

~~orange~~ For Examination Purposes  
By registered post  
includes

## ~~Red~~ Topic Directors

- Companies Act recognises the general meetings and the board of directors as the principle management organs of the Co.
- General meetings makes major decision and board of directors is responsible for managing the day to day affairs of the Co.
- Section 3 of the act states that the director is relative to the board corporate includes
  - ✓ Any person occupying the position of the director body corporate by whatever name the person is called e.g. boss, m/s, sonko, father, husband, wife, etc.
  - ✓ Any person in accordance with whose directions or instructions (that being advised given) in a professional capacity. The directors of a body are accustomed to act.

HB

A director may be defined as a person having control of over the directions, conduct, management of the affairs of the Co.

### ~~B Definitions of Some Terms~~

#### DEFINITION OF SOME TERMS

##### ① Shadow Director -

A person might seek to avoid the legal responsibilities of being a director by avoiding appointment but using his power as a major shareholder to manipulate the acknowledged board of directors.

- Shadow directors are directors for legal purposes if the board of directors are accustomed to act in accordance with their instructions and directions.

##### ② Alternate Director - A director may, if the article permits, appoint an alternate director to attend and vote for him at board meeting which they are unable to attend.

~~Non-executive PD~~

~~Shareholders and Directors~~

- Alternate directors may represent an absent director and they are usually outsiders.

### (3) Executive directors -

Is a director who performs a specific role in a Co. Under a service contract which requires a regular, possibly daily involvement in management.

#### \* Non-Executive director -

A non-executive director does not have a function to perform in a Co. Management but ~~he~~ is involved in his ~~governance~~ governance.

#### Main duties of non-executive director

✓ Contribute an independent view to the board deliberations

✓ To help the board provide the Co. with effective leadership

✓ Ensure the ~~continuing~~ effectiveness of the executive director and management.

✓ Ensure high standard of financial probity of the part of the Co.

✓ Non-executive and shadow directors are subject to the same duties as executive directors.

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~~want more to know~~

- Non-executive directors are headed by the chairman of the board.

### (4) Managing director

- Is one of the directors of the Co. appointed to carry out overall day to day management.

If the articles provides for it the board may appoint one or more directors to be managing directors.

- A managing director does not have a special position and has a wider apparent powers like any director who is not appointed as a managing director.

- Managing director is the head of the executive arm of the board of directors.

The office of the managing director is created by the Co. Constitution.

Directors may from time to time appoint one or more of the own to the office of the Managing Director for such term and other conditions as the board may determine.

The board has a power to remove the Managing Director from office subject to the terms of the contract between him and the Co.

In case of wrongful removal Managing Director may sue for damages for breach of contract.

Managing Director receives such remunerations by way of fees, commission or participation in profit as the board gives seems fit.

- Managing Director serves the Co. in his capacity as  
① Director  
② Employee

- His powers and functions depends on the terms of appointment.

### The board of directors

- It is the ~~body~~ <sup>body</sup> responsible for the day to day affairs of the Co.

Board of Directors is the responsible of the Co. Ltd.

It is the group of persons <sup>elected</sup> appointed by the shareholders of Corporation to govern and manage the affairs of the Co.

Under section 128 of the Act, a <sup>private</sup> Co. should have at least 2 directors and public should have at least 3 directors.

Section 129 also provides that a Co. must have atleast 1 director who is a natural person including a corporate sole.

Section 130 provides that failure to comply with section 128(2) a witness in time of 1952 should be liable to the defaulter Co. and its officers.

- Section 131 is clear that the minimum range is 18 years
- Directors generally are appointed by members by ~~other~~ special ordinary resolution in the general meeting.
- The number and the names of the first directors is determined by the subscribers to M.O.A. in writing failing which all the subscribers becomes the first directors.
- A Co. may by its constitution require directors to take up a specified no. of shares.
- In absence of such an article, the Co.'s Act does not require directors to own any number of shares.

