming interested in the transaction. Thereafter, such interest should be disclosed in the first board</p>

		meeting held in every financial year. In case there is any change in the disclosure already made by the director, such change needs to be brought in the knowledge of other directors in the first board meeting which he attends after occurring of such change. A detailed disclosure of interest and punishment for non-disclosure is discussed at the appropriate place.
	To approve the annual financial statements	Before seeking auditor's report, the annual financial statements i.e. balance sheet, statement of profit and loss, cash flow statement, etc. including consolidated financial statements, if any, are required to be approved by the directors.
	To approve and attach Board Report	A report by the Board of Directors containing requisite particulars on the affairs of the company including Directors' Responsibility Statement is required to be attached with the financial statements after its approval.
	To appoint first Auditors	It is the duty of directors to appoint first auditors of the company.

Appointment of Directors by Board

Section 161

Appointment of Additional Director [Section 161(1)]

To meet urgent requirements of management, the Board of Directors is empowered to appoint any person as an additional director who is not disqualified, gives consent and holds DIN

Sec 161(1)	If Power in AOA	The articles of a company may confer <ul style="list-style-type: none"> ✓ on its Board of Directors the power to appoint any person, ✓ other than a person who fails to get appointed as a director in a general meeting, ✓ as an additional director at any time ✓ who shall hold office up to the date of the next annual general meeting or ✓ the last date on which the annual general meeting should have been held, ✓ whichever is earlier
	By Passing BR	If Articles of the Company are silent with respect to Additional Directors, Table F shall apply and Hence Board gets the power to appoint them.

Appointment of Alternate Director [Section 161(2)]

An alternate director is appointed in place of a regular director who has gone out of India.

Sec 161(2)	If Power in AOA/ Ordinary Resolution	The Board of Directors of a company may, if so authorized by its articles or by a resolution passed by
------------	---	---

	By Passing BR	the company in general meeting , appoint a person, to act as an alternate director for a director during his absence for a period of not less than three months from India
	Non-Director to become Alternate Director with no such position elsewhere	The person so appointed shall not be a person holding any alternate directorship for any other director in the company or holding directorship in the same company
	Not as Independent Director unless qualified	Provided that no person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act
	Tenure	Provided further that an alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India
	No Deemed Re-appointment	Provided also that if the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.
<ul style="list-style-type: none"> ✓ Original Director may attend Board meeting via Virtual Mode. ✓ It is not mandatory for Board to appoint alternate Director. It may or may not choose to do so. ✓ Table F does not have any regulation with respect to Alternate Director ✓ It is important to note that purpose of going out of India of director is not specified and hence doesn't matter. ✓ Such proposed alternate director should possess DIN. ✓ Alternate director is not exempted from furnishing his consent to act as director. Therefore, he must furnish his consent in DIR-2 to the company on or before his appointment and in turn the company shall file his consent with the Registrar in DIR-12. 		

Appointment of Nominee Director [Section 161(3)]

A nominee director is not like any other director. He represents the body which makes his nomination for appointment as director in the company. Whenever a company obtains financial assistance from some financial institution or bank, such institution invariably nominates its representative for safeguarding its interests till the loaned amount is completely repaid. The nominee director is expected to ensure that the terms of loan agreements are religiously complied with all the time by the company concerned which has been granted financial assistance.

Sec 161(3)	If Power in AOA	Subject to the articles of a company, <ul style="list-style-type: none"> ✓ the Board may appoint any person as a director ✓ nominated by any institution ✓ in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company.
	By Passing BR	

- ✓ If Additional director/Alternate Director/Nominee Director is to be appointed as Regular Directors,
- ✓ Their appointment as regular director requires that the provisions of Section 160 are followed since they are not a retiring directors.

Filling of Casual Vacancy [Section 161(4)]

- ✓ The term 'casual' means a sudden happening.
- ✓ A casual vacancy results when the office of any director appointed in the general meeting is vacated before the expiry of his term in the normal course.
- ✓ This is not the vacancy created due to the retirement of a director.
- ✓ It is created because of certain other factors that are not linked with retirement like occurrence of death or attraction of disqualification or tendering of resignation or removal, etc.
- ✓ A vacancy which was created due to the fact that the elected director declined to assume the office after his appointment at general meeting cannot be said to result in a casual vacancy.

Sec 161(4)	If Power in AOA	<ul style="list-style-type: none"> ✓ If the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, ✓ the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board which shall be subsequently approved by members in the immediate next general meeting <p>Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.</p>
	By Passing BR + Approval by OR	

There is no such urgency in filling of this casual vacancy (unlike woman director/Independent director) because if the Board of Directors feels that the affairs of the company can be managed without appointing anybody, then the Board can postpone such appointment.

Appointment of Directors to Be Voted Individually

Section 162

Appointment of Directors to be Voted Individually

Electing more than one person as directors through a single resolution deprives the shareholders from exercising their choice to reject a specific individual.

Sec 162	Appointment by Single Resolution at GM	At a general meeting of a company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.
	Appointment in	A resolution moved in contravention shall be void ,

	contravention void	whether or not any objection was taken when it was moved
A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as a motion for his appointment.		
	Exemptions	<p>Section 162 shall not apply - (If such company has not committed a default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar.)</p> <ul style="list-style-type: none"> ✓ Private company – ✓ 100% Government Company ✓ 100% Subsidiary of such Government Company

Proportional Representation for Appointment of Directors

Section 163

Appointment by Proportional Representation

The section over rides all provisions of Companies Act.

Background: The directors in a company are appointed by simple majority but this may be unfair to minority shareholders as they may not find a single person of their choice on Board.

Sec 163	If Power in AOA	<ul style="list-style-type: none"> ✓ Notwithstanding anything contained in this Act, ✓ the articles of a company may provide for the appointment of ✓ not less than two-thirds of the total number of the directors of a company ✓ in accordance with the principle of proportional representation, ✓ whether by the single transferable vote or by a system of cumulative voting or otherwise
	Casual Vacancy according to sec 161	and such appointments may be made once in every three years and casual vacancies of such directors shall be filled as provided in sub-section (4) of section 161.
Note: Provisions of Rotation given u/s 152 shall not apply in such case.		
	Exemptions	<p>Section 163 shall not apply - (If such company has not committed a default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar.)</p> <ul style="list-style-type: none"> ✓ 100% Government Company ✓ 100% Subsidiary of such Government Company

Such directors cannot be removed u/s 169 by shareholders.

Resignation of Director

Section 168

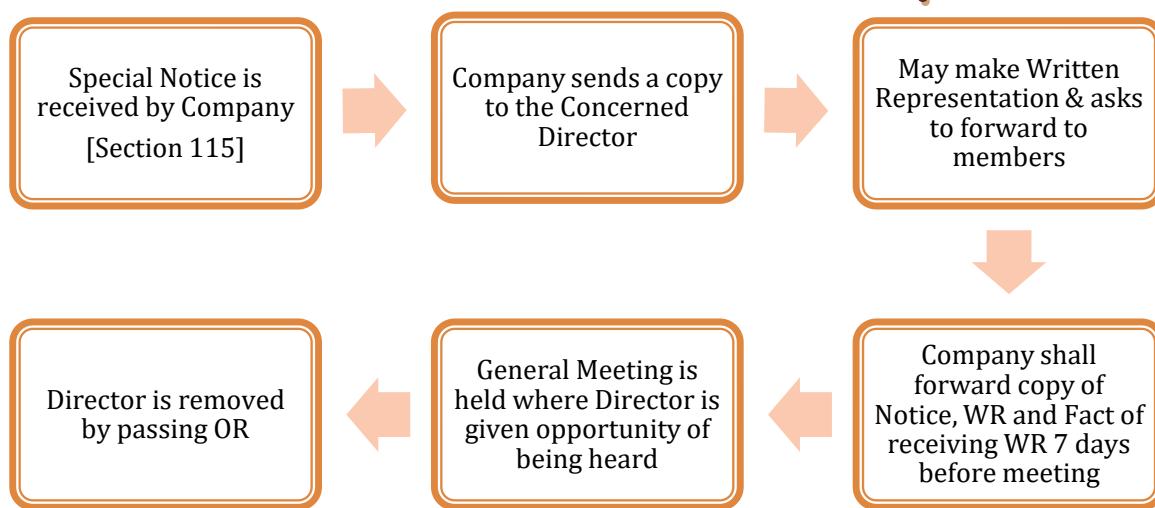
Resignation Director

Section 168 read with Rule 15 and Rule 16	Written Notice to Company	A director may resign from his office by <ul style="list-style-type: none"> ✓ giving a notice ✓ in writing ✓ to the company
---	---------------------------	--

	Company intimate ROC to	Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar within 30 days in DIR-12 and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company.
	Option to forward resignation to ROC	Provided that a director may also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days in DIR-11
	Time of Resignation	The resignation of a director shall take effect- <ul style="list-style-type: none"> ✓ from the date on which the notice is received by the company or ✓ the date, if any, specified by the director in the notice, ✓ whichever is later Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure .
	All Directors tendering Resignation	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 .

Removal of Directors by Shareholders

Section 169



A director of a company may be removed before completion of his term as director after giving him an opportunity of being heard.

Sec 169(1)	Removal by OR	<p>A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal before the expiry of the period of his office after giving him a reasonable opportunity of being heard.</p> <p>Exceptions:</p> <ul style="list-style-type: none"> ✓ when a director is appointed by the Tribunal under Section 242. ✓ When as per Section 163, two-thirds or more of the total number of directors are appointed according to the principle of proportional representation, then such directors cannot be removed.
	Removal by SR	An independent director re-appointed for second term under Section 149(10) shall be removed by the company only by passing a special resolution
Sec 169(2)	Requirement of Special Notice	<p>A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.</p> <p>It is not necessary for a member to state the grounds of removal of a director at the time of calling the extraordinary general meeting. [LIC vs Escorts Ltd]</p>
	What is Special Notice (Sec 115)	<p>Where, by any special notice is required of any resolution,</p> <ul style="list-style-type: none"> ✓ notice of the intention to move such resolution shall be given to the company by ✓ such number of members holding not less than one per cent of total voting power or ✓ holding shares on which such aggregate sum not exceeding five lakh rupees has been paid-up and the company ✓ shall give its members notice of the resolution in such manner as may be prescribed.
	Procedure	
Sec 169(3)	Copy of Notice to Director	On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.
Sec 169(4)	Representation by the Director	<p>Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,—</p> <ol style="list-style-type: none"> a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and b) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company), and if a copy of the representation is not sent, the director may require that the

		representation shall be read out at the meeting.
Proviso to Sec 169(4)	No Need for Representation	Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, ✓ on the application either of the company or of any other person who claims to be aggrieved, ✓ the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter ; and ✓ the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it
Sec 169(6)	Tenure of Director	A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed.
Sec 169(5)	Casual Vacancy	A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board , be filled by the appointment of another director in his place at the meeting at which he is removed, provided special notice of the intended appointment has been given
Sec 169(7)		If the vacancy is not filled , it may be filled as a casual vacancy in accordance with the provisions of this Act but the director who was removed from office shall not be re-appointed as a director by the Board of Directors.
Sec 169(8)	Payment Compensation of	A person so removed as director shall not be deprived of his rights to compensation or damages payable to him in respect of the premature termination of the directorship, or terms of his appointment as director or of any appointment terminating with that as a director. The restrictions imposed by Section 202 are also to be kept under consideration while making payment of compensation for loss of office of directorship.

Independent Directors

Section 149

Sec 149(4)	Independent Director Requirement	<p>Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.</p> <p>Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014</p> <p>The following class or classes of companies shall have at least two directors as independent directors -</p> <ul style="list-style-type: none"> ✓ the Public Companies having paid up share capital of ten crore rupees or more; or ✓ the Public Companies having turnover of one hundred crore rupees or more; or ✓ the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees
------------	----------------------------------	--

		<p>The following classes of unlisted public company shall not be covered above namely-</p> <ul style="list-style-type: none"> ✓ a joint venture; ✓ a wholly owned subsidiary; and ✓ a dormant company <p>The paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account</p>
	Fraction	Any fraction contained in such one-third number shall be rounded off as one.
149(5)	Not Important (Time limit for compliance: Old Companies)	Every company existing on or before the date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules in this regard as may be applicable, comply with the requirements

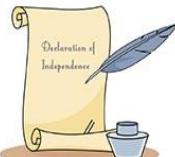
Meaning of Independent Director

Sec 149(6)		<p>An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—</p>	
	Person of Integrity	a)	<p>who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience</p>
	Not a Promoter or related to him	b)	<ul style="list-style-type: none"> ✓ who is or 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;
	No Pecuniary Relation	c)	<p>who has or had no 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, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year</p>
	Relative not: ❖ Holding security ❖ Indebted given ❖ Guarantee ❖ pecuniary transaction	d)	<p>None of whose relatives—</p> <ul style="list-style-type: none"> ✓ 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 2% of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed ✓ 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; ✓ has given a guarantee or provided any security in connection with the indebtedness of any third

			<p>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</p> <p>✓ has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to 2% 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)</p>
	Him/Relative Not a KMP in last 3 years	e)	<p>who, neither himself nor any of his relatives—</p> <p>✓ holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed</p> <p>Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years.</p> <p>✓ 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—</p> <ul style="list-style-type: none"> A. a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or B. any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to 10% or more of the gross turnover of such firm <p>✓ holds together with his relatives 2% or more of the total voting power of the company; or</p> <p>✓ is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives 25% 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</p>
	Other	f)	<p>who possesses such other qualifications as may be prescribed.</p> <p>Rule 5: An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.</p>

For the purposes of section 149(6) : In case of Government Companies which has not committed default in filing Financial Statements or Annual return with registrar, The word 'Board' shall be

substituted by the words 'Ministry or Department of the Central Government which is administratively in charge of the Company.

		Appointment of Independent Directors shall be made considering Audit Committee u/s 177
Sec 149(7)	Declaration of Independence 	Every independent director shall- <ul style="list-style-type: none"> ✓ at the first meeting of the Board in which he participates as a director and thereafter ✓ at the first meeting of the Board in every financial year or ✓ whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence.
Sec 149(9)	What they don't get?	An independent director shall not be entitled to- <ul style="list-style-type: none"> ✓ Any stock option It may get- <ul style="list-style-type: none"> ✓ Sitting fees as given u/s 197(5) ✓ reimbursement of expenses for participation in the Board and other meetings and ✓ profit related commission as may be approved by the members. <p>Provided that if a company has no profits or its profits are inadequate, an independent director may receive remuneration, exclusive of any fees payable under sub-section (5) of section 197, in accordance with the provisions of Schedule V</p>
Sec 149(10)	Term of Independent Director	An independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report. MCA Clarification As such while appointment of an 'Independent Director' for a term of less than five years would be permissible, appointment for any term (whether for five years or less) is to be treated as a one term under section 149(10) of the Act.
Sec 149(11)	Limit and Cooling Period	No independent director shall hold office for more than two consecutive terms , but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director <p>Provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.</p>
Sec 149(12)	Liability	Notwithstanding anything contained in this Act,— <ul style="list-style-type: none"> ✓ an independent director & ✓ a non-executive director not being promoter or key managerial personnel, ✓ shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted

	diligently. The provisions of retirement of directors by rotation shall not be applicable to appointment of independent directors.
	The company and independent directors shall abide by the provisions specified in Schedule IV. [Section 149(8)]

Manner of Appointment of Independent Directors & Maintenance of Data Bank

Section 150

Sec 150(1)	An independent director may be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by any body, institute or association, as may be notified by the Central Government, having expertise in creation and maintenance of such data bank and put on their website for the use by the company making the appointment of such directors.	
Proviso to Sec 150(1)	Further, the responsibility of exercising due diligence before selecting a person as an independent director from the data bank, shall lie with the company making such appointment	
Sec 150(2)	Approval of Appointment in general meeting	The appointment of independent director shall be approved by the company in general meeting as provided in sub-section (2) of section 152 and the explanatory statement annexed to the notice of the general meeting called to consider the said appointment shall indicate the justification for choosing the appointee for appointment as independent director.
Sec 150(3)	Data bank to contain list of willing persons	The data bank referred shall create and maintain data of persons willing to act as independent director in accordance with such rules as may be prescribed.
Sec 150(4)	Manner & procedure of selection specified by CG	The Central Government may prescribe the manner and procedure of selection of independent directors who fulfill the qualifications and requirements specified under section 149.
	Exemption	Section 8 company is exempted from the application of Section 150 of the Act, only if such company has not committed a default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar

Rule 6: Compliances Required by a Person Eligible and Willing To Be Appointed as an Independent Director.

Apply to Institute for Inclusion of Name	Every individual – <ul style="list-style-type: none"> ✓ who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, shall within a period of Thirteen months from such commencement; or ✓ who intends to get appointed as an independent director in a company after such commencement, shall before such appointment,
--	--

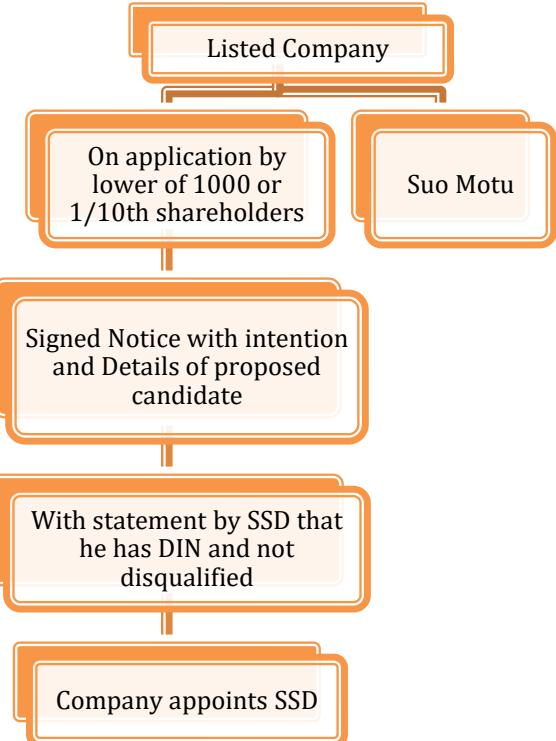
	<p>apply online to the institute for inclusion of his name in the data bank for a period of one year or five years or for his life-time, and from time to time take steps as specified till he continue to hold office as Independent Director.</p> <p>Provided that any individual, including an individual not having DIN, may voluntarily apply to the institute for inclusion of his name in the data bank.</p>
Renewal	<p>Every individual whose name has been so included in the data bank shall file an application for renewal within a period of thirty days from the date of expiry of the period upto which the name of the individual was applied for inclusion in the data bank, failing which, the name of such individual shall stand removed from the data bank of the institute</p> <p>Provided that no application for renewal shall be filed by an individual who has paid life-time fees for inclusion of his name in the data bank.</p>
Declaration of Compliance	Every independent director shall submit a declaration of compliance of sub-rule (1) and sub-rule (2) to the Board, each time he submits the declaration required under sub-section (7) of section 149 of the Act.
Proficiency Test	<p>Every individual whose name is so included shall pass an online proficiency self-assessment test conducted by the institute within a period of two years from the date of inclusion of his name failing which, his name shall stand removed.</p> <p>Provided that an individual shall not be required to pass the online proficiency self-assessment test, when he has served as a director or key managerial personnel, for a total period of not less than three years, as on the date of inclusion of his name in the databank, in one or more of the following, namely:-</p> <p>(A) as a director or key managerial personnel, as on the date of inclusion of his name in the databank, in one or more of the following, namely:-</p> <ul style="list-style-type: none"> (a) listed public company; or (b) unlisted public company having a paid-up share capital of rupees ten crore or more; or (c) body corporate listed on any recognized stock exchange or in a country which is a member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organization of Securities Commissions; or (d) bodies corporate incorporated outside India having a paid-up share capital of US\$ 2 million or more; or (e) statutory corporations set up under an Act of Parliament or any State Legislature carrying on commercial activities; or <p>(B) in the pay scale of Director or above in the Ministry of Corporate Affairs or the Ministry of Finance or Ministry of Commerce and Industry or the Ministry of Heavy Industries and Public Enterprises and having experience in handling the matters relating to corporate laws or securities laws or economic laws; or</p> <p>(C) in the pay scale of Chief General Manager or above in the Securities and Exchange Board or the Reserve Bank of India or the Insurance Regulatory and Development Authority of India or the Pension Fund Regulatory and Development Authority and having experience in handling the matters relating to corporate laws or securities laws or economic laws :</p> <p>Provided further that for the purpose of calculation of the period of three</p>

	<p>years referred to in the first proviso, any period during which an individual was acting as a director or as a key managerial personnel in two or more companies or bodies corporate or statutory corporations at the same time shall be counted only once.</p>
	<p>Provided also that the following individuals, who are or have been, for at least ten years :—</p> <p>(A) an advocate of a court; or (B) in practice as a chartered accountant; or (C) in practice as a cost accountant; or (D) in practice as a company secretary, shall not be required to pass the online proficiency self-assessment test.</p>
Other Important Points	<ul style="list-style-type: none"> ✓ an individual who has obtained a score of not less than Fifty percent. in aggregate in the online proficiency self-assessment test shall be deemed to have passed such test; ✓ there shall be no limit on the number of attempts an individual may take for passing ✓ Indian Institute of Corporate Affairs at Manesar' notified under sub-section (1) of section 150 of the Companies Act, 2013 as the institute for the creation and maintenance of data bank of Independent Directors;

Appointment of Small Shareholders Director

Section 151

"small shareholders" means a **shareholder holding** shares of **nominal value of not more than twenty thousand rupees** or such other sum as may be prescribed

Sec 151 is read with Rule 7	Requirement of SSD	A listed company may have one director elected by such small shareholders. A listed company, may upon notice of –
		<ul style="list-style-type: none"> ✓ not less than ✓ one thousand small shareholders ✓ or one-tenth of the total number of such shareholders ✓ whichever is lower, ✓ have a small shareholders' director ✓ elected by the small shareholders <p>A listed company may opt to have a director representing small shareholders suo motu.</p>

Procedure under Rules

Notice to the Company	<p>The small shareholders intending to propose a person as a candidate for the post of small shareholders' director shall-</p> <ul style="list-style-type: none"> ✓ leave a notice of their intention with the company ✓ at least fourteen days before the meeting ✓ under their signatures ✓ specifying the name, address, shares held and folio number of the person ✓ whose name is being proposed for the post of director and of the ✓ small shareholders who are proposing such person for the office of director ✓ if the person being proposed does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice: <p>The notice shall be accompanied by a statement signed by the person whose name is being proposed for the post of small shareholders' director stating -</p> <ul style="list-style-type: none"> ✓ his Director Identification Number; ✓ that he is not disqualified to become a director under the Act; and ✓ his consent to act as a director of the company
SSD to be considered as Independent Director	Such director shall be considered as an independent director subject to , his being eligible under sub-section (6) of section 149 and his giving a declaration of his independence in accordance with sub-section (7) of section 149 of the Act.
Appointment of SSD	<p>The appointment of small shareholders' director shall be subject to the provisions of section 152 except that-</p> <ul style="list-style-type: none"> ✓ such director shall not be liable to retire by rotation; ✓ such director's tenure as small shareholders' director shall not exceed a period of three consecutive years; and ✓ on the expiry of the tenure, such director shall not be eligible for re-appointment. <p>A person shall not be appointed as small shareholders' director of a company, if the person is not eligible for appointment in terms of section 164.</p>
Vacation of Office by SSD	A person appointed as small shareholders' director shall vacate the office if - <ul style="list-style-type: none"> ✓ the director incurs any of the disqualifications specified in section 164; ✓ the office of the director becomes vacant in pursuance of section 167; ✓ the director ceases to meet the criteria of independence as provided in sub-section (6) of section 149.
Prohibition to Hold Position in More Companies	<ul style="list-style-type: none"> ✓ No person shall hold the position of small shareholders' director in more than two companies at the same time ✓ Provided that the second company in which he has been appointed shall not be in a business which is competing or is in conflict with the business of the first company.

Cooling Period for holding office by SSD	A small shareholders' director shall not, for a period of three years from the date on which he ceases to hold office as a small shareholders' director in a company, be appointed in or be associated with such company in any other capacity, either directly or indirectly.
Removal	SSD can be removed by shareholders under section 169.

Registers

Section 170

Maintenance of Register	 <p>Every company shall keep at its registered office a register containing such particulars of its directors and key managerial personnel as may be prescribed, which shall include the details of securities held by each of them in the company or its holding, subsidiary, subsidiary of company's holding company or associate companies.</p>
	<p>Prescribed Details:</p> <ul style="list-style-type: none"> a) Director Identification Number (optional for key managerial personnel); b) present name and surname in full; c) any former name or surname in full; d) father's name, mother's name and spouse's name(if married) and surnames in full; e) date of birth; f) residential address (present as well as permanent); g) nationality (including the nationality of origin, if different); h) occupation; i) date of the board resolution in which the appointment was made; j) date of appointment and reappointment in the company; k) date of cessation of office and reasons therefor; l) office of director or key managerial personnel held or relinquished in any other body corporate; m)membership number of the Institute of Company Secretaries of India in case of Company Secretary, if applicable; and n) Permanent Account Number (mandatory for key managerial personnel if not having DIN); <p>In addition to the above details, the company shall also include in the Register the details of securities held by them in the company, its holding company, subsidiaries, subsidiaries of the company's holding company and associate companies relating to:</p> <ul style="list-style-type: none"> a) the number, description and nominal value of securities; b) the date of acquisition and the price or other consideration paid; c) date of disposal and price and other consideration received; d) cumulative balance and number of securities held after each transaction; e) mode of acquisition of securities ; f) mode of holding – physical or in dematerialized form; and g) whether securities have been pledged or any encumbrance has been

	created on the securities.
Return	A return containing such particulars and documents as may be prescribed, of the directors and the key managerial personnel shall be filed with the Registrar within thirty days from the appointment of every director and key managerial personnel, as the case may be, and within thirty days of any change taking place.
Exemption	Section 170 shall not apply to- 100% Government Company

Right of Inspection

Section 171

 Inspection of Register	The register <ul style="list-style-type: none"> ✓ shall be open for inspection during business hours and ✓ the members shall have a right to take extracts on a request ✓ which be provided to them free of cost within thirty days; and ✓ shall also be kept open for inspection at every AGM ✓ and shall be made accessible to person attending meeting.
Refusal and Inspection	If any inspection is refused , or if any copy required under that clause is not sent within thirty days from the date of receipt of such request, the Registrar shall on an application made to him order immediate inspection and supply of copies required there under.
Exemption	Section 171 shall not apply to- 100% Government Company

Punishment

Section 172

If a company- <ul style="list-style-type: none"> ✓ contravenes any of the provisions of this Chapter and ✓ for which no specific punishment is provided therein, 		
Company	Fine	Minimum Fine: 50000 Continuing Contravention: 500 per day Maximum Fine: 300000
Every officer in default	Fine	Minimum Fine: 50000 Continuing Contravention: 500 per day Maximum Fine: 100000



Appointment & Remuneration of Managerial Personnel

Section Summary

This chapter XIII of Companies Act, 2013 is read with Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

Section No.	Topics Covered
196	Appointment of Managing Director, Whole Time Director or Manager
197	Overall Managerial Remuneration and Managerial Remuneration in case of absence or inadequacy of Profits
198	Calculation of Profits
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/Manager
203	Appointment of Key Managerial Personnel
204	Secretarial Audit for Bigger Companies
205	Functions of Company Secretary

Meaning of Managing Director

Section 2(54)

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

For the purposes of this clause,

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



Meaning of Manager

Section 2(53)

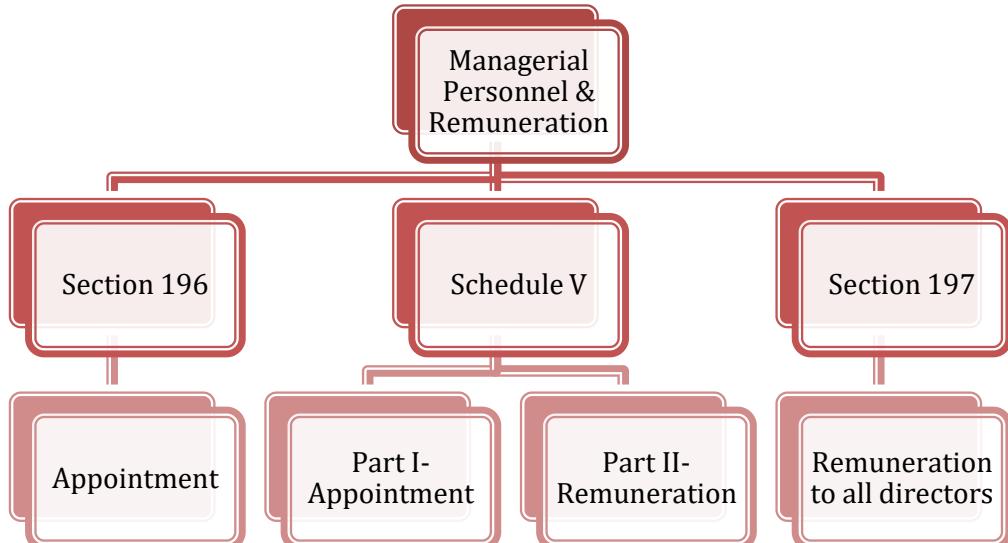
"Manager" means an **individual who, subject to** the superintendence, **control** and direction **of** the **Board of Directors**, **has the management of the whole, or substantially the whole, of the affairs** of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;

Meaning of Whole Time Director

Section 2(54)

"whole-time director" includes a director in the whole-time employment of the company

- ✓ A company can have 2 or more MDs although they may not be designated as such.
- ✓ A company can't have MD and a manager together
- ✓ A company can't have 2 managers
- ✓ A company may have manager and whole time directors
- ✓ A company may have MD and whole time directors

**Appointment of Managing Director,
Whole time Director or Manager**

Section 196

Prohibition on Appointment [Section 196(1)]

No company shall appoint or employ at the same time a managing director and a manager.

Term of Appointment [Section 196(2)]

- ✓ **No company shall appoint** or re-appoint any person as its managing director, whole-time director or manager **for a term exceeding five years** at a time
- ✓ **No re-appointment shall be made earlier than one year before** the expiry of his term.

Disqualifications [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 twenty-one years or has attained the age of seventy years**
- (b) is an **undischarged insolvent** or has at any time been adjudged as an insolvent
- (c) has at **any time suspended payment to his creditors** or makes, or has at any time made, a composition with them; or
- (d) has at any time been **convicted by a court** of an offence and **sentenced for** a period of **more than six months.**

More than 70 years [Proviso to clause (a) of 196(3)]

- ✓ **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**
- ✓ **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.**

Notice

A **notice convening Board or general meeting** for considering such appointment shall include the **terms and conditions of such appointment**, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any

Approval

Subject to the provisions of section 197 and Schedule V,

- ✓ **a managing director, whole-time director or manager**
- ✓ **shall be appointed** and the terms and conditions of such appointment and remuneration payable
- ✓ **be approved by the Board of Directors**
- ✓ **at a meeting which shall be subject to approval by a resolution**
- ✓ **at the next general meeting** of the company and
- ✓ **by the Central Government** in case such appointment is at variance to the conditions specified in Part I of that Schedule

Forms of and Procedure in relation to Certain Applications

Section 201

Every **application** made **to the Central Government** under Section 196 **shall be in Form No. MR.2** and shall be accompanied by fee as may be specified for the purpose.

Every such application **seeking approval** shall be made to the Central Government **within a period of ninety days from the date of such appointment.**

- ✓ Before any application is made by a company to the Central Government under 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.
- ✓ 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.
- ✓ The copies of the notices, together with a certificate by the company as to the due publication thereof, shall be attached to the application.

Who Can Be Appointed? [Part I of Schedule V]
(Additional Eligibility conditions for appointment

No person shall be eligible for appointment as a managing or whole-time director or a manager of a company unless he satisfies the following conditions, namely:—

(a) he had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the following Acts, namely:—

- ✓ the Indian Stamp Act, 1899
- ✓ the Central Excise Act, 1944
- ✓ the Industries (Development and Regulation) Act, 1951
- ✓ the Prevention of Food Adulteration Act, 1954
- ✓ the Essential Commodities Act, 1955
- ✓ the Companies Act, 2013 or any previous company law
- ✓ the Securities Contracts (Regulation) Act, 1956
- ✓ the Wealth-tax Act, 1957
- ✓ the Income-tax Act, 1961
- ✓ the Customs Act, 1962
- ✓ the Competition Act, 2002;
- ✓ the Foreign Exchange Management Act, 1999 ;
- ✓ the Sick Industrial Companies (Special Provisions) Act, 1985;
- ✓ the Securities and Exchange Board of India Act, 1992;
- ✓ the Foreign Trade (Development and Regulation) Act, 1922;
- ✓ the Prevention of Money-Laundering Act, 2002;
- ✓ the Insolvency and Bankruptcy Code, 2016
- ✓ the Goods and Services Tax Act, 2017
- ✓ the Fugitive Economic Offenders Act, 2018

(b) 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 sub-paragraph (a) or sub-paragraph (b), as the case may be, no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval.

(c) he has completed the age of twenty-one years and has not attained the age of seventy years

Provided that where he has attained the age of seventy years; and where his appointment is approved by a special resolution passed by the company in general meeting, no further approval of the Central Government shall be necessary for such appointment

(e) he is **resident of India.**

For the purpose of this Schedule, **resident in India includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment** as a managerial person and who has come to stay in India,—

- (i) for taking up employment in India; or
- (ii) for carrying on a business or vacation in India.

This condition shall not apply to the companies in Special Economic Zones as notified by Department of Commerce from time to time

Provided that a person, being a non-resident in India shall enter India only after obtaining a proper Employment Visa from the concerned Indian mission abroad. For this purpose, such person shall be required to furnish, along with the visa application form, profile of the company, the principal employer and terms and conditions of such person's appointment.

Validity of Acts [Section 196(5)]

Where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid

Filing of Return [Section 196(4)]

A **return** in the prescribed form shall be filed within sixty days of such appointment with the Registrar in **MR-1**

- ✓ Section 196(4) and (5) shall not apply to private company
- ✓ Section 196(2), (4) and (5) shall not apply to Government Company

Process of Appointment (Summary)

Step 1	Check whether the proposed candidate fulfills conditions given in Part I of Schedule V <ul style="list-style-type: none"> • No Imprisonment /fine>1000 under 19 statutes • No detention under specified Acts • Age not less than 21 and not attained 70 • Resident
Step 2	If any condition not fulfilled, then CG approval shall be needed in addition otherwise no need.
Step 3	BOD finds a suitable person who is not disqualified u/s 196(3) (and if appointed as MD/WTD – Check disqualifications of being a Director also)
Step 4	Conduct BM and pass BR/ Unanimous BR if Proposed MD is also MD of another company. Appointment by BR shall be subject to approval by members in GM and approval by CG(If required)
Step 5	Send Notice of GM with Explanatory statement containing details of Proposed candidate
Step 6	File return of appointment within 60 days of appointment by filing MR-1 (Just

	like DIR-12 is filed in case of appointment of Directors within 30 days of appointment)
Step 7	In the GM, take approval of shareholders by passing OR/SR OR/SR shall be passed subject to CG's approval. When SR needed? <ul style="list-style-type: none"> If appointment is of person who has attained the age of 70 years, SR is needed. Remuneration is also fixed at the time of appointment. So limit given under Part II of schedule V must be checked. If it exceeds the limit, SR is needed
Step 8	File MR-2 within 90 days of appointment if conditions of Part1 Schedule V not fulfilled and if fulfilled, No need for this step.

Overall Maximum Managerial Remuneration and Managerial Remuneration in Case Of Absence or Inadequacy of Profits

Section 197

- ✓ Section 197 of the Act lays down the provisions relating to overall maximum managerial remuneration payable by every public company and the managerial remuneration payable by it in case of absence or inadequacy of profits.
- ✓ Section 197 read with Schedule V to the Companies Act, 2013 defines maximum remuneration payable to KMPs and other directors.

