

CORPORATE REGULATIONS

**Core Course
Of**

Bachelor of commerce

IV SEMESTER

CUCBCSS

2014 Admission Onwards



University of Calicut

School of distance education

331A

**CALICUT UNIVERSITY
SCHOOL OF DISTANCE EDUCATION**

STUDY MATERIAL

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CORPORATE REGULATIONS

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Module I

INTRODUCTION TO COMPANIES ACT 2013

The 1956 Act has been in need of a substantial revamp for quite some time now, to make it more contemporary and relevant to corporates, regulators and other stakeholders in India. While several unsuccessful attempts have been made in the past to revise the existing 1956 Act, there have been quite a few changes in the administrative portion of the 1956 Act. The most recent attempt to revise the 1956 Act was the Companies Bill, 2009 which was introduced in the Lok Sabha, one of the two Houses of Parliament of India, on 3 August 2009. This Companies Bill, 2009 was referred to the Parliamentary Standing Committee on Finance, which submitted its report on 31 August 2010 and was withdrawn after the introduction of the Companies Bill, 2011. The Companies Bill, 2011 was also considered by the Parliamentary Standing Committee on Finance which submitted its report on 26 June 2012. Subsequently, the Bill was considered and approved by the Lok Sabha on 18 December 2012 as the Companies Bill, 2012 (the Bill). The Bill was then considered and approved by the Rajya Sabha too on 8 August 2013. It received the President's assent on 29 August 2013 and has now become the Companies Act, 2013.

Companies Act 2013 is an Act of the Parliament of India which regulates incorporation of a company, responsibilities of a company, directors, dissolution of a company. The 2013 Act is divided into 29 chapters containing 470 sections as against 658 Sections in the Companies Act, 1956 and has 7 schedules. The Act came into force on 12 September 2013 with few changes like earlier private companies maximum number of member was 50 and now it will be 200. A new term of "one person company" is included in this act that will be a private company and with only 98 provisions of the Act notified. On 27 February 2014, the MCA stated that Section 135 of the Act which deals with corporate social responsibility will come into effect from 1 April 2014. On 26 March 2014, the MCA stated that another 183 sections will be notified from 1 April 2014. The Ministry of Company Affairs thereafter proposed a draft notification for exempting private companies from the ambit of various sections under the companies act.

Purpose/Objective of the Act

The Act broadly seeks to achieve the following objectives:

- a) To promote the development of the economy by encouraging entrepreneurship and enterprise efficiency and creating flexibility and simplicity in the formation and maintenance of companies;
- b) To encourage transparency, accountability and high standards of corporate governance;
- c) To recognize various new concepts and procedures facilitating ease of doing business while protecting interests of all the stakeholders;
- d) To enforce stricter action against fraud and gross non-compliance with company law provisions;
- e) To set up institutional structure in the form of various authorities, bodies and panels as well as by including recognition of various roles for professionals and other experts; and
- f) To cater to the need for more effective and time bound approvals and compliance requirements relevant in the present context.

Salient features of the Act

The Companies Bill 2013 contains 29 Chapters, 7 Schedules, 470 clauses as against the Companies Act, 1956 which consists of 658 sections under 13 Parts and 15 schedules. In so far as section numbers are concerned more than 200 sections have been deleted from the Companies Act, 1956. While this is on one side of it, number of provisions have been removed or discontinued or dispensed with in the existing but revised section/clause numbers. The clauses to the Companies Bill, 2013 have been categorized into Introduced, Amended sections for easy and quick reference.

Introduced

1. For the first time introduced the concept of One Person Company [Clause 2(62)].
2. Expert [Clause 2(38)]
3. Inclusive definition of Financial Statement [Clause 2(40)]
4. Entrenchment Provisions in Articles of Association (Clause 5)
5. Public Offer and Private Placement deals with issue of securities by a public and a private company (Clause 23)
6. Class Action Suits (Clause 37)
7. E-governance in all company processes (Clause 120)
8. Corporate Social Responsibility - 2% of average net profits of the previous three years (Clause 135)
9. Mandatory Internal Audit for prescribed classes of companies (Clause 138)
10. Mandatory Rotation of auditors for listed companies and other prescribed classes of companies after 1 terms of 5 consecutive years in case of individual auditor and after 2 terms of 5 consecutive years for audit firm (Clause 139)
11. 5 year tenure for auditor appointed at AGM of company (other than Government Company/ Government controlled Company) instead of annual appointment/ reappointment
12. Limited Liability Partnership eligible to be appointed as Auditor of Company (Clause 141)
13. Auditor not to render certain services (Clause 144)
14. Independent Directors [Clause 149] 1/3rd of the total number of directors as independent directors - listed public companies
15. Inclusion of at least one woman director on board (Clause 149)
16. Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year.(Clause149 (3))
17. Nomination and Remuneration committee [Clause 178(1)]
18. Stakeholders relationship committee [Clause 178(5)]
19. Key Managerial Personnel [Clause 2(51) and Clause 203] Key managerial personnel (KMP) to include Manager or Managing Director (MD) or Chief Executive Officer (CEO), Whole time director, Chief Financial Officer (CFO) and Company Secretary (CS).
20. Insider Trading of Securities Prohibited (Clause 195)
21. Statutory Status to the Serious Fraud Investigation Office (SFIO) (Clause 211)
22. Specific framework for Merger and Acquisitions of companies. Single forum for approval of mergers and acquisitions (Clause 233)
23. Merger or Amalgamation of a Company with Foreign Company (Clause 234)

24. Protection to minority shareholders, Class Action Suits for prevention of oppression and mismanagement [Clause 245]
25. Registered Valuers (Clause 247)
26. Interim administrators or Company administrators [Clause 259]
27. Mediation and Conciliation Panel (Clause 442)
28. Punishment for Fraud (Clause 447)

Following are the important highlights of Companies Act, 2013:

- New definitions have been introduced, some of which are auditing standards, associate company, CEO, CFO, control, employee stock option, financial statement, global depository receipt, Indian depository receipt, independent director, interested director, key managerial personnel, promoter, one person company, small company, turnover, voting right, etc.
- Number of existing definitions have been modified, for example, definitions of abridged prospectus, body corporate, director, expert, managing director, officer in default, etc.
- Definition of private company changed - the limit on maximum number of members increased from 50 to 200.
- The concept of One Person Company introduced. It will be a private limited company.
- The concept of Small Company introduced. It will be subject to lesser stringent regulatory framework.

Meaning and definition of company

The term "Company" was originally derived from 2 Latin words

- Com (means together)
- Panis (means bread/meal)

Thus the term "Company" was originally used for that group of person who took their meal together.

According to Section 2(20) of Companies Act, 2013, company means a company incorporated (formed and registered) under this Act or under any of the previous companies laws.

Lord Justice Lindley has defined a company as “an association of many persons who contribute money or money’s worth to a common stock and employ it in some trade or business and who share the profit and loss arising therefrom. The common stock so contributed is denoted in money and is the capital of the company. The persons who contributed in it or form it, or to whom it belongs, are members. The proportion of capital to which each member is entitled is his “share”. The shares are always transferable although the right to transfer them may be restricted.”

Features

Following are the main characteristics of company form of business:

1) Corporate personality: Being an artificial person, a company is a legal entity different and separate from its promoters, members, directors, and other stake holders. It has its own corporate name and work under that name. It

- can hold its assets in its own name,
- can sue or be sued in its own name,
- can borrow/lend funds, open bank accounts, enter into contracts in its own name

Any of its shareholders or directors or other officers cannot be held liable for the acts of the company even if he/it holds the entire share capital. Further, the shareholders or individual

directors are not the agents of the company and so they cannot bind company by their personal acts. Company means a company incorporated (formed and registered) under this Act or under any of the previous companies laws (like Companies Act, 1956).

2) **Limited liability:** According to Section 3(2), a company may be

- **a company limited by shares**

A company limited by shares means the liability of the members towards the company is limited to amount unpaid on their shares only.

- **a company limited guarantee**

A company limited guarantee means the liability of the members towards the company is limited to the amount of guarantee prescribed in the MOA. Further, in such companies the members can be made liable only in the event of winding up of the company.

- **an unlimited company**

An unlimited company means here the liability of the members is unlimited towards company.

But, in none of the above cases, members can be made liable to anyone else except company for any act of the company or directors.

3) **Perpetual Succession:** Perpetual Succession means existence forever. According to Section 9, from the date of incorporation mentioned in the certificate of incorporation, every company has perpetual succession. A company is an artificial person created by law; therefore it can be dissolved or wind up by law. In other words, members may come and go, but company can go forever.

4) **Separate Property:** A company is separate legal entity having its own corporate name. It can hold properties in its own name. No member can claim himself to be the owner of the company's property during its existence. In other words, the property of a company is not the property of the individual members.

5) **Transferability of Shares:** According to Section 44 of Companies Act, 2013

- the shares or debentures or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company.

According to Section 2(68) (i) of Companies Act, 2013, private company may restricts the right to transfer its shares through its AOA. But a generally, a public company cannot restrict the transfer of its shares.

6) **Capacity to sue and be sued:** A company is separate legal entity having its own corporate name. Therefore, according to Section 9, company may sue or may be sued in its own name (not in the name of its directors or members).

7) **Contractual Rights:** A company is an artificial person created by law. Therefore like natural person, it can enter into contract in its own name through its agent (directors or other authorised persons).

8) **Demutualization (separation of management and ownership):** Demutualization means separation of management and ownership. Under company form of business, management (directors) is different from owners (members). Members of the company do not get engaged into day-to-day business of the company. Members appoint directors who run company on their behalf. Such directors may or may not be members of the company.

9) **Common Seal:** On incorporation, a company may have a common seal. Since a company has no physical existence, therefore it has to act through its agents only. To put restriction on the misuse of the powers of those agents, contracts entered into by anyone on behalf of the company may be under the common seal of the company. Thus common seal acts as official

signature of the company. Now, after Companies (Amendment) Act, 2015, it is not compulsory for the company to have common seal. Thus a company may or may not have common seal.

Kinds of companies

The Companies Act, 2013 provides for the kinds of companies that can be promoted and registered under the Act. The three basic types of companies which may be registered under the Act are:

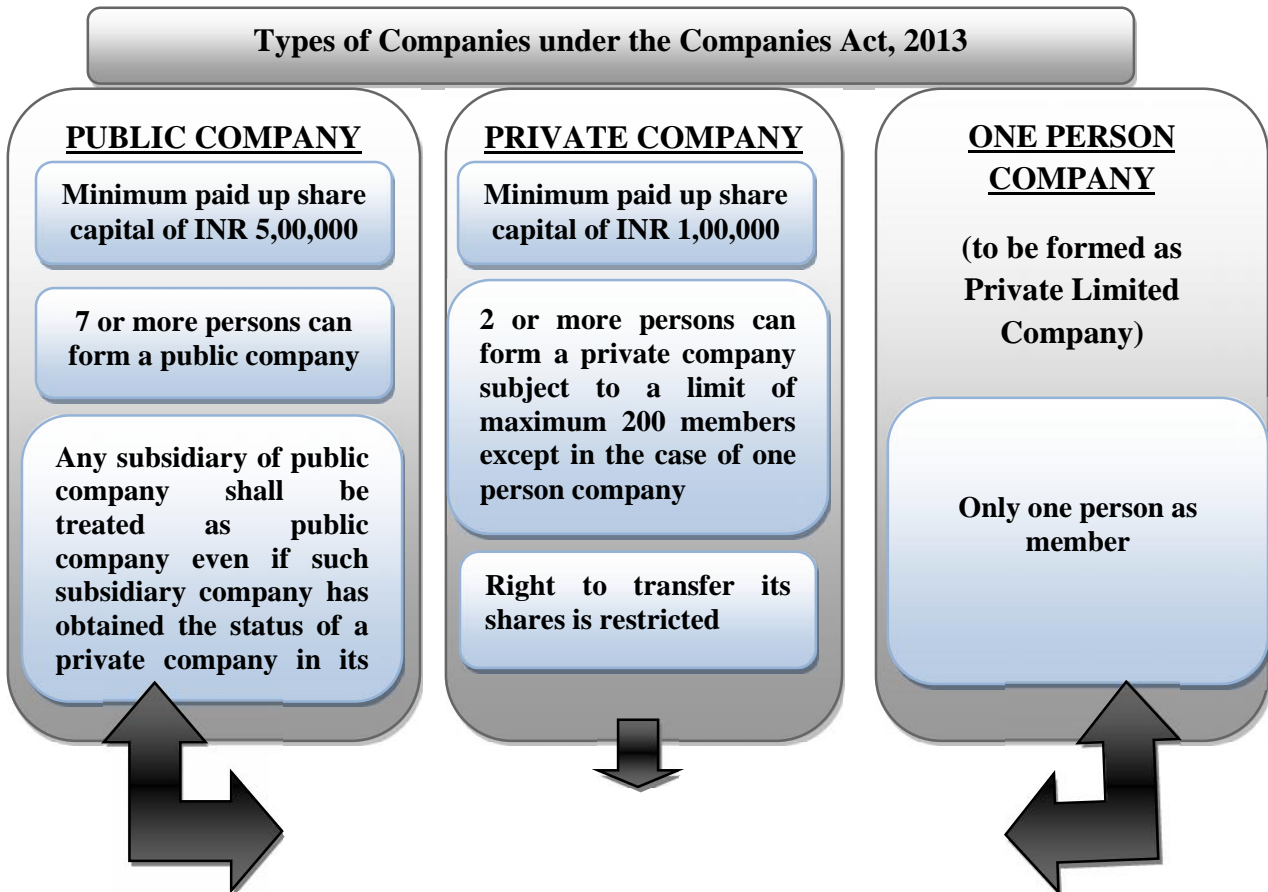
- (a) Private Companies;**
- (b) Public Companies; and**
- (c) One Person Company (to be formed as Private Limited).**

Section 3 (1) of the Companies Act 2013 states that a company may be formed for any lawful purpose by—

- (a)** seven or more persons, where the company to be formed is to be a public company;
- (b)** two or more persons, where the company to be formed is to be a private company; or
- (c)** 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

Section 3 (2) A company formed under sub-section (1) may be either—

- (a)** a company limited by shares; or **(b)** a company limited by guarantee; or **(c)** an unlimited company.



Classification of Companies

- (i) **Classification on the basis of Incorporation:** There are three ways in which companies may be incorporated.
- (a) **Statutory Companies:** These are constituted by a special Act of Parliament or State Legislature. The provisions of the Companies Act, 2013 do not apply to them. Examples of these types of companies are Reserve Bank of India, Life Insurance Corporation of India, etc.
 - (b) **Registered Companies:** The companies which are incorporated under the Companies Act, 2013 or under any previous company law, with ROC fall under this category.
- (ii) **Classification on the basis of Liability:** Under this category there are three types of companies:
- (a) **Unlimited Liability Companies:** In this type of company, the members are liable for the company's debts in proportion to their respective interests in the company and their liability is unlimited. Such companies may or may not have share capital. They may be either a public company or a private company.
 - (b) **Companies limited by guarantee:** A company that has the liability of its members limited to such amount as the members may respectively undertake, by the memorandum, to contribute to the assets of the company in the event of its being wound-up, is known as a company limited by guarantee. The members of a guarantee company are, in effect, placed in the position of guarantors of the company's debts up to the agreed amount.
 - (c) **Companies limited by shares:** A company that has the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them is termed as a company limited by shares. For example, a shareholder who has paid Rs. 75 on a share of face value ` 100 can be called upon to pay the balance of Rs. 25 only. Companies limited by shares are by far the most common and may be either public or private.
- (iii) **Other Forms of Companies**
- (a) Associations not for profit having license under Section 8 of the Companies Act, 2013 or under any previous company law;
 - (b) Government Companies;
 - (c) Foreign Companies;
 - (d) Holding and Subsidiary Companies;
 - (e) Associate Companies/Joint Venture Companies
 - (f) Investment Companies
 - (g) Producer Companies.
 - (h) Dormant Companies

Private Company

According to Section 2(68) of the Companies Act, 2013 “Private Company” means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles, –

- a) restricts the right to transfer its shares;
- b) except in case of One Person Company, limits the number of its members to two hundred:

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 –

- a) persons who are in the employment of the company; and
- b) 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; and
- c) prohibits any invitation to the public to subscribe for any securities of the company;

Public Company

According to Section 2(71) of the Companies Act, 2013 “public company” means a company which –

- a) is not a private company;
- b) has a minimum paid-up share capital of five lakh rupees or such higher paid-up 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 purpose of this Act even where such subsidiary company continues to be a private company in its articles.

As per section 3 (1) (a), a public company may be formed for any lawful purpose by seven or more persons, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

Associate Company

As per Section 2(6), “Associate Company”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation to section 2(6) provides that “significant influence” means control of at least twenty per cent of total share capital, or of business decisions under an agreement.

Dormant Company

The Companies Act, 2013 has recognized a new set of companies called as dormant companies.

As per section 455 (1) where a company 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 company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

- Explanation appended to section 455(1) says that for the purposes of this section,—
 - (i) “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 during the last two financial years;
 - (ii) “significant accounting transaction” means any transaction other than—
 - (a) payment of fees by a company to the Registrar;
 - (b) payments made by it to fulfil the requirements of this Act or any other law;
 - (c) allotment of shares to fulfil the requirements of this Act; and
 - (d) payments for maintenance of its office and records.
- As per section 455(2), the Registrar on consideration of the application shall allow the status of a dormant company to the applicant and issue a certificate in such form as may be prescribed to that effect.
- Section 455(3) provides that the Registrar shall maintain a register of dormant companies in such form as may be prescribed.
- According to section 455(4), in case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.
- Further a dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed. [Section 455(5)]

- The Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section. [Section 455(6)]

One Person Company

The 2013 Act introduces a new type of entity to the existing list i.e. apart from forming a public or private limited company, the 2013 Act enables the formation of a new entity a 'one-person company' (OPC). An OPC means a company with only one person as its member [section 3(1) of 2013 Act]. The draft rules state that only a natural person who is an Indian citizen and resident in India can incorporate an OPC or be a nominee for the sole member of an OPC.

Small Company

A small company has been defined as a company, other than a public company.

- 1) Paid-up share capital of which does not exceed 50 lakh INR or such higher amount as may be prescribed which shall not be more than five crore INR
- 2) Turnover of which as per its last profit-and-loss account does not exceed two crore INR or such higher amount as may be prescribed which shall not be more than 20 crore INR:

As set out in the 2013 Act, this section will not be applicable to the following:

- A holding company or a subsidiary company
- A company registered under section 8
- A company or body corporate governed by any special Act [section 2(85) of 2013 Act]

Government Company

Section 2(45) defines a "Government Company" as any company in which not less than fifty one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

Lifting or Piercing of corporate veil

A company is an artificial person different for its members and directors. In the eyes of law it has a separate corporate personality. It has its own corporate name. It works under that name. In normal circumstances company cannot be considered as agent or trustee of its members. Therefore members and directors of a company cannot be held liable for any act of that company.

This concept is known as Corporate Veil. Means only company can be held liable for an act done in the name of the company. But, as per company laws, a company can be created for lawful purpose only. If a company is created for

- dishonest use
- fraudulent purpose
- unlawful purpose
- evading taxes
- any other purpose which is against the public interest than law can identify the persons who are behind it and are responsible for any fraud/unlawful act.

This concept is called **“Lifting of Corporate Veil”**. Lifting the corporate veil means disregarding the corporate personality and looking behind the real person who are in the control of the company. In other words, where a fraudulent and dishonest use is made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality. In this regards the court will break through the corporate veil. According to the definition of Black Law Dictionary, "the piercing the corporate veil is the judicial act of imposing liability on otherwise immune corporate officers, Directors and shareholders for the corporation's wrongful acts".

In the following circumstances different courts found it necessary to lift the corporate veil and punish the actual persons who did wrong or unlawful acts under the name of company:

Protection of Revenue	The Court may ignore the Separate Legal Entity status of a Company, where it is used for tax invasion or circumventing tax obligation.
Determination of enemy character of the Company	Company being an artificial person cannot be enemy or friend. But during war, it may become necessary to lift the corporate veil and see the persons behind it to determine whether they are friends or enemy. This is due to the reason that though a company enjoys Separate Legal Entity but its affairs are run by individuals.
Prevention of fraud	Where a Company is used for committing frauds or improper conduct, Court may lift the corporate veil and look at the realities of the situation.
Protection of public policy	The Court shall lift the Corporate Veil without any hesitation to protect the public policy and prevent transaction opposed to public policy.
Company mere sham or cloak	Where the Company is a mere sham and was really a ploy used for committing illegalities and to defraud people, the Court shall lift the Corporate Veil.
Where a Company acts as an agent of its shareholders	If there is an arrangement between the shareholders and a Company to the effect that the Company will act as agent of shareholders for the purpose of carrying on the business, the business is essentially of that of the shareholders and will have unlimited liability.
Avoidance of Welfare Legislation	Where a Company tries to avoid its legal obligations, the corporate veil shall be lifted to look at the real picture.
To punish for contempt of Court	Company being an artificial person cannot disobey the orders of the Court. Therefore, the persons at fault should be identified.

Module II

FORMATION OF COMPANIES

- 1) A company may be formed for any lawful purpose by—
- a) seven or more persons, where the company to be formed is to be a public company;
 - b) two or more persons, where the company to be formed is to be a private company; or
 - c) 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:

Provided that the memorandum of One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles:

Provided further that such other person may withdraw his consent in such manner as may be prescribed:

Provided also that the member of One Person Company may at any time change the name of such other person by giving notice in such manner as may be prescribed:

Provided also that it shall be the duty of the member of One Person Company to intimate the company the change, if any, in the name of the other person nominated by him by indicating in the memorandum or otherwise within such time and in such manner as may be prescribed, and the company shall intimate the Registrar any such change within such time and in such manner as may be prescribed:

Provided also that any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

- 2) A company formed under sub-section (1) may be either—
- a) a company limited by shares; or
 - b) a company limited by guarantee; or
 - c) an unlimited company.

Promotion

The term 'promotion' is a term of business and not of law. It is frequently used in business. Haney defines promotion as "the process of organizing and planning the finances of a business enterprise under the corporate form". Gerstenberg has defined promotion as "the discovery of business opportunities and the subsequent organization of funds, property and managerial ability into a business concern for the purpose of making profits therefrom".

First of all the idea of carrying on a business is conceived by promoters. Promoters are persons engaged in, one or the other way; in the formation of a company. Next, the promoters make detailed study to assess the feasibility of the business idea and the amount of financial and other resources required. When the promoters are satisfied about practicability of the business idea, they take necessary steps for assembling the business elements and making provision of the funds required to launch the business enterprise. Law does not require any qualification for the promoters.

Promoter

Under Companies Act, 2013 promoter means a person who -

- who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

- who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act: Provided that nothing in sub-clauses (b) and (c) shall apply to a person who is acting in a professional capacity; (Clause 2(69))

Role of promoters

The promoters stand in a fiduciary position towards the company about to be formed. From the fiduciary position of promoters, the following important results follow:

1. A promoter cannot be allowed to make any secret profits. If any secret profit is made in violation of this rule, the company may, on discovering it, compel the promoter to account for and surrender such profit.
2. The promoter is not allowed to derive a profit from the sale of his own property to the company unless all material facts are disclosed. If he contracts to sell his own property to the company without making a full disclosure, the company may either rescind the sale or affirm the contract and recover the profit made out of it by the promoter.
3. The promoter must not make an unfair or unreasonable use of his position and must take care to avoid anything which has the appearance of undue influence or fraud.

Incorporation of company

A company is an association of both natural and artificial persons incorporated under the existing law of a country. In terms of the Companies Act, 2013 a “company means a company incorporated under the Companies Act, 2013 (the Act) or under any of the previous company law” [Section 2(20)].

In common law, a company is a “legal person” or “legal entity” separate from, and capable of surviving beyond the lives of its members.

Procedure for Incorporation of company

- (1) There shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the following documents and information for registration, namely:—
 - a) the memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;
 - b) a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with;
 - c) an affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that 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 preceding 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;
 - d) the address for correspondence till its registered office is established;
 - e) the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate, such particulars as may be prescribed;
 - f) the particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential

- address, nationality and such other particulars including proof of identity as may be prescribed; and
- g)* 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.
- (2) The Registrar on the basis of documents and information filed under sub-section (1) shall register all the documents and information referred to in that subsection 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.
- (3) On and from the date mentioned in the certificate of incorporation issued under subsection (2), 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.
- (4) The company shall maintain and preserve at its registered office copies of all documents and information as originally filed under sub-section (1) till its dissolution under this Act.
- (5) 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 under section 447.
- (6) Without prejudice to the provisions of sub-section (5) 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 clause (b) of subsection (1) shall each be liable for action under section 447.
- (7) Without prejudice to the provisions of sub-section (6), where a 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 Tribunal may, on an application made to it, on being satisfied that the situation so warrants,—
- a)* 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
- b)* direct that liability of the members shall be unlimited; or
- c)* direct removal of the name of the company from the register of companies; or
- d)* pass an order for the winding up of the company; or
- e)* pass such other orders as it may deem fit:
- Provided that before making any order under this sub-section,—
- 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.