### 8/10/16 Reasons on Appointment of Directors

#### Restrictions

① Minimum Number of directors

② Age

③ Consent

④ Sound mind

⑤ Bankruptcy

⑥ Individual voting

⑦ Share qualification

#### Details

- Private Co. - min. 1

Public Co. - min. 2

- At least 18 years

- All proposed directors must deliver to the registrar their written consent to act as director

To qualify for appointment as a director person must be of sound mind. If he is of sound unsound mind he should vacate the office.

A person who is declared bankrupt by court law must not be directly or indirectly involved in Co. Management without leave of the court.

Director can vote to office individually i.e. separate resolution.

A director must take up qualifications shares within 2 months of appointment by either

① Signing a m.o.a for the no. of shares not less than his qualifications

Save email:

- (1) Taking up and paying or agreeing to pay for his Qualification Shares
- (2) Signing and delivering to the register for registration an undertaking to take and pay for his Qualification Shares
- (3) Delivering to the register for registration, a statutory declaration to the effect that shares not less than his qualification are already registered in his name.

### ~~(8) Disqualification by the Court~~

~~The court has jurisdiction to disqualify a person from being directly or indirectly involved in Co's Management for a duration not exceeding 15 years if the person :-~~

- (1) Has been guilty of an offence relating to the formation, promotion and management of the Co.
- (2) Has been guilty of fraudulent trading.
- (3) Has been guilty of fraud or breach of duty to the Co.
- (4) Has been guilty failing to lodge returns with the registrar.
- (5) Has been involved in management of insolvent Co.
- (6) Has been deemed unfit to manage the Co. in the interest of the public Co. after investigation of attorney general.

### ~~Disqualification of the director~~ May 2016 Q1 (a) Sept 2015

~~the office of the director shall be vacated if the director is~~  
~~if he is declared bankrupt or enters into an arrangement with his creditors to compromise his debts~~

~~failure to take qualification shares within the prescribed duration~~

~~if he becomes of unsound mind.~~

~~If the directors is disqualified from holding Office by court of law.~~

\* If he attains the age of 70, thereby he retires off.  
next AGM

6. If he resigns from office by written notice to the Co.

7. If he removes from office by ordinary resolution of members  
in general meeting

H5 A Co may by its Articles adopt retirement by rotation in  
case all directors retire at the conclusion of the first AGM  
at subsequent AGMs & thus 9 the longer serving director  
However a serving managing director does not retire by rotation  
if he ceases to hold office for any reason he ceases  
a director

### The register of directors Section 133(2)(b)

Section 134 requires every Co. to maintain a register of directors  
and it is to be kept at the registered office and open to  
inspection by:

- 1 Any member of a Co without charge.
- 2 Any third party on payment of inspection fee.
- 3 Default in maintaining register attracts a default fine of Rs. 10/-

### Particulars of a register of directors

#### Natural Directors Sec-135

1. Name & any former name
2. Service address
3. Residential address
4. Country and place of residence
5. Person's nationality
6. Person's business / occupation
7. Person's date of birth

#### Corporate Directors Sec-136

- |   |   |
|---|---|
| 1. The body's corporate names                                       | 2. The registered or principal office of the body |
| 3. The legal form of the body of the law by which<br>it is governed | 4. The corporate body's registration number       |

H5

Section 137 requires every Co. to maintain a register of directors

~~OFFICES & AGENTS~~

Karnau

Directors

Convene meetings

Draw up rules

RESERVE FUND

residential address failing which a default fine of Rs. 5000/- rupees - Any change thereof must be ~~notified~~ notified to the registrar within 14 days hereof failing which a fine of Rs. 2000/- rupees.

### Removal of directors from office (from 2015-16 A.Y.)

- sec 139, provides that if Co. is entitled to remove a director from the office by an ordinary resolution provided the following procedure is followed:-

1. A special notice (28 days) or the intended resolution to remove the directors from office must be given to the Co.

2. Upon the receipt of the notice, the Co. must send a copy of ~~hereof~~ ~~to the director concerned who is entitled to make written representations not exceeding a reasonable length as his defence.~~

3. Director may request the Co. to notify the members that he has made representation.

4. Directors must summon the <sup>general</sup> extraordinary meeting to discuss the matter.

5. Notice of the meeting must indicate that the director has made representations and copies thereof must be sent to the members unless received late by the Company.