Section 197(1)	Overall Maximum Managerial Remuneration	The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed 11% of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits
	1st Proviso: Can be paid more if	Provided that the company in general meeting may authorise the payment of remuneration exceeding 11% of the net profits of the company, subject to the provisions of Schedule V
	2nd Proviso: Category wise limit	Provided further that, except with the approval of the company in general meeting by a special resolution, Remuneration shall not exceed the following: <ul style="list-style-type: none"> Remuneration to WTD, MD or manager <ul style="list-style-type: none"> If there is only one of them 5% of Net Profits for him If there is more than 1 MD, WTD or manager 10% of Net profits fo all Remuneration to other Directors <ul style="list-style-type: none"> If there is also MD or WTD or manager 1% of Net Profits In any other case 3% of Net profits
	3rd Proviso:	Where the company has defaulted in payment of dues to any bank

	Prior approval if repayment default	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
Section 197(2)	Sitting fees excluded	The percentages aforesaid shall be exclusive of any fees payable to directors under sub-section (5).
Section 197(3)	Remuneration in case of loss	Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, If, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including <ul style="list-style-type: none"> ✓ any managing or whole time director or manager, ✓ or any other non-executive director including an independent director by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V
Section 197(4)	Remuneration on other capacity	The remuneration payable to the directors of a company, including any managing or whole-time director or manager, shall be determined, in accordance with and subject to the provisions of this section, either by the articles of the company, or by a resolution or, if the articles so require, by a special resolution, passed by the company in general meeting and the remuneration payable to a director determined aforesaid shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity: Provided that any remuneration for services rendered by any such director in other capacity shall not be so included if— <ul style="list-style-type: none"> (a) the services rendered are of a professional nature; and (b) in the opinion of the Nomination and Remuneration Committee, if the company is covered under sub-section (1) of section 178, or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.
Section 197(5)	Sitting fees	A director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board <ul style="list-style-type: none"> ✓ Provided that the amount of such fees shall not exceed the amount as may be prescribed. ✓ Provided further that different fees for different classes of companies and fees in respect of independent director may be such as may be prescribed. <p>Rule 4 of Companies(Appointment & Remuneration of Managerial Remuneration) Rules</p> <ul style="list-style-type: none"> ✓ A company may pay a sitting fee to a director for attending meetings of the Board or committees thereof such sum as may be decided by the Board of directors thereof which shall not exceed one lakh rupees per meeting of the Board or committee thereof

		<ul style="list-style-type: none"> ✓ Provided that for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other directors.
Section 197(6)	Mode of Remuneration	A director or manager may be paid remuneration either- <ul style="list-style-type: none"> ✓ by way of a monthly payment or ✓ at a specified percentage of the net profits of the company or ✓ partly by one way and partly by the other.
Section 197(8)	Net Profits	The net profits for the purposes of this section shall be computed in the manner referred to in section 198.
Section 197(9)	Recovery of Excess Remuneration	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, <ul style="list-style-type: none"> ✓ 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.
Section 197(10)	Waiver of Recovery	The company shall not waive the recovery of any sum refundable to it under sub-section (9) unless approved by the company by special resolution within two years from the date the sum becomes refundable. <p>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.</p>
Section 197(11)	Increase In Accordance With Schedule V	In cases where Schedule V is applicable on grounds of no profits or inadequate profits, any provision relating to the remuneration of any director which purports to increase or has the effect of increasing the amount thereof, whether the provision be contained in the company's memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or its Board, shall not have any effect unless such increase is in accordance with the conditions specified in that Schedule
Section 197(12)	Disclosure	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. <p>Rule 5: Every listed company shall disclose in the Board's report- <ul style="list-style-type: none"> ✓ the ratio of the remuneration of each director to the median remuneration of the employees of the company for the financial year; ✓ the percentage increase in remuneration of each director, Chief Financial Officer, Chief Executive Officer, Company Secretary or Manager, if any, in the financial year; ✓ the percentage increase in the median remuneration of </p>

		<p>employees in the financial year;</p> <ul style="list-style-type: none"> ✓ the number of permanent employees on the rolls of company; ✓ average percentile increase already made in the salaries of employees other than the managerial personnel in the last financial year and its comparison with the percentile increase in the managerial remuneration and justification thereof and point out if there are any exceptional circumstances for increase in the managerial remuneration; ✓ affirmation that the remuneration is as per the remuneration policy of the company. <p>(2) The board's report shall include a statement showing the names of the top ten employees in terms of remuneration drawn and the name of every employee, who-</p> <ul style="list-style-type: none"> ✓ if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than one crore and two lakh rupees ✓ if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than eight lakh and fifty thousand rupees per month ✓ if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children, not less than two percent of the equity shares of the company. 				
Section 197(13)	Insurance Not A Part of Remuneration	<p>Where any insurance is taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel.</p> <p>Provided that if such person is proved to be guilty, the premium paid on such insurance shall be treated as part of the remuneration.</p>				
Section 197(14)	Commission allowed upon disclosure	Subject to the provisions of this section, any director who is in receipt of any commission from the company and who is a managing or whole-time director of the company shall not be disqualified from receiving any remuneration or commission from any holding company or subsidiary company of such company subject to its disclosure by the company in the Board's report.				
Section 197(15)	Penalty	<p>Any default in complying with the provisions of this section:</p> <table border="1" style="width: 100%;"> <tr> <td>Penalty on Company</td> <td>500000</td> </tr> <tr> <td>Penalty on any other person</td> <td>100000</td> </tr> </table>	Penalty on Company	500000	Penalty on any other person	100000
Penalty on Company	500000					
Penalty on any other person	100000					

Section 197(16)	Report by Auditor	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
Section 197(17)	Approval before Amendment Act	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"
Exemption: Section 197 is not applicable on Central Government Companies		

SCHEDULE V- PART II

SECTION I:

Subject to the provisions of Section 197, a company having profits in a financial year may pay remuneration to a managerial person or persons or other director or directors not exceeding the limits specified in such section.

SECTION II:

Remuneration in case of Loss or Inadequate Profits

Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may pay remuneration to the managerial person not exceeding limits under (A) and (B)

Limits under (A):

Where the effective capital is (in any FY)	Limit of yearly remuneration payable shall not exceed (in any FY) in case of managerial remuneration	Limit of yearly remuneration payable shall not exceed (in any FY) in case of other directors
Negative or less than Rs. 5 crores	Rs. 60 lakhs	Rs. 12 lakhs
Rs. 5 crores and above but less than Rs. 100 crores	Rs. 84 lakhs	Rs. 17 lakhs
100 crores and above but less than Rs 250 crores	Rs. 120 lakhs	Rs. 24 lakhs
Rs. 250 crores and above	120 lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores	24 Lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores
Provided that the remuneration in excess of above limits may be paid if the resolution passed by the shareholders is a special resolution.		
If a managerial person is employed for a part of the year, the remuneration payable to him shall be pro-rated.		

Effective Capital

Paid up share Capital	XX
Add: Share Premium Account	XX
Add: Reserves & Surplus	XX
Add: Long- term loans & deposits repayable after one year	XX
Less: Any investments(except in case of investments company)	XX
Less: Accumulated losses	XX
Less: Preliminary expenses w/off	<u>XX</u>
Effective Capital	<u>XX</u>

Date of Effective Capital

- ✓ Where the appointment of the managerial person is made in the year in which company has been incorporated, the effective capital shall be calculated as on the date of such appointment;
- ✓ In any other case the effective capital shall be calculated as on the last date of the financial year preceding the financial year in which the appointment of the managerial person is made.

(B)

In case of a managerial person or other director who is functioning in a professional capacity, remuneration as per item (A) may be paid, if such managerial person or other director:

- ✓ is not having any interest in the capital of the company or its holding company or any of its subsidiaries directly or indirectly or through any other statutory structures (i.e. does not hold any shares subject to the deeming provision below);
Note: "Statutory Structure" means any entity which is entitled to hold shares in any company formed under any statute.
- ✓ is not having any, direct or indirect interest or related to the directors or promoters of the company or its holding company or any of its subsidiaries at any time during the last two years before or on or after the date of appointment
- ✓ possesses graduate level qualification with expertise and specialised knowledge in the field in which the company operates

It is provided that any employee of a company holding shares of the company not exceeding 0.5% of its paid-up share capital under any scheme formulated for allotment of shares to such employees including Employees Stock Option Plan or by way of qualification shall be deemed to be a person not having any interest in the capital of the company.

Conditions for Payment

- ✓ payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under Section 178 (1), also by the Nomination and Remuneration Committee;
- ✓ the company has not committed any default in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, and in case of default, 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;
- ✓ an ordinary resolution or a special resolution, as the case may be, has been passed for payment of remuneration as per item (A) or a special resolution has been passed for payment of remuneration as per item (B), at the general meeting of the company for a period not exceeding three years.
- ✓ a statement along with a notice calling the general meeting is given to the shareholders

containing:-

- I. **General information:** like nature of industry, expected date of commencement of commercial production, Financial performance etc.
- II. **Information about the appointee** like background details, past remuneration, awards, profile etc.
- III. **Other information:** like Reasons of loss or inadequate profits, Steps taken or proposed to be taken for improvement
- IV. **Disclosures** in Board's report like elements of remuneration package, notice period etc

SECTION III.-

Remuneration Payable by Companies Having No Profit or Inadequate Profit in Certain Special Circumstances

In the following circumstances a company may pay remuneration to a managerial person or other director in excess of the amounts provided in Section II above-

(a) where the remuneration in excess of the limits specified in Section I or II is paid by any other company and that other company is either a foreign company or has got the approval of its shareholders in general meeting to make such payment, and treats this amount as managerial remuneration for the purpose of section 197 and the total managerial remuneration payable by such other company to its managerial persons including such amount or amounts is within permissible limits under section 197.

(b) where the company-

is a newly incorporated company	for a period of seven years from the date of its incorporation	it may pay any remuneration to its managerial persons or other directors.
is a sick company for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction	for a period of five years from the date of sanction of scheme of revival, or	
is a company in relation to which a resolution plan has been approved by the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016	for a period of five years from the date of such approval,	

(c) where remuneration of a managerial person or other director 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

Additional Conditions to be followed in above Circumstances

Provided that the limits under this Section shall be applicable subject to meeting all the conditions specified under Section II and the following additional conditions:

- ✓ except as provided in para (a) of this Section, the managerial person is not receiving remuneration from any other company;
- ✓ the auditor or Company Secretary of the company or where the company has not appointed a Secretary, a Secretary in whole-time practice, certifies that all secured creditors and term lenders have stated in writing that they have no objection for the appointment of the managerial person section 196. or other director as well as the quantum of remuneration and such certificate is filed along with the return as prescribed under sub-section (4) of
- ✓ the auditor or Company Secretary or where the company has not appointed a secretary, a secretary in whole-time practice certifies that there is no default on payments to any creditors, and all dues to deposit holders are being settled on time.

SECTION IV

Perquisites Not Included In Managerial Remuneration

A managerial person shall be eligible for the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in Section II and Section III:

- (a) Contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Income-tax Act, 1961;
- (b) Gratuity payable at a rate not exceeding half a month's salary for each completed year of service; and
- (c) Encashment of leave at the end of the tenure.

An expatriate managerial person (including a non-resident Indian) shall be eligible to the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in Section II or Section III—

- (a) **Children's education allowance:** In case of children studying in or outside India, an allowance limited to a maximum of Rs. **12,000 per month per child** or actual expenses incurred, whichever is less. Such allowance is admissible up to a maximum of two children.
- (b) **Holiday passage** for children studying outside India or family staying abroad: Return holiday passage once in a year by economy class or once in two years by first class to children and to the members of the family from the place of their study or stay abroad to India if they are not residing in India, with the managerial person.
- (c) **Leave travel concession:** Return passage for self and family in accordance with the rules specified by the company where it is proposed that the leave be spent in home country instead of anywhere in India.

“family” means the spouse, dependent children and dependent parents of the managerial person.

SECTION V

Remuneration Payable to a Managerial Person in Two Companies:

Subject to the provisions of sections I to IV, a managerial person shall draw remuneration from one or both companies, provided that the total remuneration drawn from the companies does not exceed the higher maximum limit admissible from any one of the companies of which he is a managerial person.

PART III OF SCHEDULE V

Provisions applicable to Parts I and II of this Schedule

- ✓ The appointment and remuneration referred to in Part I and Part II of this Schedule shall be subject to approval by a resolution of the shareholders in general meeting.
- ✓ The auditor or the Secretary of the company or where the company is not required to appointed a Secretary, a Secretary in whole-time practice shall certify that the requirement of this Schedule have been complied with and such certificate shall be incorporated in the return filed with the Registrar under sub-section (4) of section 196.

PART IV OF SCHEDULE V

The Central Government may, by notification, exempt any class or classes of companies from any of the requirements contained in this Schedule.

“Remuneration” means remuneration as defined in clause (78) of Section 2 and includes reimbursement of any direct taxes to the managerial person.

The Nomination and Remuneration Committee while approving the remuneration under Section II or Section III, shall—
 (a) take into account, financial position of the company, trend in the industry, appointee's qualification, experience, past performance, past remuneration, etc.;
 (b) be in a position to bring about objectivity in determining the remuneration package while striking a balance between the interest of the company and the shareholders.

Calculation of Net Profits

Section 198

Credits Allowed [Section 198(2)]

Bounties and subsidies received from any Government, or any public authority constituted or authorised in this behalf, by any Government, unless and except in so far as the Central Government otherwise directs.

Credits Not Allowed [Section 198(3)]

- a) 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 section 186
- b) **profits on sales** by the company of **forfeited shares**;
- c) **profits of a capital nature** including profits from the **sale of the undertaking** or any of the undertakings of the company or of any part thereof;
- d) **profits from the sale of any immovable property or fixed assets** of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets:
 Provided that where the amount for which any fixed asset is sold exceeds the written-down value thereof, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written down value;
- e) any **change in carrying amount of an asset or of a liability** recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.
- f) any amount representing **unrealised gains, notional gains or revaluation** of assets

Deductions Allowed [Section 198(4)]

- a) all the **usual working charges**
- b) **directors' remuneration**
- c) **bonus or commission** paid or payable to any member of the company's staff, or to any engineer, technician or person employed or engaged by the company, whether on a whole-time or on a part-time basis
- d) any **tax** notified by the Central Government as being in the nature of a tax **on excess or abnormal profits**
- e) any **tax on business profits imposed for special reasons or in special circumstances** and notified by the Central Government in this behalf
- f) **interest on debentures** issued by the company
- g) **interest on mortgages** executed by the company and on loans and advances secured by a charge on its fixed or floating assets
- h) **interest on unsecured loans** and advances

- i) **expenses on repairs**, whether to immovable or to movable property, provided the repairs are not of a capital nature
- j) outgoings inclusive of **contributions** made under **section 181**
- k) **depreciation** to the extent specified in section 123
- l) the **excess of expenditure over income**, which had arisen in computing the net profits in accordance with this section in any year in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained
- m) any **compensation** or damages to be paid in virtue **of any legal liability** including a liability arising from a breach of contract
- n) any **sum** paid **by way of insurance** against the risk of meeting any liability such as is referred to in clause (m)
- o) **debts** considered **bad** and written off or adjusted during the year of account.

Deductions Not Allowed [Section 198(5)]

- a) **income-tax** and super-tax payable by the company **under the Income-tax Act, 1961**, or any other tax on the income of the company not falling under clauses (d) and (e) of sub-section (4)
- b) any **compensation**, damages or payments **made voluntarily**, that is to say, otherwise than in virtue of a liability such as is referred to in clause (m) of sub-section (4)
- c) **loss of a capital nature** including loss on sale of the undertaking or any of the undertakings of the company or of any part thereof not including any excess of the written-down value of any asset which is sold, discarded, demolished or destroyed over its sale proceeds or its scrap value
- d) any **change in carrying amount** of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value

Appointment of Key Managerial Personnel

Section 203

Sec 203(1)	Requirement of KMP	Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel ,— (i) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director; (ii) company secretary; and (iii) Chief Financial Officer
Rule 8:	Prescribed Classes of Companies	Every listed company and every other public company having a paid-up share capital of ten crore rupees or more shall have whole-time key managerial personnel.
Rule 8A:	Appointment of Company Secretaries in Companies Not Covered Under Rule 8	Every private company which has a paid up share capital of ten crore rupees or more shall have a whole -time company secretary.
Proviso	Prohibition	An individual shall not be appointed or reappointed as the

to Sec 203(1)	to be appointed as Chairperson and MD/CEO	<p>chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,—</p> <ul style="list-style-type: none"> ✓ the articles of such a company provide otherwise; or ✓ the company does not carry multiple businesses: <p>Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government.</p> <p>The Central Government hereby notifies that public companies having paid-up share capital of rupees one hundred crore or more and annual turnover of rupees one thousand crore or more which are engaged in multiple businesses and have appointed Chief Executive Officer for each such business shall be the class of companies for the purposes of the second proviso to sub-section (1) of Section 203 of the said Act.</p>
Sec 203(2)	Appointment by Resolution	Every whole time managerial personnel shall be appointed by means of a resolution of Board containing terms and conditions of appointment including remuneration.
Section 203(3)	Office in One Company Only	A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time.
		<ul style="list-style-type: none"> ✓ Provided that nothing contained in this sub-section shall disentitle a key managerial personnel from being a director of any company with the permission of the Board; ✓ Provided further that whole-time key managerial personnel holding office in more than one company at the same time on the date of commencement of this Act, shall, within a period of six months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel; ✓ Provided also that a company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.
Section 203(4)	Vacancy to be filled Up by Board	If the office of any whole-time key managerial personnel is vacated , the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.
Section 203(5)	Penalty	If any company makes any default in complying with the provisions of this section:

		such company	Penalty	five lakh rupees	
		every director and KMP in default	Penalty	fifty thousand rupees	
Where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.					

Recovery of Remuneration in certain cases

Section 199

When?	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 there under
From whom?	<p>the company shall recover from any past or present</p> <ul style="list-style-type: none"> ✓ managing director or ✓ whole-time director or ✓ manager or ✓ Chief Executive Officer (by whatever name called) <p>who, during the period for which the financial statements are required to be restated, received the remuneration (including stock option) in excess of what would have been payable to him as per restatement of financial statements.</p>

Central Government/Company to Fix Limit

Section 200

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 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.

Compensation for Loss of Office of Managing or Whole-Time Director or Manager

Section 202

Sec 202(1)	Compensation to whom	A company may make payment to a managing or whole-time director or manager, but not to any other director, by way of compensation for loss of office , or as consideration for retirement from office or in connection with such loss or retirement.
Sec 202(2)	Cases of Non Payment	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

		<p>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;</p> <ul style="list-style-type: none"> 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 167(1) 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.
Sec 202(3)	Limit Compensation	<p>Compensation made to a managing or whole-time director or manager in pursuance of sub-section (1) shall not exceed the</p> <ul style="list-style-type: none"> ✓ remuneration which he would have earned if he had been in office ✓ for the remainder of his term or for three years, whichever is shorter, ✓ calculated on the basis of the average remuneration actually earned by him ✓ during a period of three years immediately preceding the date on which he ceased to hold office ✓ or where he held the office for a lesser period than three years, ✓ during such period
Proviso to Sec 202(3)	No Remuneration in Special Case	Provided that no such payment shall be made to the director in the event of the commencement of the winding up of the company, whether before or at any time within twelve months after, the date on which he ceased to hold office, if the assets of the company on the winding up, after deducting the expenses thereof, are not sufficient to repay to the shareholders the share capital, including the premiums, if any, contributed by them
Sec 202(4)	Nothing in this section shall be deemed to prohibit the payment to a managing or whole-time director, or manager, of any remuneration for services rendered by him to the company in any other capacity.	

Secretarial Audit for Bigger Companies

Section 204

Requirement of Secretarial Audit	<ul style="list-style-type: none"> ✓ Every listed Company ✓ Every public company having a paid-up share capital of fifty crore rupees or more; or ✓ Every public company having a turnover of two hundred fifty crore rupees or more. ✓ Every company having outstanding loans or borrowings from
----------------------------------	---

	banks or public financial institutions of one hundred crore rupees or more
Annexed to Board's Report	shall annex with its Board's report a secretarial audit report , given by a company secretary in practice in Form MR 3.
Explanation of Qualification	The Board of Directors, in their report shall explain in full any qualification or observation or other remarks made by the company secretary in practice in his report as above.
Penalty	If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, every officer of the company or the company secretary in practice, who is in default , shall be liable to a penalty of two lakh rupees .

Functions of Company Secretary

Section 205

Report about compliances	to report to the Board about compliance with the provisions of this Act, the rules made there under and other laws applicable to the company.
Ensure compliance with SS	to ensure that the company complies with the applicable secretarial standards
Other Prescribed Duties	<p>to discharge such other duties as may be prescribed.</p> <ul style="list-style-type: none"> • to provide to the directors such guidance as they may require, with regard to their duties, responsibilities and powers • to facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings • to obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act • to represent before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act • to assist the Board in the conduct of the affairs of the company • to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices and • to discharge such other duties as have been specified under the Act or rules; and • such other duties as may be assigned by the Board from time to time.

Meetings of Board & its Powers

Meaning of Board Meetings

- ✓ Board Meeting refers to the meeting of directors of the Company. A company is not a natural person thus, it is incapable of acting on its own.
- ✓ Board of directors has the responsibilities and powers to take major decision of the company. To facilitate the process of decision making it is essential that board of directors meet at regular intervals.



Some Relevant Points

- ✓ A resolution at Board meeting is passed by voting irrespective of number of shares if any held by director by show of hands only.
- ✓ A chairman may exercise casting votes in case of equality.
- ✓ The resolution passed shall be binding on all directors whether they voted or not or voted against the resolution.
- ✓ A director can vote only if he is present at the meeting and can't appoint proxy.
- ✓ All the provisions must be complied with for holding a valid Board Meeting.



Example:

ABC Ltd has 12 directors on its Board and has following clause in its Articles of Association:

The question arising at any meeting of the Board of Directors or any committee thereof shall be decided by a majority of votes, except in cases where the Companies Act expressly provide otherwise.

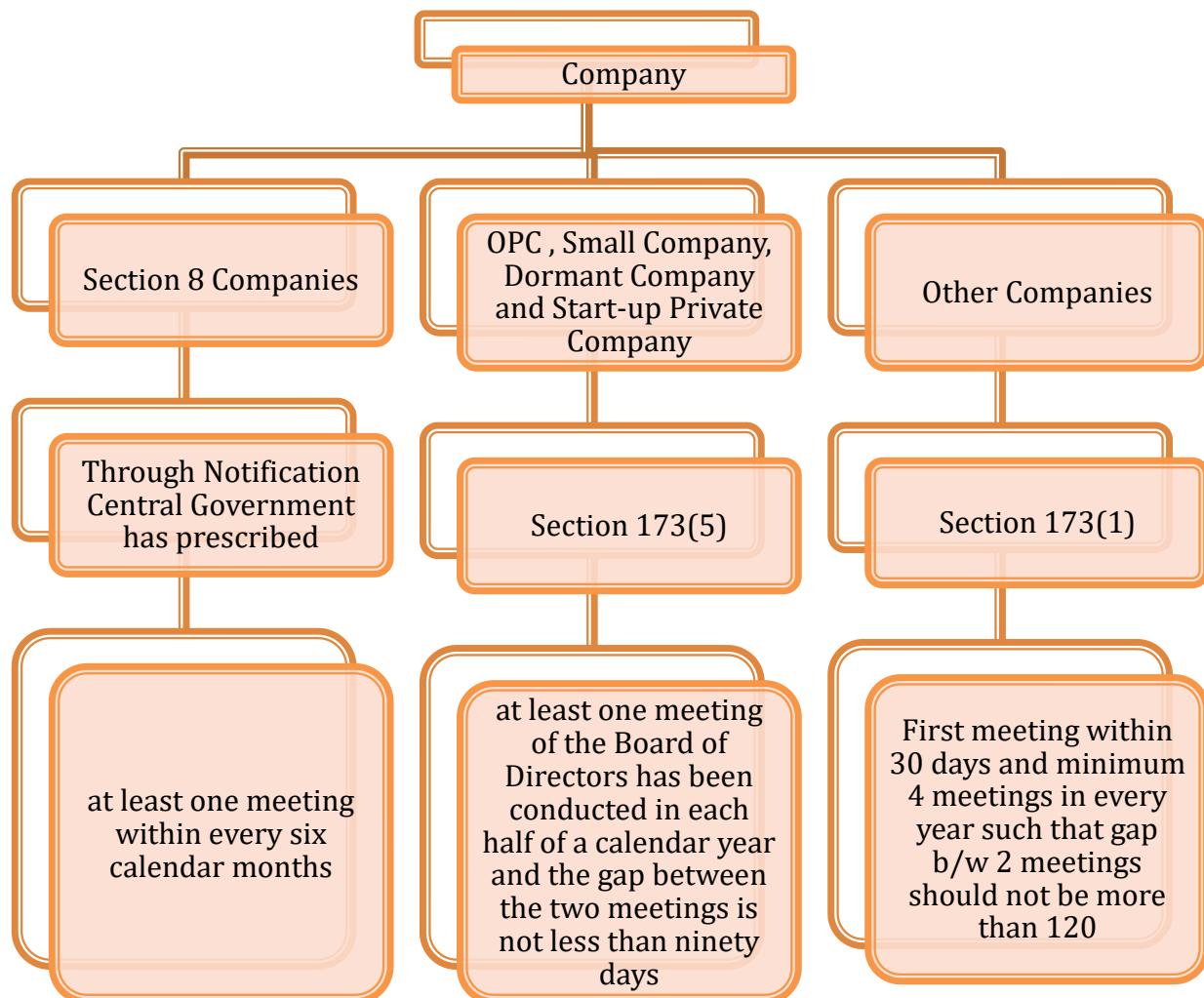
In one of the meeting of BOD of ABC Ltd, 8 directors were present. After completion of discussion of matter, voting was done. 3 Directors voted in favour of the motion, 2 directors voted against the motion while 3 directors abstained from voting. State whether the motion was carried or not?

Answer Hint: Yes it was carried out since Votes in favour exceed Votes against.

Meetings of Board

Section 173(1)

Every company shall hold the **first meeting** of the Board of Directors **within thirty days of** the date of its **incorporation** and **thereafter** hold a **minimum number of four meetings** of its Board of Directors **every year** in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board



Provided that the **Central Government may**, by notification, **direct** that the **provisions** of this sub-section shall **not apply** in relation to **any class** or description of **companies** or shall apply subject to such exceptions, modifications or conditions as may be specified.

A Specified IFSC public and Private company shall hold the first meeting of the Board of Directors within sixty days of its incorporation and thereafter hold atleast one meeting of the Board of Directors in each half of a calendar year.



Example:

Seafood Ltd, a public limited company was incorporated on 1st April, 2015. The company has conducted four board meetings during the financial year 2015-16 i.e. on 6th April, 2015, 28th Aug 2015, 30th September 2015 and 30th March 2016.

- i) Has the company contravened the provisions of the Companies Act, 2013 in respect of the conduct of the meetings?
- ii) Will your answer differ if the company was incorporated u/s 8?

Answer Hint:

- i) Gap between 2 consecutive meetings (held on 6th April and 28th Aug) is 144 days which is more than 120 days.
Also, gap between 30th sept and 30th march is 182 days.
hence contravention of sec 173.
- ii) No contravention if section 8 company

Participation in Meeting- Video Conferencing

Section 173(2)



A director is not required to attend all Board Meetings. However, continuous absence is also detrimental if we look at Section 167 (1) (b) which states that a director shall be required to vacate his office if he absents himself from all the meetings of the Board of Directors held during a period of 12 months with or without seeking leave of absence of the Board. Hence, participation by Audio visual means is a welcome move and also issues like non- participation in Board meeting, incorrect record can be easily avoided.

Option to participate via AV	The participation of directors in a meeting of the Board may be- <ul style="list-style-type: none"> ✓ either in person or ✓ through video conferencing or ✓ other audio visual means, as may be prescribed,
Is it mandatory to give AV facility to directors?	Yes!! Reason: Achintya Kumar vs Ranjit Barthkur (NCLAT) The word may written in the section doesn't give option to company to refuse this right of participation through audio visual means.
Essentials of AV given in sec 173(2)	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
Power of CG	Provided that the Central Government may , by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means . Rule 4 specifies the following matters which shall not be considered in any meeting held through video conferencing or other audio-visual means: "This has been omitted now"

The procedural points **relating to meetings of Board that are held through video conferencing or other audio-visual means** are given in Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014

Rule 3

Explanation to Rule 3	"video conferencing or other audio visual means" means audio- visual electronic communication facility employed which enables all the persons participating in a meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting.
Necessary Arrangements	Every Company shall make necessary arrangements to avoid failure of video or audio visual connection.
Chairperson, CS to take reasonable care	The Chairperson of the meeting and the company secretary , if any, shall take due and reasonable care - <ul style="list-style-type: none"> ✓ to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures; ✓ to ensure availability of proper video conferencing or other audio visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting ✓ to record proceedings and prepare the minutes of the meeting; ✓ to store for safekeeping and marking the tape recordings or other electronic recording mechanism as part of the records of the company at least before the time of completion of audit of that particular year.

	<ul style="list-style-type: none"> ✓ to ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means; and ✓ to ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting ✓ The persons, who are differently abled, may make request to the Board to allow a person to accompany him.
Notice of the meeting	<ul style="list-style-type: none"> ✓ The notice of the meeting shall be sent to all the directors in accordance with the provisions of the Act. ✓ The notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.
Communication about mode of participation by director	<ul style="list-style-type: none"> ✓ A director intending to participate through video conferencing or audio visual means shall communicate his intention to the Chairperson or the company secretary of the company. ✓ If the director intends to participate through video conferencing or other audio visual means, he shall give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangements in this behalf. ✓ Any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year .Such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person. ✓ In the absence of any intimation, it shall be assumed that the director shall attend the meeting in person.
Roll call	<p>At the commencement of the meeting, a roll call shall be taken by the Chairperson when every director participating through video conferencing or other audio visual means shall state, for the record, the following namely:-</p> <ul style="list-style-type: none"> ✓ name ✓ the location from where he is participating ✓ that he has received the agenda and all the relevant material for the meeting; and ✓ that no one other than the concerned director is attending or having access to the proceedings of the meeting.
Quorum	<p>After the roll call, the Chairperson or the Company Secretary shall inform the Board about the names of persons other than the directors who are present for the said meeting at the request or with the permission of the Chairperson and confirm that the required quorum is complete.</p> <ul style="list-style-type: none"> • A director participating in a meeting through video conferencing or other audio-visual means shall be counted for the purpose of quorum. • The Chairperson shall ensure that the required quorum is present throughout the meeting.
Venue of the meeting	The scheduled venue of the meeting as set forth in the notice convening the meeting shall be deemed to be the place of the said meeting
Register	The statutory registers which are required to be placed in the Board meeting

	as per the provisions of the Act shall be placed at the scheduled venue of the meeting
Identification of participant	Every participant shall identify himself for the record before speaking on any item of business on the agenda.
Statement interrupted or garbled	If a statement of a director in the meeting through video conferencing or other audio-visual means is interrupted or garbled, the Chairperson or Company Secretary shall request for a repeat or reiteration.
Objection against a motion	If a motion is objected to and there is a need to put it to vote, the Chairperson shall call the roll and note the vote of each director who shall identify himself while casting his vote.
No access to unauthorized person	From the commencement of the meeting till its conclusion, no person except the Chairperson, Directors, Company Secretary and any other person whose presence is required by the Board shall be allowed access to the place where any director is attending the meeting either physically or through video conferencing without the permission of the Board.
Summary of decision on each agenda item	At the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decision taken on such item along with names of the directors, if any, who dissented from the decision taken by majority.
Draft Minutes	<ul style="list-style-type: none"> ✓ At the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decision taken on such item along with names of the directors, if any, who dissented from the decision taken by majority and the draft minutes so recorded shall be preserved by the company till the confirmation of the draft minutes. ✓ The minutes shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio visual means. ✓ The draft minutes of the meeting shall be circulated among all the directors within fifteen days of the meeting either in writing or in electronic mode as may be decided by the Board. ✓ Every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give his comments in writing, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed. ✓ After completion of the meeting, the minutes shall be entered in the minute book as specified under section 118 of the Act and signed by the Chairperson.

Notice of Board Meeting

Section 173(3)

When?	To whom?	Where?	How?
<ul style="list-style-type: none"> Atleast 7 days before meeting 	<ul style="list-style-type: none"> Every Director 	<ul style="list-style-type: none"> Director's address registered with Company 	<ul style="list-style-type: none"> Hand delivery or post or Electronic means

Who calls Board Meeting? (SS-1)	Any Director of a company may, at any time, summon a Meeting of the Board, and the Company Secretary or where there is no Company Secretary, any person authorised by the Board in this behalf, on the requisition of a Director, shall convene a Meeting of the Board, in consultation with the Chairman or in his absence, the Managing Director or in his absence, the Whole-time Director, where there is any, unless otherwise provided in the Articles.
Shorter Notice	<ul style="list-style-type: none"> ✓ Provided that a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting ✓ Provided further that in case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.
AV option in Notice	The notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing [As discussed in Rule 3]
Penalty Sec 173(4)	Every officer of the company- <ul style="list-style-type: none"> ✓ whose duty is to give notice under this section and ✓ who fails to do so ✓ shall be liable to a penalty of twenty-five thousand rupees.
Other Relevant Points	<ul style="list-style-type: none"> ✓ Oral Notice is not adequate ✓ Notice is required to be given to all directors including alternate, interested as well as those who have waived the requirement of notice. ✓ Meeting shall be void if notice not sent to all directors. Even accidental omission to give notice to single director would render the resolutions passed at meeting void. [Parmeshwari Prasad vs Union of India] ✓ Ratification is possible and it shall relate back to the date of ratification.

Quorum for Board Meeting

Section 174

A quorum is the minimum number of directors who must attend the proceedings in order to transact business validly at a duly convened Board meeting.

Requirement of Quorum	<p>The quorum for a meeting of the Board of Directors of a company shall be-</p> <ul style="list-style-type: none"> ✓ one third of its total strength or ✓ two directors, ✓ whichever is higher <p>The participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.</p> <table border="1" style="margin-left: 20px;"> <tr> <td>For the purposes of this section,—</td></tr> <tr> <td> <ul style="list-style-type: none"> • any fraction of a number shall be rounded off as one • “total strength” shall not include directors whose places are vacant. </td></tr> </table>	For the purposes of this section,—	<ul style="list-style-type: none"> • any fraction of a number shall be rounded off as one • “total strength” shall not include directors whose places are vacant.
For the purposes of this section,—			
<ul style="list-style-type: none"> • any fraction of a number shall be rounded off as one • “total strength” shall not include directors whose places are vacant. 			

Articles of a company may provide for higher quorum but not lower than required u/s 174.

For Sec 8 Company	<p>In case of Section 8 Company-</p> <ul style="list-style-type: none"> ✓ either eight members or twenty five per cent, of its total strength whichever is less shall be the quorum. <p>Provided quorum shall not be less than two members</p>
-------------------	---

Number of Directors reduced below quorum [Sec 174(2)]	The continuing directors may act notwithstanding any vacancy in the Board but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company and for no other purpose.
Interested Director not to be part of Quorum [Sec 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 number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time. In case of Private Company, interested director may also be counted towards quorum in such meeting after disclosure of his interest pursuant to section 184. Where all or all but one of the directors are interested can't be transacted at a Board meeting then proper course of action would be to decide the matter at General meeting. (SS-1)
Adjournment for want of Quorum [Sec 174(4)]	Where a meeting of the Board could not be held for want of quorum , ✓ then, unless the articles of the company otherwise provide, ✓ the meeting shall automatically stand adjourned ✓ to the same day at the same time and place in the next week or ✓ if that day is a national holiday, till the next succeeding day , which is not a national holiday, at the same time and place. If at the adjourned meeting also Quorum is not present, the meeting shall stand cancelled and a fresh meeting has to be convened in order to transact the business within the time frame.
For OPC with 1 Director [Sec 174(5)]	the provisions of Section 174 relating to quorum are not applicable to such One Person Company (OPC) which has only one director on its Board.
Other Relevant Points	✓ No fresh notice is required for adjourned meeting . ✓ Quorum has to be present throughout the meeting. ✓ Resolutions passed at adjourned meeting does not relate to the date of original meeting

Resolution by Circulation

Section 175

When Resolution can be passed by circulation?	✓ There are certain matters, which according to the provisions of the Companies Act, 2013, can only be considered and decided at the duly convened board meetings and therefore, they cannot be implemented through passing resolutions by circulation. ✓ All such matters which do not require consideration at a board meeting can be decided through resolutions which are passed by circulation.
Requirements [Sec 175(1)]	No resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, ✓ unless the resolution has been circulated in draft , together with the necessary papers, if any, ✓ to all the directors, or members of the committee , as the case may be, ✓ at their addresses registered with the company in India ✓ by hand delivery or by post or by courier, or through such electronic means including e-mail and fax and ✓ has been approved by a majority of the directors or members, who are

	entitled to vote on the resolution Rule 5 provides that a resolution in draft form may be circulated to the directors together with the necessary papers for seeking their approval, by electronic means which may include email or fax.
When a resolution cannot be passed by circulation	Provided that, where not less than one-third of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board.(instead of being decided by circulation).
Noting of passed resolution in next meeting	A resolution that has been passed by circulation shall have to be necessarily noted in the next meeting of board or the committee thereof, as the case may be, and made part of the minutes of such meeting.