Capital subscription

Kinds of share capital

The share capital of a company limited by shares shall be of two kinds, namely:—

- a)** equity share capital—
- (i)* with voting rights; or
 - (ii)* with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; and
- b)** preference share capital:

Provided that nothing contained in this Act shall affect the rights of the preference shareholders who are entitled to participate in the proceeds of winding up before the commencement of this Act.

Explanation.—For the purposes of this section,—

- “Equity share capital”, with reference to any company limited by shares, means all share capital which is not preference share capital;
- “Preference share capital”, with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to—
 - a) payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and
 - b) repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company;
- Capital shall be deemed to be preference capital, notwithstanding that it is entitled to either or both of the following rights, namely:—
 - a) that in respect of dividends, in addition to the preferential rights to the amounts specified in sub-clause (a) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;
 - b) that in respect of capital, in addition to the preferential right to the repayment, on a winding up, of the amounts specified in sub-clause (b) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

Commencement of business

The provisions with regard to Certificate of Commencement of business have been dispensed with under the Companies Bill, 2013. Only declaration and verification is required by the Public Company under the Companies Bill, 2013. These provisions were as follows:

- (1) A company having a share capital shall not commence any business or exercise any borrowing powers unless—
 - a) a declaration is filed by a director in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him and the paid-up share capital of the company is not less than five lakh rupees in case of a public company and not less than one lakh rupees in case of a private company on the date of making of this declaration; and
 - b) the company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12.
- (2) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty which may extend to five thousand rupees and every officer who is in default shall be punishable with fine which may extend to one thousand rupees for every day during which the default continues.
- (3) Where no declaration has been filed with the Registrar under clause (a) of subsection (1) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.

Pre-incorporation and provisional contracts

The promoter is obligated to bring the company in the legal existence and to ensure its successful running; and in order to accomplish his obligation he may enter into some contract on behalf of prospective company. These types of contract are called ‘Pre-incorporation Contract’.

Nature of Pre-incorporation contract is slightly different to ordinary contract. Nature of such contract is bilateral, be it has the features of tripartite contract. In this type of contract, the promoter furnishes the contract with interested person; and it would be bilateral contract between them. But the remarkable part of this contract is that, this contract helps the prospective company, who is not a party to the contract.

Provisional contract as the expression 'provisional' indicates, is a 'contract in waiting'. Such contracts are meant only for public companies; because a public company has dual life span – one after incorporation and another after commencement of business; or in other words one before commencement of business and another after commencement of business. A contract entered into before commencement of business is 'provisional' in nature but becomes 'regular and enforceable' automatically on its obtaining the certificate of commencement of business. However, the company doesn't obtain the said certificate of commencement of business, the contract will continue to remain in abeyance.

Memorandum of Association

Memorandum of Association (MOA) is the supreme public document which contains all those information that are required for the company at the time of incorporation. It can also be said that, a company cannot be incorporated without memorandum. At the time of registration of the company, it needs to be registered with the ROC (Registrar of Companies). It contains the objects, powers and scope of the company, beyond which a company is not allowed to work, i.e. it limits the range of activities of the company.

Any person who deals with the company like shareholders, creditors, investors, etc. is presumed to have read the company, i.e. they must know the company's objects and its area of operations. The Memorandum is also known as the charter of the company. There are six conditions of the Memorandum:

- **Name Clause** – Any company cannot register with a name which CG may think unfit and also with a name that too nearly resembles with the name of any other company.
- **Situation Clause** – Every company must specify the name of the state in which the registered office of the company is located.
- **Object Clause** – Main objects and auxiliary objects of the company.
- **Liability Clause** – Details regarding the liabilities of the members of the company.
- **Capital Clause** – Total capital of the company.
- **Subscription Clause** – Details of subscribers, shares taken by them, witness etc.

Definition

As per Section 2(56) of the Companies Act,2013 "memorandum" means the 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.

Alteration of memorandum

- (1) Save as provided in section 61, a company may, by a special resolution and after complying with the procedure specified in this section, alter the provisions of its memorandum.
- (2) Any change in the name of a company shall be subject to the provisions of subsections (2) and (3) of section 4 and shall not have effect except with the approval of the Central Government in writing: Provided that no such approval shall be necessary where the only change in the name of the company is the deletion therefrom, or addition thereto, of the word Private, consequent on the conversion of any one class of companies to another class in accordance with the provisions of this Act.
- (3) When any change in the name of a company is made under sub-section (2), the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.

- (4) The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.
- (5) The Central Government shall dispose of the application under sub-section (4) within a period of sixty days and before passing its order may satisfy itself that the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company or that the sufficient provision has been made by the company either for the due discharge of all its debts and obligations or that adequate security has been provided for such discharge.
- (6) Save as provided in section 64, a company shall, in relation to any alteration of its memorandum, file with the Registrar—
 - a) the special resolution passed by the company under sub-section (1);
 - b) the approval of the Central Government under sub-section (2), if the alteration involves any change in the name of the company.
- (7) Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same, and the Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.
- (8) 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—
 - a) the details, as may be prescribed, in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change;
 - b) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.
- (9) The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution in accordance with clause (a) of sub-section (6) of this section.
- (10) No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.
- (11) Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

Doctrine of ultravires

‘Ultra’ means beyond and ‘vires’ means powers. The term ultra vires a company means that the doing of the act is beyond the legal power and authority of the company. The doctrine of ultra vires is important in defining the limits of the powers conferred on the company by its Memorandum of Association. According to this doctrine, the vires (power) of a company to enter into a contract or transaction is limited by the ambit of the Objects Clause of the Memorandum and the provisions of the Companies Act. Whatever is not permitted by the Objects Clause and the Act, is prohibited by the doctrine of ultra vires. If a company engages in any activity or enters into any contract which is ultra vires (outside the power conferred by) the Memorandum or Act, it will be null and void so far as the company is concerned and it cannot be subsequently ratified or validated even if all the shareholders give their consent. Thus under this doctrine, a company has powers to engage in only such activities or enter into such transactions:

- Which are essential to the attainment of the objects specified in the Memorandum;
- Which are reasonably and fairly incidental to the main objects; and
- Which are permitted by the provisions of the Companies Act.

Effects of Ultra Vires Transactions

If a company enters into transactions, which are ultra vires, it will have the following effects:

- (1) **Injunction:** Whenever a company goes beyond the scope of the object clause, any of its members can get an injunction from the court to restrain the company from undertaking the ultra vires act.
- (2) **Personal Liability of Directors:** If the transaction is ultra vires, for instance, if the funds of the company are misapplied, the directors will be held personally liable.
- (3) **Ultra Vires Contracts:** Contracts entered into by a company, which are ultra vires, are void ab initio and unenforceable.
- (4) **Property Acquired Ultra Vires:** If a company acquires any property under an ultra vires transaction, it has the right to hold the property and protect it against damage by other persons.
- (5) **Ultra Vires Torts:** A company is not liable for torts committed by its agents or employees in the course of ultra vires transactions.

Articles of Association

Articles of Association (AOA) is the secondary document, which defines the rules and regulations made by the company for its administration and day to day management. In addition to this the articles contain the rights, responsibilities, powers and duties of members and directors of the company. It also includes the information about the accounts and audit of the company.

Every company must have its own articles, however, a public company limited by shares can adopt Table A instead of Articles of Association. It comprises of all the necessary details regarding the internal affairs and the management of the company. It is prepared for the persons inside the company, i.e. members, employees, directors, etc. The governance of the company is done according to the rules prescribed in it. The companies, can frame its articles of association as per their requirement and choice.

Definition

As per Section 2(5) of the Companies Act, 2013 “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.

Alteration of Articles of Association of a Company

Section 14 of the Companies Act, 2013 lays down that subject to the provisions of the Act and to the conditions contained in its memorandum, a company may, by a special resolution, alter its articles.

Every alteration of articles shall be filed with the Registrar together with a printed copy of the altered articles within a period of fifteen days. [Section 14(2)].

Any alteration of the articles so registered, shall be valid as if it were originally in the articles. A company may alter its articles in accordance with the above provisions in any of the manners mentioned below:

- (i) by adoption of new set of articles;
- (ii) by addition/insertion of a new article;
- (iii) by deletion of an article;
- (iv) by amendment of a specific article; or
- (v) by substitution of a specific article.

Procedure for Altering Articles of Association

A company which proposes to alter its articles of association has to follow the procedure detailed below:

- (1) Convene and hold a Board meeting to –
 - a) Consider and decide which of the articles are to be altered and pass a formal resolution in this respect.
 - b) Fix time, date and venue for holding a general meeting of the company for passing a special resolution as required by Section 14 of the Companies Act, 2013.
 - c) Approve notice, agenda and explanatory statement to be annexed to the notice of the general meeting as per 102 of the Act.
 - d) Authorise the Company Secretary or any other competent officer of the company to issue notice of the general meeting as approved by the Board.
- (2) On the conclusion of the Board meeting, send to the stock exchanges, where the securities of the company are listed, particulars of the proposed alteration of the articles of association of the company.
- (3) Issue notice of the general meeting along with the explanatory statement, to all the members, directors and the auditor of the company. Also forward three copies of the notice of the general meeting to the concerned stock exchanges as per the Listing Agreement.
- (4) Hold the general meeting and have the special resolution passed.

Note: If the company is a listed company and the alteration of articles of association relates to insertion of the provisions defining a private company then ensure that the Special Resolution as aforesaid is passed only through postal ballot.
- (5) Forward a copy of the proceedings of the general meeting to the concerned stock exchanges as per the Listing Agreement.
- (6) File with the ROC, Form MGT – 14 along with a certified copy of the special resolution and the explanatory statement annexed to the notice of the general meeting at which the resolution was passed and a copy of the Articles of Association, within fifteen days of the passing of the resolution along with the prescribed filing fee.
- (7) Make necessary changes in all the copies of the articles of association of the company lying in the office of the company.

Distinction between Memorandum and Articles

The major differences between memorandum of association and articles of association are given as under:

Basis	Memorandum of Association	Articles of Association
Condition	The memorandum contains the conditions upon which alone the company is granted incorporation. These conditions are fundamentals and unalterable.	The articles are the internal regulations of the company and over these the members have full control and they can be easily altered.
Power	The memorandum cannot give the company power to do anything contrary to the provision of the Companies Act.	The articles are not only limited by the act, but they are also subsidiary to the memorandum and cannot exceed the powers contained therein.
Contract	The memorandum is in the nature of a contract between the company and the outsider dealing with it.	The articles do not create a contract between the company and the outsiders.
Objectives	The memorandum contains the objectives and powers of the company.	The articles provide the regulations by which those objectives and powers are to be carried into effect.
Provision	A person dealing with a company is supposed to know the provisions of its memorandum.	A person dealing with a company is supposed to know the provision of its articles, if there is a breach of those provisions.
Alteration	The memorandum cannot be altered except as regards certain specified particulars and in accordance with the provisions of the law.	The articles can be altered by a special resolution at any time.
Relation	The memorandum limits the area beyond which articles cannot go.	In this sense, articles is subsidiary to the memorandum.
Validity	The memorandum is the dominant instrument and controls articles.	Any provision, contrary to memorandum of association, is invalid.
Deed of the company	Every company must have its memorandum of association.	A company limited by shares may have its own articles of association.
Registration	Memorandum must be registered at the time of incorporation.	The articles may or may not be registered.
Scope	The memorandum is the charter, which defines and confines powers and limitations of the company.	The articles indicate duties, rights and powers of members, who are entrusted with the responsibility of running the administration and management.

Constructive notice of Memorandum and Articles

Constructive notice is the legal fiction that signifies that a person or entity should have known, as a reasonable person would have, even if they have no actual knowledge of it. For example, if it is not possible to serve notice personally then a summons may be posted on a court house bulletin board or legally advertised in an approved newspaper. The person is considered to have received notice even if they were not aware of it.

In companies law the doctrine of constructive notice is a doctrine where all persons dealing with a company are deemed (or "construed") to have knowledge of the company's articles of

association and memorandum of association. The doctrine of indoor management is an exception to this rule.

Doctrine of Constructive Notice

The Memorandum and Articles, on registration, assume the character of public documents. The office of the Registrar is a public office and documents registered there are open and accessible to the public at large. Therefore, every outsider dealing with the company is deemed to have notice of the contents of the Memorandum and Articles. This is known as Constructive Notice of Memorandum and Articles.

Under the doctrine of 'constructive notice', every person dealing or proposing to enter into a contract with the company is deemed to have constructive notice of the contents of its Memorandum and Articles. Whether he actually reads them or not, it is presumed that he has read these documents and has ascertained the exact powers of the company to enter into contract, the extent to which these powers have been delegated to the directors and the limitations to such powers. He is presumed not only to have read them, but to have understood them properly. Consequently, if a person enters into a contract which is ultra vires the Memorandum, or beyond the authority of the directors conferred by the Articles, then the contract becomes invalid and he cannot enforce it, notwithstanding the fact that he acted in good faith and money was applied for the purposes of the company.

Doctrine of indoor managementThe doctrine of indoor management follows from the doctrine of 'constructive notice' laid down in various judicial decisions. The hardships caused to outsiders dealing with a company by the rule of 'constructive notice' have been sought to be softened under the principle of 'indoor management'. It affords some protection to the outsiders against the company.

According to this doctrine, after satisfying themselves that the proposed transaction is intra vires the memorandum and articles, persons dealing with the company are not bound to enquire whether the internal proceedings were correctly followed. They are entitled to assume that the internal proceedings relating to the contract are regular as per the memorandum and articles. When an outsider enters into a contract with the company, he is presumed to have knowledge of the provisions of memorandum and articles as per the doctrine of constructive notice. But he is not required to go beyond that and to enquire whether the internal proceedings required by these documents have been regularly followed by the company. They need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner. This is known as the Doctrine of Indoor Management.

Exceptions to the Doctrine of Indoor Management

No benefit under the doctrine of indoor management can be claimed by a person under the following circumstances:

- 1) Where a person dealing with the company has actual or constructive notice of any irregularity in the internal proceedings of the company.
- 2) Where a person did not in fact consult the Memorandum and Articles of the company and consequently did not act on knowledge of these documents.
- 3) Where a person dealing with the company was negligent and, had he not been negligent, could have discovered the irregularity by proper enquiries.
- 4) Where a person dealing with the company relies upon a forged document or the act done by the company is void.

- 5) Where a person enters into a contract with an agent or officer of the company and the act of the agent/officer is beyond the authority granted to him

Prospectus

According to Companies Act, 2013 define “prospectus” means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate [Clause (70) of Section 2 of this Bill].

Matters to be stated in Prospectus (section 26):

A prospectus may be issued by or behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company.

Contents or Information in Prospectus:

Every prospectus shall state following information:-

- (1) names and addresses of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed;
- (2) dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time;
- (3) a statement by the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred and disclosure of details of all monies including utilised and unutilised monies out of the previous issue in the prescribed manner;
- (4) details about underwriting of the issue;
- (5) consent of the directors, auditors, bankers to the issue, expert’s opinion, if any, and of such other persons, as may be prescribed;
- (6) the authority for the issue and the details of the resolution passed there for;
- (7) procedure and time schedule for allotment and issue of securities;
- (8) capital structure of the company in the prescribed manner;
- (9) main objects of public offer, terms of the present issue and such other particulars as may be prescribed;
- (10) main objects and present business of the company and its location, schedule of implementation of the project;
- (11) particulars relating to—
 - a) management perception of risk factors specific to the project;
 - b) gestation period of the project;
 - c) extent of progress made in the project;
 - d) deadlines for completion of the project; and
 - e) any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company;
- (12) minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash;
- (13) details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed; and
- (14) Disclosures in such manner as may be prescribed about sources of promoter’s contribution.

Statement in lieu of prospectus

Statement in lieu of prospectus is similar to actual prospectus but without the invitation to the public for subscribing to the shares of the company. This statement is prepared when a company issues shares by

private placement. The statement in lieu of prospectus is prepared for the purpose of record, and it is filed with the Registrar of Companies before allotment of share.

1. The prospectus contains a summary of the past, present and prospects of the company
2. The prospectus expressly invites the public to buy shares issued by the company
3. It is the basis of share issue. The contents of prospectus are considered legal evidence in the event of dispute between share holder and the company.
4. A misleading clause in the prospectus will be taken seriously by the courts.

Liabilities for misstatement

Where a prospectus, issued, circulated or distributed under this Chapter, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorizes the issue of such prospectus shall be liable under section 447:

Provided that nothing in this section shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.

Civil liability for misstatements in prospectus

- (1) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who—
 - a) is a director of the company at the time of the issue of the prospectus;
 - b) has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time;
 - c) is a promoter of the company;
 - d) has authorised the issue of the prospectus; and
 - e) is an expert referred to in sub-section (5) of section 26, shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage.
- (2) No person shall be liable under sub-section (1), if he proves—
 - a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
 - b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.
- (3) Notwithstanding anything contained in this section, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in subsection (1) shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

Module III

SHARE CAPITAL

A company, being an artificial person, cannot generate its own capital that has to be collected from several persons. These persons are called shareholders and their contribution is called share capital. In other words, when total capital of a company is divided into shares, then it is called share capital. It constitutes the basis of the capital structure of a company. In other words, the capital collected by a joint stock company for its business operation is known as share capital.

Meaning and definition of shares

A share is the interest of a member in a company. Section 2(84) of the Companies Act, 2013 (hereinafter referred to as Act) “share” means a share in the share capital of a company and includes stock. It represents the interest of a shareholder in the company, measured for the purposes of liability and dividend. It attaches various rights and liabilities.

Definition

Section 2(84) of the Act defines a share as “a share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied.

Nature of share

- (a) A share is a right to a specified amount of the share capital of a company
- (b) A share is the interest of a shareholder in the company measured by a sum of money
- (c) A share is a right to participate in the profits made by a company
- (d) A share is not a sum of money but a bundle of rights and liabilities; it is an interest measured by a sum of money. These rights and liabilities are regulated by the articles of a company.
- (e) A share or other interest of any member in a company is a movable property transferable in the manner provided by the articles of the company. (Sec 44)
- (f) In India, a share is regarded as goods. According to the Sale of Goods Act, 1930, “Goods” means any kind of movable property other than actionable claim and money, and includes stock and Shares.
- (g) Every share in a company having a share capital shall be distinguished by its distinctive number (Sec 45)

KINDS OF SHARES

Section 43 of the Act provides that the share capital of a company limited by shares shall be of two kinds:

- (a) **Equity share capital**— (i) with voting rights; or (ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed

“Equity share capital”, with reference to any company limited by shares, means all share capital which is not preference share capital.

- (b) **Preference share capital:**

“preference share capital”, with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to—

- (i) Payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and
- (ii) Repayment, in the case of a winding up or repayment of capital, of the amount of the share capital Paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the Company

According to section 55 of the Act, a company limited by shares cannot issue any preference shares which are irredeemable. However a company limited by shares may, if so authorised by its articles, issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue.

Difference between Equity and Preference Shares

- 1) **Rate of Dividend:** Preference shares are entitled to a fixed rate of dividend. The rate of dividend on equity shares depends upon (a) the amount of profit available (b) funds requirements of the company for future expansion etc.
- 2) **Preference in Dividend payment:** Dividend on the preference shares is paid in preference to the equity shares. The dividend on equity shares is paid only after the preference dividend has been paid.
- 3) **Repayment of Capital:** In case of winding up of company, preference share holders get preference over equity share holders as to the payment of capital.
- 4) **Nature of Dividend:** Dividend on preference share may be cumulative. It is not in case of equity shares.
- 5) **Voting Right:** The voting rights of preference shareholders are restricted. An equity shareholder can vote on all matters affecting the company.
- 6) **Bonus/Right Issue:** No bonus shares/right shares are issued to preference share holders while the same are issued to the company's existing equity shareholders.
- 7) **Redemption:** Redeemable preference shares may be redeemed by the company. Equity shares cannot be redeemed except under a scheme involving reduction of capital or buy back of its own shares.
- 8) **Nature of Voting right:** the Voting right of a preference shareholders on a poll shall be in proportion to his share in the paid-up preference share capital of the company. In case of an equity shareholder, it shall be in proportion to his share in the paid up equity share capital of the company.

Public Issue of Shares

Public Issue is the process of selling and marketing of securities for subscription by public by issue of prospectus. The Issuer has to comply with the provisions of the SEBI (ICDR) regulations, 2009 along with the provisions of the Companies Act, 2013 and the SCR Act, 1956 and the Listing agreement.

Types of Public Issue:

When the offer of securities is made to the general public inviting them to take up securities in the company and thereby enabling them to be a part of the shareholding of the Company, it becomes a public issue. Public Issues can be in the nature of an Initial Public Offering (IPO) or a Follow on Public Offering (FPO).

The issue of shares may be at premium, discount (as sweat equity shares)

A company may issue securities at a premium if it is able to sell them at a price above par or above nominal value. The Companies Act, 2013, does not stipulate any conditions or restrictions regulating the

issue of securities by a company at a premium But the Act does impose conditions regulating the utilization of the amount of premium collected on securities.

Section 52 (1) of the companies Act 2013 states that when a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a “securities premium account” and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid up share capital of the company.

What are the purposes for which the securities premium amount may be used?

As per Section 52(2) of the Act, the securities premium can be utilized only for:

- (a) Issuing fully paid bonus shares to members;
- (b) Writing off the balance of the preliminary expenses of the company;
- (c) Writing off commission paid or discount allowed, or the expenses incurred on issue of shares or Debentures of the company;
- (d) For providing for the premium payable on redemption of any redeemable preference shares or Debentures of the company; or
- (e) For the purchase of its own shares or other securities under section 68.

In addition the Section 52(3) states that the securities premium account may, notwithstanding anything contained in sub-Sections (1) and (2), be applied by such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133,—

- (a) In paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or
- (b) In writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or
- (c) For the purchase of its own shares or other securities under section 68.

The peculiar features of securities premium are

- (a) The premium cannot be treated as profit and as such the amount of premium is not available for distribution as dividend.
- (b) The amount of premium whether received in cash or in kind must be kept in a separate account, known as the “Securities Premium Account”.
- (c) The amount of premium is to be maintained with the same sanctity as the share capital.

Whether a company can issue shares at discount?

Section 53 states that except as provided in section 54 (i.e. issue of sweat equity shares), a company shall not issue shares at a discount. Any such issue shall be void. When a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer 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 one lakh rupees but which may extend to five lakh rupees, or with both.

ALLOTMENT OF SHARES & IRREGULAR ALLOTMENT

Allotments of shares means acceptance by the company of the offer made by the applicants to take up the shares applied for. The information of allotment is given to the shareholders by a letter known as ‘Allotment Letter’, informing the amount to be called at the time of allotment and the date fixed for payment of such money. It is on allotment that share come into existence. Thus, the application money on

the share after allotment becomes a part of share capital. Decision to allot the share is taken by the Board of Directors in consultation with the stock exchange. After the closure of the subscription list, the bank sends all applications to the company. On receipt of applications, each application is carefully scrutinized to ascertain that the application form is properly filled up and signed and the money is deposited with the bank.

Allotment of shares not defined in the Act. Offer of shares made on an application form issued by the Company when accepted is the allotment of shares.

WHAT IS IRREGULAR ALLOTMENT? WHEN AN ALLOTMENT IS SAID TO BE IRREGULAR?

The companies Act, 2013 doesn't separately provide for the term "irregular allotment". When the allotment of shares is made in contravention of the provision of the act then the allotment is termed as irregular. In Broad terms, an allotment of shares is deemed to be irregular when it has been made by a company in violation of sections 23, 26, 39 and 40. An allotment will be considered irregular in the following cases:-

- (i) Where minimum subscription is not received Section 39 or
- (ii) Where a copy of the prospectus has not been filed with the Registrar of Companies. Section 26(4) or
- (iii) Where a copy of the statement in lieu of prospectus has not been delivered to the Registrar of Companies at least 3 days before the allotment or
- (iv) Where application money has not been received, kept in a scheduled bank or
- (v) Where subscription list is opened before the beginning of the 5th day from the date of issue of prospectus or
- (vi) Where application money to a minimum of 5% of the nominal value has not been received or
- (vii) Where the shares are not listed on a recognised stock exchange or have been refused listing within 10 weeks. Section 40 or
- (viii) When a company doesn't not issue a prospectus in a public issue as required by section 23 or
- (ix) Where the prospectus issued by the company doesn't include any of the matters required to be included there in under section 26(1) or the information given is misleading, faulty and incorrect

Effect of irregular allotment

The consequences of an irregular allotment depend on the nature of irregularity. However, the Companies Act 2013 doesn't specifically mention that in case of an irregular allotment the contract is voidable at the option of the allottee. Under section 26(9) of the companies act 2013, if a prospectus is issued in contravention of the provisions of section 26, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees or with both.