6. If the copies of are not enclosed by reason of lateness or default by the Co., the director is entitled to have them let out at the meeting if an application by the Co. or any aggrieved person, the Court is ~~satisfied~~ satisfied that the director is abusing right to be heard, to secure the public from any defamatory matter.

7. The Court may hold the director liable for the cost of the application if the removal of directors from office takes effect when the meeting by which the ordinary resolution so resolves.

### The Legal position of Directors

1. Directors are ~~servants~~ servants

1. Directors ~~are~~ agents

- Directors are stated treated as agent when they contract on behalf of the Co.
- As agents of the Co. is general liable as principal for the acts of directors if they act within the authority.

## 2. Directors as trustees

- Directors are trustees of the Co. property and money
- Directors here are not ordinary trustees who have legal title to trust property, directors do not have a legal title on the Co. property (ownership), they are bound to invest Co's money for benefit

## 3 Directors as fiduciaries

- There is a fiduciary relationship b/w the directors and Co. based on trust, confidence and good faith which impose upon the directors, equitable duties known as ~~loyalty~~ and loyalty & good faith.

### DIRECTOR DUTIES

There are of two categories :-

- ① Statutory duties
- ② Common law duties

### ① Statutory duties

- These duties are provided by the Co's Act under Section 140 may include :-

#### Statutory provisions

Statutory provision	Duty	Details
1. Section 142	Duty to act within powers (not to act beyond powers)	1) In accordance with the constitution of the Co. 2) Only exercise powers for the purposes for which they are conferred.
2. Section 143	Duty to promote the success of the Co.	in promoting success of the Co. regard shall be had to the success of the Co.

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## \* Statutory Provision - Duty

### Duties

- ① Long term consequences of my decisions of the director.
- ② The interests of the employee of the Co.
- ③ The impact of the operations of the Co. on the community & the environment.
- ④ They should ensure that there is good relationship b/wn Co. and its customers, Suppliers and others.
- ⑤ They should maintain a good reputation.
- ⑥ Need to act fairly at the directors and members of the Co.

### 3. Section 144

Duty to exercise <sup>independent</sup> Directors should not be influenced by any independent judgement person and should always act in accordance to the constitution of the Co.

### 4. Section 145

#### Duty to exercise

reasonable care, skill and diligence

Directors shall apply:-

- ① The general knowledge, skill and experience that may reasonably be expected of a person carrying on duty as a director of the Co.
- ② The general knowledge over staff and experience that the director has.

### 5. Section 146

#### Duty to avoid conflicts of interest

The director must avoid the situation that may have a direct or indirect interest that conflicts or may conflicts with the interest of the Co.

Directors with potential conflict of interest or proposed conflict has existing transaction disclose to either:-

- ① Director general meeting
  - ② Committee members
- Decision needed later to be made:-
- ① Were the director is not aware of interest
  - ② The situation cannot reasonably be avoided

as likely to give rise to a conflict of interest.  
B. Lack of Compliance attract a fine of £50,000

### 6. Section 174

Duty not to accept benefit from 3rd parties (bribe, secret profit) A person who is a director of a Co. shall not accept a benefit from a 3rd party if the benefit is attributable to the fact that the person is a director of the Co.

② Any act or omission of the person is a director  
B. Any person who contravenes section 174 is liable to a fine not exceeding £50,000 & forfeiture of the benefit or its monetary equivalent.

## 2. Common law duties

\* Common law duties are divided into two categories

- ① Duty of care, skill and diligence
- ② Duty of loyalty and good faith (fiduciary duties)

B. Formulated by Romer J. in Re. City Equitable Fire Insurance Co. Ltd

### ① Duty of care, skill and diligence (Dec 2014 Q S(3))

- Directors are required to demonstrate some degree of care, skill and diligence. This duties include

1. A director need not exhibit in the performance of his duties a greater degree of care and skill than may be reasonably expected from a person of his knowledge and experience (Case of Brazilian Rubber Plantations) after due consideration

2. A director is bound to give continuous attention to the affairs of the Co.

3. In the absence of suspicion that officers of the company are relying on their own information provided by the trusted servant of the Company, a director is entitled to assume their duties honestly.