The provisions of chairperson and minutes of meetings already studied at previous level and hence not reproduced again.

Defects in Appointment of Directors not to invalidate Actions Taken

Section 176

Acts Not Invalid of Director	No act done by a person as a director shall be deemed to be invalid if 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
The validation of actions provides a kind of protection to the company as well as the third parties.	
Acts Invalid	However, Any act done by the director after his defect in appointment has been noticed by the company shall be invalid
Act Validity Examples: Whether Act of Director shall be valid or not?	
Company comes to know that his appointment is invalid or illegal	No
It is in the notice of the company that his appointment has been terminated.	No
It is noticed by the company that his acts are illegal or ultra vires	No
It was well within the knowledge of the third party that the appointment of director was not valid or there existed any irregularity or there was any disqualification attached to the director and still such party dealt with him.	No
If the director knows it fully that his term of office has expired but he continues to occupy his office despite such knowledge.	No
If a person knows that he has no authority to exercise such powers because his appointment was invalid or he has since been terminated	No

Audit Committee

Section 177

Following shall constitute an Audit Committee:-

- ✓ The Board of Directors of **every listed public company** and
- ✓ Prescribed Classes:
 - **Unlisted Public Company having PUC>= 10 Cr Turnover>= 100 Cr Loans> 50 Cr**
According to Rule 6:
A company covered under rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014



- (2) The Audit Committee shall consist of a **minimum of three directors** with-
- ✓ **majority being independent** directors; and
 - ✓ **majority with ability to read and understand**, the financial statement.

Every **Audit Committee** shall act in accordance with the terms of reference specified in writing by the **Board** which shall, inter alia, include,—

- i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company
- ii) review and monitor the auditor's independence and performance, and effectiveness of audit process
- iii) examination of the financial statement and the auditors' report thereon
- iv) approval or any subsequent modification of transactions of the company with related parties

Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to conditions

Rule 6A - Omnibus Approval for Related Party Transactions on Annual Basis

All related party transactions shall require approval of the Audit Committee and the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to the following conditions, namely

- (1) The Audit Committee shall, after obtaining approval of the Board of Directors, specify the criteria for making the omnibus approval which shall include the following, namely:-
 - (a) maximum value of the transactions, in aggregate, which can be allowed under the omnibus route in a year
 - (b) the maximum value per transaction which can be allowed



<p>(c) extent and manner of disclosures to be made to the Audit Committee at the time of seeking omnibus approval</p> <p>(d) review, at such intervals as the Audit Committee may deem fit, related party transaction entered into by the company pursuant to each of the omnibus approval made</p> <p>(e) transactions which cannot be subject to the omnibus approval by the Audit Committee.</p> <p>(2) The Audit Committee shall consider the following factors while specifying the criteria for making omnibus approval, namely: -</p> <p>(a) repetitiveness of the transactions (in past or in future)</p> <p>(b) justification for the need of omnibus approval.</p> <p>(3) The Audit Committee shall satisfy itself on the need for omnibus approval for transactions of repetitive nature and that such approval is in the interest of the company.</p> <p>(4) The omnibus approval shall contain or indicate the following: -</p> <p>(a) name of the related parties</p> <p>(b) nature and duration of the transaction</p> <p>(c) maximum amount of transaction that can be entered into</p> <p>(d) the indicative base price or current contracted price and the formula for variation in the price, if any; and</p> <p>(e) any other information relevant or important for the Audit Committee to take a decision on the proposed transaction:</p> <p>Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may make omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction.</p> <p>(5) Omnibus approval shall be valid for a period not exceeding one financial year and shall require fresh approval after the expiry of such financial year.</p> <p>(6) Omnibus approval shall not be made for transactions in respect of selling or disposing of the undertaking of the company.</p> <p>(7) Any other conditions as the Audit Committee may deem fit.</p>

Where Audit Committee does not approve the transaction, it shall make its recommendations to the Board.

In case **any transaction**

- ✓ involving any **amount not exceeding one crore** rupees
- ✓ is **entered** into by a director or officer of the company
- ✓ **without** obtaining the **approval of the Audit Committee and**
- ✓ it is **not ratified** by the Audit Committee
- ✓ **within three months** from the date of the transaction,
- ✓ **such transaction** shall be **voidable at the option of the Audit Committee**
- ✓ the **director concerned shall indemnify** the company against any loss incurred by it:

The provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company.

- v) **scrutiny of inter-corporate loans and investments;**
- vi) **valuation of undertakings** or assets of the company, wherever it is necessary;
- vii) **evaluation of internal financial controls and risk management systems;**

- viii) **Monitoring** the end **use of funds** raised through **public offers** and related matters.

Other Powers

- ✓ The Audit Committee **may call for the comments of the auditors about internal control** systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.
- ✓ The Audit Committee shall have authority to **investigate into any matter in relation to the items specified** or referred to it **by the Board** and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.
- ✓ The **auditors** of a company and the **key managerial personnel** shall have a **right to be heard in the meetings of the Audit Committee** when it considers the auditor's report **but shall not have the right to vote**.

Disclosure in Board's Report

- ✓ The **Board's report** of section 134 shall **disclose** the **composition of an Audit Committee** and **where the Board had not accepted** any **recommendation** of the Audit Committee, the **same** shall be **disclosed in such report** along with the reasons thereof.

Vigil Mechanism [Section 177(9) & 177(10)]

- ✓ Every **listed company** or such class or classes of **companies**, as may be **prescribed**, shall establish a **vigil mechanism** for directors and employees to report genuine concerns in such manner as may be prescribed.

Rule 7: Prescribed Classes of Companies

- (a) the Companies which accept deposits from the public;
- (b) the Companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees.

Other Points

- ✓ The companies which are required to constitute an audit committee shall oversee the vigil mechanism through the committee and if any of the members of the committee have a conflict of interest in a given case, they should recuse themselves and the others on the committee would deal with the matter on hand.
- ✓ In case of other companies, the Board of directors shall nominate a director to play the role of audit committee for the purpose of vigil mechanism to whom other directors and employees may report their concerns.
- ✓ The vigil mechanism shall provide for adequate safeguards against victimisation of employees and directors who avail of the vigil mechanism and also provide for direct access to the Chairperson of the Audit Committee or the director nominated to play the role of Audit Committee, as the case may be, in exceptional cases.
- ✓ In case of repeated frivolous complaints being filed by a director or an employee, the audit committee or the director nominated to play the role of audit committee may take suitable action against the concerned director or employee including reprimand.

- ✓ 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
- ✓ Details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board's report.

 Referring to the provisions of the Companies Act, examine the following:
XYZ ltd, a listed company has constituted an audit committee consisting of five members out of whom two are independent directors. Subsequently, the company increased the composition of audit committee to six members with three independent directors

Hint: Non compliance with respect to composition of Audit committee with independent directors forming majority is not valid.

Nomination and Remuneration Committee and Stakeholders Relationship Committee

Section 178

The Board of Directors of-

- ✓ **every listed public company** and
- ✓ a **company covered under rule 4** of the Companies (Appointment and Qualification of Directors) Rules, 2014
- ✓ shall constitute the Nomination and Remuneration Committee

Constitution of NRC

- ✓ Committee shall consist of **three or more non-executive directors out of which not less than one-half shall be independent directors**:
- ✓ The chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.

Functions of NRC

- ✓ It 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 **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
- ✓ shall **formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration** for the directors, key managerial personnel and other employees.

Ensure while formulating policy that—

- (a) the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;
- (b) relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and

(c) remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals

Provided that such policy shall be 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

- ✓ The **Board of Directors** of a company which **consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year** shall constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.
- ✓ The Stakeholders Relationship Committee shall consider and **resolve the grievances of security holders** of the company.
- ✓ The chairperson of each of the committees constituted under this section or, in his absence, any other member of the committee authorised by him in this behalf shall attend the general meetings of the company.

Punishment for Contravention of Section 177 and 178 [Section 178(8)]

In case of contravention of provisions of Section 177 and Section 178,

- ✓ the company shall be liable to a penalty of five lakh rupees and
- ✓ every officer of the company who is in default shall be liable to a penalty of one lakh rupees.

Inability to resolve or consider any grievance by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of this section.

Section 178 does not apply to Sec 8 Company

Clarification on Board Meetings [Read Only]

- ✓ "National Holiday" means Republic Day i.e. 26th January, Independence Day i.e. 15th August, Gandhi Jayanti i.e. 2nd October and such other day as may be declared as National Holiday by the Central Government.
- ✓ Notice of the Meeting shall clearly mention a venue, whether registered office or otherwise, to be the venue of the Meeting and all the recordings of the proceedings of the Meeting, if conducted through Electronic Mode, shall be deemed to be made at such place.
- ✓ Where a Director specifies a particular means of delivery of Notice, the Notice shall be given to him by such means. However, in case of a Meeting conducted at a shorter Notice, the company may choose an expedient mode of sending Notice
- ✓ Proof of sending Notice and its delivery shall be maintained by the company for such period as decided by the Board, which shall not be less than three years from the date of the Meeting.

- ✓ The Chairman may, unless dissented to or objected by the majority of Directors present at a Meeting at which a Quorum is present, adjourn the Meeting for any reason, at any stage of the Meeting.
- ✓ Notice of an adjourned Meeting shall be given to all Directors including those who did not attend the Meeting on the originally convened date and unless the date of adjourned Meeting is decided at the Meeting, Notice thereof shall also be given not less than seven days before the Meeting.
- ✓ Any item not included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting
- ✓ An adjourned Meeting being a continuation of the original Meeting, the interval period in such a case, shall be counted from the date of the original Meeting.
- ✓ Unless otherwise stipulated in the Act or the Articles or under any other law, the Quorum for Meetings of any Committee constituted by the Board shall be as specified by the Board. If no such Quorum is specified, the presence of all the members of any such Committee is necessary to form the Quorum.
- ✓ The Chairman of the company shall be the Chairman of the Board. If the company does not have a Chairman, the Directors may elect one of themselves to be the Chairman of the Board.

What Board is Permitted to do?

Sec 179	Sec 180	Sec 181	Sec 182 and Sec 183	Sec 186
<ul style="list-style-type: none"> • Powers to BOD • Some powers at BM only 	<ul style="list-style-type: none"> • Some powers of Board like sale of UT, borrowing are restricted and needs and needs SR 	<ul style="list-style-type: none"> • Board may make charitable contribution but needs OR if exceeds limit 	<ul style="list-style-type: none"> • Political contribution and to National Defense Fund 	<ul style="list-style-type: none"> • Board may invest and give loan within limit. Above which SR needed.

Powers of Board

Section 179

The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do.	
Power within Powers	<p>The Board shall exercise powers subject to-</p> <ul style="list-style-type: none"> ✓ the provisions contained in that behalf in this Act, or ✓ in the memorandum or articles, or ✓ in any regulations including regulations made by the company in general meeting.
Not allowed when power given to shareholders	Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting.
Prior acts of BOD valid	No regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.

Powers exercisable at BM only [Sec 179(3)]	The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board , namely:— a) to make calls on shareholders in respect of money unpaid on their shares b) to authorise buy-back of securities under section 68 c) to issue securities , including debentures, whether in or outside India d) to borrow monies e) to invest the funds of the company f) to grant loans or give guarantee or provide security in respect of loans g) to approve financial statement and the Board's report h) to diversify the business of the company i) to approve amalgamation , merger or reconstruction; j) to take over a company or acquire a controlling or substantial stake in another company; k) any other matter which may be prescribed
Delegation of Powers	The Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify.
The list given u/s 179 is not exhaustive. There are certain other powers which are also to be exercised by the Board of Directors at a duly convened board meeting. Some of them are as under:	
	<ul style="list-style-type: none"> ✓ Making of contributions to political parties under Section 182 ✓ Filling of casual vacancy under Section 161 (4) ✓ Approving of transactions with related parties as provided under Section 188 ✓ Giving of loans or making of investment in the shares of other body corporates as provided under Section 186. ✓ Appointing a person as a managing director who is also holding office of managing director or manager in another company as provided under Section 203.
Special Provisions for Banking Companies	Provided further that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, or the placing of monies on deposit by a banking company with another banking company on such conditions as the Board may prescribe, shall not be deemed to be a borrowing of monies or, as the case may be, a making of loans by a banking company within the meaning of this section.
A company may in general meeting impose restrictions and conditions on the exercise by the Board of any of the powers specified in this section	

Restrictions on Powers of Board

Section 180

Powers Requiring Approval [Section 180(1)]

The **Board** of Directors of a company shall **exercise the following powers** only **with the consent of the company by a special resolution**, namely:—

- a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.

"undertaking" shall mean an **undertaking in which the investment** of the company **exceeds 20% of its net worth** as per the audited balance sheet of the preceding financial year or an undertaking which generates **20% of the total income of the company during the previous financial year**

"substantially the whole of the undertaking" in any financial year shall **mean 20% 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

Money received on amalgamation belongs to Shareholders and can't be invested elsewhere without their approval. Hence, it can be only invested in trust securities like post office etc.

- 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, free reserves and securities premium**, apart from temporary loans obtained from the company's bankers in the ordinary course of business

Provided that the acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of monies by the banking company within the meaning of this clause.

"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**

Eg. Cash credit, overdraft or other short term loan from bank is temporary loan however, short term loan from other person is not temporary loan.

- d) to remit, or give time for the repayment of, any debt due from a director.

Specifications in SR

Every **special resolution** passed by the company in general meeting in relation to the exercise of the powers referred to in clause (c) of sub-section (1) shall **specify the total amount up to which monies may be borrowed** by the Board of Directors.

Any **special resolution** passed by the company consenting to the transaction as is referred to in clause (a) of sub-section (1) **may stipulate** such **conditions** as may be specified in such resolution, including conditions **regarding the use, disposal or investment of the sale proceeds** which may result from the transactions

No Effect on Title in Good Faith

Nothing shall effect:-

- ✓ the title of a buyer or other person who buys or takes on lease any property, investment or undertaking as is referred to in that clause, in good faith
- ✓ 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.

Onus of Proof on Lender [Section 180(5)]

No debt incurred by the company **in excess of the limit** imposed by clause (c) of sub-section (1) shall be **valid** or effectual, **unless the lender proves that he advanced** the loan **in good faith** and **without knowledge that** the limit imposed by that clause had been **exceeded**.

Section 180 is not applicable to Private Company.

Contribution to Bona Fide and Charitable Funds

Section 181

The **Board of Directors** of a company **may contribute** to bona fide charitable and other **funds**.

Provided that

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



The section does not make it mandatory for the company to have a profit for making a charitable contribution in any financial year. As the amount of donation is restricted to the average of immediately previous 3 years' profits, it is possible for a company suffering a loss to make contribution provided it is made to a bonafide charitable fund and the average of the three immediately preceding financial years' profits (including current losses) is positive.

Prohibitions and Restrictions Regarding Political Contributions

Section 182



A **company may contribute any amount** directly or indirectly to any political party by **passing a resolution** authorizing the making of such contribution at a meeting of the Board of Directors.

Exception:

- ✓ A **Government company** and
- ✓ A **company** which has been **in existence for less than three financial years**.

Procedure [Proviso to 182(1)]	A company shall make the contribution to a political party only after a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors. In effect, such resolution shall be deemed to be justification in law for the making of the contribution authorised by it.				
Deemed political contributions [Section 182(2)]	<p>Following contributions are also deemed as political contributions:</p> <ul style="list-style-type: none"> (a) a donation or subscription or payment given by a company to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given, can reasonably be regarded as likely to affect public support for a political party; (b) the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication being in the nature of a souvenir, brochure, tract, pamphlet or the like: <ul style="list-style-type: none"> • where such publication is by or on behalf of a political party • where such publication is not by or on behalf of, but for the advantage of a political party. 				
Disclosure of contributed amount [Sec 182(3)]	Every company shall disclose in its profit and loss account the total amount contributed by it under Section 182 during the financial year to which the account relates.				
Modes of contribution [Section 182 (3A)]	by an account payee cheque drawn on a bank; or <ul style="list-style-type: none"> • by an account payee bank draft; or • by using electronic clearing system through a bank account; or • through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties 				
Punishment for contravention	<table border="1"> <tr> <td>Company</td> <td>punishable with fine up to five times the amount of contribution so made</td> </tr> <tr> <td>Officer in Default</td> <td>punishable with imprisonment up to six months and with fine up to five times the amount of contribution so made.</td> </tr> </table>	Company	punishable with fine up to five times the amount of contribution so made	Officer in Default	punishable with imprisonment up to six months and with fine up to five times the amount of contribution so made.
Company	punishable with fine up to five times the amount of contribution so made				
Officer in Default	punishable with imprisonment up to six months and with fine up to five times the amount of contribution so made.				
Electoral Trust Disclosure [MCA Clarification]	<p>Companies contributing any amount or amounts to an 'Electoral Trust Company' for contributing to a political party or parties are not required to make disclosures required under Section 182(3) of Companies Act 2013. It will suffice if the Accounts of the company disclose the amount released to an Electoral Trust Company.</p> <p>(ii) Companies contributing any amount or amounts directly to a political party or parties will be required to make the disclosures laid down in Section 182(3) of the Companies Act, 2013.</p> <p>(iii) Electoral trust companies will be required to disclose all amounts received by them from other companies/sources in their Books of Accounts and also disclose the amount or amounts contributed by them to a political party or parties as required by Section 182(3) of Companies Act, 2013.</p>				

Power of Board and Other Persons to make contributions to National Defence Fund Etc.

Section 183

- ✓ 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.

- ✓ Every company shall disclose in its profits and loss account the total amount or amounts contributed by it to the Fund during the financial year to which the amount relates

Disclosure of Interest by Director

Section 184

General Disclosure [Section 184(1)]

Every director shall-

- ✓ at the **first meeting** of the Board **in which he participates** as a director **and**
- ✓ thereafter at the **first meeting** of the Board **in every financial year or**
- ✓ **whenever there is any change** in the disclosures already made, then at the first Board meeting held after such change,
- ✓ **disclose his concern or interest in any company or companies or bodies corporate, firms, or other association** of individuals which shall include the shareholding, in such manner as may be prescribed.

Rule 9 of Companies(Meetings of Board & Its Powers) Rules, 2014

- ✓ Notice shall be in writing in Form **MBP 1**.
- ✓ It shall be the duty of the director giving notice of interest to cause it to be disclosed at the meeting held immediately after the date of the notice.
- ✓ All notices shall be kept at the registered office and such notices shall be preserved for a period of eight years from the end of the financial year to which it relates and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for the purpose.

Specific Disclosure [Section 184(2)]

Every director of a company **who is** in any way, whether directly or indirectly, concerned or interested in a **contract** or arrangement or proposed contract or arrangement entered into or to be **entered into**—

- ✓ **with a body corporate in which such director** or such director in association with any other director, **holds more than 2% shareholding** of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or
- ✓ **with a firm or other entity in which, such director is a partner, owner or member**, as the case may be,
- ✓ **shall disclose** the nature of **his concern or interest** at the meeting of the Board in which the contract or arrangement is discussed **and shall not participate in such meeting**

Provided that where any **director** who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he **becomes concerned** or interested **after** the **contract** or arrangement is **entered into**, **disclose** his concern or **interest forthwith** when he becomes concerned or interested **or at the first meeting** of the Board held **after he becomes so concerned or interested**.

A **contract** or arrangement entered into by the company **without disclosure** under sub-section (2) or with participation by a director who is concerned or interested in any way,

directly or indirectly, in the contract or arrangement, **shall be voidable at the option of the company.**

Penalty

If a director of the company contravenes these provisions, such director shall be punishable with fine of 1 lakh.

Non- Applicability

Nothing in this section—

(a) shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company;

(b) **shall apply to any contract** or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate **where any of the directors** of the one company or body corporate **or two or more of them together** holds or **hold not more than 2% of the paid-up share capital** in the other company or the body corporate.

- ✓ In case of Private Company which has not committed default in filing u/s 137 or 92 , the interested director may participate in the Board meeting after his disclosure of his interest.
- ✓ Section 184(2) shall apply to a section 8 company which has not committed default in filing u/s 137 or 92, only when transaction value exceeds 1 lakh.

Seth MohanLal v Grain Chambers Ltd: Where the same matter comes before a general meeting, the right of an interested director to vote on it is not affected by section 184.

Venkatachalamathy V.S. Guntur Cotton Mills where a whole body of directors is aware of the facts relating to an interest of a director, a formal disclosure is not necessary.

P. Leslie & Co. vs. V.O. Wapshare-there is no ban on a contract in which a director is interested. It was held in this case that the only requirement is that the interest should be disclosed

Shailesh Harilal Shah vs. Matushree Textiles- "the appointment as an additional director of a person who is related to a director" cannot be considered as a Contract because the position of a director may be conferred on a person by any method other than contract but it would amount to an arrangement

Loan to Directors

Section 185

Prohibition on Loan to Directors [Section 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.**

Permitted Transactions [Section 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.

"any person in whom any of the director of the company is interested" means—

- (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.

Non- Applicability

Nothing contained in sub-sections (1) and (2) shall apply to—

- (a) the giving of any loan to a managing or whole-time director—
 - as a part of the conditions of service extended by the company to all its employees; or
 - pursuant to any scheme approved by the members by a special resolution; or
- (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 years, five years or ten years 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.

MCA Circular:

Section 185 shall not apply to a private company-

- in whose share capital no other body corporate has invested any money;
- if the borrowings of such a company from banks or financial institutions or any body

- corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and
- such a company has no default in repayment of such borrowings subsisting at the time of making transactions under this section.

Section 185 shall not apply to Nidhi Company provided the loan is given to a director or his relative in their capacity as members and such transaction is disclosed in the annual accounts by a note. -

Section 185 shall not apply to Government Company in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before making any loan or giving any guarantee or providing any security under the section.

Does not apply to Specified IFSC Public and Private Companies to certain conditions

Penalty [Section 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.

Loan and Investment by Company

Section 186

A company shall unless otherwise prescribed, **make investment** through **not more than two layers of investment companies**:

Provided that the provisions of this sub-section shall not affect,—

- i. a company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country
- ii. a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.

Limit for Investment [Section 186(2)]

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 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more.

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

Equity and Preference share capital are to be taken.

Calls in arrear to be deducted to derive Paid up capital.

(3) 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)

Where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of sub-section (3) of section 186 shall not apply

Disclosure [Section 186(4)]

The **company shall disclose to the members in the financial statement the full particulars of-**

- ✓ the loans given,
- ✓ investment made or guarantee given or security provided and
- ✓ the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security.

Approval of Board and PFI [Section 186(5)]

No investment shall be made **or loan** or guarantee or security given by the company **unless the resolution** sanctioning it is passed **at a meeting of the Board with the consent of all the directors present** at the meeting **and the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained:**

Provided that prior **approval of a public financial institution** shall **not be required**-

- ✓ where the aggregate of the loans and investments so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate, along with the investments, loans, guarantee or security proposed to be made or given
- ✓ does not exceed the limit as specified in sub-section (2), and
- ✓ there is no default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution.

Restriction u/s 186(6)

No company, which is registered under section 12 of the Securities and Exchange Board of India Act, 1992 and covered under such class or classes of companies as may be prescribed, shall take inter-corporate loan or deposits exceeding the prescribed limit and such company shall furnish in its financial statement the details of the loan or deposits.

Rate of Interest [Section 186(7)]

No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.

No Loan in Case of Default [Section 186(8)]

No company which is in default in the repayment of any deposits accepted before or after the commencement of this Act or in payment of interest thereon, shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting.

Register [Section 186(9) &186(10)]

Every company giving loan or giving a guarantee or providing security or making an acquisition under this section shall keep a register which shall contain such particulars and shall be maintained in such manner as may be prescribed.

The register referred to in sub-section (9) shall be kept at the registered office of the company and

- (a) shall be open to inspection at such office; and
- (b) extracts may be taken therefrom by any member, and copies thereof may be furnished to any member of the company on payment of such fees as may be prescribed.

Rule 12 of Companies (Meetings of Board & Its Powers) Rules, 2014

- ✓ The register shall be in **Form MBP 2** and separate particulars of loans and guarantees given, securities provided and acquisitions made shall be entered.
- ✓ The entries in the register shall be made chronologically in respect of each such transaction **within seven days** of making such loan or giving guarantee or providing security or making acquisition.
- ✓ The register shall be kept at the **registered office** of the company and the register shall be **preserved permanently** and shall be kept in the **custody of the company secretary** of the company or any other person authorised by the Board for the purpose.
- ✓ The entries in the register shall be authenticated by the company secretary of the company or by any other person authorised by the Board for the purpose.
- ✓ The register can be **maintained either manually or in electronic mode**.
- ✓ The extracts from the register may be furnished to any member of the company on payment of such fee as may be prescribed in the Articles of the company which shall not exceed ten rupees for each page.

Non- Applicability [Section 186(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

Nothing in this Section shall apply to

- ✓ Government Company engaged in defence production
- ✓ Government Company other than a listed company in case such a company obtains approval of Ministry or Department or Central Government which is administratively in charge of Company

Penalty [Section 186(13)]

If a company contravenes the provisions of this section,

- ✓ the company shall be **punishable with fine** which shall **not be less than twenty-five thousand rupees but which may extend to five lakh rupees** and
- ✓ **every officer** of the company who is **in default** shall be **punishable with imprisonment** for a term **which may extend to two years and with fine** which shall **not be less than twenty-five thousand rupees but which may extend to one lakh rupees.**

“investment company” means a company whose principal business is the acquisition of shares, debentures or other securities 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.

Summary with Extra Points [Section 186]

- ✓ According to Section 2(87), Any company [Other than Banking, NBFC, Insurance, Government, Foreign subsidiary] shall not have more than 2 layers of subsidiaries.
- ✓ Section 186 is specifically for Investment Companies.
- ✓ LGSI Limit= Higher of 60% of (PUC+ FR+SP) or 100% of (FR+ SP)
- ✓ LGSI within limit requires Unanimous Board Resolution and PFI approval (In case of default in repayment)
- ✓ LGSI exceeding limit requires Unanimous Board Resolution + Special Resolution in General meeting/Postal ballot+ PFI Approval
- ✓ Notice of SR to include limits, company to whom loan given, source of funding and other

- details
- ✓ Resolution to specify max amount of LGSI
 - ✓ LGSI to 100% subsidiary doesn't need SR
 - ✓ Disclosure of details in Financial statement
 - ✓ Rate of Interest for loans>= Prevailing yield of 1/3/5/10 years Government security closest to tenor of loan
 - ✓ No subsisting default in repayment of deposits
 - ✓ Entries within 7 days in Register MBP-2
 - ✓ Register open for inspection

Investments of Company to be held in its own Name

Section 187

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

Exceptions

A 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.

Nothing in this section shall be deemed to prevent a company—

- a) from depositing with a bank, being the bankers of the company, any shares or securities for the collection of any dividend or interest payable thereon; or
- b) from depositing with, or transferring to, or holding in the name of, the State Bank of India or a scheduled bank, being the bankers of the company, shares or securities, in order to facilitate the transfer thereof
Provided that if within a period of six months from the date on which the shares or securities are transferred by the company to, or are first held by the company in the name of, the State Bank of India or a scheduled bank as aforesaid, no transfer of such shares or securities takes place, the company shall, as soon as practicable after the expiry of that period, have the shares or securities re-transferred to it from the State Bank of India or the scheduled bank or, as the case may be, again hold the shares or securities in its own name; or
- c) from depositing with, or transferring to, any person any shares or securities, by way of security for the repayment of any loan advanced to the company or the performance of any obligation undertaken by it;
- d) from holding investments in the name of a depository when such investments are in the form of securities held by the company as a beneficial owner.

Rule 14:

Investments of Company to be Held in its Own Name

- 1) Every company shall, from the date of its registration, maintain a register in Form MBP 3 and enter therein, chronologically, the particulars of investments in shares or other securities beneficially held by the company but which are not held in its own name and

the company shall also record the reasons for not holding the investments in its own name and the relationship or contract under which the investment is held in the name of any other person.

- 2) The company shall also record whether such investments are held in a third party's name for the time being or otherwise.
- 3) The register shall be maintained at the registered office of the company. The register shall be preserved permanently and shall be kept in the custody of the company secretary of the company or if there is no company secretary, any director or any other officer authorised by the Board for the purpose.
- 4) The entries in the register shall be authenticated by the company secretary of the company or by any other person authorised by the Board for the purpose.

Punishment for Contravention

Company	500000
Director/Beneficiary	50000

Related Party Transactions

Section 188

Meaning of Related Party [Section 2(76)]

"related party", with reference to a company, means—

- i. a director or his relative;
 - ii. a key managerial personnel or his relative;
 - iii. a firm, in which a director, manager or his relative is a partner;
 - iv. a private company in which a director or manager or his relative is a member or director;
 - v. a public company in which a director and manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital;
 - vi. any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager
 - vii. any person on whose advice, directions or instructions a director or manager is accustomed to act.
- Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity
- viii. any body corporate which is—
 - a holding, subsidiary or an associate company of such company
 - a subsidiary of a holding company to which it is also a subsidiary or
 - an investing company or the venturer of the company

"the investing company or the venturer of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

Above clause not applicable to Private Company

ix. such other person as may be prescribed

a director other than an independent director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

Meaning of Relative

Section 2 (77) of the Act defines the term 'relative'. Accordingly, 'relative', with reference to any person, means any one who is related to another, if—

- ✓ they are members of a Hindu Undivided Family;
- ✓ they are husband and wife; or
- ✓ one person is related to the other in the prescribed manner as under:
 - Father (including step-father).
 - Mother (including step-mother).
 - Son (including step-son).
 - Son's wife.
 - Daughter.
 - Daughter's husband.
 - Brother (including the step-brother).
 - Sister (including the step-sister).

Related party transactions to which Section 188 is applicable [Section 188(1)]	<p>Any contract or arrangement with a related party with respect to—</p> <p>a) sale, purchase or supply of any goods or materials;</p> <p>b) selling or otherwise disposing of, or buying, property of any kind;</p> <p>c) leasing of property of any kind;</p> <p>d) availing or rendering of any services;</p> <p>e) appointment of any agent for purchase or sale of goods, materials, services or property;</p> <p>f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and</p> <p>Office or Place of Profit</p> <p>✓ 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</p> <p>✓ 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;</p> <p>g) underwriting the subscription of any securities or derivatives thereof, of the company</p>
Disclosures of 'related party transactions' in Board's report [Section 188 (2)]	Every contract or arrangement entered into under Section 188 (1) (<i>i.e.</i> the related party transactions) shall be mentioned in the Board's report to the shareholders along with the justification for entering into such contract or arrangement.
No Bar on above	Section 188 does not bar a company from entering into 'related

transactions	party transactions' . They can very well be undertaken, but after following the procedure prescribed as per the law like taking permission from the Board and if required, from the company in general meeting when prescribed limits are exceeded.	
OR needed if Transaction value exceeds limit specified	If transaction value exceeds as given under Rule 15, OR is needed. Otherwise BR is sufficient.	
Procedure of RPT when OR not required (Read with Rule 15)	<p>In case, a related party transaction covered under Section 188 (1) (<i>i.e.</i> contract or arrangement between a company and related party) is not on arm's length basis and also does not require approval of the shareholders, such transactions shall be entered only with consent of Board of Directors by a resolution at Board Meeting and complying with following conditions specified in Rule 15</p> <div style="border: 1px solid black; padding: 10px; margin-top: 10px;"> <p>In case any related party transaction is entered into by the company in its ordinary course of business and at an arm's length basis, Section 188 (1) is not attracted and therefore, no approval is required. However, transactions which are not on an arm's length basis shall require the appropriate approval.</p> <p>"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.</p> </div> <p>Agenda of the Board meeting at which the resolution is proposed to be moved shall disclose the following matters:</p> <ul style="list-style-type: none"> ✓ the name of the related party and nature of relationship; ✓ the nature, duration of the contract and particulars of the contract or arrangement; ✓ the material terms of the contract or arrangement including the value, if any; ✓ any advance paid or received for the contract or arrangement, if any; ✓ the manner of determining the pricing and other commercial terms, both included as part of contract and not considered as part of the contract; ✓ whether all factors relevant to the contract have been considered, if not, the details of factors not considered with the rationale for not considering those factors; and ✓ any other information relevant or important for the Board to take a decision on the proposed transaction. 	
	Interested Director not to participate	Where any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement-

What is the Limit Specified? [Rule 15]

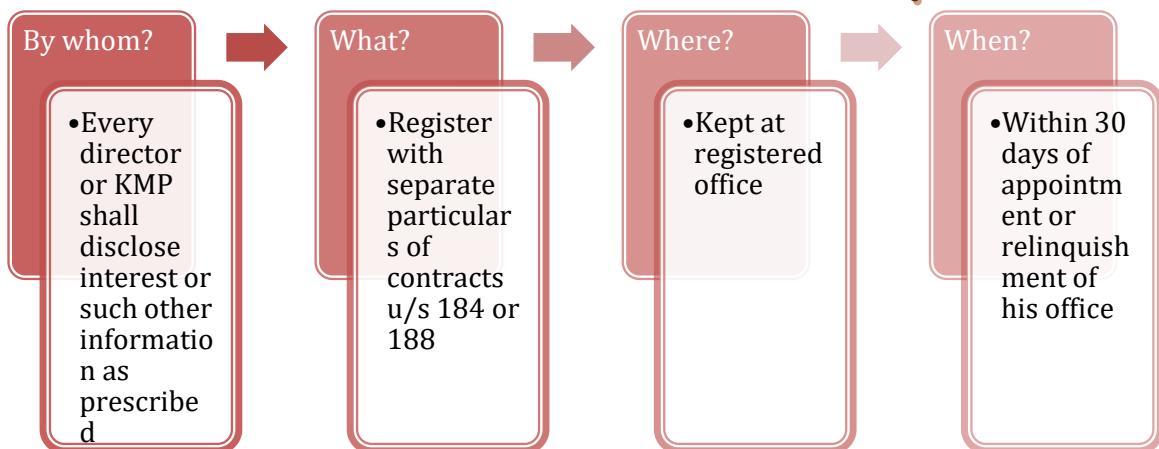
Related Party Transactions requiring approval by ordinary resolution	Details of transactions to be entered into as contracts or arrangements with respect to clauses (a) to (e) of sub-section (1) of Section 188	Prescribed limits for seeking approval by a resolution relating to the specified transactions
	(i) Sale, purchase or supply of any goods or materials, directly or through appointment of agent, as mentioned in clause (a) and clause (e) respectively of sub-section (1) of Section 188.	If the value of such transaction or transactions amounting to 10% or more of the turnover of the company
	(ii) Selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, as mentioned in clause (b) and clause (e) respectively of sub-section (1) of Section 188.	If the value of such transaction or transactions amounting to 10% or more of net worth of the company
	Leasing of property of any kind, as mentioned in clause (c) of sub-section (1) of Section 188.	If the value of such transaction or transactions amounting to ten per cent or more of the turnover of the company
	(iv) Availing or rendering of any services, directly or through appointment of agent, as mentioned in clause (d) and clause (e) respectively of sub-section (1) of section 188.	If the value of such transaction or transactions amounting to 10% or more of the turnover of the company.
For 188(1)(f)		is for appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding two and a half lakh rupees as mentioned in clause (f) of sub-section (1) of section 188.
For 188(1)(g)		is for remuneration for underwriting the subscription of any securities or derivatives thereof, of the company exceeding one percent of the net worth as mentioned in clause (g) of sub-section (1) of section 188. Above limit shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year. 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.