Similarly in case the company has not received the minimum subscription amount within 30 days of the date of issue of the prospectus, it must refund the application money received by it within the stipulated time. Any allotment made in violation of this will be void and the defaulting company and officers will be liable to further punishment as provided in section 39(5). Under section 40(5) any default made in respect of getting the approval to listing of securities in one or more recognised stock exchange in case of a public issue, will render the company punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees or with both.

Hence , under various provisions of the companies act 2013, stringent punishment has been provided against irregular allotment of securities but the option of going ahead with such allotment even if desired by the allottee is not specifically permitted.

Book Building

Book building is a systematic process of generating, capturing, and recording investor demand for shares during an initial public offering (IPO), or other securities during their issuance process, in order to support efficient price discovery. Usually, the issuer appoints a major investment bank to act as a major securities underwriter or book runner. Book Building is an alternative method of making a public issue in which applications are accepted from large buyers such as financial institutions, corporations or high net-worth individual, almost on firm allotment basis, instead of asking them to apply in public offer.

Book building is essentially a process used by companies raising capital through public offerings—both initial public offers (IPOs) and follow-on public offers (FPOs) to aid price and demand discovery. It is a mechanism where, during the period for which the book for the offer is open, the bids are collected from investors at various prices, which are within the price band specified by the issuer. The process is directed towards both the institutional as well as the retail investors. The issue price is determined after the bid closure based on the demand generated in the process.

When a company wants to raise money, it plans on offering its stock to the public either through either an IPO (initial Public Offer) or an FPO (follow-on public offers). The book building process helps to determine the value of the security. Once a company determines to have an IPO, it will then contact a book runner or a lead manager who will determine the price range at which it is willing to sell the stock. The book runner will then send out the draft prospectus to potential investors and collects bids from investors at various prices, between the floor price and the cap price. Bids can be revised by the bidder before the book closes. The process aims at tapping both wholesale and retail investors. The final issue price is not determined until the end of the process when the book has closed. After the close of the book building period, the book runner evaluates the collected bids on the basis of certain evaluation criteria and sets the final issue price. If demand is high enough, the book can be oversubscribed. In these cases the green shoe option is triggered. Generally, the issue stays open for five days. At the end of the five days, the book runner determines the demand of the stock for its given price range. Once the cost of the stock has been determined, then the issuing company can decide how to divide its stock at the determined price to its bidders.

The key differences between acquiring shares via a book build (conducted off-market) and trading (conducted on-market) are:

The main difference between the book building method and the fixed price method is that in the former, the issue price is not decided initially. The investors have to bid for the shares within the price range given. The issue price is fixed on the basis of demand and supply of the shares.

On the other hand, in the fixed price method, the price is decided right at the start. Investors cannot choose the price. They have to buy the shares at the price decided by the company. In the book building method, the demand is known every day during the offer period, but in fixed price method, the demand is known only after the issue closes.

Book Building Process

- The Issuer who is planning an offer nominates lead merchant banker(s) as 'book runners'.
- The Issuer specifies the number of securities to be issued and the price band for the bids.
- The Issuer also appoints syndicate members with whom orders are to be placed by the investors.
- The syndicate members input the orders into an 'electronic book'. This process is called 'bidding' and is similar to open auction.
- The book normally remains open for a period of 5 days.
- Bids have to be entered within the specified price band.
- Bids can be revised by the bidders before the book closes.
- On the close of the book building period, the book runners evaluate the bids on the basis of the demand at various price levels.
- The book runners and the Issuer decide the final price at which the securities shall be issued.

- Generally, the number of shares are fixed, the issue size gets frozen based on the final price per share.
- Allocation of securities is made to the successful bidders. The rest get refund orders.

Comparative Merits of BBM

The book building method is more efficient as it solves the "leakage" of value often seen with fixed priced IPOs. Here the issuer sets a price range within which the investor is allowed to bid for shares. The range is based on where comparable companies are trading and an estimate of the value of the company that the market will bear. The investors then bid to purchase an agreed number of shares for a price which they feel reflects fair value. By compiling a book of investors, the issuer can ascertain what price range the shares should be valued at, based on the demand of the people who are going to buy them, the investors. In this process supply and demand are matched.

ALLOTMENT OF SHARES

Allotment means an appropriation of a certain number of shares to an applicant in response to his application for shares. Thus allotment means distribution of shares among those who have submitted written application.

Procedures regarding Allotment of Shares:

(1) Fulfillment of statutory conditions which need to be fulfilled: The company secretary has to see that the statutory conditions regarding the allotment of shares are fulfilled before the Board proceeds to allot the shares.

The following are the statutory conditions which need to be fulfilled:

(* Valid offer and acceptance: There should be a valid offer and acceptance for the allotment to be a valid one. Here the company is the offeror and the acceptors are the general public. If there is no company to offer then there would be no public to accept.

(* Unconditional Allotment: The allotment must be absolute and unconditional and also as per the terms and conditions mentioned in the application. The allotment should be unbiased, and not according to the caste, creed, and religion. It is not that rich shareholders pay more on the shares and the poor shareholders pay less on the shares. All have to pay the same price on the shares.

(* Collection of minimum subscription amount and Receipt of application: The amount payable on application on every security shall not be less than five per cent of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board by making regulations in this behalf. If the stated minimum amount has not been subscribed and the sum payable on application is not received within a period of thirty days from the date of issue of the prospectus, or such other period as may be specified by the Securities and Exchange Board, the amount received under section 39(1) shall be returned within such time and manner as may be prescribed.

(* Deposition of application of money in a scheduled bank: All application money received along with the applications must be deposited in a scheduled bank. It cannot be withdrawn until the company gets trading certificate or where such certificate is already received or till the minimum subscription amount is received.

(* Filing of prospectus with the registrar: A copy of the prospectus or statement in lieu of prospectus has been duly filed with the registrar and at least three days have elapsed after such filing before the allotment is taken up.

(* Proper communication: The allotment must be duly communicated to the applicant through post i.e. registered post with necessary details.

(* Allotment strictly as per documents issued: The Board of Directors have to make the allotment of shares strictly as per the documents issued which include the prospectus and the application form. The provisions made in the Memorandum of Association and the Articles of Association must also be given due consideration.

(*) **SEBI nominee:** If the issue is over subscribed, the shares are allotted on a proportionate basis. SEBI's nominee is associated while finalizing the basis of allotment. The purpose is to see that the allotment is done on a fair and just basis. The allotment also needs to be approved by a leading stock exchange.

(2) **Appointment of allotment committee:** The secretary informs the Board, that the share applications are received and are ready for allotment. If the issue is just subscribed or under subscribed, the Board will do the allotment of shares, but if the issue is over subscribed, the Board appoints an allotment committee to do the allotment work. The allotment committee will study the problem, prepare a report and submit to the Board.

(3) **Board meeting for finalization of allotment formula:** A meeting of the Board of Directors will be called to finalize the allotment formula, which is being prepared by the allotment committee. If the shares are listed, the allotment formula is to be finalized with the approval of the concerned Stock Exchange Authorities.

(4) **SEBI's association with allotment work:** A representative of SEBI need to be associated while finalizing the allotment formula. For this, the company has to request SEBI to nominate a public representation for allotment work. SEBI's nominee is necessary when the issue is over subscribed.

(5) **Signature of chairman on application and allotment list:** The secretary has to see that every sheet of application and allotment list is signed by the chairman. The secretary also has to sign the application and allotment lists.

(6) **Resolution of the Board for allotment:** The secretary has to see that the Board passes a resolution regarding the allotment of shares and authorizing him to issue letters of allotment and letters of regret.

(7) **Issue of letters of allotment and letters of regret:** After the Board's resolution to allot shares, the secretary prepares the allotment list. Then he will send allotment letters to those who have been allotted shares and regret letters to those who could not be allotted shares.

(8) **Refund / Adjustment of application money:** The secretary has to make suitable arrangement for the repayment of application money sent by the applicant. The refunded application money is made to those share holders who could not be allotted shares. The refund order is sent along with the letters of regret. If an applicant has been allotted a smaller number of shares than the number applied for, the secondary has to adjust the excess amount with the amount due on allotment.

(9) **Collection of allotment money:** The secretary has to make suitable arrangements with the Company's Bankers for collection of allotment money against the allotment letters.

(10) **Arrangement relating to letters of renunciation:** To renounce means to give up. Certain applicants who are being allotted shares do not want them, so they return the shares back to the company. This is known as renunciation. The blank form of letter of renunciation and letter of request for allotment along with the letter of renunciation duly executed and the original letter of allotment from the renounces, the secretary has to make necessary changes in the Application of Allotment list in order to enter the names of the new allottees.

(11) **Arrangement relating to splitting of allotment letters:** Splitting means putting the shares in one or more names. In case any allottee requests for a split of the allotment letter, the secretary places such a request before the Board for approval. Once the Board approves the splitting of the allotment letter, the secretary has to enter the details of the split in a separate list of split allotments and issue the necessary 'split' letters.

(12) **Submission of return of Allotment:** Every company whether public or private and having a share capital, within 30 days of allotment is required to send to the Registrar, a document known as the "Return of Allotment". The return of allotment contains various details on allotment of shares such as the nominal value of shares allotted, names and addresses of allottees, amount paid or payable on each share and particulars of bonus shares and shares issued at discount. The secretary has to see that these documents are prepared and submitted in time to the Registrar.

(13) **Preparation of Register of members and issue of share certificates:** The secretary has to prepare the Register of members from the Application and Allotment lists. He has to see that the shares

certificates are properly printed, sealed, signed and distributed to all the allottees within three months after the allotment of shares. He has also to see that the share certificates are issued against the letters of allotment.

SWEAT EQUITY SHARES

According to section 2(88), sweat equity shares mean equity shares issued by a company to its directors or employees at a discount or for consideration, other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called. Sweat Equity Shares are mainly intended to be issued to build up equity for directors or promoters with technical capability. These shares can be issued at discounted price or free for know-how and services to the company.

According to Explanation to Rule 8(1) of Companies (Share Capital and Debentures) Rules, 2014.

(i) the expressions ‘Employee’ means-

- (a) a permanent employee of the company who has been working in India or outside India, for at least last one year; or
- (b) a director of the company, whether a whole time director or not; or
- (c) an employee or a director as defined in sub-clauses (a) or (b) above of a subsidiary, in India or outside India, or of a holding company of the company;

(ii) the expression ‘Value additions’ means actual or anticipated economic benefits derived or to be derived by the company from an expert or a professional for providing know-how or making available rights in the nature of intellectual property rights, by such person to whom sweat equity is being issued for which the consideration is not paid or included in the normal remuneration payable under the contract of employment, in the case of an employee

What are the conditions to be satisfied for issue of sweat equity shares?

Section 54(1) provides that notwithstanding anything contained in Section 53, a company can issue sweat equity shares, of a class of shares already issued, if the following conditions are satisfied:

- (i) the issue has been authorised by a special resolution passed by the company in the general meeting.
- (ii) the following are clearly specified in the resolution:
 - (a) number of shares;
 - (b) current market price;
 - (c) consideration, if any; and
 - (d) class or classes of directors or employees to whom such equity shares are to be issued.
- (iii) as on the date of issue, at least one year should have elapsed from the date on which the company had commenced business.
- (iv) a company whose shares are listed on a recognized stock exchange issuing sweat equity shares should comply with the regulations made in this behalf by SEBI.
- (v) a company whose shares are not so listed should issue sweat equity shares in compliance with the rules made in this behalf by the Central Government (i.e., Companies (Share Capital and Debentures) Rules, 2014)

IMPORTANT PROVISIONS AS TO SWEAT EQUITY

1. Information to be contained in the Explanatory Statement

Rule 8(2) of the Companies (Share Capital and Debentures) Rules, 2014 states that the explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 shall contain the following particulars, namely:-

- (a) the date of the Board meeting at which the proposal for issue of sweat equity shares was approved;
- (b) the reasons or justification for the issue;
- (c) the class of shares under which sweat equity shares are intended to be issued;
- (d) the total number of shares to be issued as sweat equity;
- (e) the class or classes of directors or employees to whom such equity shares are to be issued;
- (f) the principal terms and conditions on which sweat equity shares are to be issued, including basis of valuation ;
- (g) the time period of association of such person with the company;
- (h) the names of the directors or employees to whom the sweat equity shares will be issued and their relationship with the promoter or/and Key Managerial Personnel;
- (i) the price at which the sweat equity shares are proposed to be issued;
- (j) the consideration including consideration other than cash, if any to be received for the sweat equity;
- (k) the ceiling on managerial remuneration, if any, be breached by issuance of such sweat equity and how it is proposed to be dealt with;
- (l) a statement to the effect that the company shall conform to the applicable accounting standards; and
- (m) diluted Earning Per Share pursuant to the issue of sweat equity shares , calculated in accordance with the applicable accounting standards.

2. Validity of Special Resolution – Rule 8(3)

The special resolution passed for authorizing the issue of sweat equity shares shall be valid for making the allotment within a period of not more than twelve months from the date of passing of the special resolution.

3. Limits on Issue of sweat equity shares – Rule 8(4)

The company shall not issue sweat equity shares for more than fifteen percent of the existing paid up equity share capital in a year or shares of the issue value of rupees five crores, whichever is higher. In any case, the issuance of sweat equity shares in the Company shall not exceed twenty five percent, of the paid up equity capital of the Company at any time.

4. Lock-in Period -

The sweat equity shares issued to directors or employees shall be locked in for a period of three years from the date of allotment. The fact that the share certificates are under lock-in and the period of expiry of lock in shall be stamped in bold or mentioned in any other prominent manner on the share certificate.

5. Valuation -

Rule 8(6) states that the sweat equity shares to be issued shall be valued at a price determined by a registered valuer as the fair price giving justification for such valuation.

Rule 8(7) states that the valuation of intellectual property rights or of know how or value additions for which sweat equity shares are to be issued, shall be carried out by a registered valuer, who shall provide a proper report addressed to the Board of directors with justification for such valuation.

Rule 8(8) states that a copy of gist along with critical elements of the valuation report obtained under Rule 8(6) and Rule 8(7) shall be sent to the shareholders with the notice of the general meeting.

6. Issue of sweat equity shares for non-cash consideration – Rule 8(9)

Where sweat equity shares are issued for a non-cash consideration on the basis of a valuation report in respect thereof obtained from the registered valuer, such non-cash consideration shall be treated in the following manner in the books of account of the company-

- (a) where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the accounting standards; or
- (b) where clause (a) is not applicable, it shall be expensed as provided in the accounting standards.

7. Sweat equity shares forming part of managerial remuneration – Rule 8(10)

The amount of sweat equity shares issued shall be treated as part of managerial remuneration for the purposes of sections 197 and 198 of the Act, if the following conditions are fulfilled, namely.-

- (a) the sweat equity shares are issued to any director or manager; and
- (b) they are issued for consideration other than cash, which does not take the form of an asset which can be carried to the balance sheet of the company in accordance with the applicable accounting standards.

8. Sweat equity shares as compensation -

(a) if the shares are not issued pursuant to acquisition of an asset -

In respect of sweat equity shares issued during an accounting period, the accounting value of sweat equity shares shall be treated as a form of compensation to the employee or the director in the financial statements of the company, if the sweat equity shares are not issued pursuant to acquisition of an asset.

(b) if the shares are issued pursuant to acquisition of an asset -

If the shares are issued pursuant to acquisition of an asset, the value of the asset, as determined by the valuation report, shall be carried in the balance sheet as per the Accounting Standards and such amount of the accounting value of the sweat equity shares that is in excess of the value of the asset acquired, as per the valuation report, shall be treated as a form of compensation to the employee or the director in the financial statements of the company.

9. Board's Report to disclose the details of sweat equity shares -

The Board of Directors shall, inter alia, disclose in the Directors' Report for the year in which such shares are issued, the following details of issue of sweat equity shares namely:-

- (a) the class of director or employee to whom sweat equity shares were issued;
- (b) the class of shares issued as Sweat Equity Shares;
- (c) the number of sweat equity shares issued to the directors, key managerial personnel or other employees showing separately the number of such shares issued to them , if any, for consideration other than cash and the individual names of allottees holding one percent or more of the issued share capital;
- (d) the reasons or justification for the issue;
- (e) the principal terms and conditions for issue of sweat equity shares, including pricing formula;
- (f) the total number of shares arising as a result of issue of sweat equity shares;
- (g) the percentage of the sweat equity shares of the total post issued and paid up share capital;
- (h) the consideration (including consideration other than cash) received or benefit accrued to the company from the issue of sweat equity shares;
- (i) the diluted Earnings Per Share (EPS) pursuant to issuance of sweat equity shares.

(10) Maintenance of Register -

Rule 8(14) states that the company shall maintain a Register of Sweat Equity Shares in Form No. SH.3 and shall forthwith enter therein the particulars of Sweat Equity Shares issued under section 54. The Register of Sweat Equity Shares shall be maintained at the registered office of the company or such other place as the Board may decide. The entries in the register shall be authenticated by the Company Secretary of the company or by any other person authorized by the Board for the purpose

BONUS SHARES

Bonus shares are additional shares given to the current shareholders without any additional cost , based upon the number of shares that a shareholder owns. A company may, if its Articles provide, capitalize its profits by issuing fully-paid bonus shares. When a company is prosperous and accumulates large distributable profits, it converts these accumulated profits into capital and divides the capital among the existing members in proportion to their entitlements. Members do not have to pay any amount for such shares. The bonus shares allotted to the members do not represent taxable income in their hands. The

vesting of the rights in the bonus shares takes place when the shares are actually allotted and not from any earlier date.

There was no specific section under the companies act 1956, dealing with bonus shares that Table A contains provision relating to capitalization of profits. Companies were following the norms prescribed by the controller of capital issues. Once SEBI came into existence and controller of capital issues were abolished, unlisted private companies and public listed companies were free to issue Bonus shares if there had sufficient reserves to match the issue of Bonus shares. To bring in sanctity to the issue of bonus shares, the companies act 2013 has introduced section 63 to deal exclusively with bonus shares. Issue of bonus shares is covered under section 63 of companies act, 2013, read with rule 14 of the companies (share capital and debentures) Rules 2014.

Source for issue of Bonus shares

As per section 63(1) a company may issue fully paid bonus shares to its members out of the following

- (i) its free reserves;
- (ii) the securities premium account; or
- (iii) the capital redemption reserve account.

Sources that can't be used for issue of Bonus shares

** No issue of bonus shares shall be made capitalizing reserves created by the revaluation of assets. (ie No issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.)

** The company shall not issue shares in lieu of dividend

PROCEDURE FOR ISSUE OF BONUS SHARES

Call the Board Meeting:

As per Section 173(3): Issue Notice of at least 7 days for calling meeting of Board of Directors.

Hold the Board Meeting:

- Check the Quorum as per Section 174(1): Quorum for the Meeting of Board of Directors is 1/3rd of total strength of Board or 2 directors, whichever is higher.
- Place before the Board Resolution for issue of Bonus Shares.
- Pass Board Resolution for issue of shares.
- Decide the Ration of Shares offering to share holders.
- Fixing the date, time, and venue of the general meeting and authorizing a director or any other person to send the notice for the same to the members.
- Provisions of the Section 101 of the Companies Act 2013 provides for issue of notice of EGM in writing to below mentions atleast 21 days before the actual date of the EGM :
- All the Directors.
- Members
- Auditors of Company
- The notice shall specify the place, date, day and time of the meeting and contain a statement on the business to be transacted at the EGM.
- Authorize a director to do all the work relating to issue notice of right issue.

File MGT-14:

File e-form- MGT-14 within 30 days of Passing of Board Resolution for issue of shares. (along with Resolution for issue of shares.

CONVENE A GENERAL MEETING:

- Check the Quorum.

- Check whether auditor is present, if not. Then Leave of absence is Granted or Not. (As per Section-146).
- Pass Ordinary Resolution for bonus issue of shares.

Call the Board Meeting: As per Section 173(3): Issue Notice of at least 7 days for calling meeting of Board of Directors.

Hold the Board Meeting

Pass Board Resolution for allotment of shares.

Filling of e-Forms

1. File PAS-3: File e-form PAS-3 within 30 days of passing of Board Resolution for allotment of shares.

The following documents are to be attached with the form

- Ordinary Resolution for Bonus issue of shares.
- Board Resolution for allotment of shares.
- List of Allotees. (as per annexure –B of PAS-3)- Mentioning Name, Address, occupation if any and number of securities allotted to each of the allottees and the list shall be certified by the signatory of the form pas-3.

Issue Share Certificates:

Company will issue share certificate to the share holders with in 2 month from the date of allotment of shares.

Before Bonus issue, a company has to ensure the following:

- Check whether Authorized capital is sufficient for issue of Bonus Shares.
- If authorized capital is not enough then first alter the Capital of Company by alteration in MOA.
- Check Provision for Bonus issue in Article of Association of Company.
- If AOA not authorize to issue Bonus Shares then alter the Article of Association.
- Check availability of resources for issue of Bonus shares.
- Check Quantum of Bonus shares.
- Check no default in payment of interest or principle in respect of fixed deposit or debt securities issued by it.
- Check no default in payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus.
- Check is there any partly paid up share on the date of allotment.
- If there are partly paid up share, then first make them fully paid up shares.

CONDITIONS FOR ISSUE OF BONUS SHARES

- Articles must contain provision for issue of bonus shares [As per Section-62(2) (a)].
- Bonus issue must be authorised by the members of the company (by passing of Ordinary Resolution) on recommendation of Board.
- Company should not have defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it and no defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus.

Advantages of Issuing Bonus Shares

1. Fund flow is not affected adversely.
2. Market value of the Company's shares comes down to their nominal value by issue of bonus shares.
3. Market value of the members' shareholdings increases with the increase in number of shares in the company.

4. Bonus shares is not an income. Hence it is not a taxable income.
5. Paid-up share capital increases with the issue of bonus shares.

Further issue of shares to existing shareholders/ right issue

When a company proposes to increase the share capital by issue of **equity, convertible debentures (fully or partly), convertible preference shares** to its **existing equity shareholders**, then companies (including private limited companies) have to comply with the new procedures laid out under Companies Act 2013. (Section 62 of Companies Act 2013 and Rule 13 of Companies (Share Capital and Debentures) Rules 2014). A rights issue is directly offered to all existing shareholders of the Company in proportion to their current holding. The company also set a time limit for the shareholder to buy the shares. Companies pursue Rights Issue as an avenue to raise funds for various reasons, ranging from expansion or acquisitions to paying down debts.

Section 62 of Companies Act, 2013 contains provisions on “further issue of capital”, and enacts the principle of pre-emptive rights of shareholders of a company to subscribe to new shares of the company. Provisions of Section 62 of Companies Act, 2013 are mandatory for all Private companies, public companies, listed as well as unlisted companies.

Relevant provisions of COMPANIES ACT-2013 as to RIGHT ISSUE

Sec 62 (1) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered:

- to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:—
 - (i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;
Provided in case of Private companies if ninety percent of the members of company give their consent in writing or in electronic mode, the time limit of fifteen days shall not apply.
 - (ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;
 - (iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company;

PROCEDURE FOR ALLOTMENT OF SHARES ON RIGHT ISSUE BASIS:

- Issue notice in writing to every Director at least seven days’ before convening the Board meeting. [Sec 173 (3)]
- Convene a Board Meeting
- Pass a Board resolution for approving “Letter of offer”. The offer letter shall include right of renunciation also.
- Dispatch Letter of offer to all existing shareholders through registered post or speed post or through electronic mode at least three days before the opening of the issue. In case of Private companies if ninety percent of the members of company give their consent in writing or in electronic mode, the time limit of three days before the opening of the issue shall not apply.
- Receive acceptance, renunciations, rejection of rights from shareholders.
- Issue notice in writing to every Director at least seven days’ before convening the Board meeting. [Sec 173 (3)]

- Convene a Board Meeting
- Pass Board resolution for approving allotment and issue of shares.
- File with Registrar a return of allotment in E-Form PAS-3 within 30 days of allotment of shares.
- File E-form MGT 14 within 30 days of Issue of securities. [Not applicable in case of private companies]

ADVANTAGES OF RIGHT ISSUE OF SHARES

1. Control in the hands of existing shareholders:

Control of company is retained in the hands of existing shareholders. Issue of rights shares makes possible equitable distribution of shares without disturbing the established equilibrium of shareholdings, because rights shares are offered to the persons who on the date of rights issue are the holders of equity shares of the company, proportionately to their equity shares on that date.