## 2. Duty of Loyalty and good Firms (Fiduciary duties)

1. Duty to have bonafide - directors are bound to act in good firm and for the benefit of the Co.

2. Duty to exercise unfeigned discretion

- Directors are required / bound to approach Co. matters with an open mind.

3. Duty to exercise power for the proper purpose i.e. for the benefit of their Co.

(i) Duty to avoid conflict of interest - as fiduciaries, directors are bound bound to avoid conflict of interest,

→ Director must note without a Co. consent place himself in circumstances in which his personal interest and those of the Co. conflict.

→ See three potential situations of conflict of interest namely-

\* (a) Interest in Contract made by the Co.

- If a director has a personal interest in a contract made by its Co., equity demands that it discloses the interest before Co. failing which the contract is voidable at the option of the Co.

→ Section 151 of the Co.'s Act prescribes the rules and principles relating to disclosure by interested directors - (rules)

June 2020  
Q15) If a director who is directly or indirectly interested in a Contract or proposed Contract must declare his name & his interest at the meeting of the board.

(i) If the contract is a proposal, disclosure must be made at the meeting of the board at which the question of the contract is first considered.

(ii) If the director's interest develops at the first meeting disclosure must be made at the next meeting of the board.

→ If director's interest develops after the contract is concluded, disclosure must be made at the next meeting of the board.

→ The director must give a general notice at the

prime of his interest

- (f) It is the duty of the directors to disclose at the meeting or take reasonable steps to ensure that the notice of director is brought up and read at the meeting.  
In the above discourse, the director is not required to be present or to answer for the non-meeting, classifying the Board and take non-first vote on the issue.

### EFFECTS OF NON-DISCLOSURE

- Non-disclosure of personal interest by a director is a criminal offence which he is liable to a fine not exceeding Rs. 10,000/-

### (5) Making secret profit

Secret profit means any financial advantage enjoyed by a director with respect to his remuneration or contribution.

- A non-judging director must not make a Secret Profit. They can be by way of bribe, secret commission  
\* The following factors are to be considered in determining whether a director is liable to allow for the secret profit under Article :-

i) The office or position held

ii) Nature of the corporate opportunity

iii) The extent to which it is specific

iv) The relationship between the Office and Information

v) Amount of the information possessed

vi) The circumstances in which the information was obtained

vii) The use to which the information was obtained

viii) Reasons for leaving the Company if he left

### (6) Conflicting or Interlocking directorship

- a conflict of interest arises if one director is actually involved in the affairs of two competing or more competing Co's.

H.B.

Under section 307, A director of a Co. to satisfy the burden of director amounting to negligence, default, breach of duty or trust in relation to the Co. can be taken only by means

However unless a Co's. Constitution require a higher majority such a decision can be approved by ordinary resolution of the members.

### Loans and other payment to director (fsltd) Del 2014 Q5(a)

Under section 164, of Co's act It is unlawful for a Co. to make a loan to any person who is its directors or a director of its holding Co. or extend a guarantee or provide a security in connection with a loan made to such a person unless

- (i) Both the Co. for the time being private
- (ii) The lending Co. is the subsidiary and the holding Co. is a director
- (3) The lending money or giving guarantee is part of the ordinary b/s of the Co. and the same is given in the ordinary course of the business by bank
- (4) The funds are necessary to meet the expenditure incurred or to be incurred by the director for purposes of the Co. or enabling him to properly perform his duties as an officer of the Co.
- (5) The payment must be approved at the general meeting during which the particulars of payment including the amount to be disclosed.

A payment made without approval of the general meeting tends to ester directors who authorized the same jointly and severally liable to indemnify the co. from any loss arising.

### Payment to directors for loss of office Del 2014

Under section 182 it is unlawful for the Co. to make any payment to a director by way of compensation for loss of office or as a consideration of for his retirement unless :- (1) Particulars of the proposed payment including the amount are disclosed to members in the general meeting and (2) The general meeting by this resolution approves

the payment.