Procedure of RPT when OR needed [If transaction value exceeds limit]	Calling of GM (With Explanatory Statement)	The explanatory statement to be annexed to the notice of a general meeting convened pursuant to section 101 shall contain the following particulars, namely:- a. name of the related party; b. name of the director or key managerial personnel who is related, if any; c. nature of relationship; d. nature, material terms, monetary value and particulars of the contract or arrangements e. any other information relevant or important for the members to take a decision on the proposed resolution.
	OR required [1st Proviso to sec 188(1)]	Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed above shall be entered into except with the prior approval of the company by a resolution
	Voting [2nd Proviso to sec 188(1)]	Provided further that no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party.
	Related member may Vote [3rd Proviso to Sec 188(1)]	Above shall not apply to a company in which ninety per cent. or more members, in number, are relatives of promoters or are related parties
	No OR needed [4th Proviso to Sec 188(1)]	Provided also that the requirement of passing the resolution under first proviso shall not be applicable for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval In case of a wholly owned subsidiary, the 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.
RPT Contract without consent: Voidable [Section 188(3)]	Where any contract or arrangement is entered into by a director or any other employee, ✓ without obtaining the consent of the Board or approval by a resolution in the general meeting ✓ and if it is not ratified by the Board or , as the case may be, by	

	<p>the shareholders at a meeting</p> <ul style="list-style-type: none"> ✓ within three months from the date on which such contract or arrangement was entered into <p>such contract or arrangement</p> <ul style="list-style-type: none"> ✓ shall be voidable at the option of the Board or, as the case may be, of the shareholders ✓ and if the contract or arrangement is with a related party to any director, or is authorised by any other director, ✓ the directors concerned shall indemnify the company against any loss incurred by it. 						
Recovery of Loss from Director [Section 188(4)]	it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of Section 188 for recovery of any loss sustained by it as a result of such contract or arrangement						
Penalty Contravention [Sec 188(5)]	<p>Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall,—</p> <ul style="list-style-type: none"> ✓ In case of listed company, liable to a penalty of 25 lakh ✓ In case of any other company, liable to a penalty of 5 lakh 						
Exemptions	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">Government Company [No OR required and Related member may vote]</td> <td style="padding: 5px;">First and Second Proviso to Section 188(1) shall not apply to: (a) a government company in respect of contracts or arrangements entered into by it with any other government company; (b) a government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause(a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or as the case may be, the state Government before entering into such contract or arrangement.</td> </tr> <tr> <td style="padding: 5px;">Private Company</td> <td style="padding: 5px;">2nd Proviso to Sec 188(1) not applicable. [Related member may vote in case of Private Company]</td> </tr> <tr> <td style="padding: 5px;">Compromises Arrangement, Amalgamation</td> <td style="padding: 5px;">Transactions arising out of Compromises, Arrangements and Amalgamations dealt with under specific provisions of the Companies Act, 2013, will not attract the requirements of Section 188 of the Companies Act, 2013.</td> </tr> </table>	Government Company [No OR required and Related member may vote]	First and Second Proviso to Section 188(1) shall not apply to: (a) a government company in respect of contracts or arrangements entered into by it with any other government company; (b) a government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause(a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or as the case may be, the state Government before entering into such contract or arrangement.	Private Company	2 nd Proviso to Sec 188(1) not applicable. [Related member may vote in case of Private Company]	Compromises Arrangement, Amalgamation	Transactions arising out of Compromises, Arrangements and Amalgamations dealt with under specific provisions of the Companies Act, 2013, will not attract the requirements of Section 188 of the Companies Act, 2013.
Government Company [No OR required and Related member may vote]	First and Second Proviso to Section 188(1) shall not apply to: (a) a government company in respect of contracts or arrangements entered into by it with any other government company; (b) a government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause(a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or as the case may be, the state Government before entering into such contract or arrangement.						
Private Company	2 nd Proviso to Sec 188(1) not applicable. [Related member may vote in case of Private Company]						
Compromises Arrangement, Amalgamation	Transactions arising out of Compromises, Arrangements and Amalgamations dealt with under specific provisions of the Companies Act, 2013, will not attract the requirements of Section 188 of the Companies Act, 2013.						

Register of Contracts or Arrangements in which Directors Are Interested

Section 189



- ✓ Such register or registers shall be **placed before** the next meeting of the **Board** and **signed by all the directors present** at the meeting.
- ✓ it shall be **open for inspection** at such office **during business hours** and extracts may be taken there from, and copies thereof as may be required by any member of the company shall be furnished by the company to such extent, in such manner, and on payment of such fees as may be prescribed.
- ✓ The register to be kept under this section shall also be **produced at** the commencement of **every annual general meeting** of the company and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting.

Non-Applicability

Nothing shall apply to any contract or arrangement—

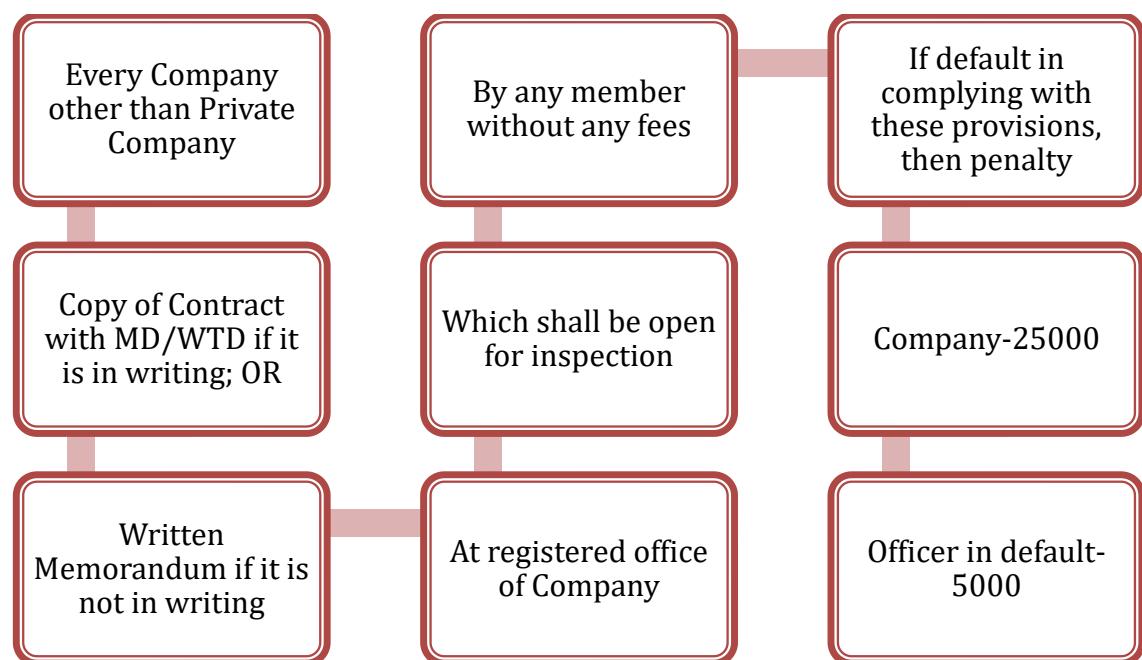
- ✓ for the **sale, purchase or supply** of any goods, materials or services if the **value** of such goods and materials or the cost of such services **does not exceed five lakh rupees** in the **aggregate in any year; or**
- ✓ by a **banking company** for the collection of **bills** in the **ordinary course** of its business.

Penalty

Every director who fails to comply with the provisions of this section and the rules made thereunder shall be liable to a **penalty of twenty-five thousand rupees**.

**Contract of Employment with
Managing Director/ Whole Time Director**

Section 190



**Payment to Director for Loss Of Office
in Connection With Transfer Of Undertaking,
Property Or Shares**

Section 191

No director of a company shall, in connection with—

- the transfer of the whole or any part of any undertaking or property of the company;
- the transfer to any person of all or any of the shares in a company being a transfer resulting from—
 - ✓ an offer made to the general body of shareholders;
 - ✓ an offer made by or on behalf of some other body corporate with a view to a company becoming a subsidiary company of such body corporate or a subsidiary company of its holding company;
 - ✓ an offer made by or on behalf of an individual with a view to his obtaining the right to exercise, or control the exercise of, not less than one-third of the total voting power at any general meeting of the company; or
 - ✓ any other offer which is conditional on acceptance to a given extent, receive any payment by way of compensation for loss of office or as consideration for retirement from office, or in connection with such loss or retirement from such company or from the transferee of such undertaking or property, or from the transferees of shares or from any other person, not being such company, unless particulars as may be prescribed with respect to the payment proposed to be made by such transferee or person, including the amount thereof, have been disclosed to the members of the company and the proposal has been approved by the company in general meeting.

(2) Nothing in sub-section (1) shall affect any payment made by a company to a managing director or whole-time director or manager of the company by way of compensation for loss of office or as consideration for retirement from office or in connection with such loss or retirement subject to limits or priorities, as may be prescribed.

(3) If the payment under sub-section (1) or sub-section (2) is not approved for want of quorum either in a meeting or an adjourned meeting, the proposal shall not be deemed to have been approved.

(4) Where a director of a company receives payment of any amount in contravention of sub-section (1) or the proposed payment is made before it is approved in the meeting, the amount so received by the director shall be deemed to have been received by him in trust for the company.

Penalty

If a director of the company makes any default in complying with the provisions of this section, **such director shall be liable to a penalty of one lakh rupees.**

Nothing in this section shall be taken to prejudice the operation of any law requiring disclosure to be made with respect to any payment received under this section or such other like payments made to a director.

Restriction on Non-Cash Transaction Involving Directors

Section 192

No company shall enter into an arrangement by which—

- ✓ 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
- ✓ the company acquires or is to acquire assets for consideration other than cash, from such director or person so connected,
- ✓ unless prior approval for such arrangement is accorded by a resolution of the company in general meeting and if the director or connected person is a director of its holding company, approval under this sub-section shall also be required to be obtained by passing a resolution in general meeting of the holding company.

The notice for approval of the resolution by the company or holding company in general meeting shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.

Any arrangement entered into by a company or its holding company in contravention of the provisions of this section shall be voidable at the instance of the company unless—

- ✓ the restitution of any money or other consideration which is the subject matter of the arrangement is no longer possible and the company has been indemnified by any other person for any loss or damage caused to it; or
- ✓ any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.

Contract by One Person Company

Section 193



Inspection, Inquiry & Investigation

Section Summary

This chapter XIV of Companies Act, 2013 is read with The Companies (Inspection, Investigation and Inquiry) Rules, 2014

Section No.	Topics Covered
206	Call for information and inspection of books and conduct Inquiries
207	Conduct of Inspection and Enquiry
208	Submission of inspection report
209	Search and seizure
210	Investigation into affairs of Company
211	Establishment of Serious Fraud Investigation Office
212	Investigation into affairs of Company by SFIO
213	Investigation into Company's affairs in other cases
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 Inspectors
218	Protection of employees during investigation
219	Power of Inspector to conduct investigation into affairs of Related Companies etc.
220	Seizure of Documents by Inspector
221	Freezing of Assets of company on inquiry and investigation
222	Imposition of restrictions upon securities
223	Inspector's Report
224	Actions to be taken in pursuance of Inspector's Report
225	Expenses of Investigation
226	Voluntary Winding up of Company, etc. not to stop investigation proceedings
227	Legal Advisers and Bankers not to disclose certain Information
228	Investigation etc. of foreign companies
229	Penalty for furnishing false statement, mutilation, Destruction of Documents

Power to Call for Information, Inspect Books and Conduct Inquiries

Section 206

Power of Registrar to Call Information [Sec 206(1)]	Where on a scrutiny of any document filed by a company or on any information received by him, the Registrar is of the opinion that any further information or explanation or any further documents relating to the company is necessary, he may by a written
---	--

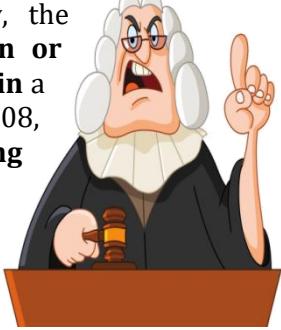
	<p>notice require the company—</p> <ul style="list-style-type: none"> ✓ to furnish in writing such information or explanation; or ✓ to produce such documents, within such reasonable time, as may be specified in the notice. 
Duty to furnish Information [Sec 206(2)] 	<p>On the receipt of a notice under sub-section (1), it shall be the duty of the company and of its officers concerned to furnish such information or explanation to the best of their knowledge and power and to produce the documents to the Registrar within the time specified or extended by the Registrar</p> <p>Duty of Past Officers Provided that where such information or explanation relates to any past period, the officers who had been in the employment of the company for such period, if so called upon by the Registrar through a notice served on them in writing, shall also furnish such information or explanation to the best of their knowledge.</p>
Order of Inspection [Section 206(3)]	<ul style="list-style-type: none"> ✓ If no information or explanation is furnished to the Registrar within the time specified under sub-section (1) or ✓ if the Registrar on an examination of the documents furnished is of the opinion that the information or explanation furnished is inadequate or ✓ if the Registrar is satisfied on a scrutiny of the documents furnished that an unsatisfactory state of affairs exists in the company and does not disclose a full and fair statement of the information required, he may, by another written notice, call on the company to produce for his inspection such further books of account, books, papers and explanations as he may require at such place and at such time as he may specify in the notice <p>Provided that before any notice is served under this sub-section, the Registrar shall record his reasons in writing for issuing such notice.</p>
Order of Inquiry [Section 206(4)]	<p>If the Registrar is satisfied-</p> <ul style="list-style-type: none"> ✓ on the basis of information available with or ✓ furnished to him or ✓ on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act or ✓ if the grievances of investors are not being addressed, the Registrar may, after informing the company of the allegations made against it by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order within such time as he may specify therein and carry out such inquiry as he deems fit after providing the company a reasonable opportunity of being heard

	<p>Provided that the Central Government may, if it is satisfied that the circumstances so warrant, direct the Registrar or an inspector appointed by it for the purpose to carry out the inquiry under this sub-section</p> <p>Provided further that where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in section 447.</p>				
Inspection by Central Government [Section 206(5) and 206(6)]	<ul style="list-style-type: none"> ✓ Without prejudice to the foregoing provisions of this section, the Central Government may, if it is satisfied that the circumstances so warrant, direct inspection of books and papers of a company by an inspector appointed by it for the purpose. ✓ The Central Government may, having regard to the circumstances by general or special order, authorise any statutory authority to carry out the inspection of books of account of a company or class of companies. 				
Penalty [Section 206(7)]	<p>If a company fails to furnish any information or explanation or produce any document required under this section,</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">the company and every officer of the company, who is in default shall be punishable</td> <td style="padding: 5px;">fine ≤ 1 lakh</td> </tr> <tr> <td style="padding: 5px;">in the case of a continuing failure</td> <td style="padding: 5px;">Additional fine which may extend to five hundred rupees for every day after the first during which the failure continues</td> </tr> </table>	the company and every officer of the company, who is in default shall be punishable	fine ≤ 1 lakh	in the case of a continuing failure	Additional fine which may extend to five hundred rupees for every day after the first during which the failure continues
the company and every officer of the company, who is in default shall be punishable	fine ≤ 1 lakh				
in the case of a continuing failure	Additional fine which may extend to five hundred rupees for every day after the first during which the failure continues				

Conduct of Inspection and Inquiry

Section 207

Duty to furnish information [Section 207(1)]	<p>Where a Registrar or inspector calls for the books of account and other books and papers under section 206,</p> <ul style="list-style-type: none"> ✓ it shall be the duty of <ul style="list-style-type: none"> • every director, • officer or • other employee ✓ of the company to produce ✓ all such documents to the Registrar or inspector and ✓ furnish him with such statements, information or explanations ✓ in such form as the Registrar or inspector may require and ✓ shall render all assistance to the Registrar or inspector in connection with such inspection.
Powers of Inspector [Section 207(2)]	<p>The Registrar or inspector, making an inspection or inquiry under section 206 may, during the course of such inspection or inquiry, as the case may be,—</p> <ul style="list-style-type: none"> ✓ make or cause to be made copies of books of account and other books and papers; or ✓ place or cause to be placed any marks of identification in such books in token of the inspection having been made.

Powers Coextensive with those in Civil Court [Section 207(3)]	<p>Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the Registrar or inspector making an inspection or inquiry shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—</p> <ul style="list-style-type: none"> ✓ 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 ✓ summoning and enforcing the attendance of persons and examining them on oath; and ✓ inspection of any books, registers and other documents of the company at any place. 	
Penalty [Section 207(4)]	Punishment	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 Imprisonment ≤ 1 Year AND 25000≤ Fine ≤ 100000
	Other Disqualification	If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.

Report on Inspection made

Section 208

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.

Actually, this report has to be submitted to Regional Director (RD). If the punishment is less than two years, RD himself can sanction launching of prosecution. In other cases, he should forward report to Central Government for sanctioning prosecution.

Search and Seizure

Section 209

Power of Inspector to Enter, Search And Seize on permission from Special Court [Section 209(1)]	Where, upon information in his possession or otherwise, the Registrar or inspector has reasonable ground to believe that the books and papers of a company, or relating to the key managerial personnel or any director or auditor or company secretary in practice if the company has not appointed a company secretary, are likely to be destroyed, mutilated, altered, falsified or secreted , he may, after
---	---

	<p>obtaining an order from the Special Court for the seizure of such books and papers-</p> <ul style="list-style-type: none"> ✓ enter, with such assistance as may be required, and search, the place or places where such books or papers are kept; and ✓ seize such books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books or papers at its cost.
Duty of Inspector to return the seized Books [Section 209(2)]	<p>The Registrar or inspector shall return the books and papers seized as soon as may be, and in any case not later than one hundred and eightieth day after such seizure, to the company from whose custody or power such books or papers were seized</p> <p>Provided that the books and papers may be called for by the Registrar or inspector for a further period of one hundred and eighty days by an order in writing if they are needed again</p>
Power to take copies and place marks	Provided further that the Registrar or inspector may, before returning such books and papers as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof or deal with the same in such other manner as he considers necessary.
Applicability of Code	The provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures shall apply, mutatis mutandis, to every search and seizure made under this section.

Investigation into Affairs of Company

Section 210

Optional Order of Investigation by CG [Sec 210(1)]	<p>Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company,—</p> <ul style="list-style-type: none"> ✓ on the receipt of a report of the Registrar or inspector under section 208 ✓ on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or ✓ in public interest, it may order an investigation into the affairs of the company.
Mandatory Order of Investigation by CG [Sec 210(2)]	Where an order is passed by a court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government shall order an investigation into the affairs of that company.
Appointment of Inspectors	For the purposes of this section, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.
Companies (Inspection, investigation and inquiry) Rules, 2014	<p>The Central Government may before appointing an inspector require the applicant to give a security not exceeding 25,000 rupees for payment of the costs and expenses of investigation.</p> <p>The above referred security shall be refunded to the applicant if the investigation results in prosecution.</p>

Investigating into Company's Affairs in Other Cases

Section 213

According to this section, NCLT can order investigation in specified cases.

On Application by Members:-	In case of Company having Share Capital	not less than one hundred members or members holding not less than one-tenth of the total voting power
	In case of Company not having Share Capital	not less than one-fifth of the persons on the company's register of members
	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	
On Application by Other person	On an application made to it by any other person or otherwise , if it is satisfied that there are circumstances suggesting that— <ul style="list-style-type: none"> i) the business of the company <ul style="list-style-type: none"> • is being conducted with intent to defraud its creditors, members or any other person • or otherwise for a fraudulent or unlawful purpose, • or in a manner oppressive to any of its members • or that the company was formed for any fraudulent or unlawful purpose ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or iii) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company, 	
Order of Investigation	Tribunal may order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed,	
Appointment of Inspector	the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct.	
Punishment	Provided that if after investigation it is proved that— <ul style="list-style-type: none"> ✓ 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 ✓ 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.	

Establishment of SFIO

Section 211

Setting up of Serious Fraud Investigation Office (SFIO) [Section 211 (1)]	<p>The Central Government shall, by notification, establish an office to be called the Serious Fraud Investigation Office to investigate frauds relating to a company</p> <p>Provided that until the Serious Fraud Investigation Office is established under subsection (1), the Serious Fraud Investigation Office set-up by the Central Government in terms of the Government of India Resolution dated 2nd July, 2003 shall be deemed to be the Serious Fraud Investigation Office for the purpose of this section.</p>
Composition of SFIO [Section 211(2)]	<p>The Serious Fraud Investigation Office shall be headed by a Director and consist of such number of experts from the following fields to be appointed by the Central Government from amongst persons of ability, integrity and experience in,—</p> <ul style="list-style-type: none"> (i) banking; (ii) corporate affairs; (iii) taxation; (iv) forensic audit; (v) capital market; (vi) information technology; (vii) law; or (viii) such other fields as may be prescribed.
Appointment of Director [Section 211(3)]	<p>The Central Government shall, by notification, appoint a Director in the Serious Fraud Investigation Office, who shall be an officer not below the rank of a Joint Secretary to the Government of India having knowledge and experience in dealing with matters relating to corporate affairs.</p> <p>Rule 3: The Central Government may appoint such experts persons having expertise in the fields of investigations, cyber forensics, financial accounting, management accounting, cost accounting and any other fields and other officers and employees in the Serious Fraud Investigation Office as it considers necessary for the efficient discharge of its functions under this Act.</p>
Terms of Employment [Section 211(5)]	<p>The terms and conditions of service of Director, experts, and other officers and employees of the Serious Fraud Investigation Office shall be such as may be prescribed.</p> <p>The terms and conditions of service of the above mentioned officers have been laid down in the Rule 4 of the Companies (Inspections, Investigations and Inquiry) Rules, 2014.</p>

Investigation into Affairs of Company by SFIO

Section 212

Power of CG to assign Investigation to SFIO	<p>Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office—</p> <p>a) on receipt of a report of the Registrar or</p>
---	--

	<p>inspector under section 208</p> <p>b) on intimation of a special resolution passed by a company that its affairs are required to be investigated in the public interest; or</p> <p>c) on request from any Department of the Central Government or a State Government,</p> <p>the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.</p>
Other Agencies to discontinue and transfer docs to SFIO [Section 212(2)]	Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office .
SFIO to carry out Investigation and submit report [Section 212(3)]	<p>Where the investigation into the affairs of a company has been assigned by the Central Government to Serious Fraud Investigation Office, it shall</p> <ul style="list-style-type: none"> ✓ conduct the investigation in the manner and follow the procedure provided in this Chapter and ✓ submit its report to the Central Government ✓ within such period as may be specified in the order. <p>The Director, Serious Fraud Investigation Office shall cause the affairs of the company to be investigated by an Investigating Officer who shall have the power of the inspector under section 217.</p>
Duty of Employees and Officers [Section 212(5)]	The company and its officers and employees, who are or have been in employment of the company shall be responsible to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation.
Conditions of Bail [Section 212(6)]	<p>Notwithstanding anything contained in the Code of Criminal Procedure, 1973, offence 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—</p> <ul style="list-style-type: none"> ✓ the Public Prosecutor has been given an opportunity to oppose the application for such release; and ✓ 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: <p>Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs.</p> <p>The limitation on granting of bail specified in sub-section (6) is in</p>

	addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.
Cognizance of Offence	Provided further that the Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by— ✓ the Director, Serious Fraud Investigation Office ; or ✓ any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.
Power to Arrest [Section 212(8)]	If any officer not below the rank of Assistant Director of SFIO authorized in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.
Forwarding Copy Of Order [Section 212(9)]	The officer authorized under sub-section (8) shall, immediately after arrest of such person under such sub-section(8), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the SFIO in a sealed envelope, in such manner as may be prescribed and the SFIO shall keep such order and material for such period as may be prescribed.
Presentment after Arrest [Section 212(10)]	Every person arrested shall within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate , as the case may be, having jurisdiction Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's court.
Report to Central Government [Section 212(11) & 212(12)]	✓ The Central Government if so directs , the Serious Fraud Investigation Office shall submit an interim report to the Central Government . ✓ On completion of the investigation, the Serious Fraud Investigation Office shall submit the investigation report to the Central Government .
Obtaining Copy of Report [Section 212(13)]	Notwithstanding anything contained in this Act or in any other law for the time being in force, a copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court.
Action in Pursuance of Report [Section 212(14)]	On receipt of the investigation report, the Central Government may, after examination of the report (and after taking such legal advice, as it may think fit), direct the Serious Fraud Investigation Office to initiate prosecution against the company and its officers or employees , who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company. The investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973.
Disgorgement Orders [Sec 212(14A)]	Where the report under sub-section (11) or sub-section (12) states that fraud has taken place in a company and due to such fraud, ✓ any director,

	<ul style="list-style-type: none"> ✓ key managerial personnel, ✓ other officer of the company or ✓ any other person or entity, <p>has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner,</p> <p>the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability.</p> <p>Example: Mr. A a director of Pappu Ltd., received a car in gift from his supplier for giving him order in bulk quantity with higher rate than market. This fact was reported in the investigation report under sub-section (11) or sub-section (12), there CG may file an application before the Tribunal for appropriate orders to recover this car from Mr. A .</p>
Investigation under Companies Act 1956 [Section 212(16)]	Notwithstanding anything contained in this Act, any investigation or other action taken or initiated by Serious Fraud Investigation Office under the provisions of the Companies Act, 1956 shall continue to be proceeded with under that Act as if this Act had not been passed.
Authorities to Share Information [Section 212(17)]	<ul style="list-style-type: none"> ✓ In case Serious Fraud Investigation Office has been investigating any offence under this Act, any other investigating agency, State Government, police authority, income-tax authorities having any information or documents in respect of such offence shall provide all such information or documents available with it to the Serious Fraud Investigation Office ✓ The Serious Fraud Investigation Office shall share any information or documents available with it, with any investigating agency, State Government, police authority or income tax authorities, which may be relevant or useful for such investigating agency, State Government, police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law.

Investigation into Ownership of Company

Section 216

Appointment of inspectors by CG [Sec 216(1)]	<p>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—</p> <ul style="list-style-type: none"> ✓ 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; or ✓ 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.
Appointment of inspectors by CG	The Central Government shall appoint one or more inspectors under that sub-section, if the Tribunal, in the course of any proceeding before it,

where Tribunal directs for investigation [Sec 216(2)]	directs by an order that the affairs of the company ought to be investigated as regards the membership of the company and other matters relating to the company, for the purposes specified in sub-section (1).
Define scope of Investigation [Sec 216(3)]	While appointing an inspector under sub-section (1), the Central Government may define the scope of the investigation , whether as respects the matters or the period to which it is to extend or otherwise, and in particular, may limit the investigation to matters connected with particular shares or debentures .
Powers of Inspector [Sec 216(4)]	Subject to the terms of appointment of an inspector , his powers shall extend to the investigation of any circumstances suggesting the existence of any arrangement or understanding which, though not legally binding, is or was observed or is likely to be observed in practice and which is relevant for the purposes of his investigation .
	<ul style="list-style-type: none"> ✓ During investigation under section 216, NCLT can impose certain restrictions upon securities. Such restriction can be upto three years [section 222(1) of Companies Act, 2013] ✓ If despite such order, there is issue or transfer of securities, company as well as every officer who is in default is liable for punishment of fine and imprisonment [Section 222(2) of Companies Act, 2013] ✓ The provisions of investigation of ownership apply to foreign company also [section 228 of Companies Act, 2013]

Impositions of Restrictions upon Securities

Section 222

Tribunal may by order put restrictions upon securities:	Where it appears to the Tribunal, <ul style="list-style-type: none"> ✓ in connection with any investigation under section 216 or ✓ on a complaint made by any person in this behalf, that there is good reason to find out the relevant facts about any securities issued or to be issued by a company and the Tribunal is of the opinion that such facts cannot be found out unless certain restrictions, as it may deem fit, are imposed, the Tribunal may , by order, direct that the securities shall be subject to such restrictions as it may deem fit for such period not exceeding three years as may be specified in the order.		
Contravention of Sec 222(1): Penalty [Section 222(2)]	Company	Fine	Minimum- 1 Lakh Maximum- 25 lakhs
	Officer in default	Imprisonment and/or Fine	Imprisonment ≤ 6 Months Minimum Fine- 25000 Maximum Fine- 5 lakhs

Freezing of Assets of Company on Inquiry and Investigation

Section 221

Restriction by Tribunal in certain cases	Where it appears to the Tribunal <ul style="list-style-type: none"> ✓ on a reference made to it by the Central Government ✓ or in connection with any inquiry or investigation into the affairs of a company under this Chapter or
---	---

	<ul style="list-style-type: none"> ✓ on any complaint made by <ul style="list-style-type: none"> • such number of members as specified under sub-section (1) of section 244 or • a creditor having one lakh amount outstanding against the company or • any other person having a reasonable ground to believe ✓ that the removal, transfer or disposal of funds, assets, properties of the company ✓ is likely to take place in a manner that is prejudicial ✓ to the interests of the company ✓ or its shareholders or creditors or in public interest, ✓ it may by order direct that such transfer, removal or disposal ✓ shall not take place during such period not exceeding three years as may be specified ✓ in the order or may take place subject to such conditions and restrictions as the Tribunal may deem fit. 							
Penalty [Section 221(2)]	<p>In case of any removal, transfer or disposal of funds, assets, or properties of the company in contravention of the order of the Tribunal under sub-section (1),</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">Company</td> <td style="padding: 5px;">Fine</td> <td style="padding: 5px;">Minimum- 1 Lakh Maximum- 25 lakhs</td> </tr> <tr> <td style="padding: 5px;">Officer default</td> <td style="padding: 5px;">in</td> <td style="padding: 5px;">Imprisonment and/or Fine</td> <td style="padding: 5px;">Imprisonment ≤ 3 Years Minimum Fine- 50000 Maximum Fine- 5 lakhs</td> </tr> </table>	Company	Fine	Minimum- 1 Lakh Maximum- 25 lakhs	Officer default	in	Imprisonment and/or Fine	Imprisonment ≤ 3 Years Minimum Fine- 50000 Maximum Fine- 5 lakhs
Company	Fine	Minimum- 1 Lakh Maximum- 25 lakhs						
Officer default	in	Imprisonment and/or Fine	Imprisonment ≤ 3 Years Minimum Fine- 50000 Maximum Fine- 5 lakhs					

Power of Inspector to Conduct Investigation of Related Companies

Section 219

When?	If an inspector appointed under section 210 or section 212 or section 213 to investigate into the affairs of a company considers it necessary for the purposes of the investigation, to investigate also the affairs of—
Which related entities?	<ol style="list-style-type: none"> a) any other body corporate which is, or has at any relevant time been the company's subsidiary company or holding company, or a subsidiary company of its holding company; b) any other body corporate which is, or has at any relevant time been managed by any person as managing director or as manager, who is, or was, at the relevant time, the managing director or the manager of the company; c) any other body corporate whose Board of Directors comprises nominees of the company or is accustomed to act in accordance with the directions or instructions of the company or any of its directors; or d) any person who is or has at any relevant time been the company's managing director or manager or employee,
Approval and Scope of Investigation	he shall, subject to the prior approval of the Central Government, investigate into and report on the affairs of the other body corporate or of the managing director or manager, in so far as he considers that the results of his investigation are relevant to the investigation of the affairs of the company for which he is appointed.

Seizure of Documents by Inspector

Section 220

Power of Inspector to Enter, Search And Seize necessary books [Section 220(1)]	<p>Where in the course of an investigation under this Chapter, the inspector has reasonable grounds to believe that the books and papers of, or relating to, any company or other body corporate or managing director or manager of such company are likely to be destroyed, mutilated, altered, falsified or secreted, the inspector may—</p> <ul style="list-style-type: none"> ✓ enter, with such assistance as may be required, the place or places where such books and papers are kept in such manner as may be required; and ✓ seize books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books and papers at its cost for the purposes of his investigation.
Time Period for keeping books and Papers [Section 220(2)]	<p>The inspector shall keep in his custody the books and papers seized under this section for such a period not later than the conclusion of the investigation as he considers necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person from whose custody or power they were seized:</p>
Power to take copies and place marks	<p>Provided that the inspector may, before returning such books and papers as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof or deal with the same in such manner as he considers necessary.</p>
Applicability of Code [Section 220(3)]	<p>The provisions of the Code of Criminal Procedure, 1973, relating to searches or seizures shall apply mutatis mutandis to every search or seizure made under this section.</p>

Inspector's Report

Section 223

Written Interim and Final Report to CG	<ul style="list-style-type: none"> ✓ An inspector appointed under this Chapter may, and if so directed by the Central Government shall, submit interim reports to that Government, and on the conclusion of the investigation, shall submit a final report to the Central Government. ✓ Every report made shall be in writing or printed as the Central Government may direct.
Obtaining Copy of Report [Section 223(3)]	<p>A copy of the report made may be obtained by members, creditors or any other person whose interest is likely to be affected by making an application in this regard to the Central Government.</p>
Authentication of Report [Section 223(4)]	<p>The report of any inspector appointed under this Chapter shall be authenticated either—</p> <ol style="list-style-type: none"> by the seal, if any, of the company whose affairs have been investigated; or by a certificate of a public officer having the custody of the report, as provided under section 76 of the Indian Evidence Act, 1872, and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.
Nothing in this section shall apply to the report referred to in section 212.	

Actions to Be Taken In Pursuance of Report

Section 224

Prosecution by CG [Section 224(1)]	<p>If, from an inspector's report, made under section 223, it appears to the Central Government that any person has, in relation to the company or in relation to any other body corporate or other person whose affairs have been investigated under this Chapter been guilty of any offence for which he is criminally liable,</p> <p>the Central Government may prosecute such person for the offence and it shall be the duty of all officers and other employees of the company or body corporate to give the Central Government the necessary assistance in connection with the prosecution.</p>
Petition for Winding Up/ Prevention of Oppression [Section 224(1)]	<p>If any company or other body corporate is liable to be wound up under this Act or under the Insolvency and Bankruptcy Code, 2016 and it appears to the Central Government from any such report made under section 223 that it is expedient so to do by reason of any such circumstances as are referred to in section 213, the Central Government may, unless the company or body corporate is already being wound up by the Tribunal, cause to be presented to the Tribunal by any person authorised by the Central Government in this behalf—</p> <ul style="list-style-type: none"> a) a petition for the winding up of the company or body corporate on the ground that it is just and equitable that it should be wound up b) an application under section 241; or c) both.
Recovery of Damages/Property [Section 224(3)]	<p>If from any such report as aforesaid, it appears to the Central Government that proceedings ought, in the public interest, to be brought by the company or any body corporate whose affairs have been investigated under this Chapter—</p> <ul style="list-style-type: none"> (a) for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs, of such company or body corporate; or (b) for the recovery of any property of such company or body corporate which has been misappropriated or wrongfully retained, the Central Government may itself bring proceedings.
CG to be indemnified [Section 224(4)]	The Central Government , shall be indemnified by such company or body corporate against any costs or expenses incurred by it in, or in connection with, any proceedings brought by virtue of sub-section (3).
Disgorgement [Section 224(5)]	Where the report made by an inspector states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property, or cash, as the case may be, and also for holding such director, key managerial personnel, officer or other person liable personally without any limitation of liability.