2. No dilution in the value of existing shares:

The existing shareholders do not suffer on account of dilution in the value of their holdings if fresh shares are offered to them, because the value of shares is likely to fall with fresh issue. This decrease in the value of the shares will be compensated by getting new shares at a price lower than the market price. They are likely to suffer on account of the dilution in the value of their holdings if fresh shares are offered to the general public.

3. Expenses Saved: The expenses of public issue can be saved through right issue.

4. Better Image: Image of the company is bettered when rights issues are made from time to time and existing shareholders remain satisfied.

5. More Certainty of getting shares: There is more certainty of getting shares, when fresh issue is made to the existing share holders, instead of general public.

6. No Misuse by directors: Directors cannot misuse the opportunity of issuing new shares to their friends and relatives at low price and at the same time retaining more control in their hands when right shares are issued because in right issue shares are offered proportionately to the existing shareholders according to their existing holdings.

DISADVANTAGES OF RIGHT ISSUE

1. The value of each share will be diluted as a result of the increased number of shares issued.
2. It is awfully easy for investors to get tempted by the prospect of buying discounted Shares with a rights issue. But it is not always a certainty that you are getting a bargain. Besides knowing the ex-rights share price, shareholder should know the purpose of the additional funding before accepting or rejecting a rights issue.
3. A rights issue can offer a quick fix for a troubled balance sheet, but that doesn't necessarily mean management will address the underlying problems that weakened the balance sheet in the first place.

EMPLOYEES STOCK OPTION SCHEME

Section 2(37) of the new Companies Act defines employees' stock option means (ESOP) as- "The option given to the **directors**, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such **directors**, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price."

Section 62(1)(b) provides that a company may issue further shares to its employees under a scheme of employees' stock option, subject to special resolution passed by company and subject to such conditions as may be prescribed. Rule 12 of Companies (Share Capital and Debentures) Rules, 2014 with regard to issue of Employee stock options covers issue of ESOPs.

For the purpose of clause (b) of sub-section (1) of section 62 and Rule 12 of the Companies (Share Capital and Debentures) Rules, 2014, ‘Employee’ means–

- ** A permanent employee of the company who has been working in India or outside India; or
- ** A director of the company, whether a whole time director or not but excluding an independent director; or
- ** An employee as defined in clauses (a) or (b) of a subsidiary, in India or outside India, or of a holding company of the company or of an associate company but does not include-
 - an employee who is a promoter or a person belonging to the promoter group; or
 - a director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company.

PRICING ESOP

Rule 12(3) states that the companies granting option to its employees pursuant to Employees Stock Option Scheme will have the freedom to determine the exercise price in conformity with the applicable accounting policies, if any.

VESTING PERIOD

Rule 12 (6) (a) states that there shall be a minimum period of one year between the grant of options and vesting of option. In a case where options are granted by a company under its Employees Stock Option Scheme in lieu of options held by the same person under an Employees Stock Option Scheme in another company, which has merged or amalgamated with the first mentioned company, the period during which the options granted by the merging or amalgamating company were held by him shall be adjusted against the minimum vesting period required under this clause;

LOCK-IN-PERIOD

Rule 12(6)(b) states that the company shall have the freedom to specify the lock-in period for the shares issued pursuant to exercise of option.

CONDITIONS ON ESOP

A company, other than a listed company, which is not required to comply with Securities and Exchange Board of India Employee Stock Option Scheme Guidelines shall not offer shares to its employees under a scheme of employees’ stock option (hereinafter referred to as ‘Employees Stock Option Scheme’), unless it complies with the following requirements, namely:-

- (i) The issue of Employees Stock Option Scheme has been approved by the shareholders of the company by passing a special resolution. Rule 12(8) states the following conditions:
 - The option granted to employees shall not be transferable to any other person.
 - The option granted to the employees shall not be pledged, hypothecated, mortgaged or otherwise encumbered or alienated in any other manner.
 - No person other than the employees to whom the option is granted shall be entitled to exercise the option.

CONTENTS IN BOARD’S REPORT AS TO ESOP

Rule 12(9) states that the Board of directors, shall, inter alia, disclose in the Directors’ Report for the year, the following details of the Employees Stock Option Scheme:

- (a) options granted;
- (b) options vested;
- (c) options exercised;
- (d) the total number of shares arising as a result of exercise of option;
- (e) options lapsed;
- (f) the exercise price;

- (g) variation of terms of options;
- (h) money realized by exercise of options;
- (i) total number of options in force;
- (j) employee wise details of options granted to:-
 - Key managerial personnel;
 - any other employee who receives a grant of options in any one year of option amounting to five Percent or more of options granted during that year.
 - identified employees who were granted option, during any one year, equal to or exceeding one Percent of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant;

SHARES WITH DIFFERENTIAL RIGHTS

A Company can raise Capital through issue of Equity Shares. Equity Shares can be of different types such as equity shares with pari-pasu voting right or equity shares with differential voting right. Equity Shares with Differential Voting Rights (DVR) shares are like ordinary equity shares but with differential voting rights. They may be listed and traded in the same manner as an ordinary equity shares. However, they are mostly traded at a discount as they provide fewer voting rights as compared to ordinary equity shares. Companies generally compensate DVR Shares investors with a higher dividend or with lower dividend. Shares with Differential Voting Rights means shares that give the holder differential rights so as to voting (either more or less voting right) as against the Ordinary shareholders of the company. Section 43 of the Companies Act, 2013 and Companies (Share Capital and Debenture) Rules, 2014 specify the law and procedure regarding Issue of Equity Shares with differential voting right as outlined below.

No company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions, namely :-

- ** The articles of association of the company authorizes the issue of shares with differential rights,
- ** The issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders, Provided that where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot,
- **The shares with differential rights shall not exceed twenty-six percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time,
- ** The Company having consistent track record of distributable profits for the last three years,
- ** The Company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares,
- ** The Company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend,
- ** The Company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government,
- **The Company has not been penalized by Court or Tribunal during the last three years of any offence under the Reserve Bank of India Act, 1934 , the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated by sectoral regulators ,
- ** The explanatory statement to be annexed to the notice of the general meeting,

- ** The Company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice-versa.
- ** The Board of Directors shall, inter alia, disclose in the Board's Report for the financial year in which the issue of equity shares with differential rights was completed, the following details, viz:-
- a) The total number of shares allotted with differential rights,
 - b) The details of the differential rights relating to voting rights and dividends
 - c) The percentage of the shares with differential rights to the total post issue equity share capital with differential rights issued at any point of time and percentage of voting rights which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;
 - d) The price at which such shares have been issued
 - e) The particulars of promoters, directors or key managerial personnel to whom such shares are issued,
 - f) The change in control, if any, in the company consequent to the issue of equity shares with differential voting rights
 - g) The diluted Earnings Per Share pursuant to the issue of each class of shares, calculated in accordance with the applicable accounting standards,
 - h) The pre and post issue shareholding pattern along with voting rights in the format specified under sub-rule (2) of rule 4.

The holders of the equity shares with differential rights shall enjoy all other rights such as bonus shares, rights shares etc., which the holders of equity shares are entitled to, subject to the differential rights with which such shares have been issued.

** Where a company issues equity shares with differential rights, the Register of Members maintained under section 88 shall contain all the relevant particulars of the shares so issued along with details of the shareholders.

CALLS

A company issuing shares to its members may call the money due on shares at intervals depending upon the requirements for funds for implementing the project and the shareholders also prefer to pay the nominal value on their shares in installments as and when demanded by the company. A call is a demand, by the company in pursuance of a Board resolution and in accordance with the articles of the company, upon its shareholders to pay the whole or part of the balance still due on each class of shares allotted or held by them made at any time during the life of the company. A call may also be made by the liquidator in the course of winding up of the company. The amount payable in application on each share shall not be less than five per cent of the nominal amount of the share. The balance may be payable as and when called for in one or more calls. The prospectus and the articles of a company generally specify the amount payable at different times, as call(s).

Under Section 10(2) of the Act all moneys payable by any member to the company on the shares held by him under the memorandum or articles is a debt due from him to the company. In the event of default in payment of a valid call, the company can enforce payment of such moneys by legal process and forfeit the shares in case the call is not paid. The liability of members is enforceable only after a proper notice which is called 'call letter' or call notice as 1st, 2nd and final or so on, is given to him in accordance with the articles.

1. Board of Directors to make call(s) on shares

The power to make calls is exercised by the Board in its meeting by means of a resolution [Section 179(3) (a)]. The Board, in making a call, must observe the provisions of the articles, otherwise the call will be invalid, and the shareholder is not bound to pay. A proper notice must be given, and the notice must specify the amount called up and manner i.e. the date for payment and place and to whom it is

to be paid. It may be emphasised that the time and place at which the call is to be paid are essential ingredients of a valid call.

Apart from this rule, "in making call, care must be taken that the directors making it are duly appointed and qualified; the meeting of the directors has been duly convened; proper quorum was present, and that the resolution making the call was duly passed and specifies the amount of the call, the time and place of payment.

2. Call(s) to be made bonafide in the interest of the company

The power to make call is in the nature of trust and must be exercised only for the benefit of the company, and not for the private ends of the directors. If the call is made for the personal benefit of directors, the call will be invalid. In *Alexander v. Automatic Telephone Co.*, (1900) 2 Ch. 56, the directors of the company paid nothing on their shares but did not disclose this fact to the shareholders and called on them to pay certain amount partly as allotment money and partly as call money. The directors were held guilty of breach of trust and the call was held invalid.

3. Call(s) must be made on uniform basis

According to Section 49 of the Act, calls on same class of shares must be made on a uniform basis. Hence a call cannot be made only on some of the members unless they constitute a separate class. In other words, there cannot be any discrimination between shareholders of the same class as regards amount and time of payment of call.

4. Notice of call(s)

The notice of call must specify the exact amount and time of payment. In *Shackleyford & Co. Dangerfield*

(1868) (R3 CP 407) the notice had specified the time and amount to be paid as a call, it will be a valid call inspite of the fact that the form of notice was an inaccurate one. A call must be made by serving upon member formal notice in accordance with the provisions of Section 53 of Companies Act, 1956 (Corresponding to Companies Act, 2013).

5. Time limitations for receiving the call money

If the issuer proposes to receive subscription monies in calls, it shall ensure that the outstanding subscription money is called within twelve months from the date of allotment of the issue.

Usually Articles of association of companies provide for the manner in which calls should be made. They follow the pattern set out in Regulations 13 to 18 of Table-F of Schedule-I appended to the Companies Act,

- (a) For each call at least 14 days notice must be given to members.
- (b) An interval of one month is required between two successive calls and not more than one-fourth of the nominal value of shares can be called at one time. However, companies may have their own articles and raise the limit.
- (c) The Board of directors has the power to revoke or postpone a call after it is made.
- (d) Joint shareholders are jointly and severally liable for payment of calls.
- (e) If a member fails to pay call money he is liable to pay interest not exceeding the rate specified in the articles or terms of issue or such lower rate, as the Board may determine. The directors are free to waive the payment of interest wholly or in part.
- (f) If any member desires to pay the call money in advance, the directors may at their discretion accept and pay interest not exceeding the rate specified in the articles.
- (g) A defaulting member will not have any voting right till call money is paid by him.

6. Interest on calls due but not paid — A member is generally made liable to pay interest on the calls made but not paid. The rate of interest to be charged is as specified in the Articles. Regulation 16 of Table F, in this regard provides:

"16 (i) If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest thereon from the day appointed for payment thereof to the time of actual payment at 10% per annum or at such lower rate, if any, as the Board may determine. (ii) The Board shall be at liberty to waive payment of any such interest wholly or in part."

7. Acceptance of uncalled capital

Section 50(1) states that if authorized by its articles, a company may accept from any member the whole or part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up.

Where section 50(2) provides that a member who has paid the whole or part of the amount remaining unpaid on the shares held by him even though the company has not made a call for it is not entitled for any voting right at a general meeting on the amount so paid until that amount has been called up

8. Quantum and Interval between two calls

Proviso to Regulation 13(i) to the Table 'F' of Schedule I of the Companies Act, 2013 provides that no call shall exceed 25% of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call.

If the issuer proposes to receive subscription monies in calls, it shall ensure that the outstanding subscription money is called within twelve months from the date of allotment of the issue and if any applicant fails to pay the call money within the said twelve months, the equity shares on which there are calls in arrear along with the subscription money already paid on such shares shall be forfeited. However, it shall not be necessary to call the outstanding subscription money within twelve months, if the issuer has appointed a monitoring agency in terms of regulation 16 of SEBI (ICDR) Regulations, 2009.

Regulation 16 of ICDR provides that if the issue size exceeds five hundred crore rupees, the issuer shall make arrangements for the use of proceeds of the issue to be monitored by a public financial institution or by one of the scheduled commercial banks named in the offer document as bankers of the issuer. However, nothing contained in this clause shall apply to an offer for sale or an issue of specified securities made by a bank or public financial institution or an insurance company.

FORFEITURE OF SHARES

To forfeit means to take away or to withdraw the rights of a person. In other words forfeit means to lose the right to, be deprived of; to lose or become liable to lose, as in consequence of fault or breach of promise or contract. It is a penalty for a breach of contract or neglect; a fine that is imposed for not complying with the stipulated condition, obligation or duty. Forfeiture of share refers to the cancellation or termination of membership of a share holder by taking away the shares and rights of membership.

Forfeiture of shares and companies act 2013

According to Regulation 13 of the Table – F of schedule – I, the Board may make calls upon the members in respect of any monies unpaid on their shares. Regulation 17 of the Table – F of schedule – I, says, in case of non-payment of such sum, all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.

Regulation 28 of Table – F of Schedule – I provides that if a member fails to pay any call, or installment of a call, on the day appointed for payment thereof, the Board of directors of the company may, at any time thereafter during such time as any part of the call or installment remains unpaid, serve a notice on him requiring payment of so much of the call or installment as is unpaid, together with any interest which may have accrued. Regulation 29 of Table – F of Schedule – I lays down that the notice aforesaid shall –

- (a) name a further day (not being earlier than the expiry of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made; and
- (b) state that, in the event of non-payment on or before the day so named, the shares in respect of which the call was made will be liable to be forfeited.

Regulation 30 of Table – F of Schedule – I provides that if the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may, at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect. Regulation 32 of Table – F of Schedule – I provide that a person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding the forfeiture, remain liable to pay to the company all monies which, at the date of forfeiture, were presently payable by him to the company in respect of the shares. The liability of such person shall cease if and when the company shall have received payment in full of all such monies in respect of the shares.

Procedures regarding forfeiture of shares:

1. If a member fails to pay any call, or installment of a call, on the day appointed for payment thereof, the Board may, at any time thereafter serve a notice on him requiring payment of so much of the call or installment as is unpaid, together with any interest which may have accrued.
2. The board or committee thereof shall pass a resolution authorizing the forfeiture of share and issue of notice for this purpose.
3. The notice aforesaid shall:
 - name a further day (not being earlier than the expiry of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made; and
 - state that, in the event of non-payment on or before the day so named, the shares in respect of which the call was made will be liable to be forfeited.
4. The notice must:
 - specify clearly the amount payable on account of unpaid call money as well as interest accrued, if any, and other expenses.
 - mention the day on or before which the amount specified ought to be paid, not be earlier than 14 days from the date of service of the notice.
 - contain an unambiguous statement to the effect that in the event of failure to pay the specified amount latest on the appointed day, the shares in respect of which the amount remains unpaid would be liable to be forfeited.
5. The notice of forfeiture as contemplated in regulation 28 of Table – F of Schedule – I must be served in accordance with the provisions of section 20 of the Companies Act 2013.
6. If the call money is not paid in response to such notice threatening forfeiture, the company may, at any time thereafter, before the payment required by the notice has been made, forfeit the shares by a resolution of the Board to that effect.
7. Publish a notice of forfeiture in newspapers so that the members of the public are made aware of the forfeiture and cautioned not to deal in the forfeited shares.
8. Inform the forfeiture of the shares to the concerned shareholders by registered post.
9. Regulation 33 of Table – F of Schedule – I provides for a verified declaration in writing to be issued under the signature of a director, manager or secretary of the company that a share in the company has been duly forfeited on a date stated in the declaration. The declaration so made shall be conclusive evidence of the facts stated therein as against all persons claiming to be entitled to the shares forfeited.
10. The fact of the forfeiture will be entered in the Register of Members and the name of the concerned Shareholder as a member of the company will be deleted from the register.
11. In case of listed company, notify the Stock Exchange at which the securities of the Company are listed about such forfeiture of shares.

FEATURES OF VALID FORFEITURE

1. **Articles of Association must authorise the forfeiture of shares** - Where power is given in the articles, it must be exercised in accordance with the regulation regarding notice, procedure and manner stated therein; otherwise the forfeiture will be void. The power of forfeiture must be exercised

bona fide and in the interest of the company. It should not be collusive or fraudulent. If Articles authorise, the forfeiture shall include forfeiture of all dividends declared in respect of the forfeited shares and such dividend is not actually paid before the forfeiture of the shares.

2. **Resolution for Forfeiture** - Article 30 of the Table F provides that if the defaulting shareholder does not pay the amount within the specified time as required by the notice, the directors may pass a resolution forfeiting the shares.
3. **Proper Notice** - Before the shares of a member are forfeited, a proper notice to that effect must have been served. Regulation 29 of Table F provides that a notice shall name a further day (not less than 14 days from the date of service of the notice) on or before which the payment is to be made. The notice must also mention that in the event of nonpayment, the shares will be liable to be forfeited.
4. **Power of forfeiture must be exercised bona fide and for the benefit of the company** - The power to forfeit be exercised bona fide and for the benefit of the company. The power must be used in order to coerce reluctant shareholders into paying their calls. The power of forfeiture cannot be exercised to relieve unwilling shareholders from the liability of making the payment. Such a shareholder continues to be responsible for the unpaid part of the shares.

SURRENDER OF SHARES

Surrender means to hand over; relinquish possession of, especially on compulsion or demand. The Companies Act does not contain any provision on surrender of shares. Table – F of Schedule – I also does not give power to a company to accept surrender of its shares; it contains no regulation on this subject. But articles usually empower the companies to accept surrender of shares.

There is difference between surrender and forfeiture of shares. Nothing is provided in the Act as to surrender of shares; but these have been admitted by the courts, upon the principle that they have practically the same effect as forfeiture, the main difference being that Forfeiture is a proceeding against an unwilling party and the Surrender happens when the shareholder who is unable to retain and pay future calls on the shares. Surrender is voluntary and forfeiture is due to breach of contract.

It is not open to a shareholder to surrender his shares at will, especially when he has to meet future calls, and it is not open to the company to accept a surrender of shares unless the act of the company can be brought within the rule relating to forfeiture of shares. The Act permits forfeiture of shares on certain grounds; but to give an unlimited and wide power to a company to accept surrender of shares is opposed to the principle that a company cannot buy its own shares and to the principle that a company can reduce its capital only with the permission of the court and on such terms and conditions as the court may impose.

A surrender of shares releasing the shareholder from further liability in respect of the shares, is equivalent to a purchase of the shares by the company, and is therefore illegal, null and void. Thus, a surrender of shares is not valid merely because the articles of the company authorise the Board to accept surrender of shares, unless it can be shown that the surrender took place in circumstances, which would have justified forfeiture. There can be no valid surrender of shares that are not fully paid except where shares are lawfully forfeited, as it involves reduction of capital requiring the sanction of the court. A surrender of shares amounts to a reduction of capital, which is unlawful unless sanctioned by the court. Where a company's articles give the directors power to accept a surrender of shares, this power will be recognised as valid if it is used merely to avoid the formalities of forfeiture. Subject to the provisions allowing companies to acquire their own shares, a company cannot accept a surrender if the shares are not liable to forfeiture, so that such a surrender of partly paid shares would not relieve the shareholder from his uncalled liability; such a surrender would amount to an unauthorised purchase by the company of its own shares, or a reduction of capital without the court's sanction, and is invalid. It is, however, valid to accept the surrender of partly paid shares from an insolvent member and discharge liability for future calls thereon, if this represents bona fide compromise of the company's on him. The effect of a valid surrender is the same as forfeiture, provided the articles authorise it. It is doubtful whether a company may accept a

surrender of fully paid shares in exchange for the issue by the company of an equivalent nominal amount of fully paid shares. There is a difference between surrender of shares and purchasing by a company of its own shares. A company cannot make any payment or give any valuable consideration for the surrender. This is because a surrender of shares in consideration of a payment in money or money's worth by the company is a purchase by it of its own shares and is ultra vires that is to say, unless confirmed by the court as a reduction of capital. Like forfeiture, surrender also does not involve any payment out of the funds of the company. If the surrender were made in consideration of any such payment it would be neither more nor less than a sale, and open to the same objections as purchase by the company of its own shares. If it were accepted in a case when the company was in a position to forfeit the shares, the transaction would be perfectly valid. However, surrender of shares to the company for consideration may be valid if the circumstances are very special, e.g. where the surrender is part of a compromise. A valid surrender of shares would not amount to buying by a company of its own shares.

What is share certificate?

A share certificate is a certificate issued to the members by the company under its common seal specifying the number of shares held by him and the amount paid on each share. According to Section 45 of the Companies Act, 2013 each share of the share capital of the company shall be distinguished with a distinct number for its individual identification. However, such distinction shall not be required, as per provided in Section 45, if the shares are held by a person whose name is entered as holder of beneficial interest in such share in the records of a depository. In terms of Section 46(1) of the Act, a certificate under the common seal of the company is prima facie evidence of the title of the person to the shares specified therein. The certificate is the only documentary evidence of title in the possession of the shareholder. But it is not a warranty of title by the company issuing it.

A share certificate is an instrument in writing, that is a legal proof of the ownership of the number of shares stated in it. Every company, limited by shares, whether it is public or private must issue the share certificate to its shareholders except in the case where the shares are held in dematerialisation system. The share certificate contains the following details in it, they are:

- Company name
- Date of issue
- Details of the member
- Shares held
- Nominal value
- Paid up value
- Definite number.

Provisions relating to issue of Duplicate share certificate

Section 46 (2) states that a duplicate certificate of shares may be issued, if such certificate —

- (a) is proved to have been lost or destroyed; or
- (b) has been defaced, mutilated or torn and is surrendered to the company.

Procedure for issue of Share Certificate

- ** Pass board resolution
- ** Letter of offer surrendered to company if the letter is lost or destroyed the board may impose reasonable terms
- ** Certificate shall be issued in Form No. SH-1 and shall specify the name of person in whose favour the certificate is issued
- ** Certificate shall be issue under the common seal of the company
- ** The certificate shall be signed by a) Two directors duly authorized by the board if the composition of board permits at least one of the aforesaid two directors shall be a person other than managing or whole time director (b) The secretary or any person authorized by the board

** Particulars of shares certificates to be entered in the Register of Members.

Procedure for issue of Renewed or duplicate Share Certificate

- ** Renewal to be made only on surrender of old certificate
- ** Company may charge fee for duplicate share certificate as the board decides but not exceeding ` 50 per certificate.
- ** Company shall not issue any duplicate share certificate in lieu of those lost or destroyed without the prior consent of Board
- ** If the company is listed then the duplicate share certificates shall be issued within 15 days and if the company is unlisted it shall issue the certificates in 3 months
- ** The particulars of renewed and duplicate share certificate to be entered in Form No.SH.2
- ** The register to be kept at registered office of the company
- ** On fraudulent issue the company shall be punishable with: fine which shall not be less than five times the face value of shares involved which may extend to ten times
- ** Officer in default shall be liable under section

What is the significance of share certificate?

A certificate of shares is evidence to the effect that the allottee is holding a certain number of shares of the company showing their nominal and paid-up value and distinctive numbers. This certificate is a prime facie evidence of title to the shares in the possession of shareholders. [Society Generale De Paris v. Walker, (1885) 11A AC 20, 29].

Moreover, when the company issues a certificate, it holds out to the world that the facts contained therein are true. Any person acting on the faith of the share certificate of the company, can compel the company to pay compensation for any damage caused by reason of any misstatement in the share certificate as the company is bound by any statements made in the certificate.

Share certificate is the only documentary evidence of title and that the share certificate is a declaration by the company that the person in whose name the certificate is issued is a shareholder in the company. [Ghanshyam Chhaturbhuj v. Industrial Ceramics (Pvt.) Ltd. (1995) 4 Com LJ 51]. Also the company cannot dispute the amount mentioned on the certificate as already paid. [Bloomenthal v. Ford (1897) AC 156 (HL)].