The above prohibition Section 182 does not apply for a payment made in good faith :-

- (1) In discharge of an existing legal obligation
- (2) As damages for breach of such an obligation.
- (3) In settle setting or compromising any claim arising in connection with termination of a persons office or employment.
- (4) As a pension for past services.

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It is unlawful for a Co. to transfer the whole or part of undertaking in property ~~to~~ a director for purposes of payment unless for loss of office unless such payment has been approved by members in a general meeting and the price have been disclosed to members.

It is unlawful for a Co. to pay directors remuneration free from tax.

Under section 187 payment needs to a director without compensation it is illegal and the director receives the same in trust for the Co. and he is suppose to return the money to the Co.

### Minutes of Directors Meeting

Section 210

A Co. shall ensure that minutes of all proceedings of a meeting of its directors are recorded.

Co. shall keep minutes of the director meetings from the date of the meeting.

In case of non compliance each director of a Co. in default commits an offence and on conviction is liable of a fine not exceeding 500 000.

Under section 211 if minutes of a meeting are recorded in accordance with section 210:-

- (1) The meeting is presumed to have been duly held.

and Concurred

Interim dividend  $\rightarrow$  is a distribution  
loyalty and honesty

- (2) All proceedings at the meeting are presumed to have duly taken place.
- (3) All appointments at the meeting are presumed to be validly made.

## 10/2010 DIVISION OF POWERS BTW THE GENERAL MEETING AND THE B.O.D.

### Q 6(3) BOARD

#### I Powers of General meeting.

1. Alter the M.O.A.
2. Alter the A.O.A.
3. Declare dividends.
4. Remove directors from office.
5. Authorised Bonus issue.
6. Approve appointment of auditors.

#### II Powers of the B.O.D. in Directors' meeting

- They appoint Co. secretary.
- They recommend payment of dividends.
- Recommend a bonus issue.
- Exercise borrowing powers.
- Paying interim dividend.
- Appointing Managing directors.

### Appointment of Auditors (B.O.D.)

#### F Exceptional Circumstances under which powers vested by the Constitution of the B.O.D.

1. Dead lock in Management (disagreement in management).
2. The board acts beyond powers i.e. ultra vires.
3. The board leaves the necessary power to carry on its functions e.g. lack of a quorum.
4. Board is acting in contravention of the Co.'s constitution.
5. Ratification of abuse of power by the directors, i.e. where the general meeting ratify or approve abuse of powers by directors.
6. Ratification or Commencement of proceedings - if to board of

director refuses to defend an action on behalf of the Co.

### Personal liability of director

Directors are ~~the agents of~~ <sup>co.</sup> when they contract on behalf of the Co.

Co. therefore thereby owing a Co. liable as the principal.

Director may be personally liable under the following circumstances:

- 1) Breach of warranty of authority - exceed their authority.
- 2) Fraud
- 3) Consent
- 4) Negligence - failure to observe duty of care to § 3rd party.  
↳ failure to ...
- (5) False publication or misdescription of Companies name.
- (6) Unlawful principal

### Remedies against Directors for breach of duty.

1. Injunction

2. Damages or Monetary Compensation  
↳ Amount or recovery of profit

3. Rescission of contract, entered into ie withdraw

↳ Refused

4. Restoration of Companies Property

5. Summary dismissal

### HB Doctrine of Holding out

This doctrine is to the effect that any one anyone who is held out by a Co. as a director, ~~as a director, or does something~~ a director although not <sup>validly</sup> currently elected as one will be a defected director who will bind the Co. in the transactions entered into on its behalf.

- Co. will be ~~be~~ stripped from denying the apparent authority.

### The organic

The organic theory of Co's is a principle of Co's law which attempts to connect to the living to the non-living.

Any one trying to bring you down  
already below you.

So in that it attributes to the Co. the thought & decide of the responsible authority officiating of the Co.  
Co. being an official person, it acts through the agent who call directors.

- June 2013 Q 5 (a) Dec 2014 Q 3 (a)  
May 2016 Q 1 (a) May 2014 Q 5 (a)  
Nov 2015 Q 6 (a) June 2010 Q 4 (c)

## COMPANY ACCOUNTS & COMPANY AUDITORS

(COMPANY INVESTIGATION FOR DIRECT MEMBERS)

An investigation into the Companies affairs and its membership  
need for investigation.