Security for Payment of Cost and Expenses

Section 214

- ✓ Where an investigation is ordered by the Central Government in pursuance of clause (b) of sub-section (1) of section 210,
- ✓ or in pursuance of an order made by the Tribunal under section 213,
- ✓ the Central Government may before appointing an inspector under subsection (3) of section 210 or clause (b) of section 213, require the applicant to give such security not exceeding twenty-five thousand rupees as may be prescribed, as it may think fit, for payment of the costs and expenses of the investigation and such security shall be refunded to the applicant if the investigation results in prosecution

Costs and Expenses of Investigation as per criteria given below-

S. No.	Turnover as per previous year Balance sheet	Amount of security (Rs.)
1	Turnover upto 50 cr	10000
2	Turnover more than 50 cr and upto 200 cr	15000
3	Turnover more than 200 cr	25000

Individual as Inspector

Section 215

No firm, body corporate or other association shall be appointed as an inspector**Procedure, Powers of Inspector**

Section 217

Duty of all officers and other employees and agents including former officers, employees and agents [Section 217(1)]	It shall be the duty of all officers and other employees and agents including the former officers, employees and agents of a company which is under investigation in accordance with the provisions contained in this Chapter, and where the affairs of any other body corporate or a person are investigated under section 219, of all officers and other employees and agents including former officers, employees and agents of such body corporate or a person—	
	Preserve and Produce books	(a) to preserve and to produce to an inspector or any person authorised by him in this behalf all books and papers of, or relating to, the company or, as the case may be, relating to the other body corporate or the person, which are in their custody or power; and
		(b) otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.
Furnishing of Information by other Body Corporate [Section 217(2)]	The inspector may require any body corporate, other than a body corporate referred to in sub-section (1), to furnish such information to, or produce such books and papers before him or any person authorised by him in this behalf as he may consider necessary, if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation.	
Period of Custody [Section 217(3)]	The inspector shall not keep in his custody any books and papers for more than one hundred and eighty days and return the same to the company, body corporate, firm or individual by whom or on whose behalf the books and papers were produced	

	Provided that the books and papers may be called for by the inspector if they are needed again for a further period of one hundred and eighty days by an order in writing.			
Examination on Oath [Section 217(4)]	<p>An inspector may examine on oath—</p> <p>a) any of the persons referred to in sub-section (1); and b) with the prior approval of the Central Government, any other person,</p> <p>in relation to the affairs of the company, or other body corporate or person, as the case may be, and for that purpose may require any of those persons to appear before him personally:</p> <p>Provided that in case of an investigation under section 212, the prior approval of Director, Serious Fraud Investigation Office shall be sufficient under clause (b).</p>			
Powers as of Civil Court [Section 217(5)]	<p>Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the inspector, being an officer of the Central Government, making an investigation under this Chapter shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—</p> <p>a) the discovery and production of books of account and other documents, at such place and time as may be specified by such person b) summoning and enforcing the attendance of persons and examining them on oath; and c) inspection of any books, registers and other documents of the company at any place.</p>			
Punishment for Contravention [Section 217(6)]	<table border="1"> <tr> <td>Officer in default(disobeys direction by ROC/Inspector)</td> <td>Imprisonment and Fine</td> <td>Imprisonment ≤ 1 Year Minimum Fine- 25000 Maximum Fine- 1 lakh</td> </tr> </table> <p>Vacation of Office: If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.</p>	Officer in default(disobeys direction by ROC/Inspector)	Imprisonment and Fine	Imprisonment ≤ 1 Year Minimum Fine- 25000 Maximum Fine- 1 lakh
Officer in default(disobeys direction by ROC/Inspector)	Imprisonment and Fine	Imprisonment ≤ 1 Year Minimum Fine- 25000 Maximum Fine- 1 lakh		
Notes of Examination [Section 217(7)]	The notes of any examination under sub-section (4) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.			
Failure to attract Punishment [Section 217(8)]	<p>If any person fails without reasonable cause or refuses—</p> <ul style="list-style-type: none"> ✓ to produce to an inspector or any person authorised by him in this behalf any book or paper which is his duty ✓ to furnish any information which is his duty ✓ to appear before the inspector personally when required to do so under subsection (4) or to answer any question which is put to him by the inspector in pursuance of that sub-section; or ✓ to sign the notes of any examination <table border="1"> <tr> <td>Officer in</td> <td>Imprisonment</td> <td>Imprisonment ≤ 6 Months</td> </tr> </table>	Officer in	Imprisonment	Imprisonment ≤ 6 Months
Officer in	Imprisonment	Imprisonment ≤ 6 Months		

	default (above contravention)	and Fine	Minimum Fine- 25000 Maximum Fine- 1 lakh Further fine- 2000/day during which failure continues
Officers/Police/Authorities to provide assistance [Section 217(9)]		The officers of the Central Government, State Government, police or statutory authority shall provide assistance to the inspector for the purpose of inspection, inquiry or investigation, which the inspector may, with the prior approval of the Central Government, require.	
Reciprocal Agreements with Foreign State For Investigation [Section 217(10)]		The Central Government may enter into an agreement with the Government of a foreign State for reciprocal arrangements to assist in any inspection, inquiry or investigation under this Act or under the corresponding law in force in that State and may, by notification, render the application of this Chapter in relation to a foreign State with which reciprocal arrangements have been made subject to such modifications, exceptions, conditions and qualifications as may be deemed expedient for implementing the agreement with that State.	
Letter of Request to obtain evidence [Section 217(11)]		<p>Notwithstanding anything contained in this Act or in the Code of Criminal Procedure, 1973</p> <ul style="list-style-type: none"> ✓ if, in the course of an investigation into the affairs of the company, ✓ an application is made to the competent court in India ✓ by the inspector ✓ stating that evidence is, or may be, available ✓ in a country or place outside India, ✓ such court may issue a letter of request to a court ✓ or an authority in such country or place, competent to deal with such request, ✓ to examine orally, or otherwise, any person, supposed to be acquainted with the facts and circumstances of the case, ✓ to record his statement made in the course of such examination and also ✓ to require such person or any other person to produce any document or thing, which may be in his possession pertaining to the case, and ✓ to forward all the evidence so taken or collected or the authenticated copies thereof or the things so collected to the court in India which had issued such letter of request <p>Provided that the letter of request shall be transmitted in such manner as the Central Government may specify in this behalf</p> <p>Provided further that every statement recorded or document or thing received under this sub-section shall be deemed to be the evidence collected during the course of investigation.</p>	
Letter of Request to give evidence [Section 217(12)]	Upon receipt of	<ul style="list-style-type: none"> ✓ a letter of request from a court or an authority in a country or place outside India, competent to issue such letter in that country or place ✓ for the examination of any person or production of any document or thing in relation to affairs of a company under investigation in that country or place, 	

	<ul style="list-style-type: none"> ✓ the Central Government may, if it thinks fit, ✓ forward such letter of request to the court concerned, ✓ which shall thereupon summon the person before it and record his statement or cause any document or thing to be produced, ✓ or send the letter to any inspector for investigation, ✓ who shall thereupon investigate into the affairs of company in the same manner as the affairs of a company are investigated under this Act and ✓ the inspector shall submit the report to such court within thirty days or ✓ such extended time as the court may allow for further action <p>Provided that the evidence taken or collected under this sub-section or authenticated copies thereof or the things so collected shall be forwarded by the court, to the Central Government for transmission, in such manner as the Central Government may deem fit, to the court or the authority in country or place outside India which had issued the letter of request.</p>
--	--

Protection of Employees

Section 218

Approval from Tribunal [Section 218(1)]	<p>Notwithstanding anything contained in any other law for the time being in force, if—</p> <ul style="list-style-type: none"> a) during the course of any investigation of the affairs and other matters of or relating to a company, other body corporate or person under section 210, section 212, section 213 or section 219 or of the membership and other matters of or relating to a company, or the ownership of shares in or debentures of a company or body corporate, or the affairs and other matters of or relating to a company, other body corporate or person, under section 216; or b) during the pendency of any proceeding against any person concerned in the conduct and management of the affairs of a company under Chapter XVI, such company, other body corporate or person proposes— <ul style="list-style-type: none"> (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, <p>the company, other body corporate or person, as the case may be, shall obtain approval of the Tribunal of the action proposed against the employee and if the Tribunal has any objection to the action proposed, it shall send by post notice thereof in writing to the company, other body corporate or person concerned.</p>
No approval from NCLT [Section 218(2)]	If the company, other body corporate or person concerned does not receive within thirty days of making of application under sub-section (1), the approval of the Tribunal, then and only then, the company, other body corporate or person concerned may proceed to take

	against the employee , the action proposed.
Appeal to NCLAT [Section 218(3)]	If the company , other body corporate or person concerned is dissatisfied with the objection raised by the Tribunal, it may, within a period of thirty days of the receipt of the notice of the objection, prefer an appeal to the Appellate Tribunal in such manner and on payment of such fees as may be prescribed.
Binding decision of NCLAT [Section 218(4)]	The decision of the Appellate Tribunal on such appeal shall be final and binding on the Tribunal and on the company, other body corporate or person concerned.
Applicability of Other Laws [Section 218(5)]	For the removal of doubts, it is hereby declared that the provisions of this section shall have effect without prejudice to the provisions of any other law for the time being in force.

Expenses of Investigation

Section 225

Extent reimbursement	of The expenses of , and incidental to, an investigation by an inspector appointed by the Central Government under this Chapter other than expenses of inspection under section 214 shall be defrayed in the first instance by the Central Government, but shall be reimbursed by the following persons to the extent mentioned below, namely:— (a) any person who is convicted on a prosecution instituted, or who is ordered to pay damages or restore any property in proceedings brought, under section 224 , to the extent that he may in the same proceedings be ordered to pay the said expenses as may be specified by the court convicting such person, or ordering him to pay such damages or restore such property, as the case may be; (b) any company or body corporate in whose name proceedings are brought as aforesaid, to the extent of the amount or value of any sums or property recovered by it as a result of such proceedings; (c) unless , as a result of the investigation, a prosecution is instituted under section 224,— <ul style="list-style-type: none"> ✓ any company, body corporate, managing director or manager dealt with by the report of the inspector; and ✓ the applicants for the investigation, where the inspector was appointed under section 213, to such extent as the Central Government may direct.
First charge on Property [Section 225(2)]	(2) Any amount for which a company or body corporate is liable under clause (b) of sub-section (1) shall be a first charge on the sums or property mentioned in that clause.

Voluntary Winding Up not to stop Proceedings

Section 226

Over riding effect	An investigation under this Chapter may be initiated notwithstanding, and no such investigation shall be stopped or suspended by reason only of , the fact that— a) an application has been made under section 241 b) the company has passed a special resolution for voluntary winding up ; or
---------------------------	--

	c) any other proceeding for the winding up of the company is pending before the Tribunal
Provided that where a winding up order is passed by the Tribunal in a proceeding referred to in clause (c), the inspector shall inform the Tribunal about the pendency of the investigation proceedings before him and the Tribunal shall pass such order as it may deem fit.	
Provided further that nothing in the winding up order shall absolve any director or other employee of the company from participating in the proceedings before the inspector or any liability as a result of the finding by the inspector	

Legal Advisers and Bankers Not To Disclose Information

Section 227

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—



Investigation of Foreign Companies

Section 228

The provisions of this Chapter shall apply mutatis mutandis to inspection, inquiry or investigation in relation to foreign companies.

Penalty Provisions

Section 229

Where a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation,—

- ✓ **destroys, mutilates or falsifies, or conceals or tampers or unauthorisedly removes**, or is a party to the destruction, mutilation or falsification or concealment or tampering or unauthorised removal of, documents relating to the property, assets or affairs of the company or the body corporate;
- ✓ **makes**, or is a party to the making of, a **false entry** in any document concerning the company or body corporate; or
- ✓ **provides an explanation** which is **false** or which he knows to be false, he shall be punishable for fraud in the manner as provided in section 447.

Compromises, Arrangements & Amalgamation

Section Summary

This chapter XV of Companies Act, 2013 is read with The Companies (Compromises, Arrangement and Amalgamation) Rules, 2016

Section No.	Topics Covered
230	Power to compromise or make arrangements with creditors or members
231	Power of Tribunal to enforce compromise or Arrangement
232	Merger and Amalgamation of Companies
233	Merger or Amalgamation of Certain companies
234	Merger or Amalgamation of Company with Company Incorporated outside India
235	Power to acquire shares of shareholders dissenting from scheme or contract approved by majority
236	Purchase of Minority shareholding
237	Power of CG 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
240	Liability of Officers in respect of Offences committed prior to Merger, Amalgamation etc.

Meaning of Terms Involved [Not Defined in the Act]

Compromise	'Compromise' means a peaceful or willing settlement of a dispute by mutual adjustments and concessions. Thus, in 'compromise' each party has to yield and give some concessions. Compromise assumes a dispute. A compromise is an informal method of restructuring the company's obligations by entering into an agreement where members or creditors make mutual concessions in order to solve the differences between them.
Arrangement	Arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods. In ' arrangement ' there is no dispute, but it modifies rights . Arrangement includes Debt Restructuring.
Amalgamation	Amalgamation includes merger and is the process where two business who are willing to combine, come together to carry out their business. We are not concerned about Amalgamation in the Transferor Company=



	<p>nature of merger or purchase as we read to prepare Accounts. Here No classification done in Law. However, there may be following 3 situations:-</p> <p>A+B= B (Absorption) A+B= C (Merger by New Company) A= A+B (Demerger)</p>	<p>the company which is amalgamated into another company. Transferee Company = the company into which a transferor company is amalgamated.</p>
Merger, reconstruction and amalgamation is one of the scheme of compromise and arrangement.		
'Reconstruction' literally means 'building again'. Reconstruction usually involves reduction in value of shares, making fully paid up shares as partly paid so that further amounts can be called, transfer of undertaking to another company, take-over by another company, satisfaction of rights of shareholders by allotting them shares in new company etc. Compromise is nothing but a type of Internal Reconstruction.		
The compromise, arrangement and amalgamation, reconstruction requires approval of NCLT. This chapter is a complete code in itself which contains provisions regarding all forms of compromises with creditors and arrangements with members.		

Power to Compromise and make Arrangements with Creditors & Members

Section 230

Summarized Procedure u/s 230

Application to NCLT

- Application can be made in NCLT 1 by-
- Company/ Creditor/ Member/ Liquidator in case of winding up.

Attachment to Application

- Scheme of Compromise
- Notice of Admission in NCLT-2
- Affidavit in NCLT 6

Disclosure by Affidavit

- Facts, financial position, Auditor's report, Investigation
- Reduction of Share Capital
- Scheme of Corporate Debt Restructuring

Calling & Sending Notice of Meeting on Tribunal's Order

- All creditors, members ,debentureholder in Form CAA 2
- by Registered/speed post or courier or e-mail or hand delivery or any other manner directed

Voting on Scheme

- Voting can be done by
- In person or proxy; or
- by postal ballot within 1 month

Notice to other authorities

- Notice to certain statutory authorities in Form CAA 3
- Authorities shall have right to make representations

Tribunal's Order

- Chairperson submits report on result on meeting in CAA 4
- Petition is presented in CAA 5 for sanctioning
- Tribunal sanctions scheme in CAA 6

Meeting to be called by Tribunal [Section 230(1)]	Compromise between whom?	A compromise or arrangement may be made between- <ul style="list-style-type: none"> ✓ a company and its creditors or any class of them or ✓ a company and its members or any class of them
	Application by whom? Step 1	Where a compromise or arrangement is proposed, the Tribunal may, on the application of – <ul style="list-style-type: none"> ✓ the company or ✓ of any creditor or ✓ member of the company, or ✓ in the case of a company which is being wound up, of the liquidator, appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be,
	Order of Meeting Step 2	order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.
Rule 3 of Companies (Compromises, Arrangements and Amalgamation of Companies) Rules, 2016		
An application may be submitted in form no. NCLT-1 along with:- <ul style="list-style-type: none"> ✓ a notice of admission in Form No. NCLT-2 ✓ an affidavit in Form No. NCLT -6 ✓ a copy of scheme of compromise or arrangement ✓ fee as prescribed in the Schedule of Fees. 		
Disclosure by Affidavit [Section 230(2)]	<p>The company or any other person, by whom an application is made under subsection (1), shall disclose to the Tribunal by affidavit—</p> <ol style="list-style-type: none"> a) all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company and the pendency of any investigation or proceedings against the company; b) reduction of share capital of the company, if any, included in the compromise or arrangement; c) Any scheme of corporate debt restructuring consented to by not less than 75% of the secured creditors in value, including— <ul style="list-style-type: none"> ✓ a creditor's responsibility statement in the prescribed form; ✓ safeguards for the protection of other secured and unsecured creditors; ✓ 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; ✓ where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect; 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. 	
Sending Of Notice [Section 230(3)]	To Whom?	Where a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (1), a notice of such meeting shall be sent to

Step 3		<ul style="list-style-type: none"> ✓ all the creditors or class of creditors and ✓ to all the members or class of members and ✓ the debenture-holders of the company, ✓ individually at the address registered with the company.
	Attachments	<p>It shall be accompanied by</p> <ul style="list-style-type: none"> ✓ a statement disclosing the details of the compromise or arrangement, ✓ a copy of the valuation report, if any, ✓ and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and ✓ the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, ✓ and such other matters as may be prescribed
	Placed on Website	<p>Provided that such notice and other documents shall also be placed on the website of the company, if any, and in case of a listed company, these documents shall be sent to the Securities and Exchange Board and stock exchange</p>
	Advertisement (Rule 7) (Listed Company)	<p>where the securities of the companies are listed, for placing on their website and shall also be published in newspapers in such manner as may be prescribed.</p> <p>Provided further that where the notice for the meeting is also issued by way of an advertisement, it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned persons free of charge from the registered office of the company.</p>
Rule 6 [Mode of Sending Ntice]		<ul style="list-style-type: none"> ✓ Where a meeting of any class or classes of creditors or members has been directed or to be convened, the notice of the meeting pursuant to the order of the Tribunal to be given in the manner provided in sub-section (3) of section 230 of the Act shall be in Form No. CAA.2 and shall be sent individually to each of the creditors or members. ✓ The notice shall be sent by the chairperson appointed for the meeting, or, if the Tribunal so directs, by the company (or its liquidator), or any other person as the Tribunal may direct, by registered post or speed post or by courier or by e-mail or by hand delivery or any other mode as directed by the Tribunal to their last known address at least one month before the date fixed for the meeting. ✓ Enclosures: <ul style="list-style-type: none"> • Details of Order of Tribunal, • Details of Company, • Summary of Valuation report, • Statement explaining effect of compromise or arrangement on the creditors, key managerial personnel, members, promoters, debenture-holders, directors, debenture trustees • Parties involved in Compromise in Explanatory statement • A statement to the effect that the persons to whom the notice is sent may vote in

- the meeting either in person or by proxies, or where applicable, by voting through electronics means.
- details of approvals, sanctions or no-objection(s), if any, from regulatory or any other government authorities required, received or pending for the purpose scheme of compromise or arrangement.
 - details of the availability of the following documents for obtaining extract from or for making/obtaining copies of or for inspection by the members and creditors eg. Copy of scheme of compromise or arrangement
 - Other matters as prescribed

Rule 7

- ✓ The **notice of the meeting shall be advertised in Form No. CAA.2** in at least one English newspaper and in at least one vernacular newspaper having wide circulation in the state in which the registered office of the company is situated, or such newspaper as may be directed by the Tribunal and shall also be placed, not less than thirty days before the date fixed for the meeting, on the website of the company of the SEBI and the recognized stock exchange where the securities of the company are listed.

Notice to Statutory Authorities [Section 230(5)]	<p>A notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to</p> <ul style="list-style-type: none"> ✓ the Central Government, ✓ the income-tax authorities, ✓ the Reserve Bank of India, ✓ the Securities and Exchange Board, ✓ the Registrar, ✓ the respective stock exchanges, ✓ the Official Liquidator, ✓ the Competition Commission of India if necessary, ✓ and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.
---	--

Rule 8: [Mode of Sending Notice and Receipt of Representations]

- ✓ the **notice shall be in Form No. CAA.3**, and shall be accompanied with a copy of the scheme of compromise or arrangement, the explanatory statement and the disclosures mentioned under rule 6
- ✓ It shall be sent forthwith, after the notice is sent to the members or creditors of the company, by registered post or by speed post or by courier or by hand delivery at the office of the authority.
- ✓ If they desire to make any representation, the same shall be sent to the Tribunal within a period of thirty days from the date of receipt of such notice and copy of such representation shall simultaneously be sent to the concerned companies and in case of representation is received within the stated period of thirty days by the Tribunal, it shall be presumed that the authorities have no representation to make on the proposed scheme of compromise or arrangement.

Voting Mode Specified In Notice [Section 230(4)]	<p>A notice under sub-section (3) shall provide that the persons to whom the notice is sent may vote in the meeting-</p> <ul style="list-style-type: none"> ✓ either themselves or ✓ through proxies or ✓ by postal ballot to the adoption of the compromise or
---	---

	<p>arrangement within one month from the date of receipt of such notice.</p> <p>Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than 10% of the shareholding or having outstanding debt amounting to not less than 5% of the total outstanding debt as per the latest audited financial statement.</p> <p>Example: Internal Limited applied to the Tribunal for a scheme of arrangement between the company and its members under section 230 of the Companies Act, 2013. Accordingly, a meeting was ordered by the Tribunal to be conducted between the company and its members regarding the scheme of arrangement. Few of the members of the company to whom notice was sent have some objections to be made to the scheme of arrangement.</p> <p>As per the proviso to the provisions section 230(4) of the Act, any objection to the compromise or arrangement shall be made only by persons holding not less than ten percent of the shareholding or having outstanding debt amounting to not less than five percent of the total outstanding debt as per latest audited financial statements.</p>
Consent of Members or Creditors [Section 230(6)] Step 5	<ul style="list-style-type: none"> ✓ Where, at a meeting held in pursuance of sub-section (1), ✓ majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, ✓ voting in person or by proxy or by postal ballot, ✓ agree to any compromise or arrangement and ✓ if such compromise or arrangement is sanctioned by the Tribunal by an order, ✓ the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator, "appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be," and the contributories of the company.

Report of Meeting to Tribunal

Step 6

Rule 14 [Submission of Report]

The **chairperson** of the meeting (or where there are separate meetings , the chairperson of each meeting) shall, within the time fixed by the tribunal, or where no time has been fixed ,**within three days after the conclusion** of the meeting **submit a report to the Tribunal** on the result of the meeting **in Form No. CAA.4**

Rule 15 [If Approved- also submit petition for sanction of scheme]

Where the **proposed compromise or arrangement is agreed** to by the members or creditors or both as the case maybe with or without modification, the **company** (or its liquidator),shall , **within seven days of the filing of the report** by the chairperson , **present a petition to the tribunal in Form No.CAA.5 for sanction of the scheme** of compromise or arrangement

Rule 16 [Hearing by Tribunal]

The **tribunal shall fix a date for the hearing** of petition, and **notice of the hearing shall be advertised in the same newspaper in which the notice of the meeting was advertised, or in such other newspaper as the Tribunal may direct not less than ten days before the date fixed for the hearing.**

The notice of the hearing of the petition shall also be served by the Tribunal to the objectors or to their representatives under sub section (4) of section 230 of the Act and to the central government and other authorities who have made representation under rule 8 and have desired to be heard in their representation.

Rule 17

The **order of Tribunal has the discretion to sanction scheme in Form No. CAA. 6**, with such variations as may be necessary.

Contents of Order of Tribunal [Section 230(7)] Step 7	<p>An order made by the Tribunal under sub-section (6) shall provide for all or any of the following matters, namely:—</p> <ul style="list-style-type: none"> a) where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable; b) the protection of any class of creditors c) if the compromise or arrangement results in the variation of the shareholders' rights, it shall be given effect to under the provisions of section 48; d) if the compromise or arrangement is agreed to by the creditors under sub-section (6), any proceedings pending before the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall abate e) such other matters including exit offer to dissenting shareholders, if any, as are in the opinion of the Tribunal necessary to effectively implement the terms of the compromise or arrangement <p>Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.</p>
---	---

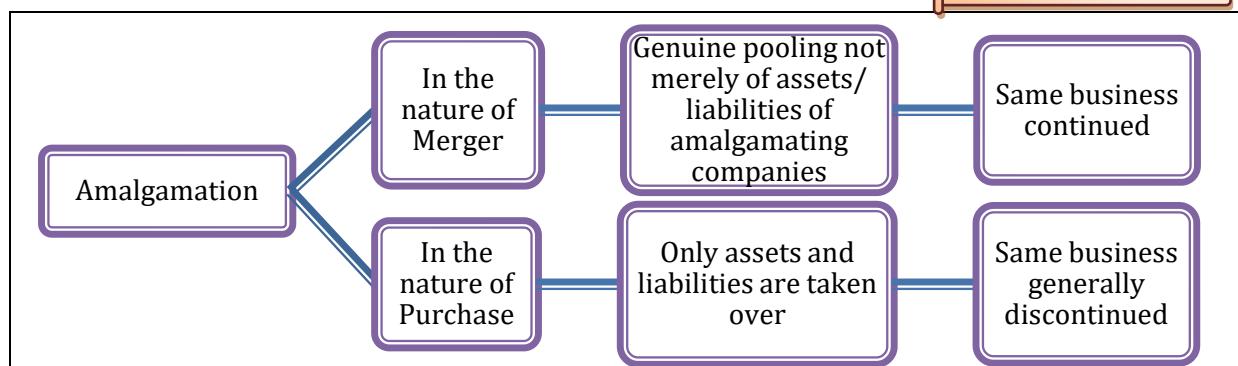
Filing Of Order [Section 230(8)] Step 8	<p>The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order.</p>
--	---

Other Related Points	
Waiver of Creditor's Meeting [Section 230(9)]	<p>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 90% value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.</p>

Buy Back To Be In Accordance With Section 68 [Section 230(10)]	No compromise or arrangement in respect of any buy-back of securities under this section shall be sanctioned by the Tribunal unless such buy-back is in accordance with the provisions of section 68 .
Regulations of SEBI In Case Of Listed Companies [Section 230(11)]	Any compromise or arrangement may include takeover offer made in such manner as may be prescribed. Provided that in case of listed companies, takeover offer shall be as per the regulations framed by the Securities and Exchange Board.
Appeal to Tribunal [Section 230(12)]	An aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of companies other than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit.
Explanation.—For the removal of doubts, it is hereby declared that the provisions of section 66 shall not apply to the reduction of share capital effected in pursuance of the order of the Tribunal under this section.	
Exception: In case of Government Company - In section 230 for the word "Tribunal" the words "Central Government" shall be substituted.	

Merger and Amalgamation of Companies

Section 232



Amalgamation in the nature of merger is an amalgamation which satisfies **all the following conditions** –

- ✓ All the assets and liabilities of the transferor company become, after amalgamation, the assets and liabilities of the transferee company.
- ✓ Shareholders holding not less than **90% of the face value of the equity shares** of the transferor company (other than the equity shares already held therein, immediately before the amalgamation, by the transferee company or its subsidiaries or their nominees) shall become **equity shareholders of the transferee company** by virtue of the amalgamation.
- ✓ The **consideration** for the amalgamation **receivable** by those equity shareholders of the transferor company who agree to become equity shareholders of the transferee company is discharged by the transferee company **wholly by the issue of equity shares in the transferee company**, except that cash may be paid in respect of any fractional shares.
- ✓ The **business of the transferor company is intended to be carried on**, after the amalgamation, by the transferee company.

- ✓ **No adjustment** is intended to be **made to the book values of the assets and liabilities of the transferor company** when they are incorporated in the financial statements of the transferee company except to ensure uniformity of accounting policies.

Amalgamation in the Nature of Purchase

Amalgamation in the nature of purchase is an amalgamation which **does not satisfy any one or more of the conditions** specified above.

Explanation given in the Act

- ✓ **In a scheme involving a merger**, where under the scheme the undertaking, property and liabilities of one or more companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to another existing company, it is a **merger by absorption**, or
- ✓ where the undertaking, property and liabilities of two or more companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to a new company, whether or not a public company, it is a **merger by formation of a new company**

Property includes assets, rights and interests of every description and liabilities include debts and obligations of every description.

Application to Tribunal for Merger or Amalgamation [Section 232(1)]	<p>Where an application is made to the Tribunal under section 230 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal—</p> <ol style="list-style-type: none"> a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies; and b) that under the scheme, the whole or any part of the undertaking, property or liabilities of transferor company is required to be transferred to transferee company, or is proposed to be divided among and transferred to two or more companies, <p>the Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and the provisions of sub-sections (3)to (6) of section 230 shall apply mutatis mutandis.</p>
Circulation of Documents [Section 232(2)]	<p>Where an order has been made by the Tribunal under sub-section (1), merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Tribunal, namely:—</p> <ol style="list-style-type: none"> a) the draft of the proposed terms of the scheme drawn up and adopted by the directors of the merging company b) confirmation that a copy of the draft scheme has been filed with the Registrar c) a report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders, key managerial personnel, promoters and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special

	valuation difficulties d) the report of the expert with regard to valuation , if any e) a supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme.
Order of Tribunal [Section 232(3)]	The Tribunal , after satisfying itself that the procedure specified in sub-sections (1) and (2) has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:—
Transfer of Undertaking	(a) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of the transferor company from a date to be determined by the parties unless the Tribunal, for reasons to be recorded by it in writing, decides otherwise
Allotment	(b) the allotment or appropriation by the transferee company of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person: Provided that a transferee company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished
Legal Proceedings	(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company on the date of transfer
Dissolution	(d) dissolution, without winding-up , of any transferor company
Provision for Dissenting	(e) the provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement
Share Capital by Non-resident	(f) where share capital is held by any non-resident shareholder under the foreign direct investment norms or guidelines specified by the Central Government or in accordance with any law for the time being in force, the allotment of shares of the transferee company to such shareholder shall be in the manner specified in the order
Employee transfer	(g) the transfer of the employees of the transferor company to the transferee company
Listed to Unlisted	(h) where the transferor company is a listed company and the transferee company is an unlisted company,—

		<ul style="list-style-type: none"> ✓ the transferee company shall remain an unlisted company until it becomes a listed company ✓ if shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal <p>Provided that the amount of payment or valuation under this clause for any share shall not be less than what has been specified by the Securities and Exchange Board under any regulations framed by it</p>								
	Fees Payable	(i) where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation; and								
	Incidental matters	(j) such incidental, consequential and supplemental matters as are deemed necessary to secure that the merger or amalgamation is fully and effectively carried out Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.								
Transfer Of Property and Liabilities [Section 232(4)]	Where order provides for the transfer of	<ul style="list-style-type: none"> ✓ any property or liabilities, then, ✓ that property shall be transferred to the transferee company and ✓ the liabilities shall be transferred to and become the liabilities of the transferee company ✓ and any property may, if the order so directs, ✓ be freed from any charge which ✓ shall cease to have effect. 								
Filing Of Order with Registrar [Section 232(5)]	Every company in relation to which the order is made shall cause a certified copy of the order to be filed with the Registrar for registration within thirty days of the receipt of certified copy of the order.	<table border="1" style="width: 100%;"> <tr> <td colspan="4">Penalty [Section 232(8)]:</td> </tr> <tr> <td>Failure to comply with</td> <td>the company and every officer</td> <td>Minimum Penalty- 20000</td> <td>Continuing Penalty- 1000/day</td> </tr> </table>	Penalty [Section 232(8)]:				Failure to comply with	the company and every officer	Minimum Penalty- 20000	Continuing Penalty- 1000/day
Penalty [Section 232(8)]:										
Failure to comply with	the company and every officer	Minimum Penalty- 20000	Continuing Penalty- 1000/day							

	subsection (5) of the company who is in default	Maximum Penalty- 3 Lakh
Effective Date of Scheme [Section 232(6)]	The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.	
Certificate of Compliance [Section 232(7)]	<ul style="list-style-type: none"> ✓ Every company in relation to which the order is made ✓ shall, until the completion of the scheme, ✓ file a statement in CAA 8 within 210 days from end of each financial year ✓ with the Registrar ✓ every year ✓ duly certified by a chartered accountant or a cost accountant or a company secretary in practice ✓ indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not. 	
Exception: In case of Government Company - In section 230 for the word "Tribunal" the words "Central Government" shall be substituted.		

Power of Tribunal to Enforce Compromise or Arrangement

Section 231

Power of Tribunal to Make Orders [Section 231(1)]	Where the Tribunal makes an order under section 230 sanctioning a compromise or an arrangement in respect of a company, it — <ol style="list-style-type: none"> shall have power to supervise the implementation of the compromise or arrangement; and may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper implementation of the compromise or arrangement.
Power to Make Winding up Order [Section 231(2)]	If the Tribunal is satisfied that the compromise or arrangement sanctioned under section 230 cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the scheme, it may make an order for winding up the company and such an order shall be deemed to be an order made under section 273.
Provisions Applicable Before Commencement of Act [Section 231(3)]	The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act sanctioning a compromise or an arrangement.
Exception: In case of Government Company - In section 230 for the word "Tribunal" the words "Central Government" shall be substituted.	

Merger and Amalgamation of Certain Companies

Section 233

Fast Track Merger Eligibility	<p>Notwithstanding the provisions of section 230 and section 232, a scheme of merger or amalgamation may be entered into</p> <ul style="list-style-type: none"> ✓ between two or more small companies or ✓ between a holding company and its wholly-owned subsidiary company or ✓ such other class or classes of companies as may be prescribed, <p>Rule 25:</p> <ul style="list-style-type: none"> (i) two or more start-up companies; or (ii) one or more start-up company with one or more small company
Conditions to be satisfied for fast track merger	<p>subject to the following, namely:—</p> <ol style="list-style-type: none"> a) a notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme within thirty days is issued by the transferor company or companies and the transferee company b) the objections and suggestions received are considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least ninety per cent of the total number of shares c) each of the companies involved in the merger files a declaration of solvency, in the prescribed form, with the Registrar of the place where the registered office of the company is situated and d) the scheme is approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twenty-one days along with the scheme to its creditors for the purpose or otherwise approved in writing.
Filing Of Copy of Scheme [Section 233(2)]	The transferee company shall file a copy of the scheme so approved in the manner as may be prescribed, with the Central Government, Registrar and the Official Liquidator where the registered office of the company is situated.
Communication of Objections [Section 233(4)]	<p>If the Registrar or Official Liquidator has any objections or suggestions, he may communicate the same in writing to the Central Government within a period of thirty days</p> <p>Provided that if no such communication is made, it shall be presumed that he has no objection to the scheme.</p>
Registration of Scheme by CG [Section 233(3)]	On the receipt of the scheme , if the Registrar or the Official Liquidator has no objections or suggestions to the scheme, the Central Government shall register the same and issue a confirmation thereof to the companies.
Filing of Application by CG for Consideration Of Scheme u/s 232 [Section 233(5)]	<ul style="list-style-type: none"> ✓ If the Central Government ✓ after receiving the objections or suggestions ✓ or for any reason is of the opinion that ✓ such a scheme is not in public interest or in the interest of the creditors, ✓ it may file an application before the Tribunal ✓ within a period of sixty days of the receipt of the scheme ✓ stating its objections and

	<p>✓ requesting that the Tribunal may consider the scheme under section 232.</p>
Confirmation by Tribunal by Passing Order [Section 233(6)]	<p>On receipt of an application from the Central Government or from any person, if the Tribunal, for reasons to be recorded in writing, is of the opinion that the scheme should be considered as per the procedure laid down in section 232, the Tribunal may direct accordingly or it may confirm the scheme by passing such order as it deems fit</p> <p>Provided that if the Central Government does not have any objection to the scheme or it does not file any application under this section before the Tribunal, it shall be deemed that it has no objection to the scheme.</p>
Communication to Registrar for Registration [Section 233(7)]	<p>A copy of the order under sub-section (6) confirming the scheme shall be communicated to the Registrar having jurisdiction over the transferee company and the persons concerned and the Registrar shall register the scheme and issue a confirmation thereof to the companies and such confirmation shall be communicated to the Registrars where transferor company or companies were situated.</p>
Dissolution without Winding Up [Section 233(8)]	<p>The registration of the scheme under sub-section (3) or sub-section (7) shall be deemed to have the effect of dissolution of the transferor company without process of winding-up.</p>
Consequences of Registration [Section 233(9)]	<p>The registration of the scheme shall have the following effects, namely:—</p> <ul style="list-style-type: none"> a) transfer of property or liabilities of the transferor company to the transferee company so that the property becomes the property of the transferee company and the liabilities become the liabilities of the transferee company b) the charges, if any, on the property of the transferor company shall be applicable and enforceable as if the charges were on the property of the transferee company c) legal proceedings by or against the transferor company pending before any court of law shall be continued by or against the transferee company; and d) where the scheme provides for purchase of shares held by the dissenting shareholders or settlement of debt due to dissenting creditors, such amount, to the extent it is unpaid, shall become the liability of the transferee company.
Not to Hold Shares in Own Name [Section 233(10)]	<p>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.</p>
Fees on Authorized Capital [Section 233(11)]	<p>The transferee company shall file an application with the Registrar along with the scheme registered, indicating the revised authorised capital and pay the prescribed fees due on revised capital</p> <p>Provided that the fee, if any, paid by the transferor company on its authorised capital prior to its merger or amalgamation with the transferee company shall be set-off against the fees payable by the transferee company on its authorised capital enhanced by the merger or amalgamation.</p>

Other Points	<ul style="list-style-type: none"> ✓ The provisions of this section shall mutatis mutandis apply to a company or companies specified in sub-section (1) in respect of a scheme of compromise or arrangement referred to in section 230 or division or transfer of a company referred to clause (b) of subsection (1) of section 232. ✓ The Central Government may provide for the merger or amalgamation of companies in such manner as may be prescribed. ✓ A company covered under this section may use the provisions of section 232 for the approval of any scheme for merger or amalgamation.
--------------	---

Rule 25

- 1) The **notice of the proposed scheme objections** or suggestions from the Registrar and official liquidator or persons affected by the scheme shall be in **Form No.CAA.9**.
- 2) The **act the declaration of solvency** shall be filed by each of the companies involved in the scheme of merger or amalgamation in **Form No.CAA.10** along with the fee as provided
- 3) The notice of the meeting to the members and creditors shall be accompanied by-
 - ✓ a statement , as far as applicable, referred to in sub section (3) of section 230
 - ✓ The declaration of solvency made in pursuance of sub-section (1) of section 233 of the Act in Form No.CAA.10
 - ✓ A copy of the scheme.
- 4) The **transferee company** shall, **within seven days after the conclusion of the meeting** of members or class of members or creditors, **file a copy of the scheme** as agreed to by the members and creditors, **along with a report of the result of each of the meetings in Form no. CAA.11** with the central government, along with the fees.
Copy of the scheme shall also be filed , along with Form No. CAA.11 **with-**
 - (i) the registrar of companies **in form no. GNL-1** along with fees
 - (ii) the **official liquidator** through hand delivery or by registered post or speed post.
- 5) **Where no objection** or suggestion is **received to the scheme** from the Registrar of companies and official Liquidator or where the objection or suggestion of registrar and official liquidator is deemed to be not sustainable and the **central government shall issue a confirmation order** of such scheme of merger or amalgamation **in Form No. CAA.12**.
- 6) **Where objections** or suggestions are **received** from the registrar of companies or official liquidator **and the central government is of the opinion**, whether on the basis of such objections or otherwise, that the **scheme is not in the public interest of creditors** , it may file an application before the tribunal in **Form No.CAA.13** within **sixty days of the receipt** of the scheme stating its **objections** or opinion and requesting that **tribunal may consider the scheme under section 232** of the act.
- 7) The **confirmation order of the scheme** issued by the central government or tribunal shall be filed, **within thirty days of the receipt of the order of confirmation**, in **Form INC-28** along with the fees.