BUY BACK OF SHARES

Buy Back of securities simply implies purchase of its own securities by a Company. Buy Back of securities is a important mode of capital restructuring. A company can buy back its shares under Section 68 of the Companies Act, 2013 which is more or less same as section 77A of The Companies Act, 1956 but there are some procedural Changes. A private or public unlisted company is further required to comply with The Companies (Share capital and Debenture rules, 2014)

MANNER OF BUY BACK OF SHARES

A Company may buy-back its shares by either of the following methods:

1. From the existing security holders on a proportionate basis through private offers; or
2. By purchasing the securities issued to employees of the company pursuant to a scheme of a Stock Option or Sweat Equity

Advantages of Buy Back:

It is an alternative mode of reduction in capital without requiring approval of court –

- To improve earnings per share

- To improve return on capital, return on net worth and to enhance the long term shareholders value
- To provide an additional exit route to shareholders when shares are undervalued or thinly traded
- To enhance consolidation of stake in the company
- To prevent unwelcome takeover bids
- To return surplus cash to shareholders
- To achieve optimum capital structure
- To support share price during periods of sluggish market condition
- To serve the equity more efficiently
-

ESSENTIAL CONDITIONS FOR BUYBACK:

1. Ensure that there is a specific provision in the Articles of Association authorizing the Company to buy back its own shares. If the Articles don't provide for it, then the Company first needs to amend its Articles of Association by passing a Special Resolution.
2. Pass a Special Resolution in the General Meeting authorizing the buyback of shares.

Provided that no Specific provision in Article of Association is required and no Special Resolution is required to be passed in General Meeting where—(i) The buy-back is, ten percent or less of the total paid-up equity capital and free reserves of the company; and(ii) such buy-back has been authorized by the Board by means of a resolution passed at its meeting

3. Ensure that no buy back was made during a period of one year immediately preceding the current buy back.
4. Ensure that post buy back Debt Equity Ratio of the Company i.e. amount of debt should not be more than twice the paid up capital and free reserves.
5. Ensure that all the shares of the Company which are going to be purchased by the Company should be fully paid up.
6. Ensure that the Company does not issue same kind of securities within a period of 6 months from the completion of buy back.
7. Where a company buys-back its shares it should maintain the register of the securities so bought, the consideration paid for the securities bought-back, the date of cancellation of securities, the date of extinguishing and physically destroying of securities and such other particulars as may be prescribed (in form SH-10).

LEGAL AND SECRETARIAL ASPECTS GOVERNING BUY BACK OF EQUITY SHARES UNDER THE COMPANIES ACT, 2013

Section 68, 69 and 70 of the Companies Act, 2013 and Rule 17 of Companies (Share Capital and Debentures) 2014 deal with buy back of Securities. The Act and the Rules both prescribe the permitted resources and the permitted methods for buy back of Securities. Both the Act and the Rules not only list out various criteria to be fulfilled for a buy back but also the rules to be followed for buy back. Section 69 deals the accounting treatment on account of Buy back of Securities and Section 70 gives the list of things that the Company should not have done in order to make them eligible to go for a buy back.

A. PERMITTED RESOURCES AND PERMITTED METHODS FOR BUY BACK OF EQUITY SHARES

The first step is find out the resources under which the Equity Shares could be purchased and also the permitted source of funds to be utilised for the purpose of buy back.

a. Section 68 (1) says that the Shares could be purchased out of resources generated in the following manner i) Free reserves ii) Securities Premium Account iii) Proceeds that are generated out of Issue of any shares or other specified securities. However the proceeds thus generated should not be of an earlier issue of the same kind of shares or same kind of other specified securities.

b. Rule 10 says that i) A separate Bank Account has to be opened and the amount has to be paid only by way of cash. ii) The Company shall not utilize any money borrowed from the Bank or financial institution for the purpose of buying back its shares iii) The Company shall not utilize the proceeds of an earlier issue of the same kind of shares for buy back or same kind of other securities.

B. FROM WHOM THE EQUITY SHARES COULD BE BOUGHT BACK

The second step is to find out from whom the Shares could be bought back. Under Section 68 (5) of the Companies Act, 1956, the buy-back of equity shares may be (i) from the existing equity shareholders on a proportionate basis; (ii) from the open market; (ii) by purchasing the shares issued to employees of the company pursuant to a scheme of stock option or sweat equity.

C. ELIGIBILITY CRITERIA FOR BUY BACK OF EQUITY SHARES UNDER THE ACT AS WELL AS THE RULES

The third step is to find out whether the Company fits in with the norms prescribed under the Act as well as the rules to make them eligible to go for a buy back.

I. Eligible Criteria for Buy Back under the Act Section 68(2) lists out the following criteria to be fulfilled for buy back of shares

- i. The percentage of Buy Back shall not exceed 10% of the total equity capital and free reserves if the same is to be authorized by the Board by means of a resolution in the Board meeting.
- ii. The percentage of buy back could exceed 10% but not beyond 25% of the total paid equity Capital and free reserves if the same is authorized by the shareholders by means of a Special resolution
- iii. The ratio of the aggregate of secured and unsecured debts owed by the company after buy-back shall not be more than twice the paid-up capital and its free reserves: (The Central Government may in future notify by order a higher ratio of the debt to capital and free reserves for a class or classes of companies)
- iv. All the Equity Shares for buy-back are fully paid-up;
- v. the buy-back of the shares listed on any recognized stock exchange is in accordance with the regulations made by the Securities and Exchange Board in this behalf; and
- vi. the buy-back in respect of shares other than those specified in clause (v) is in accordance with such rules prescribed under Rule 17 of the (Companies Share Capital and Debentures) Rules, 2014.
- vii. No offer of buy-back under shall be made within a period of one year reckoned from the date of the closure of the preceding offer of buy-back, if any.
- viii. Under Rule 10 (b) The Company shall not issue any new shares including Bonus shares from the date of passing the special resolution authorizing Buy back till the date of closure of offer of Buy back except those arising out of convertible debentures.

II. Eligibility Criteria for Buy Back under the Rules Rules 17 lists out the following eligibility criteria for buy back of shares

- i. There are
 - a. No defaults subsisting in repayment of deposits and interest payment thereon.
 - b. No defaults on redemption of preference shares.
 - c. No defaults in payment of Dividend due to any Shareholder.
 - d. No defaults in repayment of any loan or interest payable thereon to any financial institution or banking Company.

However Section 69 gives an exemption that if the above default is remedied and a period of three years has lapsed after such default ceased to subsist. ii. There shall be no grounds on which the Company could be found unable to pay its debts. iii. The Company should be in a position to meet the liabilities as and when they fall due and shall not be rendered insolvent within a period of one year from the date of buy back.

D. PROHIBITORY LISTS FOR COMPANIES WHICH MAKE THEM INELIGIBLE TO GO FOR A BUY BACK OF EQUITY SHARES IN CERTAIN CASES

The fourth step is to ascertain whether the Company falls under any one of the prohibitory lists for buy back. Section 69 lists out the following, under which Buy back is not allowed.

i. The Company cannot buy back its shares

- a. through any subsidiary Company including its own subsidiary Companies.
- b. through any investment Company or group of investment Companies.

ii. The Company shall cannot buy back its shares if it has not complied with the provisions of Section 92, 123, 127 and Section 129

- a. Section 92 deals with preparation and filing of Annual Return
- b. Section 123 deals with manner of declaration of Dividend and its payment.
- c. Section 127 deals with punishment for failure to distribute Dividend.
- d. Section 129 deals with financial Statements. (There should not be any qualifying remark either on the Report of the Auditors or in the Notes and the financial statements should give true and fair view) Note: 1. I fail to understand what Section 129 has to do with compliance. It is only a penal provision for non compliance. 2. Sections 159,160,161 and 162 of the Old Act are combined into Section 92. Section 205 and 205A are combined into Section 123. Sections 210,211 and 212 are combined into Section 129. The compliance requirements are very broad and any non compliance of any of the provisions of the above Sections will make the company ineligible to go for a buy back. In my view, the Government has to notify certain provisions of the above sections of which in its view should be complied with. This will simplify the process.

E. RULES AND PROCEDURES TO BE FOLLOWED FOR BUY BACK OF EQUITY SHARES UNDER THE ACT AND THE RULES

Once the Company satisfies conditions laid as above , the next step would be to comply with procedures laid under the Act and the Rules. Once the Company meets the eligibility criteria, the next step would be how to go ahead with the Buy back. Separate rules and procedures are laid in the Act as well as in the rules.

COMPANY NOT TO ISSUE SHARES OF THE SAME CLASS AFTER BUY BACK WITHIN A PERIOD OF SIX MONTHS AFTER COMPLETION OF BUY BACK.

Under Section 68(8), the Company shall not issue further shares of the same class within a period of six months from the date of completion of buy back except by way of bonus issue or in discharge of subsisting obligations such as conversion of warrants, stock option scheme, sweat equity or conversion of preference shares or debentures into equity.

Dematerialization

Dematerialization is a process of getting your share physical certificate into electronic format which is maintained in an account, known as the demat account with the depository participant (DP), who is basically an agent between the company and the depository.

- A company should amend its Articles of Association by passing a special resolution in the general meeting of the company, thereby allowing the company to issue shares in dematerialised form.

- Private companies should register with both the central depositories i.e., National Securities Depository Limited (NSDL) and Central Securities Depository Limited (CDSL). These depositories have their own terms of registration, so it is necessary for a company to meet those criteria. If registration is successful depositories will be providing companies with an International Securities Identification Number (ISIN) for each of the shares. “ISIN” is a unique 12 digit alphanumeric code given to a security, shares, Debentures, Bonds etc. when the security is admitted in the depository system. First two digits of the ISIN code indicate country of registration for the security. For all securities registered on depository in India, first two digits of the ISIN code are ‘IN’.
- If the private company wants to transfer its dematerialized shares it may arrange demat connectivity from depositories like NSDL or CDSL along with a Registrar and Transfer Agent (RTA) by entering into a tripartite agreement between the company, the depositories and the transfer agent. An RTA i.e. Registrar and Transfer Agent is an agent of the issuer. RTA act as an intermediary between the issuer and depository for providing services such as Dematerialization, Rematerialisation, Initial Public Offers and Corporate actions.

Now, if the company wants to dematerialize its physical shares it has to follow certain procedures laid down by depositories like NSDL and CDSL. The general steps involved in the process are as follows:

- **Step1:** Beneficiary Owner (BO) has to open a demat account with a Depository participant (DP) and obtain an account number.
- **Step 2:** BO need to fill in a Demat Request Form (DRF) and submit the same with the physical certificate/s to the depository participants for dematerialization. For each ISIN, a separate DRF has to be used. If the BO has free as well as lock-in shares of the same ISIN, separate demat request has to be set up for free shares and lock-in shares.
- **Step3:** DP would verify that the DRF has been filled correctly.
- **Step 4:** DP would setup a demat request on the CDSL or NSDL system and send the same to the Company and the Registrar and Transfer Agent.
- **Step 5:** Issuer/ Registrar and Transfer Agent (RTA) would verifies the genuineness of the certificates and confirms the request.
- **Step 6:** Once the request has been successfully made, DP would deface and mutilate the physical certificates, generate a Demat Request Number (DRN) and send an electronic communication to the depository and courier the DRF and the share certificate to the company by courier.
- **Step 7:** On receiving confirmation, depository will credit an equivalent number of securities in the demat account of the BO maintained with CDSL or NSDL.
- **Step 8:** The depository will electronically download the details of the demat request and communicate the same to the electronic registry maintained by the Registrar of Companies.

Transfer of shares by an individual in dematerialized form

- A shareholder who wants to dematerialise his shares needs to open a demat account with Depository Participant (DP), and surrender his physical shares.
- If a shareholder who wants to transfer shares to the demat account of another can transfer by issuing appropriate instructions to the concerned depository participant through Delivery Instruction Slip (DIS) which will be issued by the DP. The delivery instruction slip is a book similar to a cheque book and an investor is supposed to handle it with the same care as a cheque book.
- If an investor wants to transfer securities through the stock exchange, he/she has to instruct the DP to transfer shares from his demat account to the brokers’ pool account.
- In case he wants to transfer shares to any other buyer’s demat account, i.e., an off market transaction, he will have to instruct his DP to transfer to the concerned buyer’s demat account. Similarly, securities can be transferred to the buyers demat account by the instruction of the seller (transferor) to his concerned DP. The seller is supposed mention investor’s demat account number in the DIS.

- It is important to note that RTA has to confirm from the company before approving the transfer. Company approval is necessary and then only RTA shall register a transfer in the demat mode

Rematerialisation

Rematerialisation is the process by which a client can get his electronic holdings converted into physical certificates. The client has to submit the rematerialisation request to the DP with whom he has an account. The DP enters the request in its system which blocks the client's holdings to that extent automatically. The DP releases the request to NSDL and sends the request form to the Issuer/ R&T agent. The Issuer/ R&T agent then prints the certificates, despatches the same to the client and simultaneously electronically confirms the acceptance of the request to NSDL. Thereafter, the client's blocked balances are debited.

Features

- A client can rematerialise his dematerialised holdings at any point of time.
- The rematerialisation process is completed within 30 days.
- The securities sent for rematerialisation cannot be traded.

Procedure

- The client will submit a request to the DP for rematerialisation of holdings in its account.
- On receipt of the request form, the DP will verify that the form is duly filled in and issue to the client, an acknowledgement slip, signed and stamped.
- The DP will verify the signature of the client as on the form with the specimen available in its records.
- If the signatures are different the DP will ensure the identity of the client.
- If the form is in order the DP will enter the request details in its DPM (software provided by NSDL to the DP). While entering the details, if it is found that the client's account does not have enough balance, the DP will not entertain the request.
- The DP will intimate the client that the request cannot be entertained since the client does not have sufficient balance.
- If there is sufficient balance in the client's account, the DP will enter the request in the DPM and the DPM will generate a Rematerialisation Request Number (RRN).
- The RRN so generated is entered in the space provided for the purpose in the rematerialisation request form.
- Details recorded for the RRN should be verified by a person other than the person who entered the data. The request is then released to the DM by the DP.
- The DM forwards the request to the Issuer/ R&T agent electronically.
- The DP will fill the authorisation portion of the request form.
- The DP will then despatch the request form to the Issuer/ R&T agent.
- While processing the request, the Issuer/ R&T agent may report some objections. Depending on the nature of objection, the Issuer/ R&T agent may reject the request or process it partially, seeking rectification for the remaining, and send an objection memo to the DP.
- The Issuer/ R&T agent accepts the request for rematerialisation prints and despatches the certificates to the client and sends electronic confirmation to the DM.
- The DM downloads this information to the DPM and the status of the rematerialisation request is updated in the DPM.
- The DP must inform the client about the changes in the client account following the acceptance of the request.

Transfer and transmission of securities

Section 56 (1) A company shall not register a transfer of securities of the company, or the interest of a member in the company in the case of a company having no share capital, other than the transfer between

persons both of whose names are entered as holders of beneficial interest in the records of a depository, unless a proper instrument of transfer, in such form as may be prescribed, duly stamped, dated and executed by or on behalf of the transferor and the transferee and specifying the name, address and occupation, if any, of the transferee has been delivered to the company by the transferor or the transferee within a period of sixty days from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities:

Provided that where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period, the company may register the transfer on such terms as to indemnity as the Board may think fit.

(2) Nothing in sub-section (1) shall prejudice the power of the company to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted.

(3) Where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless the company gives the notice of the application, in such manner as may be prescribed, to the transferee and the transferee gives no objection to the transfer within two weeks from the receipt of notice.

(4) Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted—

- (a) within a period of two months from the date of incorporation, in the case of subscribers to the memorandum;
- (b) within a period of two months from the date of allotment, in the case of any allotment of any of its shares;
- (c) within a period of one month from the date of receipt by the company of the instrument of transfer under subsection (1) or, as the case may be, of the intimation of transmission under sub-section (2), in the case of a transfer or transmission of securities;
- (d) within a period of six months from the date of allotment in the case of any allotment of debenture:

Provided that where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

(5) The transfer of any security or other interest of a deceased person in a company made by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer.

(6) Where any default is made in complying with the provisions of sub-sections (1) to (5), 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 fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

Main Provisions related to Transfer of Share

1. Instrument for Transfer of Share is compulsory: Section 56 provides that a company shall not register a transfer of shares of, the company, unless a proper transfer deed in **Form SH.4** as given in Rule 11 of Companies (Share Capital & Debentures) Rules 2014 duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee and specifying the name, address and occupation, if any, of the transferee, has been delivered to the company, along with the certificate relating to the shares, or if no such certificate is in existence, along with the letter of allotment of the shares.

2. Time Period for deposit of Instrument for Transfer: An instrument of transfer of shares i.e. Form **SH.4** with the date of its execution specified thereon shall be delivered to the company within sixty (60) days from the date of such execution by or on behalf of the transferor and by or on behalf of the transferee.

3. Value of share transfer stamps to be affixed on the transfer deed: Stamp duty for transfer of shares is 25 paise for every Rs. 100 or part thereof of the value of shares as per Notification No. SO 130(E), dated 28-01-2004 issued by the Ministry of Finance, Department of Revenue, New Delhi.

4. Time limit for issue of certificate on transfer (Section-56(4)): Every company, unless prohibited by any provision of law or of any order of any Court, Tribunal or other authority, shall, within One month deliver, the certificates of all shares transferred after the application for the registration of the transfer of any such shares, debentures or debenture stock received.

5. Private company shall restrict right to transfer its shares: Entire shareholding of a private company may be owned by a family or other private group. Section 2(58)(i) of the Companies Act, 2013 provides that the Articles of private company shall restrict the right to transfer the company's shares.

6. Restriction on transfer in Private Company not applicable in certain cases: Restriction upon transfer of shares in private company are not applicable in the following cases:—

- (i) on the right of a member to transfer his/her shares cannot be applicable in a case where the shares are to be transferred to his/her representative(s).
- (ii) in the event of death of a shareholder, legal representatives may require the registration of share in the names of heirs, on whom the shares have been devolved.

Note: Restriction should not be in the form of prohibition and Restriction can only be by the Articles of Association.

7. Time Limit for Refusal of registration of Transfer: Provisions related to Refusal of registration and appeal against refusal is given in Section 58 of the Companies Act, 2013. Power of refusal to register transfer of shares is to be exercised by the company within thirty (30) days from the date on which the instrument of transfer or the intimation of transfer, as the case may be is delivered to the company.

8. Time Limit for appeal against refusal to register Transfer by Private Company: As per section 58(3), a transferee of shares may appeal to the Tribunal against the refusal within a period of thirty (30) days from the date of receipt of the notice from the Company or in case no notice has been sent by the company, within a period of sixty (60) days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

9. Time Limit for appeal against refusal to register Transfer by Public Company: As per section 58(4), a transferee of shares may, within a period of sixty (60) days of such refusal or where no intimation has been received from the company, within ninety (90) days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.

10. Penalty for Non-compliance: Where any default is made in complying with the provisions related to transfer of shares, the company shall be punishable with fine which shall not be less than Rs. 25,000/- but which may extend to Rs. 5,00,000/- and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs. 10,000/- but which may extend to Rs. 1,00,000/-.

Basic Procedure for Transfer of Share in a Private Company

Generally articles contain the detailed provisions as regards the procedure for transfer of shares. Usually following steps shall be followed by a private company to give effect to the transfer of shares:—

Transferor should give a notice in writing for his intention to transfer his share to the company. The company in turn should notify to other members as regards the availability of shares and the price at which such share would be available to them. Such price is generally determined by the directors or the auditors of the company. The company should also intimate to the members, the time limit within which they should communicate their option to purchase shares on transfer. If none of the members comes

forward to purchase shares then the shares can be transferred to an outsider and the company will have no option, other than to accept the transfer. Get the Share transfer deed in **form SH-4** duly executed both by the transferor and the transferee. The transfer deed should bear stamps according to the Indian Stamp Act and Stamp Duty Notification in force in the State concerned. The present rate of transfer of shares is 25 Paise for every one hundred rupees of the value of shares or part thereof. Do not forget to cancel the stamps affixed at the time or before signing of the transfer deed. The signatures of the transferor and the transferee in the share transfer deed must be witnessed by a person giving his signature, name and address.

Attach the relevant share certificate or allotment letter with the share transfer deed and deliver the same to the company. The share transfer deed should be deposited with the company within sixty (60) days from the date of such execution by or on behalf of the transferor and by or on behalf of the transferee. After receipt of share transfer deed, board shall consider the same. If the documentation for transfer of share is in order, board shall register the transfer by passing a resolution.

Basic Procedure for Transfer of Share in a Public Company

Section 58(2) provides that the shares or debentures and any interest therein of a public company **shall be freely transferable**. Usually following steps shall be followed by a private company to give effect to the transfer of shares: —

Get the Share transfer deed in **form SH-4** duly executed both by the transferor and the transferee. The transfer deed should bear stamps according to the Indian Stamp Act and Stamp Duty Notification in force in the State concerned. The present rate of transfer of shares is 25 Paise for every one hundred rupees of the value of shares or part thereof. Do not forget to cancel the stamps affixed at the time or before signing of the transfer deed. The signatures of the transferor and the transferee in the share transfer deed must be witnessed by a person giving his signature, name and address. Attach the relevant share certificate or allotment letter with the share transfer deed and deliver the same to the company. The share transfer deed should be deposited with the company within sixty (60) days from the date of such execution by or on behalf of the transferor and by or on behalf of the transferee. After receipt of share transfer deed, board shall consider the same. If the documentation for transfer of share is in order, board shall register the transfer by passing a resolution.

Transmission of shares

A transmission of interest in shares of a company, of a deceased member of the company, made by the legal representative of a deceased member shall be considered as transmission of shares by operation of law. This transmission will be registered by a company in the Register of Members.

Section 56 (2) Nothing in sub-section (1) shall prejudice the power of the company to register, on receipt of an **intimation of transmission** of any right to securities by operation of law from any person to whom such right has been transmitted.

(3) Where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless the company gives the notice of the application, in such manner as may be prescribed, to the transferee and the transferee gives no objection to the transfer within two weeks from the receipt of notice.

(4) Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted—

- (a) within a period of two months from the date of incorporation, in the case of subscribers to the memorandum;
- (b) within a period of two months from the date of allotment, in the case of any allotment of any of its shares;

- (c) within a period of one month from the date of receipt by the company of the instrument of transfer under subsection(1) or, as the case may be, of the intimation of transmission under sub-section (2), in the case of a transfer or transmission of securities;
- (d) within a period of six months from the date of allotment in the case of any allotment of debenture:

Provided that where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

(5) The transfer of any security or other interest of a deceased person in a company made by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer.

(6) Where any default is made in complying with the provisions of sub-sections (1) to (5), 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 fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

Main Provisions related to Transmission of Share

1. Person eligible to apply for transmission: The survivors in case of joint holding can get the shares transmitted in their names by production of the death certificate of the deceased holder of shares. In other words in case of joint holding, the survivor or survivors shall only be entitled for registration and the legal heir of the deceased member shall have no right or claims.

2. Share transfer deed not required for Transmission: Execution of transfer deed not required in case of transmission of shares. Intimation/application of Transmission accompanied with relevant documents would be enough for valid transmission request.

3. Documents required for Transmission of Shares: In case of transmission of shares by operation of law, it is not necessary to execute and submit transfer deed. A simple application to the company by a legal representative along with the following necessary evidences is sufficient:—

- a. Certified copy of death certificate;
- b. Succession certificate;
- c. Probate;
- d. Specimen signature of the successor.

4. Liability on shares shall continue: In the case of a transmission of shares, shares continue to be subject to the original liabilities, and if there was any lien on the shares for any sums due, the lien would subsist, notwithstanding the devaluation of the shares.

5. Payment of consideration or stamp duty not required: Since the transmission is by operation of law, payment of consideration or payment of stamp duty would not be required on instruments for transmission.

6. Time limit for issue of share certificate on transmission (Section-56(4)): Every company, unless prohibited by any provision of law or of any order of any Court, Tribunal or other authority, shall, within One month deliver, the certificates of all shares transmitted after the application for the registration of the transmission of any such shares received.

7. Time Limit for Refusal of registration of Transmission: Provisions related to Refusal of registration and appeal against refusal is given in Section 58 of the Companies Act, 2013. Power of refusal to register transmission of shares is to be exercised by the company within thirty (30) days from the date on which the intimation of transmission is delivered to the company.

8. Time Limit for appeal against refusal to register Transmission by Private Company: As per section 58(3), the person who gave intimation of the transmission by operation of law, may appeal to the Tribunal against the refusal within a period of thirty (30) days from the date of receipt of the notice from

the Company or in case no notice has been sent by the company, within a period of sixty (60) days from the date on which the intimation of transmission was delivered to the company.

9. Time Limit for appeal against refusal to register Transmission by Public Company: As per section 58(4), the person who gave intimation of the transmission by operation of law may, within a period of sixty (60) days of such refusal or where no intimation has been received from the company, within ninety (90) days of the delivery of the intimation of transmission, appeal to the Tribunal against such refusal.

10. Penalty for Non-compliance: Where any default is made in complying with the provisions related to transmission of shares, the company shall be punishable with fine which shall not be less than Rs. 25,000/- but which may extend to Rs. 5,00,000/- and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs. 10,000/- but which may extend to Rs. 1,00,000/-.