1. Shareholders are numerous and spread over a wide  
geographical areas hence they cannot take a common stand  
against those who are in control of the Co.
2. Shareholders especially in the third world countries do not  
have the necessary skills to question the wisdom of directors
3. Separation of ownership from management calls for investigation  
since members do not involve themselves in the day to day  
management.

### APPOINTMENT OF THE INSPECTOR

June 2013 Q 1 b

According to section 786

Court may appoint one or more competent inspectors to  
investigate their Co.

(a) At least 200 members for a Co. with share capital

(b) Orders of at least 10% of the nominal value of the Co's  
share capital

(c) At least 20% of members of a Co. not holding share capital

By Court grants the application for investigation, the member  
or applicant must:

1. Demonstrate good reasons for requiring the investigation
2. Give security (financial deposit) less than two months

the costs of investigation.

- Additionally section 787(1) provides that the court may appoint one or more competent inspectors to investigate their affairs of a Co. If the Co. itself so directs by a special resolution.
- section 787(2) also provides for the court to appoint one or more competent inspectors to investigate their affairs of the Co. If they are circumstances suggesting an investigation is required from a report prepared by CAs A-G.

(within 1 month) & within 4 months)

Circumstances which may call for investigation May 2026

1. The company business is being conducted fraudulently or unlawfully with an intent to defraud the creditors or its manager or oppressive to its members.
2. Co. was formed for a fraudulent or unlawful purpose.
3. That persons responsible for the Co. Commission or management of its ~~affairs~~ are or have been guilty of fraud, misfeasance (breach of authority) or other misconduct towards it or towards its members.
4. That the Co. members have not been given all the information with respect to its affairs that they might reasonably expect to have been given.
5. That it will be in the public interest to do so.

Am

An inspector appointed to investigate the affairs of a Co. and may also investigate the affairs of another board member if related to the Co. (holding or subsidiary) If the Inspector consider after that result of inspection the court could be relevant to the investigation of their affairs of the Co's. (Section 785)

- Once appointed

- Once Inspector is appointed he enters upon his obligation without delay & commences investigation.
- Generally under section 785 the court has power to give direction

Ans

indisposed ~~There is indisposed~~  
How to conduct it more  
matter to be reviewed  
format and content of report  
date of report (S)

on their appointed Inspector on :-

1. How to conduct the investigation
  2. Matter to be reviewed
  3. Format and content of the report
  4. Date of the report
- section 790 also authorises the court to direct that the investigation being terminated if matters have come to light in the course of the investigation that suggest that a criminal offence has been committed.
- 2 Those matters have been or are in the process of being referred to the Directors of Public Prosecution (D.P.P.)

### Removal of the Inspector

1. Resignation by due notice
2. Revocation of appointment by court
3. Bankruptcy
4. Insanity

### Duties of Co'st management during investigation

Section 793 provides that every officer and employee of the Co. subject to investigations shall :-

1. Produce to the Inspector all documents of the Co. as well as all related entities
2. Present themselves before the Inspector when required to do so.
3. Give to the Inspector all assistance in connection with the investigations which may be reasonable able to give
4. Be liable to examinations under oath by the Inspector, which examinations shall be recorded

Failure to comply amount to contempt of the court according to section 794

### The Inspector's report

This report captures the finding of the investigation and each is a

*Brought by*  
Formal written records of the same

- The Inspector may be required to prepare an interim report or final report to the investigator to the court (Section 757)
- As soon as practicable after an interim report or final report is submitted to the court, the court shall do:
  - (i) Submitting a copy of the report to:-
    - (i) Attorney general
    - (ii) The Co. concerned and its related entity if necessary.
  - (ii) On being requested to do so and on payment of the prescribed fee if any sent a copy of report to:-
    - (i) Any member of that Co. or board corporate
    - (ii) The creditors of that Co. or board corporate
    - (iii) Any person whose conduct is referred to in the report
    - (iv) Any other person whose financial interest is affected by the report.
  - (v) The applicant, if not the attorney general