Merger and Amalgamation of Company with Foreign Company

Section 234

Applicability of Provisions of the Act [Section 234(1)]	<ul style="list-style-type: none"> ✓ The provisions of this Chapter unless otherwise provided under any other law for the time being in force, shall apply mutatis mutandis to schemes of mergers and amalgamations between companies registered under this Act and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government ✓ Provided that the Central Government may make rules, in consultation with the Reserve Bank of India, in connection with mergers and amalgamations provided under this section.
Terms and Conditions of Merger [Section 234(2)]	<p>Subject to the provisions of any other law for the time being in force, a foreign company, may with the prior approval of the Reserve Bank of India, merge into a company registered under this Act or vice versa and the terms and conditions of the scheme of merger may provide, among other things, for the payment of consideration to the shareholders of the merging company-</p> <ul style="list-style-type: none"> ✓ in cash, or ✓ in Depository Receipts, ✓ or partly in cash and partly in Depository Receipts, <p>as the case may be, as per the scheme to be drawn up for the purpose.</p> <p>"foreign company" means any company or body corporate incorporated outside India whether having a place of business in India or not.</p>
Procedure prescribed under Rule 25A	<ul style="list-style-type: none"> ✓ A foreign company incorporated outside India may merge with an Indian company after obtaining prior approval of Reserve Bank of India and after complying with the provisions of sections 230 to 232 of the Act and these rules. ✓ The transferee company shall ensure that valuation is conducted by valuers who are members of a recognised professional body in the jurisdiction of the transferee company and further that such valuation is in accordance with internationally accepted principles on accounting and valuation. ✓ A declaration to this effect shall be attached with the application made to Reserve Bank of India for obtaining its approval under clause (a) of this sub-rule. <p>It is clarified that no amendment shall be made in this rule without consultation of the Reserve Bank of India."</p>

Power to Acquire Shares of Shareholders Dissenting From Scheme or Contract Approved By Majority

Section 235

Notice to Dissenting Shareholders to Acquire Shares [Section 235(1)]	<ul style="list-style-type: none"> ✓ Where a scheme or contract involving the transfer of shares or any class of shares in transferor company to the transferee company has, ✓ within four months after making of an offer in that behalf by the transferee company,
--	--

	<ul style="list-style-type: none"> ✓ been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved, ✓ other than shares already held at the date of the offer by, or by a nominee of the transferee company or its subsidiary companies, ✓ the transferee company may, at any time within two months after the expiry of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.
Right and Duty to acquire Minority shares [Section 235(2)]	<ul style="list-style-type: none"> ✓ Where a notice under sub-section (1) is given, the transferee company shall, ✓ unless on an application made by the dissenting shareholder to the Tribunal, ✓ within one month from the date on which the notice was given and ✓ the Tribunal thinks fit to order otherwise, ✓ be entitled to and bound to acquire those shares ✓ on the terms on which, under the scheme or contract, ✓ the shares of the approving shareholders are to be transferred to the transferee company.
Registration of Shares in the name of Transferee Company [Section 235(3)]	<ul style="list-style-type: none"> ✓ Where a notice has been given by the transferee company under sub-section (1) ✓ and the Tribunal has not, on an application made by the dissenting shareholder, ✓ made an order to the contrary, ✓ the transferee company shall, on the expiry of one month from the date on which the notice has been given, or, ✓ if an application to the Tribunal by the dissenting shareholder is then pending, ✓ after that application has been disposed of, ✓ send a copy of the notice to the transferor company together ✓ with an instrument of transfer, to be executed on behalf of the shareholder by any person appointed by the transferor company and ✓ on its own behalf by the transferee company, ✓ and pay or transfer to the transferor company the amount or other consideration ✓ representing the price payable by the transferee company for the shares ✓ which, by virtue of this section, that company is entitled to acquire,
Inform dissenting shareholders about transfer [Section 235(3)]	<p>and the transferor company shall—</p> <ol style="list-style-type: none"> a. thereupon register the transferee company as the holder of those shares; and b. within one month of the date of such registration, inform the dissenting shareholders of the fact of such registration and of the receipt of the amount or other consideration representing the price payable to them by the transferee company.
Amount in Separate Bank Account and payment to	Any sum received by the transferor company under this section shall be paid into a separate bank account , and any such sum and any other consideration so received shall be held by that company in

shareholders [Section 235(4)]	<p>trust for the several persons entitled to the shares in respect of which the said sum or other consideration were respectively received and shall be disbursed to the entitled shareholders within sixty days.</p> <p>“dissenting shareholder” includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.</p>
----------------------------------	--

Registration of Offer of Schemes Involving Transfer of Shares

Section 238

Registration and Issuance of Circular [Section 238(1)]	<p>In relation to every offer of a scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company under section 235,—</p> <ul style="list-style-type: none"> a) every circular containing such offer and recommendation to the members of the transferor company by its directors to accept such offer shall be accompanied by such information and in such manner as may be prescribed b) every such offer shall contain a statement by or on behalf of the transferee company, disclosing the steps it has taken to ensure that necessary cash will be available; and c) every such circular shall be presented to the Registrar for registration and no such circular shall be issued until it is so registered <p>Provided that the Registrar may refuse, for reasons to be recorded in writing, to register any such circular which does not contain the information required to be given under clause (a) or which sets out such information in a manner likely to give a false impression, and communicate such refusal to the parties within thirty days of the application.</p>
Appeal to Tribunal [Section 238(2)]	An appeal shall lie to the Tribunal against an order of the Registrar refusing to register any circular under sub-section (1).
Penalty [Section 238(3)]	The director who issues a circular which has not been presented for registration and registered under clause (c) of sub-section (1), shall be liable to a penalty of one lakh rupees

Purchase of Minority Shareholding

Section 236

Who Can Buy Shares? [Section 236(1)]	<ul style="list-style-type: none"> ✓ In the event of an acquirer, or a person acting in concert with such acquirer,- ✓ becoming registered holder of 90% or more of the issued equity share capital of a company, or ✓ in the event of any person or group of persons becoming 90% majority or ✓ holding 90% of the issued equity share capital of a company, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason,
---	--

	<ul style="list-style-type: none"> ✓ such acquirer, person or group of persons, as the case may be, ✓ shall notify the company of their intention to buy the remaining equity shares.
Offer by Majority shareholders to Acquire Shares [Section 236(2)]	<p>The acquirer, person or group of persons under sub-section (1) shall offer-</p> <ul style="list-style-type: none"> ✓ to the minority shareholders of the company ✓ for buying the equity shares held by such shareholders ✓ at a price determined ✓ on the basis of valuation by a registered valuer ✓ in accordance with such rules as may be prescribed.
Offer by Minority Shareholders to Sell Shares [Section 236(3)]	Without prejudice to the provisions of sub-sections (1) and (2), the minority shareholders of the company may offer to the majority shareholders to purchase the minority equity shareholding of the company at the price determined in accordance with such rules as may be prescribed under sub-section (2).
Deposit of Money in separate bank account [Section 236(4)]	<p>The majority shareholders shall deposit an amount equal to the value of shares to be acquired by them under sub-section (2) or sub-section (3), as the case may be, in a separate bank account to be operated by company whose shares are being transferred for at least one year for payment to the minority shareholders and such amount shall be disbursed to the entitled shareholders within 60 days</p> <p>Provided that such disbursement shall continue to be made to the entitled shareholders for a period of one year, who for any reason had not been made disbursement within the said period of 60 days or if the disbursement have been made within the aforesaid period of 60 days, fail to receive or claim payment arising out of such disbursement.</p>
Transferor company to act as a transfer agent [Section 236(5)]	In the event of a purchase under this section, company whose shares are being transferred shall act as a transfer agent for receiving and paying the price to the minority shareholders and for taking delivery of the shares and delivering such shares to the majority, as the case may be.
Cancellation of share certificates [Section 236(6)]	In the absence of a physical delivery of shares by the shareholders within the time specified by the company, the share certificates shall be deemed to be cancelled , and company whose shares are being transferred shall be authorised to issue shares in lieu of the cancelled shares and complete the transfer in accordance with law and make payment of the price out of deposit made under sub-section (4) by the majority in advance to the minority by despatch of such payment.
Extension of period for deceased [Section 236(7)]	In the event of a majority shareholder or shareholders requiring a full purchase and making payment of price by deposit with the company for any shareholder or shareholders who have died or ceased to exist , or whose heirs, successors, administrators or assignees have not been brought on record by transmission, the right of such shareholders to make an offer for sale of minority equity shareholding shall continue and be available for a period of three years from the date of majority acquisition or majority

	shareholding.
Acquisition at a Higher Price [Section 236(8)]	<ul style="list-style-type: none"> ✓ Where the shares of minority shareholders have been acquired in pursuance of this section and as on or prior to the date of transfer following such acquisition, ✓ the shareholders holding seventy-five per cent. or more minority equity shareholding ✓ negotiate or reach an understanding ✓ on a higher price for any transfer, proposed or agreed upon, of the shares held by them ✓ without disclosing the fact or likelihood of transfer taking place on the basis of such negotiation, understanding or agreement, the majority shareholders shall share the additional compensation so received by them with such minority shareholders on a pro rata basis.

Power of Central Government to provide for Amalgamation of Companies in Public Interest

Section 237

Power of Central Government to Order Amalgamation [Section 237(1)]	Where the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company with such constitution, with such property, powers, rights, interests, authorities and privileges, and with such liabilities, duties and obligations, as may be specified in the order.
Order of Central Government [Section 237(2) & Section 237(3)]	<ul style="list-style-type: none"> ✓ The order under sub-section (1) may also provide for the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company and such consequential, incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to give effect to the amalgamation. ✓ Every member or creditor, including a debenture holder, of each of the transferor companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the transferee company as he had in the company of which he was originally a member or creditor, and in case the interest or rights of such member or creditor in or against the transferee company are less than his interest in or rights against the original company, he shall be entitled to compensation to that extent, which shall be assessed by such authority as may be prescribed and every such assessment shall be published in the Official Gazette, and the compensation so assessed shall be paid to the member or creditor concerned by the transferee company.
Appeal to Tribunal [Section 237(4)]	Any person aggrieved by any assessment of compensation made by the prescribed authority under sub-section (3) may, within a period of thirty days from the date of publication of such assessment in the Official Gazette, prefer an appeal to the

	Tribunal and thereupon the assessment of the compensation shall be made by the Tribunal.
Pre-Conditions Making Order [Section 237(5)]	<p>for No order shall be made under this section unless—</p> <p>(a) a copy of the proposed order has been sent in draft to each of the companies concerned;</p> <p>(b) the time for preferring an appeal under sub-section (4) has expired, or where any such appeal has been preferred, the appeal has been finally disposed off; and</p> <p>(c) the Central Government has considered, and made such modifications, if any, in the draft order as it may deem fit in the light of suggestions and objections which may be received by it from any such company within such period as the Central Government may fix in that behalf, not being less than two months from the date on which the copy aforesaid is received by that company, or from any class of shareholders therein, or from any creditors or any class of creditors thereof.</p>
Copy of Order to be laid before Parliament [Section 237(6)]	The copies of every order made under this section shall, as soon as may be after it has been made, be laid before each House of Parliament.

Preservation of Books and Papers of Amalgamated Companies

Section 239

No disposition of books without CG Approval	<p>The books and papers of</p> <ul style="list-style-type: none"> ✓ 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 <p>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.</p>
---	--

Liability of Officers in respect of Offences Committed Prior to Merger, Amalgamation etc.

Section 240

Notwithstanding anything in any other law for the time being in force, the **liability in respect of offences** committed under this Act by the officers in default, of the transferor company prior to its merger, amalgamation or acquisition **shall continue after such merger, amalgamation or acquisition.**

Prevention of Oppression & Mismanagement

Section Summary

This chapter XVI of Companies Act, 2013 is read with The National Company Law Tribunal Rules.

Section No.	Topics Covered
241	Application to Tribunal for relief in cases of oppression
242	Powers of Tribunal
243	Consequence of termination or modification of certain agreements
244	Right to apply under section 241
245	Class action
246	Application of certain provisions to proceedings under section 241 or section 245

Majority Rule

- ✓ It states that **ones who hold the majority of shares rule the company.**
- ✓ Corporate Law works on the principle of democracy.
- ✓ It was established in the landmark judgement of Foss v Harbottle.
- ✓ The judgement held that if the majority shareholders have made a decision to take certain action, it must be respected.



Foss v Harbottle

Two shareholders commenced legal action against the promoters and directors of the company alleging that they had misappropriated the company assets. The court rejected their plea on following grounds:

- ✓ Plaintiff is the company and not the shareholders
- ✓ Mere loss is not sufficient.

Hence following was established-

- ✓ **Company is a separate legal entity**
- ✓ **Court will not interfere with internal management of the company.**

Majority Rule has exception in following cases-

- ✓ Ultra Vires and Illegal Acts
- ✓ Transactions requiring special majorities
- ✓ Personal Rights and
- ✓ Fraud on minority [This chapter deals with this]

Rights of Minority Shareholders under the Act

- ✓ **Right to appoint Small Shareholder Directors:** Section 151 enables small shareholders, who are also minority shareholders, to elect a small shareholder director in the company.
- ✓ **Right to file an application to NCLT in cases of Oppression and Mismanagement:** Minority shareholders have right to move NCLT to report any acts of oppression and mismanagement by the board or management of the Company. These rights are provided under Section 241 of the Act.
- ✓ **Right to file a Class Action Suit:** The Companies Act, 2013 provides opportunity to minority shareholders to file a class action suits. Group of persons with a common interest approach NCLT against the company, its board or the management.
- ✓ **Right for Reconstruction and Amalgamation of Companies:** In specific, the Act, through Section 235 and 236 offers protection to the interests of minority shareholders. These sections deal with the concerns of interests of minority shareholders being suppressed in implementation of schemes of mergers, amalgamations and reconstruction.
- ✓ **E-voting Process:** Section 108 of the Act, certain companies offer e-voting facility to shareholders to vote on shareholder meetings. This provision has empowered minority shareholders to exercise their voting rights without having to attend the meeting in person.
- ✓ **Change of concept majority rule to minority rule :** Section 188 of the Companies Act, 2013 which deals with related party transactions, mandates companies to undertake such transactions only after receiving approval from the majority of non-interested parties. Since majority shareholders are usually the interested parties, the minority shareholders are naturally considered as non-interested parties. Hence, it is the minority shareholders that get to approve such transactions.
- ✓ **Chapter XVI** of the Companies Act, 2013 covering sections 241 to section 246 relating to the provisions of protection to shareholders against oppression and mismanagement of those who are in control of the company.

The words “**oppression**” and “**mismanagement**” are not defined in the Act. The meaning of these words for the purpose of Company Law should be used in a broad generic sense and not in any strict literal sense.

Oppression

- ✓ It should involve a **visible departure from the standards of fair dealing**.
- ✓ A member can complain of oppression **only in his capacity as a member** and not in his capacity as director or creditor.
- ✓ Oppression must be a **continuous process**. Isolated acts of oppression or mismanagement will not give rise to an action under this Chapter
- ✓ It should be **burdensome, harsh, wrongful**.

Elder v. Elder & Watson Ltd.

Shanti Prasad Jain v. Kalinga Tubes

Conduct 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.

The complaining member must show that he is suffering from oppression in his capacity as a member but not in any other capacity.

Rao (V.M.) v. Rajeshwari Ramakrishnan

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.

There must be a continuous acts constituting oppression up to the date of the petition. The events have to be considered not in isolation but as a part of a continuous suffering.

Re. Hindustan Co-operative Insurance Society Ltd

In Re. Hindustan Co-operative Insurance Society Ltd. the life insurance business of a company was acquired in 1956 by the Life Insurance Corporation of India on payment of compensation. The directors, who had the majority voting power, refused to distribute this amount among shareholders, rather they passed a special resolution changing the objects of the company to utilise the compensation money for the new objects.

This was held to be an "Oppression".

The court observed: "The majority exercised their authority wrongfully, in a manner burdensome, harsh and wrongful. They attempted to force the minority shareholders to invest their money in different kind of business against their will. The minority had invested their money in a life insurance business with all its safeguards and statutory protections. But they were being forced to invest where there would be no such protections or safeguards".

Lalita Rajya Lakshmi v. Indian Motor Co

Minor acts of mismanagement, however, are not to be regarded as oppression. As far as possible, shareholders should try to resolve their differences by mutual readjustment.

In Lalita Rajya Lakshmi v. Indian Motor Co, the petitioner alleged that the Board of directors were guilty of certain acts detrimental to the minority of the shareholders. The allegations were that the income of the company was deliberately shown less by excessive expenditure; that passengers travelling without ticket on the company's buses were not checked; that petrol consumption was not properly checked; that second hand buses of the company had been disposed of at low price, that dividends were being declared at too low a figure.

It was held that even if each of these allegations were proved to the satisfaction of the court, there would have been no oppression.

Meaning of Oppression and Mismanagement as observed in Sections below:-

Oppression	If affairs of a company have been or are being conducted prejudicial to public interest or in a manner prejudicial or oppressive to any member or prejudicial to the interest of company, there is a case of oppression.
Mismanagement	Any material change that has taken place in management or control of a company and that by reason of such change it is likely that the affairs of a company will be conducted prejudicial to interest of its member or company, that would also be considered as mismanagement.

Right to Apply under Section 241

Section 244

Eligibility Members	In the case of a company having a share capital	<ul style="list-style-type: none"> • not less than one hundred members of the company or • not less than one-tenth of the total number of its members, • whichever is less, or • any member or members holding not less than one tenth of the issued share capital of the company,
------------------------	---	--

	<p>subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares</p> <p>Where any share or shares are held by two or more persons jointly, they shall be counted only as one member.</p> <p>Shareholding and membership is reckoned not on the basis of the subscribed or paid-up share capital, but on the basis of the 'issued' share capital. 'Issued' share capital would include both equity and preference share capital.</p> <p>In the case of a company not having a share capital- not less than one-fifth of the total number of its members</p>
Waiver by Tribunal	<p>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.</p>
Prior Consent in Writing [Section 244(2)]	<p>Where any members of a company are entitled to make an application under subsection (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.</p> <p>✓ Consent must be prior to Application. ✓ Consent is reckoned at the beginning of proceedings.</p>

Application to Tribunal for Relief in Cases of Oppression, Etc

Section 241

Right of Member to Apply against oppression and Mismanagement	<p>Any member of a company who complains that—</p> <p>a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or</p> <p>b) the material change,</p> <ul style="list-style-type: none"> • not being a change brought about by, or in the interests of, • any creditors, • including debenture holders or • any class of shareholders of the company, • has taken place in the management or control of the company, • whether by an alteration in the Board of Directors, • or manager, • or in the ownership of the company's shares, • or if it has no share capital, in its membership, • or in any other manner whatsoever, and that by reason of such change, • it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, <p>may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.</p>
---	---

Power of Central Government to Apply to Tribunal [Section 241(2)]	The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter.
Power of Central Government to request inquiry into fit and Proper Person [Section 241(3)]	Where in the opinion of the Central Government there exist circumstances suggesting that-- <ol style="list-style-type: none"> any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust; the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices; a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,
Initiation of case by CG	<p>the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.</p> <p>The person against whom a case is referred to the Tribunal under sub-section (3), shall be joined as a respondent to the application.</p>
Every application under sub-section (3)–	<ul style="list-style-type: none"> ✓ shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry; and ✓ shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government.

Powers of Tribunal

Section 242

Power of Tribunal to Pass Orders [Section 242(1)]	If, on any application made under section 241, the Tribunal is of the opinion— <ol style="list-style-type: none"> 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 that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.
Types of Orders [Section 242(2)]	Without prejudice to the generality of the powers under sub-section (1), an order under that sub-section may provide for—

	<ul style="list-style-type: none"> 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.
Order to Be Filed with Registrar [Section 242(3)]	A certified copy of the order of the Tribunal under sub-section (1)shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.
Interim Order [Section 242(4)]	The Tribunal may , on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.
Order of Fit and Proper Person [Section 242(5)]	At the conclusion of the hearing of the case in respect of sub-section (3) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with

		the conduct and management of any company						
Alteration Memorandum or Articles [Section 242(6), 242(7)]	of 242(6), 242(7)]	<p>Where an order of the Tribunal under sub-section (1) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.</p> <p>Subject to the provisions of sub-section (1), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered.</p> <p>A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same.</p>						
Penalty	[Section 242(8)]	<p>If a company contravenes the provisions of sub-section (5), the company shall be punishable</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">Company</td> <td style="padding: 5px;">Fine</td> <td style="padding: 5px;">Minimum- 1 Lakh Maximum- 25 Lakh</td> </tr> <tr> <td style="padding: 5px;">Officer in default</td> <td style="padding: 5px;">Fine</td> <td style="padding: 5px;">Minimum- 25000 Maximum- 1 lakh</td> </tr> </table>	Company	Fine	Minimum- 1 Lakh Maximum- 25 Lakh	Officer in default	Fine	Minimum- 25000 Maximum- 1 lakh
Company	Fine	Minimum- 1 Lakh Maximum- 25 Lakh						
Officer in default	Fine	Minimum- 25000 Maximum- 1 lakh						

Consequence of Termination or Modification of Certain Agreements

Section 243

Effect of Order u/s 242(2) [Section 243(1)]	<p>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,—</p> <ul style="list-style-type: none"> 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: <p>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.</p>
Consequence of not Being Fit and Proper [Section 243(1A)]	The person who is not a fit and proper person pursuant to sub-section (4A) of section 242 shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the said decision:

	Provided that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.
No compensation for loss of Office [Section 243(1B)]	Notwithstanding anything contained in any other provision of this Act, or any other law for the time being in force, or any contract, memorandum or articles, on the removal of a person from the office of a director or any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.
Penalty for Contravention [Section 243(2)]	Any person who knowingly acts as a managing director or other director or manager of a company <ul style="list-style-type: none"> ✓ in contravention of clause (b) of sub-section (1) or ✓ sub section (1A) ✓ and every other director of the company who is knowingly a party to such contravention, shall be punishable with fine which may extend to five lakh rupees.

Class Action

Section 245

Filing of Application before NCLT [Section 245(1)]	Such number of member or members, depositor or depositors or any class of them, as the case may be, <ul style="list-style-type: none"> ✓ 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:— 
Requisite Number of Members given u/s 245(3)	In the case of a company having a share capital, <ul style="list-style-type: none"> ✓ not less than one hundred members of the company or not less than such percentage (5%) of the total number of its members as may be prescribed, whichever is less, or ✓ any member or members holding not less than such percentage of the issued share capital of the company as may be prescribed(5% for Unlisted and 2% for Listed companies), subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares In the case of a company not having a share capital , not less than one-fifth of the total number of its members .
Requisite Number of Depositors given u/s	The requisite number of depositor or depositors to file an application under sub-section (1) of section 245 shall be lower of— <ul style="list-style-type: none"> (i)

	245(3)	<ul style="list-style-type: none"> ✓ at least five percent of the total number of depositors of the company; or ✓ one hundred depositors of the company, <p>(ii) depositor or depositors to whom the company owes five percent of total deposits of the company.</p>
List of Orders		<p>(a) to restrain the company from committing an act which is ultra vires the articles or memorandum of the company;</p> <p>(b) to restrain the company from committing breach of any provision of the company's memorandum or articles;</p> <p>(c) to declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors;</p> <p>(d) to restrain the company and its directors from acting on such resolution;</p> <p>(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;</p> <p>(f) to restrain the company from taking action contrary to any resolution passed by the members;</p> <p>(g) to claim damages or compensation or demand any other suitable action from or against—</p> <ul style="list-style-type: none"> • 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 • 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 • 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; <p>(h) to seek any other remedy as the Tribunal may deem fit.</p>
Liability of Firm [Section 245(2)]		Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm , the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner.
Points of Consideration by Tribunal [Section 245(4)]		<p>In considering an application under sub-section (1), the Tribunal shall take into account, in particular—</p> <ol style="list-style-type: none"> a) whether the member or depositor is acting in good faith in making the application for seeking an order b) any evidence before it as to the involvement of any person other than directors or officers of the company on any of the matters provided in clauses (a)to (f) of subsection (1) c) whether the cause of action is one which the member or depositor could pursue in his own right rather than through an order under this section d) any evidence before it as to the views of the members or depositors of the company who have no personal interest, direct or

	<p>indirect, in the matter being proceeded under this section</p> <p>e) where the cause of action is an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be—authorised by the company before it occurs; or ratified by the company after it occurs</p> <p>f) where the cause of action is an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company.</p>
Other Relevant Points [Section 245(5)]	<p>If an application filed under sub-section (1) is admitted, then the Tribunal shall have regard to the following, namely:—</p> <p>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</p> <p>b) all similar applications prevalent in any jurisdiction should be consolidated into a single application and the class members or depositors should be allowed to choose the lead applicant and in the event the members or depositors of the class are unable to come to a consensus, the Tribunal shall have the power to appoint a lead applicant, who shall be in charge of the proceedings from the applicant's side</p> <p>c) two class action applications for the same cause of action shall not be allowed</p> <p>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.</p>
Order of Tribunal Binding [Section 245(6)]	Any order passed by the Tribunal shall be binding on the company and all its members, depositors and auditor including audit firm or expert or consultant or advisor or any other person associated with the company.
Penalty for Contravention [Section 245(7)]	<p>Any company which fails to comply with an order passed by the Tribunal under this section</p> <ul style="list-style-type: none"> ✓ shall be punishable with fine ✓ which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and <p>every officer of the company who is in default</p> <ul style="list-style-type: none"> ✓ shall be punishable with imprisonment for a term which may extend to three years and ✓ with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
Power of Tribunal to Reject Application [Section 245(8)]	Where any application filed before the Tribunal is found to be frivolous or vexatious ,
	<ul style="list-style-type: none"> ✓ it shall, for reasons to be recorded in writing, ✓ reject the application and ✓ make an order that the applicant shall pay to the opposite party such cost, ✓ not exceeding one lakh rupees, as may be specified in the order.
Non Applicability to Banking Company [Section 245(9)]	Nothing contained in this section shall apply to a banking company .

Application of Certain Provisions to Proceedings under section 241 or section 245 [Section 246]

The provisions of section 337, 338, 339, 340 and 341 (both inclusive) related to winding up, shall apply mutatis mutandis, in relation to an application made to the Tribunal under section 241 or section 245.

- ✓ Penalty for Frauds by Officers [Section 337]
- ✓ Liability where Proper Accounts not Kept [Section 338]
- ✓ Liability for Fraudulent Conduct of Business [Section 339]
- ✓ Power of Tribunal to Assess Damages Against Delinquent Directors, etc. [Section 340]
- ✓ Liability Under Sections 339 and 340 to Extend to Partners or Directors in Firms or Companies [Section 341]

Case Laws:

Shanti Prasad Jain v Kalinga Tubes: Conduct complained of should atleast involve visible departure from the standards of their dealing and violations of conditions of fair play.

Rao v Rajeshwari Ramakrishnan: Oppression complained off must affect a person in his capacity as a member of the company

Thomas Veddon V.J. v Kuttanad Robber Co. Ltd: Non declaration of dividend is not an act of oppression. Failure to declare dividend does not amount to oppression

Ashok Betelnut Co. P Ltd v M.K. Chandrakanth: Continuous losses by itself can't be regarded as oppression while obtaining relief from Tribunal.

Worldwide Agencies Pvt. Ltd. and Another v. Mrs. Margaret T. Desor and Others: The legal representatives of a deceased member whose name is still on the register of members are entitled to file a petition for relief against oppression or mismanagement.

Jagdish Chandra Mehra v New India Embroidery Mills: The requirement of minimum shareholding is to be satisfied only at the time of filing application. Subsequently if some shareholders sell their shares and cease to be the member, it will not render the application invalid.

Rajamundhry Electric Corporation v V Nageshwar Rao: The consent to be given by a shareholder is reckoned at the beginning of the proceedings. The withdrawal of consent by any shareholder during course of proceedings shall not affect maintainability of the petition.

Makhanlal Jain v Amrit Banaspati Company Ltd: Consent obtained subsequent to the making of application is ineffective.

Re. Sindhri Iron Foundry (P) Ltd. : If the court is satisfied about the act of oppression or mismanagement, relief can be granted even if the application is made by a majority, who have been rendered completely ineffective by the wrongful acts of a minority group

Sudha M. Singh v Eagle cones pvt ltd: The decisions relating to operation of company's bank accounts are a part of the managerial power of the directors. The mere fact that a director is not being associated with the operation of the company's bank accounts does not constitute oppression or mismanagement.

Lalita Rajya Lakshmi v Indian Motor co. Ltd Mere denial of Inspection of books of accounts and documents of company to shareholders whether during pendency of petition or before it does not amount to oppression.

Sheth Mohanlal Ganpatram v Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd: The shareholders have alleged that the company has entered into various illegal, invalid and irregular transactions. This in itself would not constitute a ground for invoking provisions of section 241 unless it is proved that these acts are oppressive to the shareholders or prejudicial to the interest of the company or public interest.

Yashovardhan Saboo v Groz Beckert Saboo Ltd: Tribunal is empowered to make an order that either group shall buy the shareholding of the other at a fair price.

Kishan Lal Ahuja v Suresh Kumar Ahuja: In case, both parties fail to buy the shareholding of the other, the Tribunal may make an order of winding up of the company under just and equitable ground.

Piercy v Mill(s) & Co: Issue of further shares amounts to oppression if it is proved that the idea of issuing further shares was to benefit one group to the detriment of the other

Examples

- ✓ Mere lack of confidence among members themselves resulting in certain acts of irregularities or illegalities cannot be held to be oppressive per se. A case of oppression as well as mismanagement has to be made out by the petitioners substantiating that the acts complained of have caused prejudice to the interest of the company and its members and shareholders to have a cause of action to attract the provisions of the Act.
- ✓ The matter of selection and appointment of dealers of the company's products, is not within the ambit and scope of the proceedings under section 241 (erstwhile section of the Act). In a tripartite agreement with the government, a project was assigned to the company. In this case, the right to manage the affairs of the company is vested in the majority of the shareholders and not in the person who might have procured the project for the company.
- ✓ The decision of the Board of Directors of the company to write-off bad debts is a commercial decision and does not require any judicial interference.
- ✓ In deciding an application under section 241 and 242 (erstwhile section of the Act). A single act of renting out the premises of the company without the knowledge of the members cannot be termed as oppression or mismanagement. In other words, the act of oppression must be a continuing one.
- ✓ The power to issue shares should be exercised bona-fide in the interest of the company and not for benefiting the directors or any other group. The directors are in a fiduciary position with the company and must exercise their power to issue the shares for the benefit of the company. If the power is exercised solely for their personal benefits, the Tribunal may interfere and prevent the directors from doing so. The act of issue of further shares by the directors of a company for the purpose of converting a majority into minority is a grave act of oppression.
- ✓ In case, where the shareholding of the petitioner has reduced below 10 per cent due to fresh issue/allotment of shares, which is challenged as oppressive, the maintainability of the petition would be reduced after determining the validity of the issue of allotment. The petition shall be maintainable and the petitioner shall be entitled to relief.
- ✓ The requirement of shareholding [Section 244] upto the prescribed percentage is mandatory. It must be shown with the help of documentary evidences. Possession of share certificates is a *prima facie* proof that the petitioner is a shareholder. There is a presumption that a share certificate is a valid title to shares.

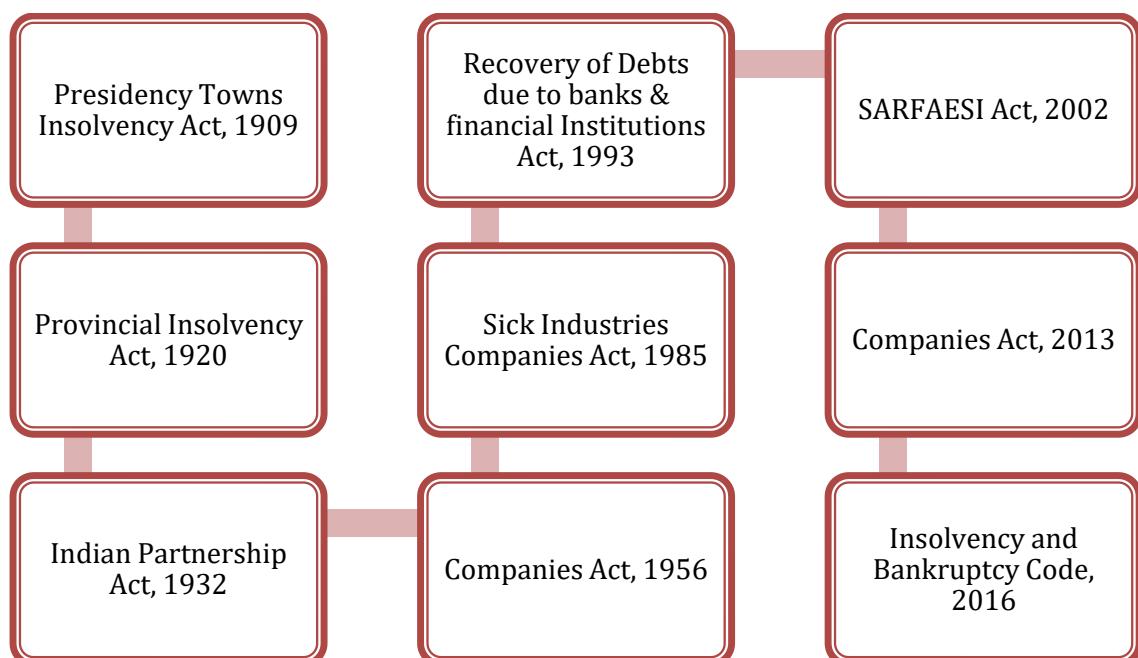
Insolvency & Bankruptcy Code, 2016

Concept of Insolvency and Bankruptcy



- ✓ **Insolvency** in this Code is regarded as a “**state**” where assets are insufficient to meet the liabilities.
- ✓ If untreated insolvency will lead to **bankruptcy for non-corporates** and **liquidation of corporate**.
- ✓ **insolvency** is a **state** and **bankruptcy** is a **conclusion**
- ✓ insolvency is a situation which arises due to inability to pay off the debts due to insufficient assets, bankruptcy is a situation wherein application is made to an authority declaring insolvency and seeking to be declared as bankrupt
- ✓ Liquidation is the winding up of a corporation or incorporated entity.