Extremely useful Information and knowledge about Transmission documents:

- i. Meaning of Probate:** If a member of a company dies and he leaves after him a will or letter of administration then the survivors shall get a copy of 'will' certified under the seal of a Court of competent jurisdiction. The certified copy of the will is called a 'probate'. Succession certificate is not required when probate or letter of administration is issued.
- ii.** If a member of a company dies without leaving a will, then succession certificate issued by a Court of competent jurisdiction shall be submitted to the company. Once succession certificate is granted, it provides full indemnity to the company regarding transmission of shares by operation of law.
- iii.** The survivors in case of joint holding can get the shares transmitted in their names by production of the death certificate of the deceased holder of shares.

Basic Procedure for Transmission of Share

Generally articles contain the detailed provisions as regards the procedure for transmission of shares. Usually following steps shall be followed in order to give effect to the transmission of shares:—

- 1.** The survivor in case of joint holding or legal heir, as the case may be, who want transmission by operation of law in his/her favour, shall file a simple application with the Company with relevant documents such as death certificate, succession certificate, probate, etc., depending upon various circumstances may be considers necessary for transmission by the Company.
- 2.** The company records the particulars of the death certificate and a reference number of recording entry is given to the shareholder so as to enable him to quote such number in all future correspondence with the company.
- 3.** The company review and verify the documents submitted with transmission request. In case all the documents are in order, company shall approve the transmission request and register the shares in the name of the survivor or legal heir as the case may be.
- 4.** However in case documents submitted with transmission request are not in order and it is the case of refusal, company shall within thirty (30) days, from the date on which the intimation of transmission is delivered to the company, communicate refusal to the concerned person.
- 5.** Dividend declared before the death of the shareholder will be payable to legal representative but dividend declared after the death of a member can be paid to him only after registration of his name and till that period it has to be kept in abeyance.

Module IV

MANAGEMENT OF COMPANIES

Board and Governance

The supreme executive authority controlling the management and affairs of a company vests in the team of directors of the company, collectively known as its Board of Directors. At the top of the corporate governance practice is the Board of Directors which oversees how the management serves and protects the long term interests of all the stakeholders of the Company. The institution of board of directors was based on the assumption that a group of trustworthy and respectable people should look after the interests of the large number of shareholders who are not directly involved in the management of the company. The position of board of directors is that of trust as the board is entrusted with the responsibility to act in the best interests of the company. Even the Board comprises individual directors, the actions and deeds of directors individually functioning cannot bind the company, unless a particular director has been specifically authorised by a Board resolution to discharge certain responsibilities on behalf of the company. The Companies Act, 2013 does not contain an exhaustive definition of the term “director”. Section 2 (34) of the Act prescribed that “director” means a director appointed to the Board of a company. A director is a person appointed to perform the duties and functions of director of a company in accordance with the provisions of the Companies Act, 2013.

Board of Directors

A company, though a legal entity in the eyes of law, is an artificial person, existing only in contemplation of law. It has no physical existence. It has neither soul nor body of its own. As such, it cannot act in its own person. It can do so only through some human agency. The persons who are in charge of the management of the affairs of a company are termed as directors. They are collectively known as Board of Directors or the Board. The directors are the brain of a company. They occupy a pivotal position in the structure of the company. Directors take the decision regarding the management of a company collectively in their meetings known as Board Meetings or at the meetings of their committees constituted for certain specific purposes. Section 2 (10) of the Companies Act, 2013 defined that “Board of Directors” or “Board”, in relation to a company, means the collective body of the directors of the company.

The Companies Act 2013 has introduced significant changes in the composition of the board of directors of a company. The key changes introduced are set out below:

NUMBER OF DIRECTORS: The following key changes have been introduced regarding composition of the board:

Section 149(1) of the Companies Act, 2013 requires that every company shall have a minimum number of 3 directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company. A company can appoint maximum 15 fifteen directors. A company may appoint more than fifteen directors after passing a special resolution in general meeting and approval of Central Government is not required. A period of one year has been provided to enable the companies to comply with this requirement.

1. A one person company shall have a minimum of 1 (one) director;
2. Companies Act 1956 permitted a company to determine the maximum number of directors on its board by way of its articles of association. Companies Act 2013, however, specifically provides that a company may have a maximum of 15 (fifteen) directors.
3. Companies Act 1956 required public companies to obtain Central Government's approval for increasing the number of its directors above the limit prescribed in its articles or if such increase would lead to the total number of directors on the board exceeding 12 (twelve) directors. Companies Act 2013 however, permits every company to appoint directors above the prescribed limit of 15 (fifteen) by authorizing such increase through a special resolution.

Companies Act 2013 requires companies to have the following classes of directors:



Resident Director: Companies Act 2013 introduces the requirement of appointing a resident director, i.e., a person who has stayed in India for a total period of not less than 182 (one hundred and eighty two) days in the previous calendar year.

Independent Directors

The Companies Act 1956 did not require companies to appoint an independent director on its board. Provisions related to independent directors were set out in Clause 49 of the Listing Agreement ("**Listing Agreement**").

Section 149 recognizes the concept of an "Independent Director". This term is defined to mean a person:-

- (i) Who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience.
- (ii) Who possess such other qualifications as may be prescribed.
- (iii) Who is or was not a promoter of the company, or its holding, subsidiary or associate company (hereinafter referred to as Group Companies)
- (iv) Who is not related to promoters or directors of the company or any of its group companies.
- (v) Who has or had no pecuniary relationship with any of the above persons/companies during the current or two immediately preceding financial years.
- (vi) None of his relatives has or had pecuniary relationship or transaction with the above persons amounting to 2% or more of its gross turnover or total income or Rs.50 lacs (or such higher amount which is prescribed) – whichever is lower during the current or two preceding financial years.
- (vii) Who or any of his relatives –
 - (a) Holds or held the position of a key managerial personnel or as employee of the company or any of its group companies in any of the 3 financial years immediately preceding the year of his appointment.
 - (b) Is or has been an employee, proprietor or partner of the following during any of the 3 preceding financial years.
 - A firm of Auditors, Company Secretaries or Cost Auditors of the company or any of its group of companies.
 - Any legal or consulting firm which has or had transaction with the company in or any of its group companies amounting to 10% or more of the gross turnover of the firm.
 - (c) Holds, together with his relatives, 2% or more of the Voting power of the company. or,

(d) is a Chief Executive or director of any non-profit organization that receives 25% or more of its receipts from the company, any of its promoters, directors or its group companies or that hold 2% or more of the total voting power of the company.

(viii) Who is not a Managing/Whole Time/Nominee Director.

Number of independent directors:

As per the Listing Agreement, only listed companies were required to appoint independent directors. The number of independent directors on the board of a listed company was required to be equal to (i) one third of the board, where the chairman of the board is a non-executive director; or (ii) one half of the board, where the chairman is an executive director.

However, under Companies Act 2013, the following companies are required to appoint independent directors:

- i.** Public listed company: At least one third of the board to be comprised of independent directors; and
- ii.** Certain specified companies that meet the criteria listed below are required to have at least 2 (two) independent directors:
 - Public companies which have paid up share capital of Rs 1,00,000,000 (Rupees one hundred million only);
 - Public companies which have a turnover of 1,000,000,000 (Rupees one billion only); and
 - Public companies which have, in the aggregate, outstanding loans, debentures and deposits exceeding Rs. 5,00,000,000 (Rupees five hundred million only)

Qualification criteria:

Companies Act 2013 prescribes detailed qualifications for the appointment of an independent director on the board of a company. Some important qualifications include:

- he / she should be a person of integrity, relevant expertise and experience;
- he / she is not or was not a promoter of, or related to the promoter or director of the company or its holding, subsidiary or associate company;
- he / she has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors during the 2 (two) immediately preceding financial years or during the current financial year;
- a person, none of whose relatives have or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors amounting to 2 (two) percent or more of its gross turnover or total income or INR 5,000,000 (Rupees five million only), whichever is lower, during the 2 (two) immediately preceding financial years or during the current financial year.
- Companies Act 2013 also sets forth stringent provisions with respect to the relatives of the independent director.

Independent Directors and Companies Act 2013:

- (a)** The Companies Act 2013 requires an independent director to be a person of integrity, relevant expertise and experience; it fails to elaborate on the requisite standards for determining whether a person meets such criteria. Companies (acting through their respective nomination and remuneration committees) would be able to exercise their own judgment in the appointment of independent directors, diluting the "independence" criteria.
- (b)** While the Listing Agreement provided that an independent director must not have any material pecuniary relationship or transaction with the company, Companies Act 2013 states that an independent director must not have had any pecuniary relationship with the company. Further, the Listing Agreement stipulated earlier that an independent director should not have had such transactions with the company, its holding company etc., at the time of appointment as an

independent director, while Companies Act 2013 extends this restriction to the current financial year or the immediately preceding two financial years. However, this provision in the Listing Agreement has been aligned with the Companies Act 2013 by means of the circular issued by the Securities and Exchange Board of India ("SEBI") dated April 17, 2014 titled Corporate Governance in Listed Entities- Amendments to Clauses 35B and 49 of the Equity Listing Agreement ("**SEBI Circular**"). The SEBI Circular has brought the provisions of the Listing Agreement in line with the provisions of Companies Act 2013, and would be applicable from October 01, 2014. Further, the disqualification arising from any pecuniary relationship in the previous 2 (two) financial years under Companies Act 2013 may be unreasonably restrictive, as there may be situations where a pecuniary transaction of the proposed independent director may safely be considered to be of a nature which does not affect the director's independence, for instance, a person proposed to be appointed as an independent director may be the promoter or director of a supplier (or a counter-party to an arm's length transaction) which has in the past (either during or for a period prior to the two immediately preceding financial years) been selected by the company through an independent tender process.

- (c) **Duties of independent directors:** Neither the Listing Agreement nor the Companies Act 1956 prescribed the scope of duties of independent directors. Companies Act 2013 includes a guide to professional conduct for independent directors, which crystallizes the role of independent directors by prescribing facilitative roles, such as offering independent judgment on issues of strategy, performance and key appointments, and taking an objective view on performance evaluation of the board. Independent directors are additionally required to satisfy themselves on the integrity of financial information, to balance the conflicting interests of all stakeholders and, in particular, to protect the rights of the minority shareholders. The SEBI Circular however, states that the board is required to lay down a code of conduct which would incorporate the duties of independent directors as set out in Companies Act 2013.
- (d) **Liability of independent directors:** Under Companies Act 1956, independent directors were not considered to be "officers in default" and consequently were not liable for the actions of the board. Companies Act 2013 however, provides that the liability of independent directors would be limited to acts of omission or commission by a company which occurred with their knowledge, attributable through board processes, and with their consent and connivance or where they have not acted diligently.

Position of Nominee Directors

- While the Listing Agreement stated that the nominee directors appointed by an institution that has invested in or lent to the company are deemed to be independent directors, Companies Act 2013 states that a nominee director cannot be an independent director. However, the SEBI Circular in line with the provisions of Companies Act 2013 has excluded nominee directors from being considered as independent directors.
- Companies Act 2013 defines nominee director as a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by the Government or any other person to represent its interests.

Woman Director

- Listed companies and certain other public companies shall be required to appoint at least 1 (one) woman director on its board.
- Companies incorporated under Companies Act 2013 shall be required to comply with this provision within 6 (six) months from date of incorporation. In case of companies incorporated Under Companies Act 1956, companies are required to comply with the provision within a period of 1 (one) year from the commencement of the act.

Duties of directors

Companies Act 1956 did not contain any provisions that specifically identified the duties of directors. Companies Act 2013 has set out the following duties of directors:

- To act in accordance with company's articles;
- To act in good faith to promote the objects of the company for benefit of the members as a whole, and the best interest of the company, its employees, shareholders, community and for protection of the environment;
- Exercise duties with reasonable care, skill and diligence, and exercise of independent judgment;

The director is not permitted to:

- Be involved in a situation in which he may have direct or indirect interest that conflicts, or may conflict, with the interest of the company;
- Achieve or attempt to achieve any undue gain or advantage, either to himself or his relatives, partners or associates.

COMMITTEES OF THE BOARD

Companies Act 2013 envisages 4 (four) types of committees to be constituted by the board:



1. AUDIT COMMITTEE: Under Companies Act 1956, public companies with a paid up capital in excess of Rs 50,000,000 (Rupees fifty million only) were required to set up an audit committee comprising of not less than 3 (three) directors. At least one third had to be comprised of directors other than Managing Directors or Whole Time Directors. Companies Act 2013 however, requires the board of every listed company and certain other public companies to constitute the audit committee consisting of a minimum of 3 (three) directors, with the independent directors forming a majority. It prescribes that a majority of members, including its Chairman, have to be persons with the ability to read and understand financial statements. The audit committee has been entrusted with the task of providing recommendations for appointment and remuneration of auditors, review of independence of auditors, providing approval of related party transactions and scrutiny over other financial mechanisms of the company.

2. NOMINATION AND REMUNERATION COMMITTEE: While Companies Act 1956 did not require companies to set up nomination and remuneration committee, the Listing Agreement provided companies with the option to constitute a remuneration committee. However, Companies Act 2013 requires the board of every listed company to constitute the Nomination and Remuneration Committee consisting of 3 (three) or more non-executive directors out of which not less than one half are required to be independent directors. The committee has the task of identifying persons who are qualified to become directors and provide recommendations to the board regarding their appointment and removal, as well as carry out their performance evaluation.

3. STAKEHOLDERS RELATIONSHIP COMMITTEE: Companies Act 1956 did not require a company to set up a stakeholder's relationship committee. The Listing Agreement required listed companies to set up a shareholders / investors grievance committee to examine complaints and issues of shareholders. Companies Act 2013 requires every company having more than 1000 (one thousand) shareholders, debenture holders, deposit holders and any other security holders at any time during a financial year to constitute a stakeholders relationship committee to resolve the grievances of security holders of the company.

4. CORPORATE SOCIAL RESPONSIBILITY COMMITTEE ("CSR Committee"): Companies Act 1956 did not impose any requirement on companies relating to corporate social responsibility ("CSR"). Companies Act 2013 however, requires certain companies to constitute a CSR Committee, which would be responsible to devise, recommend and monitor CSR initiatives of the company. The committee is also required to prepare a report detailing the CSR activities undertaken and if not, the reasons for failure to comply.

BOARD MEETINGS AND PROCESSES

The key changes introduced by Companies Act 2013 with respect to board meetings and processes are as under:

- First board meeting of a company to be held within 30 (thirty) days of incorporation;
- Notice of minimum 7 (seven) days must be given for each board meeting. Notice for board meetings may be given by electronic means. However, board meetings may be called at shorter notice to transact "urgent business" provided such meetings are either attended by at least 1 (one) independent director or decisions taken at such meetings on subsequent circulation are ratified by at least 1 (one) independent director.
- Companies Act 2013 has permitted directors to participate in board meetings through video conferencing or other audio visual means which are capable of recording and recognising the participation of directors. Participation of directors by audio visual means would also be counted towards quorum.
- Requirement for holding board meeting every quarter has been discontinued. Now at least 4 (four) meetings have to be held each year, with a gap of not more than 120 (one hundred and twenty) days between 2 (two) board meetings.
- Certain new actions have been identified, that require approval by directors in a board meeting. These include issuance of securities, grant of loans, guarantee or security, approval of financial statement and board's report, diversification of business etc.
- Approval of circular resolution will be by a majority of directors or members who are entitled to vote on the resolution, irrespective of whether they are present in India or otherwise.

DIRECTORS OF COMPANY

- An appointed or elected member of the board of directors of a company.
- He has the responsibility for determining and implementing the company's policy.
- A company director need not
 - to be a shareholder or
 - an employee, and
 - may hold only the office of director under the provisions of the Act.

Directors derive their powers emanating from board resolutions. Unlike shareholders, directors cannot participate through proxy. Unlike employees, cannot absolve themselves of their responsibility for the delegated duties. Section 2(34) of the Companies Act, 2013 defines a director as – “director” means a director appointed to the Board of a company.

Appointment Position, Powers, Rights, Duties and Liabilities

Appointment of Directors – Section 152

First Director

The first directors of most of the companies are named in their articles. If they are not so named in the articles of a company, then 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 the case of a One Person Company, an individual being a member shall be deemed to be its first director until the director(s) are

duly appointed by the member in accordance with the provisions of Section 152. Provisions relating to appointment of Directors are contained in Sections 151 to 172 of the new Act. These provisions are more or less on the same lines as provisions of sections 254 to 267, 274, 275, 283, 284, 303, 307 and 313 of the existing Act. It may be noted that some of the Sections out of 151 to 172 are also applicable to Private Companies. These provisions are applicable to private companies, unless otherwise stated.

- (i) Subscribers to the Memorandum and Articles shall be the first directors, if the Articles do not make any provision.
- (ii) Every director will be appointed by the company at the General Meeting.
- (iii) No person shall be appointed as a director, if he is not allotted the Director Identification Number (DIN) u/s.154.
- (iv) The person to be appointed as a director has to give his consent in the prescribed form which is to be filed by the company with ROC within 30 days. He has also to give his DIN particulars and a declaration that he is not disqualified under the Act.
- (v) At least 2/3rd of the directors on the Board of a public company shall be such that they are liable to retire by rotation. At every AGM 1/3rd of such directors shall retire by rotation.
- (vi) A person other than a retiring director shall be eligible to contest election for directorship of a public company if a shareholder proposes his name for such position and deposits Rs.1 Lac or such higher amount as may be prescribed with the company. This amount will be refunded by the company if such person is elected as director or he gets at least 25% of votes at the AGM.
- (vii) Board of Directors can appoint an additional director who shall hold office up to the next AGM. Similarly, Board can also appoint an alternate director if any director is to be out of India for more than 3 months.
- (viii) A nominee of any Institution or any State/Central Government can be appointed as a director. He will be called a "Nominee Director."
- (ix) The company has option by articles of association, to adopt the principle of proportional representation for appointment of Directors.
- (x) Provisions in section 164 of the new Act for disqualification of a person for appointment as director are similar to provisions in section 274 of the existing Act.
- (xi) Provision in section 167 of the new Act for vacation of office of a director are similar to section 283 of the existing Act.
- (xii) Section 165 of the new Act provides that no person shall be a director or alternate director in more than 20 companies. It may be noted that u/s 275 of the existing Act this limit is 15 companies. Out of these, the maximum number of public companies cannot exceed 10. For computing this limit of public companies directorships in a private company which is a holding or subsidiary company of a public company shall be included. Members of a company may, by a special resolution, specify for any lesser number of companies in which its director may act as a director.
- (xiii) Any person holding directorship in more than the number specified U/s. 165 has to regularize the position in one year after the commencement of the new Act.
- (xiv) Section 168 of the new Act provides for resignation of a director and section 169 provides for removal by a director. Elaborate provisions in these sections are made more or less on the same lines as section 284 of the existing Act.
- (xv) Every company has to maintain Register of Directors and key managerial personnel and their shareholding as provided in section 170. Members shall have right to inspect these registers u/s.171.

Appointment of Additional Director- Section 161 (1) The board of directors can appoint additional directors, if such power is conferred on them by the articles of association. Such additional directors hold office only up to the date of next annual general meeting or the last date, on which the annual general meeting should have been held, whichever is earlier. A person who fails to get appointed as a director in a general meeting cannot be appointed as Additional Director.

Appointment of Alternate Director- Section 161 (2) of the Act allowed the followings:

- (i) The Board of Directors of a company must be authorised by its articles or by a resolution passed by the company in general meeting for appointment of alternate director.
- (ii) The person in whose place the Alternate Director is being appointed should be absent for a period of not less than 3 months from India.
- (iii) The person to be appointed as the Alternate Director shall be the person other than the person holding any alternate directorship for any other Director in the Company.
- (iv) If it is proposed to appoint an Alternate Director to an Independent Director, it must be ensured that the proposed appointee also satisfies the criteria for Independent Directors.
- (v) 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.
- (vi) If the term of office of the original director is determined before he so returns to India, any provision for the automatic reappointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

Appointment of Directors by Nomination Section 161(3) This new sub-section now provides for appointment of Nominee Directors. It states that subject to the articles of a company, 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.

Appointment of Directors in causal vacancy- Section 161 (4) If any vacancy is caused by death or resignation of a director appointed by the shareholders in General meeting, before expiry of his term, the Board of directors can appoint a director to fill up such vacancy. The appointed director shall hold office only up to the term of the director in whose place he is appointed.

Duties of Directors:

Section 166 of the new Act provides that a director of a company (including a private company) shall act in accordance with the Articles of the company. His duties are listed in the section as under:

- (1) He has to act in good faith in order to promote the objects of the company for the benefit of its members as a whole.
- (2) He has to act in the best interest of the company, its employees, shareholders, community and for the protection of environment.
- (3) He has to carry on his duties with due and reasonable care, skill and diligence and exercise independent judgment.
- (4) He shall not involve in a situation in which he may have a direct or indirect interest that conflicts or likely to conflict with the interest of the company.
- (5) He shall not achieve or attempt to achieve any undue gain or advantage either to himself, his relatives, partners or associates.
- (6) He shall not assign his office to any other person.

Role (position) of directors in a company

A Director is part of a collective body of Directors called the Board, responsible for the superintendence, control and direction of the affairs of the Company.

- **Directors as Agents :** A company as an artificial person, acts through directors who are elected representatives of the shareholders and who execute decision making for the benefit of shareholders
- **Directors as employees:** When the director is appointed as whole time employee of the company then that particular directors shall be considered as employee director or whole time director

- **Directors as officers:** Director treated as officers of an company. They are liable to certain penalties if the provisions of the companies act are not strictly complied with.
- **Director as trustees:** Director is treated as trustees of the company, money and property: and of the powers entrusted to and vested in them only as trustee.
- **Director as “Key Managerial Personnel”-** key managerial personnel, in relation to a company, means—
 - (i) the Chief Executive Officer or the managing director or the manager;
 - (ii) the company secretary;
 - (iii) the whole-time director;
 - (iv) the Chief Financial Officer; and
 - (v) such other officer as may be prescribed;

Director as “Officer in default”

Officer who is in default, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

- (i) whole-time director;
- (ii) key managerial personnel;
- (iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
- (iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
- (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
- (vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
- (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer

LIABILITIES OF DIRECTORS

Liability of non-executive / Independent Directors

An independent director and 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 liability of director may be Liability as “Officer”

Section 66 (Reduction of Capital)

If any officer of the company—

- (a) knowingly conceals the name of any creditor entitled to object to the reduction;
- (b) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or
- (c) abets or is privy to any such concealment or misrepresentation as aforesaid, he shall be liable under section 447.

Section 105 (Proxies)

If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to one lakh rupees. Provided that an officer shall not be punishable under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

Section 173 (Meetings of Board) Every officer of the company 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.

Section 204 (Secretarial Audit)

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 punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Section 207 (Conduct of Inspection and Enquiry)

If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees. 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.

Section 212 (Inspection by SFIO)

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. Notwithstanding anything contained in this Act or in any other law for the time being in force, 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 of the company.

Section 274 (Directions for filing statement of Affairs – Winding Up by Tribunal) If any director or officer of the company contravenes the provisions of this section, the director or the officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

Liability as “Officer in Default”

Directors are liable as officers in default under all sections where specific penalty is provided for each officer in default. Where no specific penalty is provided under the Act, they are liable under Section 450.

Liability for “Fraud”

“Fraud” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests

of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss; Any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.

Personal Liability Directors can be made personally liable if

When the directors enter into contract in their own name. When they enter into contracts on behalf of company but fails to use “LTD. or PVT LTD.” when directors exceeds their powers.

The BOD should act an agent of company, not of a single director. Therefore a single director cannot enter into a contract on behalf of company unless the BOD authorises.

Section 35 – Civil Liability for mis-statement in prospectus

Where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person concerned shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

Section 75 – Damages for Fraud

Where a company fails to repay the deposit or part thereof or any interest thereon referred to in section 74 within the time specified in sub-section (1) of that section or such further time as may be allowed by the Tribunal under subsection (2) of that section, and 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, without prejudice to the provisions contained in subsection (3) of that section and liability under section 447, 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.

Section 339 – Liability for fraudulent conduct of business

If in the course of the winding up of a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company or any other persons or for any fraudulent purpose, the Tribunal, on the application of the Official Liquidator, or the Company Liquidator or any creditor or contributory of the company, may, if it thinks it proper so to do, declare that any person, who is or has been a director, manager, or officer of the company or any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Tribunal may direct.