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- The Court may also order that the report being published in such publication (including a website) as it may direct
- The Court may under section 758 submit a copy of report to the office of D.P.P. if it appears from investigation made from the report that a person has committed an offence of which a person is criminally liable

### Powers of an Inspector

- 1 An Inspector is to investigate the holding / subsidiary Co. - to determine people connected with Co. under investigation if such investigation is necessary
- 2 Inspector has power to administer oath or witness, e.g. Co. member or officials
- 3 To examine persons under oath
- \* Requires officer of the Co. to produce books and furnish such information as may be necessary

requested  
Hello  
36874372  
regarding  
8888

§ Applied to the Court to have persons whom they cannot examine be examined by the Court for the purpose of investigation.

### Expenses of investigation (May 2015 p 2(b))

section 799 it is clear that the cost of investigation shall be borne by :-

- i) The attorney general, who may be reimbursed by persons of interest in the investigation including but not limited to :-

(a) Any person convicted on criminal prosecution instituted by A.G. on the basis of the report.

(b) Any person who is held liable in damages or restore to property on basis of proceedings.

(c) Company in whose name proceedings are instituted.

(d) (o) being investigated.

(e) The applicant for investigation toward A.G.

2. Any other person so specified by the Court.

### Investigations into Company <sup>Ownership</sup> affairs (section 800)

If established that there reasonable grounds for doing so, the A.G. shall appoint one or more company inspectors to investigate and report on the membership of a Co. for the purpose of determining the persons :-

i) Who are or have been financially interested in the success or failure, rest or apparent of the Co.

2. Who are able to control or ostensibly influence the property of the Co.

### Proceedings on the inspector's report

#### 1. Criminal proceedings (Section 798)

If the Court is of the opinion that a criminal offence has been committed, a copy of the report is forwarded to the officer of D.P.I. who may institute the appropriate criminal

## processual Prosecution

- It is the duty of the office of the AG to assist the AG in the prosecution.

2 Petition for winding up - If it appears to the AG that the Co. ought to be wound up. It petition of its members on the ground that it is just and equitable.

3 Direct Civil proceedings (Section 814) - A.G. may initiate civil proceedings on behalf of the Co. If from the report made by the Inspector after investigating Co's affairs for :-

(a) Recovery of damages irrespective of fraud, misfeasance or other misconduct in the promotion, formation or Management of the Co.

(b) The recovery of Co's property that has been misappropriated wrongfully retained.

HR

The AG must consider that such proceedings serve public interest

### \*APPLICABLE OFFENCES

Section 818	(a) Destroying, mutilating or falsifying Co's document	Fine not exceeding Rs 1m or Imprisonment not exceeding 7 yrs or both
	(b) Making a false entry in a document	Imprisonment not exceeding 7 yrs or both
	(c) Fraudulently making an omission out of Co's documents	Imprisonment not exceeding 7 yrs or both
Section 819	(a) Knowingly providing false information	Fine not exceeding Rs 50000 or imprisonment for a term not exceeding 2 yrs or both
	(b) Recklessly providing false information	2 yrs or 3 yrs

- ~~power to commence proceedings~~
- ~~investigations by the registrar of Co's under CrPNC~~
- The registrar may investigate the Co's affairs due to the following reasons:
- (a) Non-compliance with the provisions of the Act - If there is reasonable ground to suspect the Co does not comply with the provisions of Co's Act which may involve irregularities in the Co's affairs.
  - (b) Incomplete documents - If the documents submitted to the registrar does not disclose sufficient and/or elements of facts related to, the registrar may initiate an investigation like instruct the Co to produce books and documents containing information and necessary explanations as if the specified specify.
  - (c) Ownership of shares and debentures - If there is good reason the registrar is a) empowered to investigate the ownership of shares or debentures by demanding information from interested parties.
  - (d) The registrar is empowered to place restrictions on the transfer involved in which case the following shall be done:
    - (a) Any transfer of shares is void.
    - (b) The right to vote on the shares is not exercisable.
    - (c) The sums due on the shares are not payable.
    - (d) No other shares can be issued in respect of the shares.