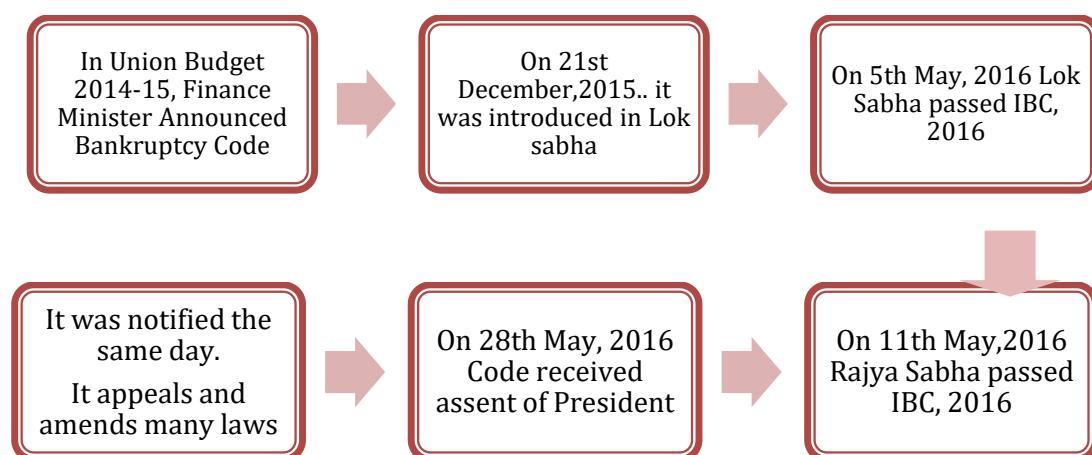
Earlier Laws



Need of New Law

- ✓ In past Bankruptcy regime of India as mentioned in chart above, company's revival has been sluggish and cumbersome which often leads to productive assets lying dormant and getting wasted.
- ✓ It takes an average of four to five years in insolvency resolution in India. The main reason behind such delay in the legal process is the existence of overlapping legislations and adjudicating authorities dealing with insolvency of companies and individuals in India.
- ✓ The Government of India then formulated a plan to refurbish the prevailing bankruptcy laws and replace them with one that will facilitate hassle-free and time-bound for revival and closure of businesses.
- ✓ For this, Insolvency and Bankruptcy Code, 2016 has come up with the expeditious insolvency resolution/revival process for corporate persons, firms and Individuals

Evolution of the Code



Objective of Insolvency & Bankruptcy Code, 2016

- a) **Comprehensive Law:** Insolvency Code is a comprehensive law which envisages and regulates the process of insolvency and bankruptcy of all persons including corporates, partnerships, LLP's and individuals.
- b) **No Multiplicity of Laws:** The Code has withered away the multiple laws covering the recovery of debts and insolvency and liquidation process and presents singular platform for all the reliefs relating to recovery of debts and insolvency.
- c) **Low Time Resolution:** The Code provides a low time resolution and defines fixed time frames for insolvency resolution of companies and individuals. The process is mandated to be completed within 180 days, extendable to maximum of 90 days. Further, for a speedier process there is provision for fast-track resolution of corporate insolvency within 90 days. If insolvency cannot be resolved, the assets of the borrowers may be sold to repay creditors.
- d) **One Window Clearance:** It has been drafted to provide one window clearance to the applicant whereby he gets the appropriate relief at the same authority unlike the earlier position of law where in case the company is not able to revive the procedure for

winding up and liquidation has to be initiated under separate laws governed by separate authorities.

- e) **One Chain of Authority:** There is one chain of authority under the Code. It does not even allow the civil courts to interfere with the application pending before the adjudicating authority, thereby reducing the multiplicity of litigations. The National Company Law Tribunal (NCLT) will adjudicate insolvency resolution for companies. The Debt Recovery Tribunal (DRT) will adjudicate insolvency resolution for individuals.
- f) **Priority to the interests of workman and employees:** The Code also protects the interests of workman and employees. It excludes dues payable to workmen under provident fund, pension fund and gratuity fund from the debtor's assets during liquidation.
- g) **New Regulatory Authority:** It provides for constitution of a new regulatory authority 'Insolvency and Bankruptcy Board of India' to regulate professionals, agencies and information utilities engaged in resolution of insolvencies of companies, partnership firms and individuals. The Board has already been established and started functioning.

Objective of IBC, 2016

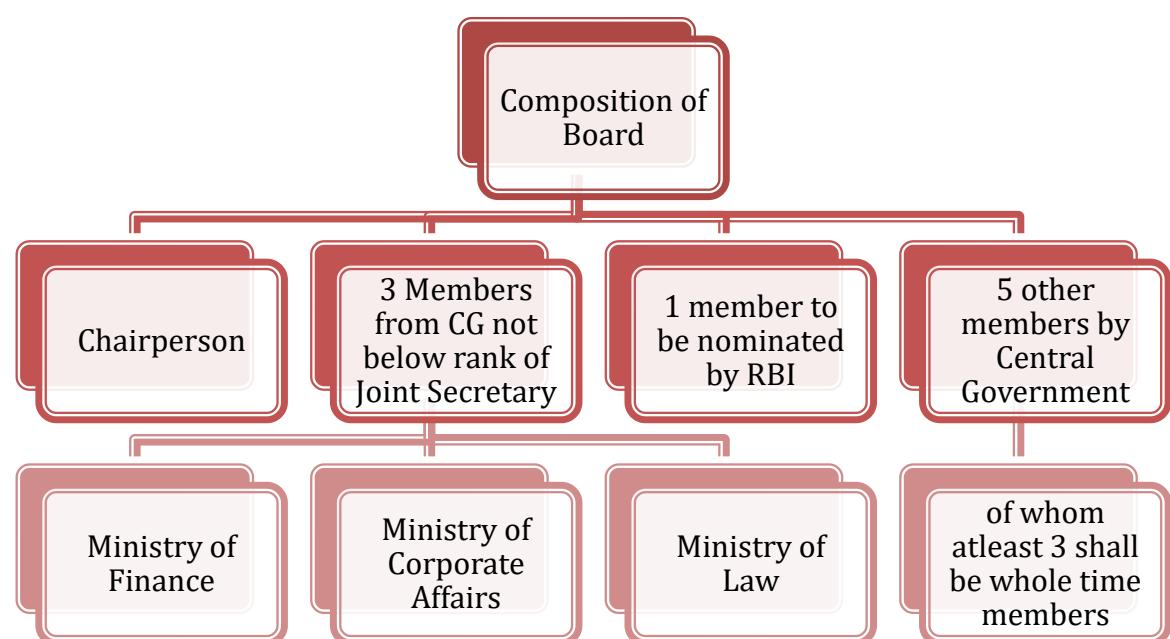
- a) To consolidate and amend the laws relating to re-organization and insolvency resolution of corporate persons, partnership firms and individuals.
- b) To fix time periods for execution of the law in a time bound manner.
- c) To maximize the value of assets of interested persons.
- d) To promote entrepreneurship
- e) To increase availability of credit.
- f) To balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues.
- g) To establish an Insolvency and Bankruptcy Board of India as a regulatory body for insolvency and bankruptcy law.

Pillars of the Code



Insolvency and Bankruptcy Board of India

Establishment	Features	Functions
<ul style="list-style-type: none"> • On 1st October, 2016 • Head Office- New Delhi 	<ul style="list-style-type: none"> • Body Corporate • perpetual Succession • Common seal • Capacity to sue and be sued • Hold & dispose property 	<ul style="list-style-type: none"> • Legislative • Executive • Quasi Judicial with respect to Insolvency Professionals, their agencies & information Utilities



Insolvency Professional Agencies

The Code provides for establishment of insolvency professionals agencies to enroll and regulate insolvency professionals as its members in accordance with the Insolvency and Bankruptcy Code 2016 and read with regulations.

Functions of IPA

- ✓ **Regulatory Functions-** Drafting detailed standards and codes of conduct through bye-laws, that are made public and are binding on all members
- ✓ **Executive Functions-** Gathering information for preventing frivolous behaviour, and malfeasance in the conduct of IP duties
- ✓ **Quasi-Judicial Functions-** Addressing grievances of aggrieved parties, hearing complaints against members and taking suitable actions

Insolvency Professionals

The Code provides for **insolvency professionals** as **intermediaries** who would **play a key role in the efficient working of the bankruptcy process.**

Every insolvency professional shall abide by the following code of conduct-

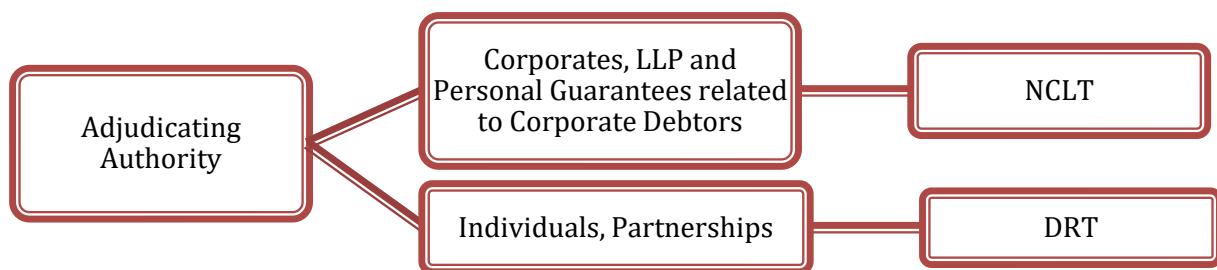
- ✓ to take reasonable care and diligence
- ✓ to allow the insolvency professional agency to inspect his records
- ✓ to submit a copy of the records

Information Utilities

- ✓ The **Code envisages creation of information utility to collect, collate, authenticate and disseminate financial information of debtors** in centralized electronic databases, at all time.
- ✓ The **Code requires creditors to provide financial information** of debtors to multiple utilities on an ongoing basis. Such information would be available to creditors, resolution professionals, liquidators and other stakeholders in insolvency and bankruptcy proceedings.

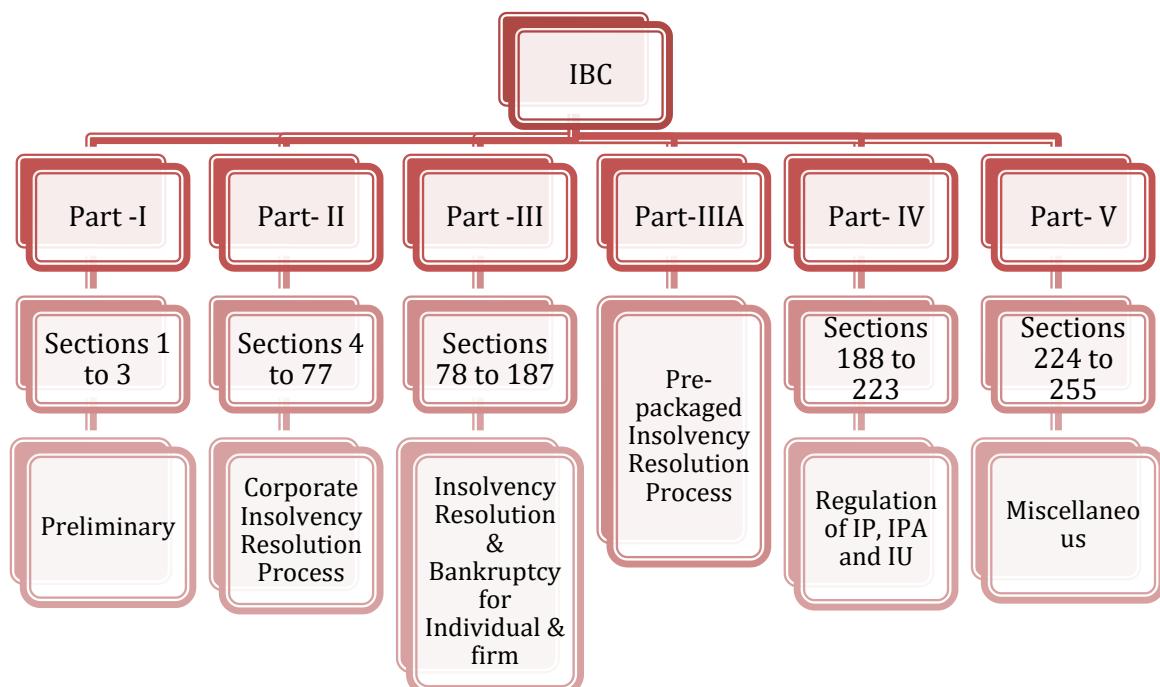
Adjudicating Authorities

The Code has created one chain of authority for adjudication under the Code. Civil Courts have been prohibited to interfere in the matters related with application pending before the Adjudicating Authority.



XY & Co., a firm applied to NCLT to be declared insolvent as the firm is not able to pay off debts to his creditors in present and in coming future. State whether the act of the firm is valid as to the filing of application in terms of jurisdiction.

Structure of the Code



Important Definitions

Claim [Section 3(6)]

Claim means a right to payment or right to remedy for breach of contract if such breach gives rise to a right to payment whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

Corporate Person [Section 3(7)]

Corporate Person means

- (a) a **company** as defined under section 2(20) of the **Companies Act, 2013**
- (b) a **Limited Liability Partnership** as defined in 2(1)(n) of Limited Liability Act, 2008 or,
- (c) any other **person incorporated with limited liability under any law** for the time being in force but shall not include any financial service provider.

Exception: NBFC and HFC with asset size \geq 500 crore are covered in above definition despite being financial service provider.

Corporate Debtor [Section 3(8)]

Corporate Debtor means a **corporate person who owes a debt** to any person.

Creditor [Section 3(10)]

Creditor means any person to whom a debt is owed and includes a financial creditor, an

operational creditor, a secured creditor, an unsecured creditor and a decree holder.

Debt [Section 3(11)]

Debt means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.

Default [Section 3(12)]

Default means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.

Financial Information [Section 3(13)]

Financial information, in relation to a person, means one or more of the following categories of information, namely:—

- (a) records of the debt of the person
- (b) records of liabilities when the person is solvent
- (c) records of assets of person over which security interest has been created
- (d) records, if any, of instances of default by the person against any debt
- (e) records of the balance sheet and cash-flow statements of the person; and
- (f) such other information as may be specified.

Person [Section 3(23)]

A person includes:-

- ✓ an individual
- ✓ a Hindu Undivided Family
- ✓ a company
- ✓ a trust
- ✓ a partnership
- ✓ A limited liability partnership, and
- ✓ any other entity established under a Statute.
- ✓ And includes a person resident outside India

Secured Creditor [Section 3(30)]

Secured creditor means a creditor in favour of whom security interest is created

Adjudicating Authority [Section 5(1)]

Adjudicating Authority, for the purposes of this Part II (Insolvency Resolution and Liquidation for corporate persons), means National Company Law Tribunal constituted under section 408 of the Companies Act, 2013. [Section 5(1)]

Corporate Applicant [Section 5(5)]

Corporate applicant means—

- a) **corporate debtor**; or
- b) a **member or partner of the corporate debtor** who is **authorised to make an application for the corporate insolvency resolution process** or the pre-packaged

- insolvency resolution process as the case may be under the constitutional document of the corporate debtor; or
- c) an individual who is **in charge of managing the operations and resources of the corporate debtor**; or
 - d) a person who **has the control** and supervision **over the financial affairs of the corporate debtor**

Dispute [Section 5(6)]

Dispute includes a suit or arbitration proceedings relating to—

- (a) the existence of the amount of debt
- (b) the quality of goods or service; or
- (c) the breach of a representation or warranty

Financial Creditor [Section 5(7)]

Financial creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

Insolvency Commencement Date [Section 5(12)]

Insolvency commencement date means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be

Operational Creditor [Section 5(20)]

Operational creditor means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;[Section 5(20)]

Related Party [Section 5(24)]

Related party, in relation to a corporate debtor, means—

- (a) a director or partner or a relative of a director or partner of the corporate debtor
- (b) a key managerial personnel or a relative of a key managerial personnel of the corporate debtor;
- (c) a limited liability partnership or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;
- (d) a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital;
- (e) a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid-up share capital;
- (f) any body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;
- (g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;
- (h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;
- (i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;

- (j) any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;
- (k) any person in whom the corporate debtor controls more than twenty per cent. of voting rights on account of ownership or a voting agreement;
- (l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;
- (m) any person who is associated with the corporate debtor on account of—
- participation in policy making processes of the corporate debtor; or
 - having more than two directors in common between the corporate debtor and such person; or
 - interchange of managerial personnel between the corporate debtor and such person

Resolution Plan [Section 5(26)]

Resolution plan means a plan proposed by any person for insolvency resolution of the corporate debtor as a going concern in accordance with Part II

Resolution Professional [Section 5(27)]

Resolution professional, for the purposes of this Part, means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional

Voting Share [Section 5(28)]

Voting share means the share of the voting rights of a single financial creditor in the committee of creditors which is based on the proportion of the financial debt owed to such financial creditor in relation to the financial debt owed by the corporate debtor.

Financial Debt [Sec 5(8)]

"Financial debt" means a debt along with interest and includes—

- ✓ money borrowed against the payment of interest,
- ✓ accepted against any credit facility
- ✓ Raised by issue of bonds, notes, debentures, loan stock or any similar instrument.
- ✓ any liability in respect of any lease
- ✓ receivables sold or discounted
- ✓ Other like forward sale or purchase agreement, having the commercial effect of a borrowing.

any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing

Operational Debt [Section 5(21)]

Claim in respect of Provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority

Process of Corporate Insolvency Resolution Process



Part II of Code

Section 4

- ✓ Part II of Code contains the provisions with respect to Insolvency Resolution and liquidation of Corporate Persons. It consists of sections 4 to 77.
- ✓ **Part II shall apply to matters of insolvency and liquidation only when minimum amount of default is 1 crore.**
- ✓ Central Government may by notification specify minimum amount of default of higher value which shall not be more than 1 crore.

Part II-Chapter II- Corporate Insolvency Resolution Process (CIRP)

Application to National Company Law Tribunal

Section 6

The process of insolvency is triggered by occurrence of default.

The corporate insolvency process may be initiated against any defaulting corporate debtor by making an application for corporate insolvency resolution. The **application may be made by:-**

- a) **Financial creditor**
- b) **Operational creditor**
- c) **Corporate debtor**

Filing Of Application by Financial Creditor

Section 7

A **financial creditor** either itself or along with other financial creditors **may lodge** an **application** before the Adjudicating Authority (National Company Law Tribunal) for initiating corporate insolvency resolution process **against a corporate debtor who commits a default in payment** of its dues in specified form and manner.

Enclosure to Application

The Financial Creditor shall **along with the application give-**

- ✓ **Record of default** with Information Utility or other evidence in support of the default committed by the corporate debtor.
- ✓ **Name of the Interim Resolution Professional.**
- ✓ Any **other information** as may be prescribed.

Admission/Rejection

The **Adjudicating Authority** may either **accept or reject** the application **within fourteen days of receipt** of application.

Grounds of Acceptance	Grounds of Rejection
If satisfied that- <ul style="list-style-type: none"> ✓ Default has occurred ✓ Application for Corporate Insolvency resolution process is complete ✓ No disciplinary proceedings are against proposed Resolution professional 	If satisfied that- <ul style="list-style-type: none"> ✓ Default has not occurred ✓ Application for Corporate Insolvency resolution process is not complete ✓ disciplinary proceedings are against proposed Resolution professional

However, applicant should be allowed to rectify the defect within seven days of receipt of notice of such rejection.

Illustration:

Mr. SP booked office space with Elegant Construction Limited. At the time of booking Rs. 36 lakhs was paid. Remaining amount of Rs. 10 lakhs was paid at the time of taking delivery. He entered into a Memorandum of Understanding (MoU) with the company having various terms and conditions of the sale/ allotment. According to the MoU, Elegant Construction Limited was required to build and deliver the possession of the unit within 2 years from the date of execution of the MoU. It also stipulated payment of an assured return of Rs. 82,000 per month (subject to TDS u/s 194A of IT Act, 1961) till possession of the unit was delivered to Mr. SP. Elegant construction Limited failed to pay the assured return. Thereafter Mr. SP filed an application for initiating insolvency resolution process. Decide about the validity of the said application in view of the provisions of Insolvency and Bankruptcy Code, 2016 as regards the definition of a 'financial creditor' under section 5(7) read with section 5(8) of the Code.

Answer:

Real Estate Allottees are Financial creditors and thus make an application under this section in case of default.

Application may be made by atleast 100 such allottees or not less than 10% of such allottees.

Pre-Condition for Filing by Operational Creditor

Section 8

Sending Of Demand Notice

- ✓ An **operational creditor** shall **on** the occurrence of **default**, shall **first send a demand notice** in such form and manner as may be prescribed **and a copy of invoice to the corporate debtor**.
- ✓ Demand Notice shall contain **demand requiring payment of amount involved** in default.

Response to Notice

The corporate **debtor shall-**

- ✓ **within** a period of **ten days of receipt** of demand notice
- ✓ **notify the operational creditor about** the existence of a **dispute**, any or record of pendency of any suit or arbitration proceedings.
- ✓ **Bring to notice of operational creditor about payment** of unpaid operational debt by sending attested copy of record of payment

Dispute [Section 5(6)]

It includes suit or arbitration proceedings relating to-

- a) Existence of amount of debt
- b) Quality of goods or service
- c) Breach of representation or warranty

Filing Of Application by Operational Creditor

Section 9

After the expiry of ten days, if the operational creditor does not receive his payment or the confirmation of a dispute that existed even before the demand notice was sent, **he may file an application before the Adjudicating Authority** for initiating a corporate insolvency resolution process.

Enclosure to Application

The Operational Creditor shall **along with** the **application give-**

- ✓ **Copy of Invoice or demand notice** delivered by operational creditor to debtor.
- ✓ An **affidavit to effect that no notice given by corporate debtor relating to dispute**
- ✓ Copy of **certificate from Financial Institutions** maintaining accounts **confirming that no payment** of unpaid operational debt is available.
- ✓ Any **other proof** confirming non-payment.
- ✓ An **operational creditor may propose Name of Resolution professional**

Admission/Rejection

The **Adjudicating Authority** may either **accept or reject** the **application within fourteen days of receipt** of application.

Grounds of Acceptance	Grounds of Rejection
If satisfied that- <ul style="list-style-type: none"> ✓ Default has occurred ✓ Application for Corporate Insolvency resolution process is complete ✓ No disciplinary proceedings are against proposed Resolution professional ✓ Invoice and demand notice is delivered to Corporate Debtor ✓ No notice of dispute received. 	If satisfied that- <ul style="list-style-type: none"> ✓ Default has not occurred ✓ Application for Corporate Insolvency resolution process is not complete ✓ disciplinary proceedings are against proposed Resolution professional ✓ Invoice and demand notice is not delivered to Corporate Debtor ✓ Notice of dispute has been received.

However, applicant should be allowed to rectify the defect within seven days of receipt of notice of such rejection.

Filing Of Application by Corporate Applicant

Section 10

Where a corporate debtor has committed a default, a **corporate applicant** thereof **may file** an **application for** initiating **corporate insolvency resolution process** with the Adjudicating Authority.

Enclosure to Application

The Corporate Applicant shall **along with** the application give-

- ✓ **Information relating to books** of account and other documents
- ✓ **Name of Resolution professional**
- ✓ **Special Resolution** passed by shareholders of Corporate Debtor or the resolution passed by atleast 3/4th of total number of partners of corporate debtor approving filing of application.

Admission/Rejection

The **Adjudicating Authority** may either **accept or reject** the application within fourteen days of receipt of application.

Grounds of Acceptance	Grounds of Rejection
If satisfied that- <ul style="list-style-type: none"> ✓ Application for Corporate Insolvency resolution process is complete ✓ No disciplinary proceedings are against proposed Resolution professional 	If satisfied that- <ul style="list-style-type: none"> ✓ Application for Corporate Insolvency resolution process is not complete ✓ disciplinary proceedings are against proposed Resolution professional

Commencement of Insolvency Resolution Proceedings

The insolvency resolution **process shall commence from the date of admission of application** by the Adjudicating Authority. It is referred to as the Corporate Insolvency Resolution Date.

Persons not entitled to Initiate Insolvency Process

Section 11

- (a) A corporate debtor already undergoing an insolvency resolution process/ PPIRP or
- (b) A corporate **debtor having completed** corporate insolvency resolution process **12 months preceding** the date of making of the application or
- (c) A corporate debtor or a financial creditor **who has violated any of the terms of resolution plan** which was **approved 12 months before** the date of making of an application
- (d) A corporate **debtor** in respect **of whom a liquidation order has been made**

Other grounds added:

- ✓ A financial creditor / operational creditor undergoing a PPIRP
- ✓ a corporate debtor in respect of whom a resolution plan has been approved under Chapter III-A, 12 months preceding the date of making of the application

In this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor

Disposal of Applications

Section 11A

- ✓ Where an application filed under section 54C is pending, the Adjudicating Authority shall pass an order to admit or reject such application, before considering any application filed under section 7 or section 9 or section 10 during the pendency of such application under section 54C, in respect of the same corporate debtor.
- ✓ Where an application under section 54C is filed within fourteen days of filing of any application under section 7 or section 9 or section 10, which is pending, in respect of the same corporate debtor, then, notwithstanding anything contained in sections 7, 9 and 10, the Adjudicating Authority shall first dispose of the application under section 54C.
- ✓ Where an application under section 54C is filed after fourteen days of the filing of any application under section 7 or section 9 or section 10, in respect of the same corporate debtor, the Adjudicating Authority shall first dispose of the application under sections 7, 9 or 10.
- ✓ The provisions of this section shall not apply where an application under section 7 or section 9 or section 10 is filed and pending as on the date of the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021.

Time Limit for Completion of Insolvency Resolution Process

Section 12

Corporate Insolvency Resolution process shall be completed within a period of 180 days from the date of admission of application to initiate such process.

Extension

- ✓ **Resolution professional shall file an application to Adjudicating Authority to extend the period beyond 180 days, if a resolution in this regard is passed at a meeting of the committee of creditors by a vote of 66% of the voting shares.**
- ✓ **On receipt of application, if Authority is satisfied that subject matter of case is such that Corporate Insolvency resolution process can't be completed within 180 days, it may by order extend duration beyond 180 days by such further period as it thinks fit but not exceeding 90 days**
- ✓ Extension shall not be granted more than once

Withdrawal of Application

Section 12A

Adjudicating Authority may allow withdrawal of application on application made with approval of 90% voting share of committee of creditors.

Order of Adjudicating Authority

Section 13

The **Adjudicating Authority, after admission of the application** under section 7 or section 9 or section 10, shall, **by an order**—

- a) **declare a moratorium** for the purposes referred to in section 14;
- b) **cause a public announcement** of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15; and
- c) **appoint an interim resolution professional** in the manner as laid down in section 16.

Appointment of IRP

Section 16

Adjudicating authority shall appoint an Interim Resolution Professional within 14 days from the commencement date.

In Case of Application by Financial Creditor

Where the application for corporate insolvency resolution process is made **by a financial creditor** or the corporate debtor, the **resolution professional as proposed** in the application **shall be appointed as the interim resolution professional**, if no disciplinary proceedings are pending against him.

In Case of Application by Operational Creditor

Where the application for corporate insolvency resolution process is made **by an operational creditor** and

Case I: No proposal for an interim resolution professional is made.

- ✓ The **Adjudicating Authority** shall **make a reference to the Board** for the recommendation of an insolvency professional who may act as an interim resolution professional.
- ✓ The **Board shall recommend** the **name** of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending, **within ten days of the receipt of a reference from the Adjudicating Authority**.
- ✓ Name proposed by Board shall be appointed.

Case II: A proposal for an interim resolution professional is made.

The **proposed** resolution **professional** shall be **appointed as** the **interim resolution professional**, if no disciplinary proceedings are pending against him.

Period of Appointment of IRP

The term of Interim Resolution Professional shall not exceed 30 days from the date of appointment.

Public Announcement

Section 15

Interim Resolution Professional shall make the Public Announcement immediately after his appointment.

"Immediately" here means not more than three days from the date of appointment of the Interim Resolution Professional.

Public announcement shall include the following:-

- (a) **Name & Address of Corporate Debtor** under the Corporate Insolvency Resolution Process.
- (b) **Name of the authority with which the corporate debtor is incorporated or registered.**
- (c) **Details of interim resolution Professional** who shall be vested with the management of the Corporate Debtor and be responsible for receiving claims.
- (d) **Penalties** for false or misleading Claims.
- (e) The **last date for the submission of the claims.**
- (f) The **date on which** the Corporate Insolvency Resolution **Process ends.**

The expenses of public announcement shall be borne by the applicant which may be reimbursed by the Committee of Creditors, to the extent it ratifies them.

Moratorium

Section 14

Following acts shall be **prohibited during the moratorium period-**

- (a) The **institution of suits or continuation of any pending suits** or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority

- (b) **Transferring, encumbering, alienating or disposing of** by the corporate debtor any of its assets or any legal right or beneficial interest therein
- (c) Any **action to** foreclose, recover or **enforce** any **security interest** created by the corporate debtor in respect of its property including any action under the SARFAESI Act, 2002
- (d) The **recovery of any property by an owner or lessor** where such property is occupied by or in the possession of the corporate debtor.

Schweitzer Systemtek India (P) Ltd v Phoenix ARC(P) Ltd

Alpha & Omega Diagnostics (India) Ltd vs Asset Reconstruction Co. of India Ltd

When moratorium is declared, it results in prohibition on any action to recover or enforce any security interest created by debtor in respect of its property. Property not owned by Corporate debtor is outside the ambit of this section

The order of Moratorium shall have effect from the date of such order till earliest of following:

- ✓ Approval of Resolution Plan by NCLT
- ✓ Liquidation order
- ✓ End of CIRP period

Powers of IRP

Section 17

- a) **Management of Affairs:** The management of the affairs of the corporate debtor shall vest in the interim resolution professional from the date of his appointment.
- (b) **Exercise of Power of BoD/ partners:** The powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional.
- (c) **Reporting of officers/managers:** The officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required.
- (d) **Instructions to financial institutions:** The financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them.

IRP also has other duties u/s 18 like collecting information, collating it. Monitoring assets, filing information with Information Utility, taking custody of asset and others as specified by board.

Committee of Creditors

Section 21

The interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.

Composition of Committee

Where Financial Creditors exist:

The **Committee of creditors shall comprise of all financial creditors of a corporate debtor.** The Resolution Professional shall identify the financial creditors and constitutes a creditors committee.

Where No Financial Creditors exist:

where a corporate debtor does not have any financial creditors, **the committee of creditors shall be constituted and comprise of such persons** to exercise such functions in such manner as may be specified by the Board.

Provided that a related party to whom a corporate debtor owes a financial debt shall not have any right of representation, participation or voting in a meeting of the committee of creditors.

Meetings and Report

- ✓ The **resolution professional shall conduct all the meetings** of the Committee of Creditors.
- ✓ After the constitution of committee of creditors, the **interim resolution professional is required to file a report certifying the constitution** of the committee to the Adjudicating Authority.
- ✓ The report shall be filed **on or before the expiry of thirty days from the date of appointment** of the interim resolution professional.

Consortium Finance

Where the **corporate debtor owes financial debts to two or more financial creditors** as part of a consortium or agreement, **each such financial creditor shall be part of the committee of creditors and their voting share shall be determined on the basis of the financial debts owed to them.**

Where Any Person is a Financial Creditor as well as an Operational Creditor

- ✓ Such person shall be a financial creditor to the extent of the financial debt owed by the corporate debtor, and shall be included in the committee of creditors, with voting share proportionate to the extent of financial debts owed to such creditor
- ✓ Such person shall be considered to be an operational creditor to the extent of the operational debt owed by the corporate debtor to such creditor.

In Case of Legal Transfer

Where an operational creditor has assigned or legally transferred any operational debt to a financial creditor, the assignee or transferee shall be considered as an operational creditor to the extent of such assignment or legal transfer.

One Trustee for More Than 1 Financial Creditor

Where the terms of the financial debt extended as part of a consortium arrangement or syndicated facility or issued as securities provide for a single trustee or agent to act for all financial creditors,

each financial creditor may—

- (a) authorise the trustee or agent to act on his behalf in the committee of creditors to the extent of his voting share;
- (b) represent himself in the committee of creditors to the extent of his voting share;
- (c) appoint an insolvency professional (other than the resolution professional) at his own cost to represent himself in the committee of creditors to the extent of his voting share; or
- (d) exercise his right to vote to the extent of his voting share with one or more financial creditors jointly or severally.

Voting Share

- ✓ The Board may specify the manner of determining the voting share in respect of financial debts issued as securities
- ✓ All decisions of the committee of creditors except otherwise stated shall be taken by a vote of not less than 51% of voting share of the financial creditors

Right to Demand Information

- ✓ The committee of creditors shall have the right to require the resolution professional to furnish any financial information in relation to the corporate debtor at any time during the corporate insolvency resolution process.
- ✓ The resolution professional shall make available any financial information so required by the committee of creditors within a period of seven days of such requisition.

Appointment of Resolution Professional

Section 22

First Meeting of Committee

The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.

Resolution for Appointment or Replacement

The committee of creditors, may, in the first meeting, by a majority vote of not less than 66% of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

Appointment

Where the committee of creditors resolves Appointment of resolution professional to continue the interim resolution professional as resolution professional, it shall communicate

its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority

Replacement

- ✓ To replace the interim resolution professional, it shall file an application before the **Adjudicating Authority** for the appointment of the proposed resolution professional.
- ✓ The Adjudicating Authority shall forward the name of the resolution professional proposed to the Board for its confirmation and shall make such appointment after confirmation by the Board.
- ✓ Where the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority shall, by order, direct the interim resolution professional to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.

Resolution Professional to Conduct Corporate Insolvency Resolution Process

Section 23

- ✓ resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period.
- ✓ The resolution professional shall exercise powers and perform duties as are vested or conferred on the interim resolution professional under this Chapter.
- ✓ In case of any appointment of a resolution professional other than Interim RP, the interim resolution professional shall provide all the information, documents and records pertaining to the corporate debtor in his possession and knowledge to the resolution professional.

Meeting of Committee of Creditors

Section 24

- ✓ The members of the committee of creditors may meet in person or by such electronic means as may be specified.
- ✓ All meetings of the committee of creditors shall be conducted by the resolution professional.
- ✓ The resolution professional shall give notice of each meeting of the committee of creditors to—
 - members of Committee of creditors
 - members of the suspended Board of Directors or the partners of the corporate persons, as the case may be
 - operational creditors or their representatives if the amount of their aggregate dues is not less than 10% of the debt.
- ✓ The directors, partners and one representative of operational creditors, as referred to in sub-section (3), may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings
- ✓ Any creditor who is a member of the committee of creditors may appoint an insolvency professional other than the resolution professional to represent such creditor in a meeting of the committee of creditors

- ✓ Provided that the fees payable to such insolvency professional representing any individual creditor will be borne by such creditor.
- ✓ Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor.
- ✓ The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.
- ✓ The meetings of the committee of creditors shall be conducted in such manner as may be specified

Duties of Resolution Professional

Section 25

It shall be the **duty of the resolution professional to preserve and protect the assets of the corporate debtor**, including the continued business operations of the corporate debtor.

For above, the **resolution professional shall undertake the following actions**, namely:—

- a. **take immediate custody and control** of all the **assets** of the corporate debtor, including the business records of the corporate debtor
- b. **represent and act on behalf of** the corporate **debtor with third parties**, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings
- c. **raise interim finances** subject to the approval of the committee of creditors under section 28
- d. **appoint accountants**, legal or other **professionals** in the manner as specified by Board
- e. **maintain an updated list of claims**
- f. **convene and attend all meetings of the committee of creditors**
- g. **prepare the information memorandum** in accordance with section 29
- h. **invite prospective resolution applicants**, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans
- i. **present all resolution plans at the meetings** of the committee of creditors
- j. **file application for avoidance of transactions** in accordance with Chapter III, if any; and
- k. **such other actions** as may be **specified** by the Board.