Disqualifications for appointment as director

A person shall not be eligible for appointment as a director of a company, if —

- He is of unsound mind and stands so declared by a competent court
- He is an undischarged insolvent
- He has applied to be adjudicated as an insolvent and his application is pending
- He has been convicted and sentenced to imprisonment for atleast 6 months and 5 years from expiry of sentence have not got over
- He has been convicted and sentenced for a period of 7 years or more
- An order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force
- He has not paid any calls in respect of any shares of the company held by him & 6 months have elapsed from the last day fixed for the payment of the call

- He has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years
- He has not obtained DIN
- A person who is director of a company which has not filed financial statements or annual returns for 5 continuous yrs, till expiry of 5 yrs from date of default
- A person who is director of company which has failed to repay deposits, debentures or distribute dividend for a period of one year, till expiry of 5 years from date of default
- Private Companies can provide for additional disqualifications in their Articles

Removal of directors- Section 169

A company may, remove a director except the director appointed by National Company Law Tribunal u/s 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard after passing the ordinary resolution. Provided that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two thirds of the total number of directors according to the principle of proportional representation. 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. 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. 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, —

(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 as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting.

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. 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 under sub-section (2). 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. If the vacancy is not filled under sub-section (5), it may be filled as a casual vacancy in accordance with the provisions of this Act:

Provided that the director who was removed from office shall not be re-appointed as a director by the Board of Directors. Nothing in this section shall be taken— (a) as depriving a person removed under this section of any compensation or damages payable to him in respect of the termination of his appointment as director as per the terms of contract or terms of his appointment as director, or of any other appointment terminating with that as director; or (b) as derogating from any power to remove a director under other provisions of this Act.

Key Managerial personnel

While the Companies Act, 1956 recognised only Managing Director, Whole Time Director and Manager as the Managerial Personnel, the Companies Act, 2013 has brought in the concept of Key Managerial Personnel which not only covers the traditional roles of managing director and whole time director but also includes some functional figure heads like Chief Financial Officer and Chief Executive Officer etc. These inclusions are in line with the global trends. “Company Secretary” has also been brought within the ambit of Key Managerial Personnel giving them the long deserved recognition of a Key Managerial Personnel of the Company. Another noteworthy feature of this concept is that it combines the important management roles as a team or a cluster rather than as independent individuals performing their duties in isolation to others.

WHO IS A KEY MANAGERIAL PERSONNEL?

The definition of the term Key Managerial Personnel is contained in Section 2(51) of the Companies Act, 2013. The said Section states as under:

“key managerial personnel”, in relation to a company, means—

- (i) the Chief Executive Officer or the managing director or the manager;
- (ii) the company secretary;
- (iii) the whole-time director;
- (iv) the Chief Financial Officer; and
- (v) such other officer as may be prescribed;

The above definition is an exhaustive definition but point number (v) gives the power to the legislature to include some other personnel also within the definition of Key Managerial Personnel as may be deemed fit by them from time to time. As of now, no further prescription has been made pursuant to point number (v) and therefore, as on date, the definition is confined to the six personnel mentioned above.

The above definitions depict that in the case of CEO and CFO, the designation is crucial to deem the person as CEO and CFO whereas in the case of MD and Manager the functions discharged or the role performed by an individual is taken as the test to deem them as the MD or Manager. The definition of whole time director is an inclusive definition and CS is defined to mean a CS as per the Company Secretaries Act, 1980 who is duly appointed to perform the functions of a company secretary.

WHICH COMPANIES ARE MANDATORILY REQUIRED TO APPOINT KEY MANAGERIAL PERSONNEL

As per Section 203 of the Companies Act, 2013 read with the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the following class of Companies, namely - Every listed company, and Every other public company having paid up share capital of Rs. 10 Crores or more 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

Further, as per recently notified Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, a company other than a company which is required to appoint a whole time key managerial personnel as discussed above and which is having paid up share capital of Rs. 5 Crores or more shall have a whole time Company Secretary.

MANNER OF APPOINTMENT OF KMP

Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration. 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 6 months from the date of such vacancy.

RESTRICTIONS REGARDING APPOINTMENT OF KEY MANAGERIAL PERSONNEL:

Same person not to act as Chairman and MD/CEO

It has been provided under the Act that the role or designation of Chairman and Managing Director or Chairman and Chief Executive Officer should not be assigned to the same person. In other words, the same person should not act as both Chairman and Managing Director or Chief Executive Officer of the Company. However, in the following circumstances, the above restriction will not apply:

- (a) the articles of the company contain provision for appointment of same person, or
- (b) the company carries only a single business, or
- (c) the company is engaged in multiple businesses and has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government

Whole time KMP not to hold office in more than one company. It has been provided under the Act that a whole-time key managerial personnel shall not hold office in more than one company at the same time, except: In the company's subsidiary company, As a director in any other company with the permission of the Board, As a MD, 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. Further, it has also been provided that a 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 6 months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel.

OTHER PROVISIONS REGARDING KMP

A KMP is included within the meaning of "Officer in Default" under the Act. A document or proceeding requiring authentication by a company; or contracts made by or on behalf of a company, may be signed by any key managerial personnel or an officer of the company duly authorised by the Board in this behalf. Details regarding KMP, changes therein and the remuneration paid to them are required to be disclosed in the Annual Return of the Company. Explanatory statement should disclose the nature of concern or interest, financial or otherwise, of every key managerial personnel, in respect of each items of special business to be transacted at a general meeting. A person whose relative is employed as a KMP in a company is disqualified to be appointed as auditor in that company. A person is disqualified to be appointed as an independent director if he either himself or through his relative holds or has held the position of a key managerial personnel of the company or its holding, subsidiary or associate company in any of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed. Company is required to maintain a register of the KMPs at its registered office containing particulars 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. A return of every appointment and change in KMP has to be filed with the ROC within 30 days of the appointment or the change as the case may be. 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. The

remuneration policy of the KMP is to be recommended by the Nomination and Remuneration Committee, who should ensure that the policy involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals. Such policy shall be disclosed in the Board's report. Every key managerial personnel shall, within a period of 30 days of his appointment, or relinquishment of his office, as the case may be, disclose to the company the particulars specified in sub-section (1) of section 184 relating to his concern or interest in the other associations which are required to be included in the register under that sub-section or such other information relating to himself as may be prescribed. Key Managerial Personnel are prohibited to make forward dealings and insider trading in securities of the company. Financial statements of a company are required to be signed either 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 and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed.

CORPORATE GOVERNANCE

In a narrow sense, corporate governance involves a set of relationships amongst the company's management, its board of directors, its shareholders, its auditors and other stakeholders. These relationships, which involve various rules and incentives, provide the structure through which the objectives of the company are set, and the means of attaining these objectives as well as monitoring performance are determined. Thus, the key aspects of good corporate governance include transparency of corporate structures and operations; the accountability of managers and the boards to shareholders; and corporate responsibility towards stakeholders. Corporate governance is the system of rules, practices and processes by which a company is directed and controlled. Corporate governance essentially involves balancing the interests of the many stakeholders in a company - these include its shareholders, management, customers, suppliers, financiers, government and the community. Since corporate governance also provides the framework for attaining a company's objectives, it encompasses practically every sphere of management, from action plans and internal controls to performance measurement and corporate disclosure. Thus **Corporate governance** broadly refers to the mechanisms, processes and relations by which corporations are controlled and directed. Governance structures and principles identify the distribution of rights and responsibilities among different participants in the corporation (such as the board of directors, managers, shareholders, creditors, auditors, regulators, and other stakeholders) and includes the rules and procedures for making decisions in corporate affairs. Corporate governance includes the processes through which corporations' objectives are set and pursued in the context of the social, regulatory and market environment.

Definition of Corporate Governance

“Accountability to providers of capital.” — Bruce Weber

John L. Weinberg “Corporate governance is the control of management in the best interests of the company, including accountability to shareholders who elect directors and auditors and vote on say on pay”

Need of Corporate Governance:

The need for corporate governance has arisen because of the increasing concern about the non-compliance of standards of financial reporting and accountability by boards of directors and management of corporate inflicting heavy losses on investors. The collapse of international giants like Enron, World Com of the US and Xerox of Japan are said to be due to the absence of good corporate governance and corrupt practices adopted by management of these companies and their financial consulting firms. The failures of these multinational giants bring out the importance of good corporate governance structure making clear the distinction of power between the Board of Directors and the management which can lead

to appropriate governance processes and procedures under which management is free to manage and board of directors is free to monitor and give policy directions. In India, SEBI realised the need for good corporate governance and for this purpose appointed several committees such as Kumar Manglam Birla Committee, Naresh Chandra Committee and Narayana Murthy Committee.

Importance of Corporate Governance:

- 1) Investors and shareholders of a corporate company need protection for their investment due to lack of adequate standards of financial reporting and accountability. It has been noticed in India that companies raised capital from the market at high valuation of their shares by projecting wrong picture of the company's performance and profitability. The investors suffered a lot due to unscrupulous management of corporate that performed much less than reported at the time of raising capital. There is increasing awareness and consensus among Indian investors to invest in companies which have a record of observing practices of good corporate governance. Therefore, for encouraging Indian investors to make adequate investment in the stock of corporate companies and thereby boosting up rate of growth of the economy, the protection of their interests from fraudulent practices of corporate of boards of directors and management are urgently needed.
- 2) Corporate governance is considered as an important means for paying heed to investors' grievances. Kumar Manglam Birla Committee on corporate governance found that companies were not paying adequate attention to the timely dissemination of required information to investors in by India. Though some measures have been taken by SEBI and RBI but much more required to be taken by the companies themselves to pay heed to the investors grievances and protection of their investment by adopting good standards of corporate governance.
- 3) The importance of good corporate governance lies in the fact that it will enable the corporate firms to (1) attract capital and (2) perform efficiently. This will help in winning investors confidence. Investors will be willing to invest in the companies with a good record of corporate governance. New policy of liberalization and deregulation adopted in India since 1991 has given greater freedom to management which should be prudently used to promote investors' interests. In India there are several instances of corporate' failures due to lack of transparency and disclosures and instances of falsification of accounts. This discourages investors to make investment in the companies with poor record of corporate governance.
- 4) Indispensable for healthy and vibrant stock market. An important advantage of strong corporate governance is that it is indispensable for a vibrant stock market. A healthy stock market is an important instrument for investors protection. A bane of stock market is insider trading. Insider trading means trading of shares of a company by insiders such directors, managers and other employees of the company on the basis of information which is not known to outsiders of the company. It is through insider trading that the officials of a corporate company take undue advantage at the expense of investors in general. Insider trading is a kind of fraud committed by the officials of the company. One way of dealing with the problem of insider trading is enacting legislation prohibiting such trading and enforcing criminal action against violators. In India, insider trading has been rampant and therefore it was prohibited by SEBI. However, the experience shows prohibiting insider trading by law is not the effective way of dealing with the problem of insider trading because legal process of providing punishment is a lengthy process and conviction rate is very low. According to Sandeep Parekh, an advocate (Securities and Financial Regulations), the effective way of tackling the problem is by encouraging the companies to practice self regulation and taking prophylactic action. This is inherently connected to the field of corporate governance. It is a means by which the company signals to the market that effective self-regulation is in place and that investors are safe to invest in their securities. In addition to prohibiting inappropriate actions (which might not necessarily be prohibited) self-regulation is also considered an effective means of creating shareholders value. Companies can always regulate their directors/officers beyond what is prohibited by the law".

5. Changing Ownership Structure: In recent years, the ownership structure of companies has changed a lot. Public financial institutions, mutual funds, etc. are the single largest shareholder in most of the large companies. So, they have effective control on the management of the companies. They force the management to use corporate governance. That is, they put pressure on the management to become more efficient, transparent, accountable, etc. They also ask the management to make consumer-friendly policies, to protect all social groups and to protect the environment. So, the changing ownership structure has resulted in corporate governance.

6. Importance of Social Responsibility: Today, social responsibility is given a lot of importance. The Board of Directors have to protect the rights of the customers, employees, shareholders, suppliers, local communities, etc. This is possible only if they use corporate governance.

7. Growing Number of Scams: In recent years, many scams, frauds and corrupt practices have taken place. Misuse and misappropriation of public money are happening everyday in India and worldwide. It is happening in the stock market, banks, financial institutions, companies and government offices. In order to avoid these scams and financial irregularities, many companies have started corporate governance.

8. Indifference on the part of Shareholders: In general, shareholders are inactive in the management of their companies. They only attend the Annual general meeting. Postal ballot is still absent in India. Proxies are not allowed to speak in the meetings. Shareholders associations are not strong. Therefore, directors misuse their power for their own benefits. So, there is a need for corporate governance to protect all the stakeholders of the company.

9. Globalisation: Today most big companies are selling their goods in the global market. So, they have to attract foreign investor and foreign customers. They also have to follow foreign rules and regulations. All this requires corporate governance. Without Corporate governance, it is impossible to enter, survive and succeed the global market.

10. Takeovers and Mergers: Today, there are many takeovers and mergers in the business world. Corporate governance is required to protect the interest of all the parties during takeovers and mergers.

11. SEBI: SEBI has made corporate governance compulsory for certain companies. This is done to protect the interest of the investors and other stakeholders.

Corporate Social Responsibility (CSR)

Corporate social responsibility refers to a business practice that involves participating in initiatives that benefit society. Corporate social responsibility (CSR) is a business approach that contributes to sustainable development by delivering economic, social and environmental benefits for all stakeholders.

There is no agreed definition of CSR. According to EU commission (2002), “....CSR is a concept where by companies integrates social and environmental concern in their business operations and in their interaction with their stakeholders on a voluntary basis.”

Types of corporate social responsibility

CSR can encompass a wide variety of tactics, from giving nonprofit organizations a portion of a company's proceeds, to giving away a product or service to a worthy recipient for every sale made. Here are a few of the broad categories of social responsibility that businesses are practicing:

Environment: One primary focus of corporate social responsibility is the environment. Businesses, both large and small, have a large carbon footprint. Any steps they can take to reduce those footprints are considered both good for the company and society as a whole.

Philanthropy: Businesses also practice social responsibility by donating to national and local charities. Whether it involves giving money or time, businesses have a lot of resources that can benefit charities and local community programs.

Ethical labor practices: By treating employees fairly and ethically, companies can also demonstrate their corporate social responsibility. This is especially true of businesses that operate in international locations with labor laws that differ from those in the United States.

Importance of corporate social responsibility to societies

Corporate social responsibility generates direct and indirect business benefits and advantages to the corporation that adopt it (Bueble, 2009). In synthesis, the benefits and advantages that corporations adopting Corporate social responsibility initiatives may obtain the following (Campbell, 2007):

1. Increased employee loyalty and retention.
2. Gaining legitimacy and access to markets.
3. Less litigation.
4. Increased quality of products and services.
5. Bolstering public image and reputation and enhanced brand value.
6. Less volatile stock value.
7. Avoiding state regulation.
8. Increased customer loyalty.

Corporate social responsibility activities amongst various corporations and its stakeholders could contribute to the macroeconomic development of a developing country through sustainable benefit to all. At the same time, optimum national impact, cooperation, and communication would be encouraged and socialized. The following are the various benefits of corporate social responsibility to the society.

Local community and society

- Improved quality of life and Changed habits.
- Capacity building creates wealth and employment.
- Balanced ecosystems.
- Waste management.
- Clean and Green environment.

Corporations

- Goodwill and Community acceptance.
- Profit, Growth, competitive edge and image.
- Genuine dialog with stakeholders.
- Spiritual and Pride values to their families and employees.

SEBI (Securities Exchange Board of India)

In 1988 the Securities and Exchange Board of India (SEBI) was established by the Government of India through an executive resolution, and was subsequently upgraded as a fully autonomous body (a statutory Board) in the year 1992 with the passing of the Securities and Exchange Board of India Act (SEBI Act) on 30th January 1992. In place of Government Control, a statutory and autonomous regulatory board with defined responsibilities, to cover both development & regulation of the market, and independent powers has been set up.

The basic objectives of the Board are as follows:

- To protect the interests of investors in securities;
- To promote the development of Securities Market;
- To regulate the securities market and
- For matters connected therewith or incidental there to.

Since its inception SEBI has been working targeting the securities and is attending to the fulfillment of its objectives with commendable zeal and dexterity. The improvements in the securities markets like capitalization requirements, margining, establishment of clearing corporations etc. reduced the risk of credit and also reduced the market. SEBI has introduced the comprehensive regulatory measures, prescribed registration norms, the eligibility criteria, the code of obligations and the code of conduct for different intermediaries like, bankers to issue, merchant bankers, brokers and sub-brokers, registrars, portfolio managers, credit rating agencies, underwriters and others. It has framed bye-laws, risk identification and risk management systems for Clearing houses of stock exchanges, surveillance system etc. which has made dealing in securities both safe and transparent to the end investor.

Functions of SEBI

The Following are some of the main functions of SEBI:

Regulatory Functions

- Registration of brokers and sub-brokers and other players in the market
- Registration of collective investments schemes and Mutual Funds
- Regulation of stock exchanges and other self-regulatory organisations (SRO) merchant banks etc
- Prohibition of all fraudulent and unfair trade practices
- Controlling Insider Trading and takeover bids and imposing penalties for such Practices

Developmental Functions

- Investor education
- Training of intermediaries
- Promotion of fair practices and Code of conduct for all SROs
- Conducting Research and Publishing information useful to all market Participants

Powers of SEBI - Securities and Exchange Board of India

1. Powers relating to stock exchanges & intermediaries:

SEBI has wide powers regarding the stock exchanges and intermediaries dealing in securities. It can ask information from the stock exchanges and intermediaries regarding their business transactions for inspection or scrutiny and other purpose.

2. Power to impose monetary penalties:

SEBI has been empowered to impose monetary penalties on capital market intermediaries and other participants for a range of violations. It can even impose suspension of their registration for a short period.

3. Power to initiate actions in functions assigned:

SEBI has a power to initiate actions in regard to functions assigned. For example, it can issue guidelines to different intermediaries or can introduce specific rules for the protection of interests of investors.

4. Power to regulate insider trading:

5. SEBI has power to regulate insider trading or can regulate the functions of merchant bankers.

6. Powers under Securities Contracts Act:

For effective regulation of stock exchange, the Ministry of Finance issued a Notification on 13 September, 1994 delegating several of its powers under the Securities Contracts (Regulations) Act to SEBI. SEBI is also empowered by the Finance Ministry to nominate three members on the Governing Body of every stock exchange.

7. Power to regulate business of stock exchanges:

SEBI is also empowered to regulate the business of stock exchanges, intermediaries associated with the securities market as well as mutual funds, fraudulent and unfair trade practices relating to securities and regulation of acquisition of shares and takeovers of companies.

Securities Appellate Tribunal

The Securities and Exchange Board of India (SEBI) is responsible for protecting the interests of investors in securities and to promote the development of, and to regulate the securities market and for all other connected matters. To protect and be responsive to the needs of three groups of people (issuer of securities, investors and market intermediaries), SEBI has been invested with three necessary functions rolled-in to enable it to carry out its mandate: Quasi-legislative function = drafts regulations Quasi-judicial = passes rulings and judgments; prosecute and judge directly certain violations Quasi-executive = investigation and enforcement actions. Since these powers make SEBI a very powerful body, an appeal process has been created to ensure accountability. For the quasi judicial functions, there is a Securities Appellate Tribunal, which is a three-member tribunal and is presently headed by Mr. Justice J P Devadhar, a former judge of the Bombay High Court. A second appeal lies directly to the Supreme Court. The first SAT was formed in 1995, through a notification issued by the Central Government and therefore, is a statutory body established under the provisions of Section 15K of the Securities and Exchange Board of India Act, 1992 to: Hear and dispose of appeals against orders passed by the Securities and Exchange Board of India or by an adjudicating officer under the Act and, Exercise jurisdiction, powers and authority conferred on the Tribunal by or under this Act or any other law for the time being in force. The Tribunal is a three-member body composed of a Presiding Officer and two other members who are to be nominated via a notification by the Central Government. The Union Government also reserves the right to notify as many SAT's as is needed. The Securities Appellate Tribunal has only one bench that sits at Mumbai and has jurisdiction over all of India. The Securities Appellate Tribunal is not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but is be guided by the principles of natural justice and, subject to the other provisions of Depositories Act, 1996. It has powers to regulate its own procedure including the places at which it shall have its sittings. Every proceeding before the Securities Appellate Tribunal is deemed to be a judicial proceeding and the tribunal has all the powers of a Civil Court.

Securities Appellate Tribunal is a statutory body established under the provisions of Section 15K of the Securities and Exchange Board of India Act, 1992 to hear and dispose of appeals against orders passed by the Securities and Exchange Board of India or by an adjudicating officer under the Act and to exercise jurisdiction, powers and authority conferred on the Tribunal by or under this Act or any other law for the time being in force.

Section 15K of SEBI Act, 1992 empowers the Central Government to set up one or more Tribunals, for the purpose making appeals against the orders of SEBI and its adjudicating officers. These tribunals will be known as Securities Appellate Tribunal (SAT). In exercise of the power conferred, the Central Government has set up one Tribunal at Mumbai.

Composition of SAT

SAT shall consist of the following:

1. One Presiding officer
2. Two other members

Presiding Officer

- The Presiding Officer of SAT shall be appointed by the Central Government in consultation with the Chief Justice of India or his nominee.
- The person to be appointed as the Presiding Officer must;
 - a) Be a sitting or retired Judge of the Supreme Court ; or
 - b) Be a sitting or retired Chief Justice of a High Court ; or
 - c) Be a sitting or retired Judge of a High Court, who has completed atleast 7 years of service.
 - d) The person so appointed shall hold office, earlier of the two for a period of 5 years ; or
 - e) up to the age of 68 years

Members

The two members of SAT shall be appointed by the Central Government.

The person to be appointed must;

- A person of ability, integrity and standing who has shown capacity in dealing with problems relating to securities market.
- Have qualification and experience of Corporate Law, Securities Law, Finance, Economics or Accountancy.
- Person shall hold office, earlier of the two, For a period of 5 years; or
- Upto age of 62 years.

Appeal to SAT [Sec. 15T]

Who can make appeal?

- Any person aggrieved,
- By an order of the SEBI ; or
- By an order made by an adjudicating office may prefer an appeal to SAT.

Exceptions: – No appeal shall lie to SAT from an order made with the consent of the parties.

Time Limit: – The appeal to SAT shall be filed within a period of 45 days from the date of receiving the copy of the order of SEBI or adjudicating officer, as the case may be. However, SAT may entertain an appeal after the expiry of 45 days, if it is satisfied that there was sufficient cause for not filing it within that period.

SAT shall send copy of every order made by it to the following person:

- SEBI
- Concerned Adjudicating Officer
- Parties to Appeal.

Appeal against the Orders of SAT [Sec 15Z]

- Any person aggrieved by any decision or order of SAT may file an appeal to the Supreme Court. It may be noted that the appeal can be made only on any Question of Law.
- The appeal shall be filed within 60 days from the date of receiving a copy of the decision or order of SAT. However, the Supreme Court may allow a further period of 60 days for making an appeal, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the first 60 days.

Powers of SAT [Sec 15U]

The SAT shall have, for the purpose of discharging their functions under SEBI Act, 1992, the same powers as are vested in a Civil Court under the CPC, 1908, while trying a suit, in respect of the following matters, namely:

1. Summoning and enforcing the attendance of any person and examining him on oath.
2. Requiring the discovery and production of documents.
3. Receiving evidence on affidavits.
4. Issuing commissions for the examination of witness or documents.
5. Reviewing its decisions.
6. Dismissing an application for default or deciding it ex parte.
7. Setting aside any order of dismissal of any application for default or any order passed by it ex parte.
8. Any other matter which may be prescribed.

Module V

COMPANY MEETINGS AND WINDING UP

INTRODUCTION

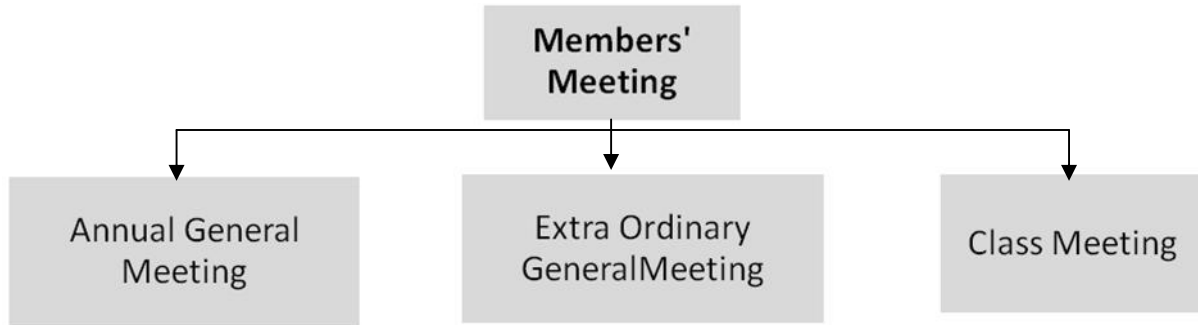
A meeting may be generally defined as a gathering or assembly or getting together of a number of persons for transacting any lawful business. There must be at least two persons to constitute a meeting. Therefore, one shareholder usually cannot constitute a company meeting even if he holds proxies for other shareholders. However, in certain exceptional circumstances, even one person may constitute a meeting. It is to be noted that every gathering or assembly does not constitute a meeting. Company meetings must be convened and held in perfect compliance with the various provisions of the Companies Act, 2013 and the rules framed there under. A company is composed of members, though it has its own entity distinct from members. The members of a company are the persons who, for the time being, constitute the company, as a corporate entity. However, a company, being an artificial person, cannot act on its own. It, therefore, expresses its will or takes its decisions through resolutions passed at validly held Meetings. The primary purpose of a Meeting is to ensure that a company gives reasonable and fair opportunity to those entitled to participate in the Meeting to take decisions as per the prescribed procedures.