Rights and Duties of Authorised Representative

Section 25A

- ✓ The **Authorised representative** shall **have the right to participate** and vote in meetings of committee of creditors **on behalf of financial creditor** he represents with prior voting instructions obtained through physical or electronic means.
- ✓ Authorised representative shall **not act against the interest of financial creditor** and always acts in accordance with prior instructions.
- ✓ **In case no prior instructions**, he shall **abstain from voting** on behalf of such creditor.
- ✓ Authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means from the financial creditor he represents for voting in accordance therewith to ensure that appropriate voting instructions of the financial creditors is correctly recorded.

Replacement of Resolution Professional to Committee of Creditors

Section 27

- ✓ Where, at **any time during** the corporate insolvency resolution **process**, the **committee** of creditors is **of the opinion that** a resolution **professional** appointed under section 22 is required to **be replaced**, it may replace him with another resolution professional in the manner provided under this section.
- ✓ The **committee** of creditors may, at a meeting, **by a vote of seventy five per cent. of voting shares, propose to replace** the resolution **professional** appointed under section 22 with another resolution professional.
- ✓ The **committee** of creditors **shall forward** the **name** of the insolvency professional proposed by them **to the Adjudicating Authority**.
- ✓ The **Adjudicating Authority shall forward** the **name** of the proposed resolution professional **to the Board for its confirmation** and a resolution professional shall be appointed **in the same manner** as laid down **in section 16**.
- ✓ Where any disciplinary proceedings are pending against the proposed resolution professional under sub-section (3), the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional under this section.

Approval of Committee of Creditors for Certain Actions

Section 28

Resolution professional, during the corporate insolvency resolution process, **shall not take** any of the following **actions without** the **prior approval** of the committee of creditors namely:—

- (a) **raise** any **interim finance in excess of the amount** as may be **decided** by the committee of creditors in their meeting;
- (b) **create** any **security interest** over the assets of the corporate debtor;
- (c) **change** the **capital structure** of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company;
- (d) **record** any **change in the ownership** interest of the corporate debtor;
- (e) **give instructions to financial institutions** maintaining accounts of the corporate debtor for a debit transaction from any such accounts **in excess of the amount** as may be **decided** by the committee of creditors in their meeting;
- (f) **undertake** any **related party transaction**;
- (g) **amend** any **constitutional documents** of the corporate debtor;
- (h) **delegate** its **authority** to any other person;
- (i) **dispose** of or permit the disposal of **shares** of any shareholder of the corporate debtor or their nominees to third parties;
- (j) **make** any **change in the management** of the corporate debtor or its subsidiary;
- (k) **transfer rights** or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;
- (l) **make changes in the appointment** or terms of contract **of such personnel as specified** by the committee of creditors; or
- (m) **make changes in the appointment** or terms of contract **of statutory auditors or internal auditors** of the corporate debtor.

Methods of Approval

- ✓ The resolution professional shall convene a meeting of the committee of creditors and seek the vote of the creditors prior to taking any of the above actions
- ✓ **No action stated above shall be approved by the committee of creditors unless approved by a vote of 66% of the voting shares.**

Consequences of Non-Approval

- ✓ **Where** any **action** is **taken** by the resolution professional **without** seeking the **approval** of the committee of creditors in the manner as required in this section, such **action shall be void.**
- ✓ The committee of creditors may report the actions of the resolution professional to the Board for taking necessary actions against him under this Code.

Information Memorandum

Section 29

A resolution plan is a proposal agreed to by the Debtors and Creditors of an entity in a collective mechanism to propose a time bound solution to resolve the situation of insolvency.

The **Resolution Professional shall prepare** an **Information Memorandum** which shall contain information for preparing resolution plan.

Resolution Professional shall provide access of the following to a Resolution applicant in order to prepare the Resolution Plan:

- ✓ **Financial position** of corporate debtor
- ✓ **Information required by applicant for resolution plan**
- ✓ **Other matters** pertaining to corporate debtor

Resolution Professional shall examine the **Resolution Plan and submit** the same to Committee of Creditors for its approval.

Persons Not Eligible To Be Resolution Applicant

Section 29A

A **person** shall **not** be **eligible to submit** a **resolution plan**, if such person, or any other person acting jointly or in concert with such person—

- ✓ is an **undischarged insolvent**
- ✓ is a **wilful defaulter** in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949
- ✓ **has an account**, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, **classified as non-performing asset** in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan

- ✓ has been **convicted for any offence punishable with imprisonment for two years or more under Act specified in Twelfth Schedule.**
- ✓ has been **convicted for any offence punishable with imprisonment for seven years or more under any other law for the time being in force**
- ✓ is **disqualified to act as a director** under the Companies Act, 2013
- ✓ is **prohibited by the Securities and Exchange Board** of India **from trading** in securities or accessing the securities markets
- ✓ **has been a promoter or in the management or control** of a corporate debtor **in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place** and in respect of which an order has been made by the Adjudicating Authority under this Code

Submission of Resolution Plan

Section 30

A **resolution applicant** may submit a **resolution plan** to the resolution professional prepared on the basis of the information memorandum.

Requirements to be examined by Resolution Professional [Section 30(2)]

The **resolution professional** shall examine each **resolution plan** received by him **to confirm** that each **resolution plan**—

- (a) **provides for the payment of insolvency resolution process costs** in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor
- (b) provides for the **repayment of the debts of operational creditors** in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;
- (c) provides for the **management of the affairs** of the Corporate debtor after approval of the resolution plan
- (d) the **implementation and supervision** of the resolution plan
- (e) **does not contravene any of the provisions** of the law for the time being in force
- (f) **conforms to such other requirements** as may be specified by the Board.

Approval by Creditors and Submission of Plan

- ✓ The **resolution professional** shall present to the **committee** of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).
- ✓ The **committee of creditors** may approve a **resolution plan** by a **vote of not less than 66% of voting share** of the financial creditors, after considering its feasibility and viability
- ✓ The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered
- ✓ Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.
- ✓ The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.

Approval of Resolution Plan

Section 31

If the **Adjudicating Authority** is **satisfied** that the **resolution plan** as **approved** by the committee of creditors **meets the requirements** as referred to in sub-section (2) of section 30, it shall **by order approve** the **resolution plan** which shall be **binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority** to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

Provided that the **Adjudicating Authority** shall, **before passing** an **order** for approval of resolution plan under this sub-section, **satisfy that the resolution plan has provisions for its effective implementation.**

Rejection of Resolution Plan

Where the **Adjudicating Authority** is **satisfied** that the resolution plan does **not confirm to the requirements** referred to in sub-section (1), it **may, by an order, reject the resolution plan.**

Consequences of Approval

After the order of **approval** under sub-section (1), -

- (a) the **moratorium order** passed by the Adjudicating Authority under section 14 shall **cease to have effect**; and
- (b) the **resolution professional shall forward all records relating to the conduct** of the corporate insolvency resolution process and the resolution plan **to the Board** to be recorded on its database.

The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority

Part II- Chapter III- Liquidation Process

Order of Liquidation

Section 33

Adjudicating Authority may order for liquidation of the Corporate Debtor in the following cases:-

- a) Where **before the expiry of the Insolvency Resolution Process or within 180 days** of the initiation of Insolvency Resolution, the **Adjudicating Authority** does **not receive the Resolution Plan.**
- b) If the **Committee** of Creditors before the expiry of the resolution process **intimate** the Adjudicating Authority of their **decision that they have passed an order for liquidation** of the Corporate Debtor.
- c) **Where the resolution plan** approved by the Adjudicating Authority is **contravened by the concerned corporate debtor**, any person other than the corporate debtor, whose interests are

prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order. Once the Adjudicating Authority passes an order of liquidation, a moratorium is imposed on the pending legal proceedings against the corporate debtor, and the assets of the debtor (including the proceeds of liquidation) vest in the liquidation estate.

Appointment of Liquidator

Section 34

- ✓ Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process under Chapter II or for the pre-packaged insolvency resolution process under Chapter IIIA shall, subject to submission of a written consent by the resolution professional to the Adjudicating Authority in specified form, shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority.
- ✓ All powers of the board of directors, key managerial personnel and the partners of the corporate debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator.
- ✓ The personnel of the corporate debtor shall extend all assistance and cooperation to the liquidator as may be required by him in managing the affairs of the corporate debtor.

Replacement of Resolution Professional

The Adjudicating Authority shall by order replace the resolution professional, if-

- (a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or
- (b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing; or
- (c) the resolution professional fails to submit written consent under sub-section (1).

- ✓ The Adjudicating Authority may direct the Board to propose name of another insolvency professional to be appointed as a liquidator.
- ✓ The Board shall propose the name of another insolvency professional along with written consent from the insolvency professional in the specified form within ten days of the direction issued by the Adjudicating Authority.
- ✓ The Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an insolvency professional as liquidator, by an order appoint such insolvency professional as the liquidator.

Fees of Liquidator

- ✓ An insolvency professional proposed to be appointed as a liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of the liquidation estate assets, as may be specified by the Board.
- ✓ The fees for the conduct of the liquidation proceedings shall be paid to the liquidator from the proceeds of the liquidation estate under section 53.

Powers and Duties of Liquidator

Section 35

- ✓ to verify claims of all the creditors;
 - ✓ to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;
 - ✓ to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;
 - ✓ to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary;
 - ✓ to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary;
 - ✓ subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified
 - ✓ to draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business;
 - ✓ to take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself;
 - ✓ to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities;
 - ✓ to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;
 - ✓ to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of or on behalf of the corporate debtor; 43
 - ✓ to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;
 - ✓ to take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator;
 - ✓ to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board; and
 - ✓ to perform such other functions as may be specified by the Board.
- ✓ The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53. Provided that any such consultation shall not be binding on the liquidator

Liquidation Estate

Section 36

Inclusions

Liquidation estate shall comprise all liquidation estate assets which shall include the following: -

- (a) **any assets over which the corporate debtor has ownership rights**, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor;
- (b) **assets that may or may not be in possession of the corporate debtor including** but not limited to **encumbered assets**;
- (c) **tangible assets**, whether movable or immovable;
- (d) **intangible assets** including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;
- (e) assets **subject to the determination of ownership** by the court or authority; 44
- (f) any **assets or their value recovered through proceedings for avoidance of transactions** in accordance with this Chapter;
- (g) any **asset of the corporate debtor in respect of which a secured creditor has relinquished security interest**;
- (h) any **other property** belonging to or **vested in the corporate debtor** at the insolvency commencement date; and
- (i) all **proceeds of liquidation** as and when they are realised.

Exclusions

The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation: -

- (a) **assets owned by a third party** which are in possession of the corporate debtor, including - assets held in trust for any third party;
 - **bailment contracts**;
 - all **sums due to any workmen** or employee from the provident fund, the pension fund and the gratuity fund
 - **other contractual arrangements** which do not stipulate transfer of title but only use of the assets; and
 - such other assets as may be notified by the Central Government in consultation with any financial sector regulator;
- (b) **assets in security collateral held by financial services providers** and are subject to netting and set-off in multi-lateral trading or clearing transactions;
- (c) **personal assets of any shareholder** or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;
- (d) **assets of any Indian or foreign subsidiary** of the corporate debtor; or
- (e) any **other assets** as may be **specified** by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.

Powers of Liquidator to Access Information

Section 37

The **liquidator shall have the power to access any information systems** for the purpose of admission and proof of claims and identification of the liquidation estate assets relating to the corporate debtor from the following sources, namely-

- (a) an information utility
- (b) credit information systems regulated under any law for the time being in force;
- (c) any agency of the Central, State or Local Government including any registration authorities;
- (d) information systems for financial and non-financial liabilities regulated under any law for the time being in force;
- (e) information systems for securities and assets posted as security interest regulated under any law for the time being in force;
- (f) any database maintained by the Board; and
- (g) any other source as may be specified by the Board.

Power of Creditors to Call for Information

- ✓ The creditors may require the liquidator to provide them any financial information relating to the corporate debtor in such manner as may be specified.
- ✓ The liquidator shall provide information referred to in sub-section (2) to such creditors who have requested for such information within a period of seven days from the date of such request or provide reasons for not providing such information.

Consolidation of Claims

Section 38

- ✓ The **liquidator shall receive or collect the claims** of creditors **within a period of thirty days from the date of the commencement of the liquidation process**.
- ✓ A financial creditor may submit a claim to the liquidator by providing a record of such claim with an information utility
Provided that where the information relating to the claim is not recorded in the information utility, the financial creditor may submit the claim in the same manner provided for the submission of claims for the operational creditor
- ✓ An operational creditor may submit a claim to the liquidator in such form and in such manner and along with such supporting documents required to prove the claim as may be specified by the Board.
- ✓ A creditor who is partly a financial creditor and partly an operational creditor shall submit claims to the liquidator to the extent of his financial debt and to the extent of his operational debt in specified manner.
- ✓ **A creditor may withdraw or vary his claim under this section within fourteen days of its submission.**

Verification of Claims

Section 39

- ✓ The **liquidator shall verify** the **claims** submitted under section 38 within such time as specified by the Board.
- ✓ The liquidator may require any creditor or the corporate debtor or any other person to produce any other document or evidence which he thinks necessary for the purpose of verifying the whole or any part of the claim.

Admission or Rejection of Claims**Section 40**

- ✓ The **liquidator** may, **after verification** of claims under section 39, **either admit or reject the claim**, in whole or in part, as the case may be.
- ✓ Provided that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection.
- ✓ The liquidator shall **communicate** his **decision** of admission or rejection of claims to the **creditor and corporate debtor** within **seven days of such admission or rejection of claims**.

Determination of Valuation of Claims**Section 41**

The liquidator shall determine the value of claims admitted under section 40 in such manner as may be specified by the Board.

Appeal against the Decision of Liquidator**Section 42**

A creditor may appeal to the Adjudicating Authority against the decision of the liquidator accepting or rejecting the claims within fourteen days of the receipt of such decision.

Preferential Transactions & Extortionate Credit Transactions**Section 43**

Where the liquidator or the resolution professional (RP), is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions to any of the following persons:

- ✓ A related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date.
- ✓ A person other than a related party during the period of one year preceding the insolvency commencement date.

In such case, the liquidator or RP shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.

What is regarded as Preference?

A corporate debtor shall be deemed to have given a preference in the following circumstances:-

- ✓ If there is a **transfer of property or an interest thereof** of the corporate debtor **for the benefit of a creditor or a surety or a guarantor** for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor.
- ✓ If the **transfer has the effect of putting such creditor or a surety or a guarantor in a beneficial position** than it would have been in the event of a distribution of assets being made in accordance with Section 53 of the Code.

What is not regarded as Preference?

Following transfers shall not be referred to as a preference transaction:-

- ✓ The transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee.

- ✓ Any transfer creating a security interest in property acquired by the corporate debtor to the extent that-
 - (i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest and was used by corporate debtor to acquire such property; and
 - (ii) such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property.
- ✓ Further, any transfer made in pursuance of the order of a Court shall not preclude such transfer to be deemed as giving of preference by the corporate debtor.

Order in case of Preferential Transaction

Section 44

The Adjudicating Authority, may, on an application made by the resolution professional or liquidator, by an order :

- a) require any property transferred in connection with the giving of the preference to be vested in the corporate debtor;
- b) require any property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;
- c) release or discharge (in whole or in part) of any security interest created by the corporate debtor;
- d) require any person to pay such sums in respect of benefits received by him from the corporate debtor, such sums to the liquidator or the resolution professional, as the Adjudicating Authority may direct;
- e) direct any guarantor, whose financial debts or operational debts owed to any person were released or discharged (in whole or in part) by the giving of the preference, to be under such new or revived financial debts or operational debts to that person as the Adjudicating Authority deems appropriate;
- f) direct for providing security or charge on any property for the discharge of any financial debt or operational debt under the order, and such security or charge to have the same priority as a security or charge released or discharged wholly or in part by the giving of the preference; and
- g) direct for providing the extent to which any person whose property is so vested in the corporate debtor, or on whom financial debts or operational debts are imposed by the order, are to be proved in the liquidation or the corporate insolvency resolution process for financial debts or operational debts which arose from, or were released or discharged wholly or in part by the giving of the preference:

Provided that an order under this section shall not—

- a) affect any interest in property which was acquired from a person other than the corporate debtor or any interest derived from such interest and was acquired in good faith and for value;
- b) require a person, who received a benefit from the preferential transaction in good faith and for value to pay a sum to the liquidator or the resolution professional.

It is clarified that where a person, who has acquired an interest in property from another person other than the corporate debtor, or who has received a benefit from the preference or such another person to whom the corporate debtor gave the preference,—

- ✓ had sufficient information of the initiation or commencement of insolvency resolution process of the corporate debtor;
- ✓ is a related party,

it shall be presumed that the interest was acquired or the benefit was received otherwise than in good faith unless the contrary is shown.

A person shall be deemed to have sufficient information or opportunity to avail such information if a public announcement regarding the corporate insolvency resolution process has been made under section 13.

Avoidance of Undervalued Transactions

Section 45

If the liquidator or the RP, on an examination of the transactions of the corporate debtor, determines that certain transactions were made during the relevant period under section 46, were undervalued, he shall make an application to the Adjudicating Authority to declare such transactions as **void and reverse the effect** of such transaction.

A transaction shall be considered undervalued where the corporate debtor —

- (a) makes a gift to a person; or
- (b) enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor, and such transaction has not taken place in the ordinary course of business of the corporate debtor.

Relevant Period for Avoidable Transactions

Section 46

In an application for avoiding a transaction at undervalue, the liquidator or resolution professional shall determine:

- a) That the **transaction was entered within the period of one year** preceding the insolvency commencement date; or
- b) That the **transaction was made with a related party within a period of two years** preceding the insolvency commencement date.

Application by Creditor In Case Of Undervalued Transactions

Section 47

where an undervalued transaction has taken place and the liquidator or the resolution professional has not reported it to the Adjudicating Authority after having sufficient information or opportunity to avail information, a creditor, member or a partner of a corporate debtor may make an application to the Adjudicating Authority to declare such transactions void and reverse their effect.

Adjudicating Authority shall pass an order-

- ✓ restoring the position as it existed before such transactions and reversing the effects thereof and
- ✓ requiring the Board to initiate disciplinary proceedings against the liquidator or the resolution professional

Order in cases of Undervalued Transactions

Section 48

NCLT may provide for following:

- ✓ Require any property transferred as a part of transaction to be vested in Corporate Debtor
- ✓ Release or discharge security interest

- ✓ Require any person to pay such sums, in respect of benefits received by such person, to the liquidator or the resolution professional as the case may be
- ✓ Require the payment of such consideration for the transaction as may be determined by an independent expert.

Transactions Defrauding Creditors

Section 49

where the corporate debtor has entered into an undervalued transaction under section 45 and the Adjudicating Authority is satisfied that such transaction was deliberately entered into by such corporate debtor—

- (a) for **keeping assets of the corporate debtor beyond the reach of any person** who is entitled to make a claim against the corporate debtor; or
- (b) in order to **adversely affect the interests of such a person in relation to the claim**, the Adjudicating Authority shall make an order—
 - (i) **restoring the position** as it existed before such transaction as if the transaction had not been entered into; and
 - (ii) **protecting the interests** of persons who are victims of such transactions:

However, an order passed under this section—

(1) shall not affect any interest in property which was acquired from a person other than the corporate debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest, and

(2) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.

Extortionate Credit Transactions

Section 50

where the corporate debtor has been a party to an extortionate credit transaction involving the receipt of financial or operational debt during the period within two years preceding the insolvency commencement date, the liquidator or the resolution professional as the case may be, may make an application for avoidance of such transaction to the Adjudicating Authority if the terms of such transaction required exorbitant payments to be made by the corporate debtor.

A transaction shall be considered an extortionate credit transaction under section 50(2) where the terms:

- a) require the corporate debtor to make exorbitant payments in respect of the credit provided; or
- b) are unconscionable under the principles of law relating to contracts.

Where any debt extended by any person providing financial services which is in compliance with any law for the time being in force in relation to such debt shall in no event be considered as an extortionate credit transaction.

Order of Adjudicating Authority

Section 51

If an Adjudicating Authority after examining the application is satisfied that the terms of a credit transaction required exorbitant payments to be made by the corporate debtor, it shall, by an order:-

CA. SHIVANGI AGRAWAL

- a) Restore the position as it existed prior to such transaction;
- b) Set aside the debt created on account of the extortionate credit transaction;
- c) Modify the terms of the transaction;
- d) Require any person who is/ was, a party to the transaction to repay any amount received by such person; or
- e) Require any security interest that was created as part of the extortionate credit transaction to be relinquished in favour of the liquidator or the resolution professional, as the case may be.

Secured Creditor in liquidation proceedings

Section 52

- ✓ A **secured creditor** in the liquidation proceedings **may**-
 - **relinquish its security interest** to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or
 - **realise its security interest** in the manner specified in this section.
- ✓ **Where the secured creditor realises security interest** under clause (b) of sub-section (1), **he shall inform the liquidator** of such security interest and identify the asset subject to such security interest to be realised.
- ✓ **Before** any security **interest is realised** by the secured creditor under this section, 52
- ✓ the **liquidator shall verify** such security interest **and permit** the secured **creditor to realise** only such security interest, the existence of which may be proved either –
 - by the records of such security interest maintained by an information utility; or
 - by such other means as may be specified by the Board.
- ✓ A secured **creditor may enforce, realise, settle, compromise or deal with the secured assets** in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.
- ✓ If in the course of realising a secured asset, any **secured creditor faces resistance from the corporate debtor or any person connected therewith in taking possession of, selling or otherwise disposing off the security**, the secured **creditor may make an application to** the Adjudicating Authority **to facilitate** the secured creditor **to realise** such security interest in accordance with law for the time being in force.
- ✓ The Adjudicating Authority, on the receipt of an application from a secured creditor under sub-section (5) may pass such order as may be necessary to permit a secured creditor to realise security interest in accordance with law for the time being in force.
- ✓ **Where the enforcement** of the security interest under sub-section (4) **yields an amount** by way of proceeds which is **in excess** of the debts due to the secured creditor, the secured **creditor shall**-
 - **account to the liquidator for such surplus**; and
 - tender to the liquidator any surplus funds received from the enforcement of such secured assets.

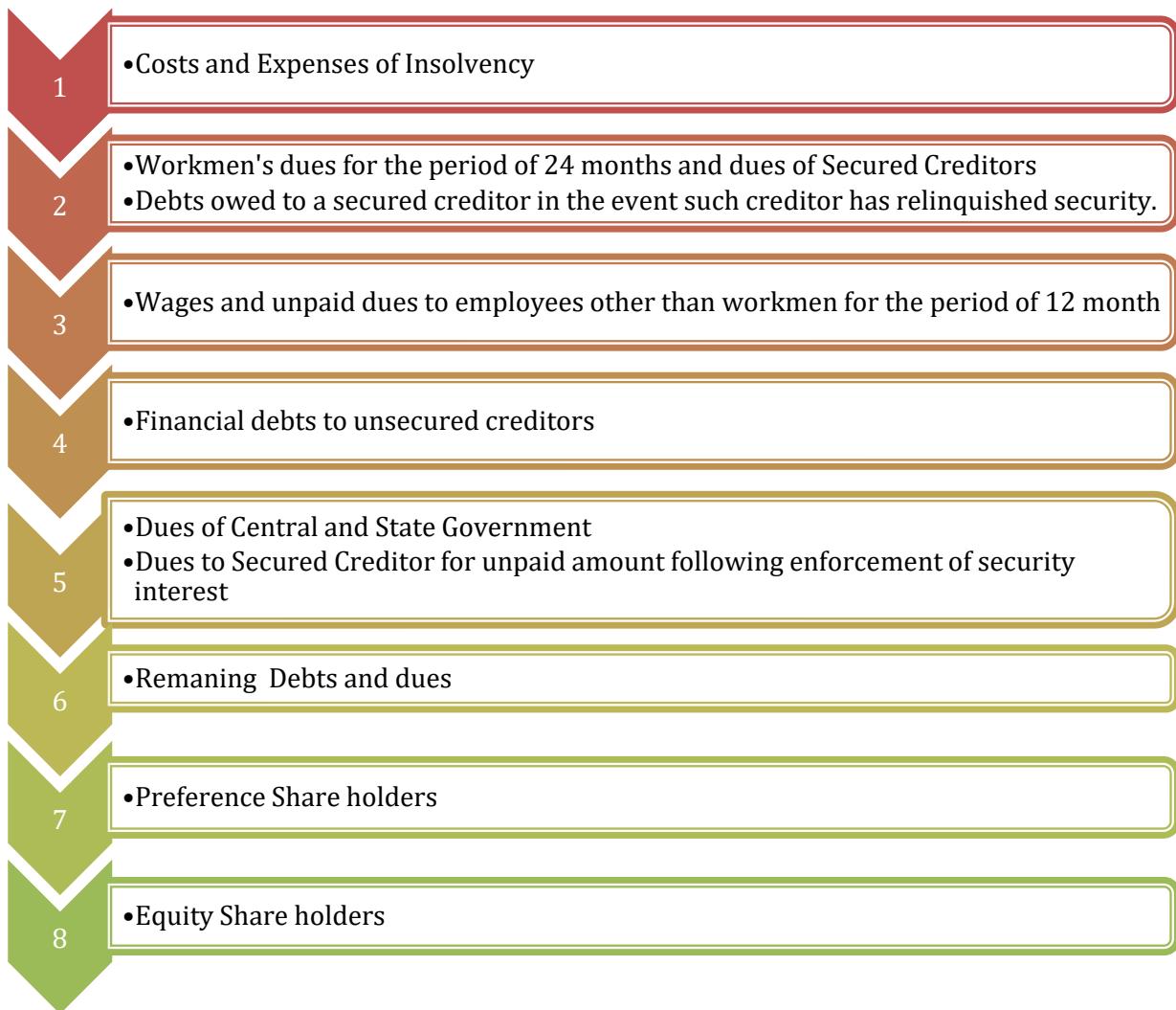
- ✓ The amount of insolvency resolution process costs, due from secured creditors who realise their security interests in the manner provided in this section, shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.
- ✓ **Where the proceeds** of the realisation of the secured assets **are not adequate** to repay debts owed to the secured creditor, the **unpaid debts** of such secured creditor **shall be paid by the liquidator** in the manner specified in clause (e) of sub-section (1) of section 53.

Distribution of Assets

Section 53

The proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely:-

- (a) the insolvency resolution process costs and the liquidation costs paid in full
- (b) the following debts which shall rank equally between and among the following :—
 - ✓ workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and
 - ✓ debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52
- (c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date
- (d) financial debts owed to unsecured creditors
- (e) the following dues shall rank equally between and among the following:—
 - ✓ any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
 - ✓ debts owed to a secured creditor for any amount unpaid following the enforcement of security interest
- (f) any remaining debts and dues; Other debts and dues Unsecured Financial creditors Dues of Central Government & State Government Wages and any unpaid dues owed to employees, other than workmen, for the period of 12 months Workmen's dues for the period of 24 months & dues of secured creditors Costs and Expenses of Insolvency
- (g) preference shareholders, if any; and
- (h) equity shareholders or partners, as the case may be.



Dissolution of Corporate Debtor

Section 54

- ✓ Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.
- ✓ The Adjudicating Authority shall on application filed by the liquidator under sub-section (1) order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.
- ✓ A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered.

Fast Track CIRP	Not covered in Syllabus
Pre- Packaged Insolvency Resolution Process (PPIRP)	Not covered in Syllabus

Personal Insolvency

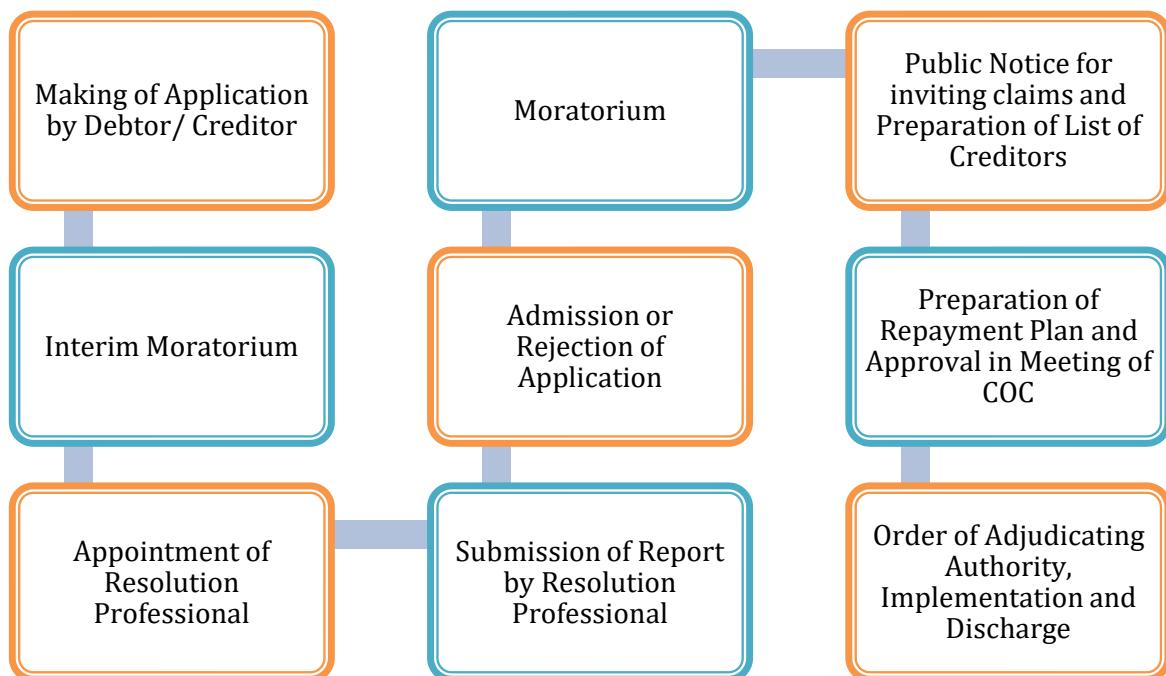
Part III of the Insolvency & Bankruptcy Code, 2016 relates to Insolvency resolution and Bankruptcy of Individuals and Partnership Firms.

Chapter I	Preliminary	Sections 78 & 79
Chapter II	Fresh Start Process	Sections 80- 93
Chapter III	Insolvency Resolution Process	Sections 94- 120
Chapter IV	Bankruptcy Order for Individuals and Partnership Firms	Sections 121- 148
Chapter V	Administration and Distribution of the estate of Bankrupt	Sections 149-178
Chapter VI	Adjudicating Authority for Individuals and Partnership Firms	Sections 179- 183
Chapter VII	Offences and Penalties	Sections 184- 187

Basics

Process:	Fresh Start/ Insolvency Resolution followed by Bankruptcy Order
Process by:	Resolution Professional
Adjudicating Authority	Debt Recovery Tribunal (DRT)
Appellate Authority	Debt Recovery Appellate Tribunal (DRAT)

Process of Insolvency Resolution (Only for Reading- Not to be learnt for Exam)



Process of Bankruptcy (To be learnt for Exam)

When an Application for Bankruptcy may be filed?

Application of bankruptcy can be made by Debtor/ creditor under sections 122 and 123 singly or jointly against-

	Explanation:
order under 100(4) relating to defrauding a creditor	If the application referred to in section 94 or 95, as the case may be, is rejected by the Adjudicating Authority on the basis of report submitted by the resolution professional or that the application was made with the intention to defraud his creditors or the resolution professional, the creditor becomes entitled to file for a bankruptcy order
order under 115(2) regarding rejection of the repayment plan	Where the Adjudicating Authority rejects the repayment plan under section 114, the debtor and the creditors become entitled to file an application for bankruptcy
order under 118(3) on non satisfaction of the debt as per repayment plan.	The Adjudicating Authority passes an order on the basis of the report that the repayment plan has not been completely implemented and the debtor or the creditor, whose claims under repayment plan have not been fully satisfied, become entitled to apply for a bankruptcy

within 3 months of the order, along with relevant documents of evidence, details of claim, and copy of the order referred above.

Application cannot be withdrawn without permission of adjudicating authority

Interim Moratorium

An interim-moratorium shall commence on the date of the making of the application on all actions against the properties of the debtor in respect of his debts and such moratorium shall cease to have effect on the bankruptcy commencement date.

During interim moratorium,

- ✓ all litigation shall be stayed and
- ✓ no new litigation can be initiated.

However, this shall not apply to such transactions as CG may notify

Appointment of Insolvency Professional as Bankruptcy Trustee

- ✓ The IP proposed shall be continued/rejected by Adjudicating Authority(AA) based on information on IP to be sent by the Board.
- ✓ In case none is proposed, the AA shall request for nomination within 7 days to Board and Board shall nominate within 10 days.
- ✓ COC may with 75% voting replace the Bankruptcy trustee (BT) who may also resign suo moto. Replacement can be done with the consent of the Board and Adjudicating Authority (section 145 and 146)

Passing of Order

The Adjudicating Authority shall pass a bankruptcy order within fourteen days of receiving the confirmation or nomination of the bankruptcy trustee under section 125.

CA. SHIVANGI AGRAWAL

Inviting Public Claims

- ✓ Adjudicating Authority to send notice within 10 days to creditors with relevant document asking for submission of claim with last date.
- ✓ A public notice shall also be issued.

Registration of Claims

- ✓ Creditor shall register claim within 7 days of public notice to bankruptcy trustee who shall make a list of creditors within 14 days.
- ✓ Bankruptcy Trustee shall call a meeting of creditors within 21 days of bankruptcy commencing date and in the meeting constitute COC, will decide, along with other businesses.
- ✓ Interested creditors shall not vote.

Completion of Administration

- ✓ The bankruptcy trustee shall convene a meeting of the committee of creditors on completion of the administration and distribution of the estate of the bankrupt in accordance with the provisions of Chapter V
- ✓ The bankruptcy trustee shall provide the committee of creditors with a report of the administration of the estate of the bankrupt in the meeting of the said committee to be approved by COC within 7 days of receipt and decide to release the BT.
- ✓ BT has to present before AA within 7 days thereafter for his release.
- ✓ BT may also apply for release after one year, in case released by COC.

Order

- ✓ Under section 126, the Adjudicating Authority shall pass an order within 14 days of confirmation of IP/ trustee by the Board, which shall be valid till the debt is discharged.
- ✓ The estate will vest on the trustee.
- ✓ The creditor shall be barred to take legal action against the debtors/properties. Secured creditors shall have to take action to realize within 30 days, failing which his interest shall be forfeited.
- ✓ Where an order has been passed, the bankrupt shall submit his statement of financial position or any other information required by the trustee.

Discharge of Bankruptcy Trustee (BT)

- ✓ Once the authority passes order of discharge, the BT shall be discharged from his functions and responsibilities subject to conditions.
- ✓ The bankrupt shall be released from all his debts. Any such order may be modified on application by the person effected.BT/IP shall be deemed to have been released on confirmation of appointment for new BT/IP

Disqualification / Restriction on the bankrupt

During bankruptcy proceeding, bankrupt, shall:

- a) not be appointed as trustee, public servant, election of local authority,
- b) not to act as director, taking part in formation of companies,
- c) disclose in all transaction about the bankruptcy proceedings,

- d) travel overseas The functions, powers of the BT and the process to be followed is similar to liquidation process of corporate.

The provisions are mentioned in detail in chapter V from section 149 to 178 with chapter heading as- "Administration and Distribution of the Estate of the Bankrupt"

Adjudicating Authority (Chapter VI)

Section 179 to 180 provides for the adjudicating authorities, their powers and duties.

- ✓ the Authority shall be the Debt Recovery Tribunal having territorial jurisdiction over the place where individual debtor actually resides or carries on business or works for gain.
- ✓ The Tribunal shall function as a court as per Civil Procedure Code.
- ✓ Civil Court shall have no jurisdiction
- ✓ The decision of DRT can be appealed DRAT within 15days.
- ✓ The decision of DRAT on question of law can be appealed to Supreme Court