The decision making powers of a company are vested in the Members and the Directors and they exercise their respective powers through Resolutions passed by them. General Meetings of the Members provide a platform to express their will in regard to the management of the affairs of the company. Convening of one such meeting every year is compulsory. Holding of more general meetings is left to the choice of the management or to a given percentage of shareholders to exercise their power to compel the company to convene a meeting. Shareholder Democracy, Class Action Suits and Protection of interest of investors are the essence and attributes of the Companies Act, 2013.

MEMBERS' MEETING

A company is required to hold meetings of the members to take approval of certain business items, as prescribed in the Act.

The meetings to be held for seeking approval to ordinary business and special business are called annual general meeting and extraordinary general meeting. In certain cases, a company may have to hold a meeting of the members of a particular class of members.



ANNUAL GENERAL MEETING (AGM) (Sec. 96)

Annual general meeting (AGM) is an important annual event where members get an opportunity to discuss the activities of the company. Section 96 provides that every company, other than a one person company is required to hold an annual general meeting every year. Following are the key provisions regarding the holding of an annual general meeting:

Holding of annual general meeting

1. Annual general meeting should be held once every year.
2. First annual general meeting of the company should be held within 9 months from the closing of the first financial year. Hence it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.
3. Subsequent annual general meeting of the company should be held within 6 months from the closing of the financial year.
4. The gap between two annual general meetings should not exceed 15 months.

Extension of validity period of AGM

In case, it is not possible for a company to hold an annual general meeting within the prescribed time, the Registrar may, for any special reason, extend the time within which any annual general meeting shall be held. Such extension can be for a period not exceeding 3 months. No such extension of time can be granted by the Registrar for the holding of the first annual general meeting,

Time and place for holding an annual general meeting

An annual general meeting can be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday. It should be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate. The Central Government is empowered to exempt any company from these provisions, subject to such conditions as it may impose. "National Holiday " for this purpose means and includes a day declared as National Holiday by the Central Government.

Default in holding the annual general meeting

Section 99 provides that if any default is made in complying or holding a meeting of the company, the company and every officer of the company who is in default shall be punishable with fine which may extend to 1 lakh and in case of continuing default, with a further fine which may extend to Rs. 5,000/- for each day during which such default continues.

If any default is made in holding the annual general meeting of a company, any member of the company may make an application to the Tribunal to call or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient. Such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

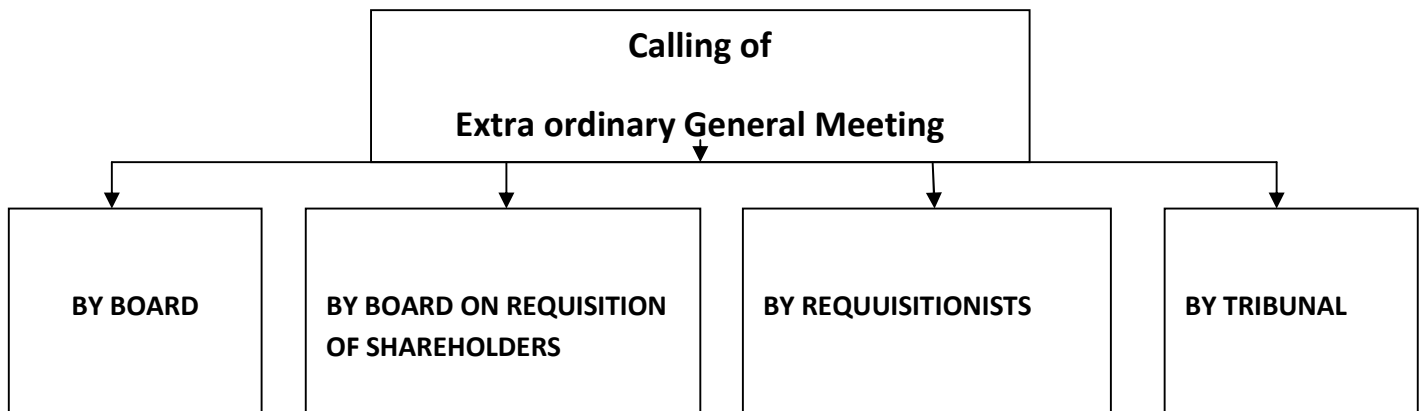
Business to be transacted at annual general meeting:

Sub-section (2) of Section 102 provides that all other businesses transacted at an Annual General Meeting except the following are special business:

- (i) the consideration of financial statements and the reports of the Board of Directors and auditors;
- (ii) the declaration of any dividend;
- (iii) the appointment of directors in place of those retiring;
- (iv) the appointment of, and the fixing of the remuneration of, the auditors.

In case of any other Meeting all business shall be deemed to be special

EXTRA ORDINARY GENERAL MEETING (Sec.10)



All general meetings other than annual general meetings are called extraordinary general meetings. All businesses items can be transacted at the extraordinary general meetings are special business. Following are the key provisions, provided in section 100, regarding calling and holding of an extraordinary general meeting:

(I) By Board [Section 100 (1)]

The Board may, whenever it deems fit, call an extraordinary general meeting of the company.

(II) By Board on requisition [Section 100 (2)]

The Board must call an extraordinary general meeting on receipt of the requisition from the following number of members:

(a) in the case of a company having a share capital: members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting;

(b) in the case of a company not having a share capital: members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote. The requisition should set out the matters to be considered at the proposed meeting and the same should be signed by the requisitionists and sent to the registered office of the company.

The Board must, within 21 days from the date of receipt of a valid requisition, proceed to call a meeting on a day not later than 45 days from the date of receipt of such requisition.

(III) By requisitionists [Section 100(4)]

If the Board does not within 21 days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than 45 days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves. However in such case, the meeting should be held within a period of 3 months from the date of the requisition.

Reasonable expenses incurred by the requisitionists in calling such a meeting shall be reimbursed by the company to the requisitionists. The company in turn recover such expenses from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting. [Section 100(6)]

In case, the quorum is not present within half-an-hour from the time appointed for holding a meeting called by requisitionists, the meeting shall stand cancelled. [Section 103(2)(b)]

Rules 17 provides as under with regard to calling of extraordinary general meeting by requisitionists:

- The members may requisition convening of an extraordinary general meeting in accordance with sub-section (4) of section 100, by providing such requisition in writing or through electronic mode at least clear twenty- one days prior to the proposed date of such extraordinary general meeting.
- The notice shall specify the place, date, day and hour of the meeting and shall contain the business to be transacted at the meeting. The requisitionists should convene meeting at Registered office or in the same city or town where Registered office is situated and such meeting should be convened on working day.
- If the resolution is to be proposed as a special resolution, the notice shall be given as required by sub-section (2) of section 114.
- The notice shall be signed by all the requisitionists or by a requisitionists duly authorised in writing by all other requisitionists on their behalf or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition.
- No explanatory statement as required under section 102 need be annexed to the notice of an extraordinary general meeting convened by the requisitionists and the requisitionists may disclose the reasons for the resolution(s) which they propose to move at the meeting.

- The notice of the meeting shall be given to those members whose names appear in the Register of members of the company within three days on which the requisitionists deposit with the Company a valid requisition for calling an extraordinary general meeting.
- Where the meeting is not convened, the requisitionists shall have a right to receive list of members together with their registered address and number of shares held and the company concerned is bound to give a list of members together with their registered address made as on twenty first day from the date of receipt of valid requisition together with such changes, if any, before the expiry of the forty- five days from the date of receipt of a valid requisition.
- The notice of the meeting shall be given by speed post or registered post or through electronic mode . Any accidental omission to give notice to, or the non-receipt of such notice by, any member shall not invalidate the proceedings of the meeting.

(IV) By Tribunal [Section 98 (not yet enforced)]

Section 98 provides that if for any reason it is impracticable to call a meeting of a company or to hold or conduct the meeting of the company, the Tribunal may, either suo motu or on the application of any director or member of the company who would be entitled to vote at the meeting: order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company.

Such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting. Meeting held pursuant to such order shall be deemed to be a meeting of the company duly called, held and conducted.

NOTICE OF THE MEETING (Sec 101)

A general meeting of a company may be called by giving not less than 21 clear days' notice either in writing or through electronic mode. Notice through electronic mode shall be given in such manner as may be prescribed.

Short notice

A general meeting may be called after giving a shorter notice also if consent is given in writing or by electronic mode by not less than 95% of the members entitled to vote at such meeting.

CONTENTS OF NOTICE

Place of meeting (Section 96)

The notice should state the place where the general meeting is scheduled to be held. In case of an annual general meeting, the place of the meeting has to be either the registered office of the company or some other place within the city, town or village in which the registered office of the company is situated. Explanation to Rule 17(2) of Companies (Management and Administration) Rules 2014 states that for the purpose of this sub rule it is hereby clarified that requisitionists should convene meeting at Registered Office or in the same city or town where the Registered Office is situated and such meeting should be convened on working day.

Day of meeting (Section 96)

The day and date of the meeting should be clearly stated in the notice. In case of an annual general meeting, the day should be one that is not a National Holiday. An extraordinary general meeting can however be held on any day.

Time of meeting (Section 96)

Exact time of holding the meeting should be given in the notice. An annual general meeting can be called during business hours only, that is, between 9 a.m. and 6 p.m. There is no need to follow such timings in case of an extraordinary general meeting.

Agenda (Section 102)

A statement of the business to be transacted at the general meeting should be given in the notice. In case, the meeting is to transact a special business, a explanatory statement should be attached about such item.

Proxy clause with reasonable prominence [Section 105(2)]

Every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, should carry with reasonable prominence, a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member.

Notice through Electronic Mode (Rule 18 of Companies (Management and Administration) (Rules 2014)

A company may give notice through electronic mode. Electronic mode' means any communication sent by a company through its authorized and secured computer programme which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the member.

Conditions for notice send through e-mail are as under:

A notice may be sent through e-mail as a text or as an attachment to e-mail or as a notification providing electronic link/ Uniform Resource Locator (URL) for accessing such notice.

- The e-mail shall be addressed to the person entitled to receive such e-mail as per the records of the company. The company has to provide an advance opportunity atleast once in a financial year, to the member to register his e-mail address and changes therein and such request may be made by only those members who have not got their email id recorded or to update a fresh email id and not from the members whose e-mail ids are already registered.
- The subject line in e-mail shall state the name of the company, notice of the type of meeting and the date on which meeting is scheduled.
- If notice is sent in the form of an attachment to e-mail, such attachment shall be in the Portable Document Format (PDF) or electronic documentation format together with a facility for recipient for downloading relevant version of the software for accessing such

notice along with instructions for downloading such software and alternative contact details in case of inability of the recipient to open or read the attachment.

- There shall be no difference in the text of the physical version of the notice and electronic version except in respect of mode of dispatch of notice.
- Sending of notice via e-mail shall be subject to such option being confirmed by the member and email address being updated in writing at least 30 days prior to dispatch of notice. In such cases, the company shall not be under obligation to deliver physical copy of the notice unless specifically requested by the member in writing before the date of the meeting.
- When notice or notifications of availability of notice are sent by e-mail, the company should ensure that it uses a system which produces confirmation of the total number of recipients e-mailed and a record of each recipient to whom the notice has been sent. A copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained by or on behalf of the company as 'proof of sending'.
- The company's obligation shall be satisfied when it transmits the e-mail and the company will not be held responsible for a failure in transmission beyond its control. However the company shall, where it is aware of the failure in delivery of the e-mail (and subsequent attempts do not rectify the situation), revert to sending physical copy of the notice at the member's registered address within 72 hours of the original attempt.
- If a member entitled to receive notice fails to provide or update relevant e-mail address to the company, company shall not be in default for not delivering notice via e-mail.
- Company may send e-mail through in-house facility or authorize any third party agency providing bulk e-mail facility.
- Notice made available on the electronic link/ URL has to be readable, and the recipient should be able to obtain and retain copies. The company shall give the complete URL/address of the website and full details of how to access the document/ information.
- The notice is taken to be 'sent' on the date the notification is sent. The notice must be available on the electronic link/ URL provided from the date of notification until the conclusion of the meeting.

The failure to make notice available throughout the required period shall be disregarded if it is made available for part of that period and the failure is wholly attributable to circumstances that the company could not reasonably have prevented or avoided.

The notice of the general meeting of the company shall be simultaneously placed on the website of the company and on the website as may be notified by the Central Government.

Persons entitled to receive Notice

In terms of Section 101(3), notice of every meeting of the company must be given to:

- (a) Every member of the company, legal representative of any deceased member or the assignee of an insolvent member;
- (b) The auditor or auditors of the company; and
- (c) Every director of the company.

Any accidental omission to give notice to, or the non-receipt of such notice by, any member or other person who is entitled to such notice for any meeting shall not invalidate the proceedings of the meeting.

Statement to be annexed to Notice (Section 102)

In case of special business items to be transacted at a general meeting, a statement setting out the following material facts, shall be annexed to the notice calling the meeting:

- (I) (a) the nature of concern or interest, financial or otherwise, if any, in respect of each item of:
- every director and the manager, if any;
 - every other key managerial personnel; and
 - relatives of the persons mentioned above.

(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Where any item of special business to be transacted at a meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every promoter, director, manager, if any, and of every other key managerial personnel of the first mentioned company shall, if the extent of such shareholding is not less than 2% of the paid-up share capital of that company, also be set out in the statement.

- (II) Where any item of business refers to any document, which is to be considered at the meeting, the time and place where such document can be inspected.

Where as a result of the non-disclosure or insufficient disclosure in any statement referred as above, being made by a promoter, director, manager, if any, or other key managerial personnel, any benefit which accrues to such promoter, director, manager or other key managerial personnel or their relatives, either directly or indirectly, the promoter, director, manager or other key managerial personnel, as the case may be, shall hold such benefit in trust for the company, and shall, without prejudice to any other action being taken against him under this Act or under any other law for the time being in force, be liable to compensate the company to the extent of the benefit received by him.

Quorum for Meetings

Quorum refers to the minimum number of members required to constitute a valid meeting. Following are the minimum numbers provided in section 103, for various categories of companies. However the Articles of Association of the company may provide for a higher number.

(a) Public company:

- 5 members personally present if the number of members as on the date of meeting is not more than 1000;
- 15 members personally present if the number of members as on the date of meeting is more than 1000 but up to 5000;
- 30 members personally present if the number of members as on the date of the meeting exceeds 5000.

(b) Private company:

- 2 members personally present, shall be the quorum for a meeting of the company.

Absence of quorum

If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company:

- (a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or
- (b) the meeting, if called by requisitionists, shall stand cancelled.

Adjourned meeting

In case of an adjourned meeting or of a change of day, time or place of meeting, the company shall give not less than 3 days notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated. If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

Chairman of Meetings (Section 104)

Unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the Chairman thereof on a show of hands. If a poll is demanded on the election of the Chairman, it shall be taken forthwith in accordance with the provisions of this Act and the Chairman elected on a show of hands shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of the poll, and such other person shall be the Chairman for the rest of the meeting.

Proxies (Section 105)

Appointment of a proxy is an important right of a member of the company. The Act contains elaborate provisions regarding exercise of this right by a member.

Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.

Every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, should carry with reasonable prominence, a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member. Hence a company not having a share capital can abstain from complying with this provision by incorporating necessary clause in its articles of association.

A proxy shall not have the right to speak at the meeting. A proxy shall be entitled to vote only on a poll. A member of a company registered under section 8 shall not be entitled to appoint any other person as his proxy unless such other person is also a member of such company.

A person appointed as proxy shall not act as proxy on behalf of more than fifty members and members holding in the aggregate more than ten percent of the total share capital of the company carrying voting rights.

The instrument appointing the proxy must be deposited with the company, 48 hours before the meeting. Any provision contained in the articles, requiring a longer period than 48 hours shall have effect as if a period of 48 hours had been specified. The instrument appointing a proxy must be in Form No. MGT. 11. It needs to be in writing and signed by the appointer or his attorney duly authorised in writing. If the appointer is a body corporate, the instrument should be

under its seal or be signed by an officer or an attorney duly authorised by the body corporate. For execution of proxy, the Articles of Association of a company can not specify any special requirement to be complied with.

Let us Remember:

The Instrument appointing a proxy must be in Form No. MGT 11

Every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, is entitled to inspect the proxies lodged with the company, if at least 3 days notice is given to the company. Such inspection can be taken during the period beginning 24 hours before the time fixed for the commencement of the meeting, during the business hours of the company, and ending with the conclusion of the meeting.

Restriction on Voting Rights (Section 106)

A member shall not exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid or on which company has exercised any right or lien. No member can be prohibited from exercising his voting right on any other ground.

Voting by Show of Hands (Section 107)

At any general meeting, a resolution put to the vote of the meeting shall in the first instance be decided on a show of hands. A declaration by the Chairman of the meeting of the passing of a resolution or otherwise, by show of hands shall be conclusive evidence of the fact of passing of such resolution or otherwise, unless a poll is demanded before or immediately on declaration by Chairman.

Voting through Electronic Means (Section 108)

Every listed company or a company having five hundred or more shareholders may provide to its members facility to exercise their right to vote at general meetings by electronic means. a member may exercise his right to vote at any general meeting by electronic means and company may pass any resolution by electronic voting system .

It may be noted that ‘voting by electronic means’ or ‘electronic voting system’ means a ‘secured system’ based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, such that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate ‘cyber security’.

‘Secured system’ means computer hardware, software, and procedure that –

- (a) are reasonably secure from unauthorized access and misuse;
- (b) provide a reasonable level of reliability and correct operation;
- (c) are reasonably suited to performing the intended functions; and
- (d) adhere to generally accepted security procedures.

“Cyber security” means protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorized access, use, disclosures, disruption, modification or destruction.

A company which opts to provide the facility to its members to exercise their votes at any general meeting by electronic voting system shall follow the following procedure:

- The notices of the meeting shall be sent to all the members, auditors of the company, or directors either - (a) by registered post or speed post ; or (b) through electronic means like registered e-mail id; (c) through courier service.
- The notice shall also be placed on the website of the company, if any and of the agency forthwith after it is sent to the members.
- The notice of the meeting shall clearly mention that the business
- may be transacted through electronic voting system and the company is providing facility for voting by electronic means.
- The notice shall clearly indicate the process and manner for voting by electronic means and time schedule including the time period during which the votes may be cast, address of places for casting votes duly sorted in order of name of states or union territories, where the members can cast their votes electronically.
- The company shall cause an advertisement to be published, not less than five days before the date of beginning of the voting period, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having sent the notice of the meeting and specifying therein, inter alia, the following matters:
 - statement that the business may be transacted by electronic voting;
 - the date of completion of sending of notices;
 - the date and time of commencement of voting through electronic means;
 - the date and time of end of voting through electronic means;
 - the statement that voting shall not be allowed beyond the said date and time;
 - website address of the company and agency, if any, where notice of the meeting is displayed; and
 - contact details of the person responsible to address the grievances connected with the electronic voting;
- The e-voting shall remain open for not less than one day and not more than three days. Provided that in all such cases, such voting period shall be completed three days prior to the date of the general meeting;
- During the e-voting period, shareholders of the company, holding shares either in physical form or in dematerialized form, as on the record date, may cast their vote electronically. Once the vote on a resolution is cast by the shareholder, he shall not be allowed to change it subsequently
- At the end of the voting period, the portal where votes are cast shall forthwith be blocked.
- The Board of directors shall appoint one scrutinizer, who may be chartered Accountant in practice, Cost Accountant in practice, or Company Secretary in practice or an advocate, but who is not in employment of the company and is a person of repute who, in the opinion of the Board can scrutinize the e- voting process in a fair and transparent manner. It may be noted that the scrutinizer so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the e-voting system.
- The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority.
- The scrutinizer shall, within a period of not exceeding three working days from the date of conclusion of e-voting period, unblock the votes in the presence of at least two

witnesses and make a scrutinizer's report of the votes cast in favour or against, if any, forthwith to the Chairman.

- The scrutinizer shall maintain a register either manually or electronically to record the consent or otherwise, received, mentioning the particulars of name, address, folio number or client ID of the shareholders, number of shares held by them, nominal value of such shares and whether the shares have differential voting rights.
- The register and all other papers relating to electronic voting shall remain in the safe custody of the scrutinizer till the chairman considers, approves and signs the minutes. Thereafter, the scrutinizer shall return the register and other related papers to the company.
- The results declared along with the scrutinizer's report shall be placed on the website of the company and on the website of the agency within two days of passing of the resolution at the relevant general meeting of members.
- Subject to receipt of sufficient votes, the resolution shall be deemed to be passed on the date of the relevant general meeting of members.

Clarifications on issues associated with e-voting procedure

Ministry of Corporate Affairs vide Circular dated 17th June, 2014 gives clarification regard to voting through electronic means – it provides that Section 108 of the Companies Act, 2013 read with rule 20 of the Companies (Management and Administration) Rules, 2014 deal with the exercise of right to vote by members by electronic means (e-means), The provisions seek to ensure wider shareholders participation in the decision making process in companies. Corporate and other stakeholders while appreciating the new approach have drawn attention to some practical difficulties in respect of general meetings to be held in the next few months.

"The suggestions received from the stakeholders have been examined. It is noticed that compliance with procedural requirements, engagement of Depository Agencies and the need for clarity on matter like demand for poll/ postal ballot etc will take some more time. Accordingly, it has been decided not to treat the relevant provisions as mandatory till 31st December, 2014." The relevant notification in this regard is being issued separately.

To provide clarity and ensure uniformity in the e-voting procedure, clarifications on certain issues raised by the stakeholders are provided in the Annexure to this circular for guidance of all concerned.

This issue with the approval of the competent authority.

Clarifications on issues associated with e-voting procedure

(i) **Show of hands not to be allowed in case of e-voting'**, - In view of clear provisions of section 107, voting by show of hands would not be allowable in cases where rule 20 of Companies (Management and Administration) Rules, 2014 is applicable.

(ii) **Participation in the general meeting after voting by e-means**:- It is clarified that a person who has voted through e-voting mechanism in accordance with rule 20 shall not be debarred from participation in the general meeting physically. But he shall not be able to vote in the meeting again, and his earlier vote (cast through e-means) shall be treated as final.

(iii) **Applicability of rule 20 for matters specified under rule 22(16)**: Stakeholders have asked whether matters specified under rule 22(16) (transactions of certain items only through postal ballot) can be considered in a general meeting where e-voting facilities is available. It has been examined and it is stated that in view of clear provisions of section 110(1Xa) read with such rule 22(16) it would be necessary to transact items specified in rule 22(16) only through postal ballot and not at the general meeting.

(iv) **Relevance of provisions relating to demanding for poll.**'- In case of companies having share capital, voting through e-means takes into account 'Proportion principle'[i.e. 'one share - one vote] unlike one person - one vote' principle under 'show of hands'. This along with provisions of section 107 make it clear that in case of companies which are covered under section 108 read with rule 20 of Companies (Management and Administration) Rules, the provisions relating to demand for poll would not be relevant.

(v) **Permissibility of voting by postal ballot under rule 20.**- Stakeholders have sought a clarification that in cases (covered under rule 20) where a shareholder who is not able to participate in the general meeting personally and who is also not exercising voting through e means whether such a person shall have the option to vote through postal ballot. The matter has been examined and it is felt that keeping in view the provisions of the Act such an option would not be available.

(vi) **Manner of noting in case of shareholders present in the meeting:-** Stakeholders have sought clarity about manner of voting for shareholders (of a company covered under rule 20) who are present in the general meeting. It is hereby clarified that since voting through e-means would be on the basis of proportion of share in the paid-up capital or 'one-share one-vote', the Chairperson of the meeting shall regulate the meeting accordingly.

(vii) **Applying rule 20 voluntarily:-** Stakeholders have referred to words 'A company which opts to' appearing in rule 20(3) and have raised a query whether rule 20 is applicable to companies not covered in rule 20(1). It is clarified that rule 20 (3) is being amended to align it with rule 20(1). Regarding voluntary application of rule 20, it is clarified that in case a company not mandated under rule 20(1) opts or decided to give its shareholders the e-voting facility, in such a case, the whole of procedure specified in rule 20 shall be applicable to such a company. This is necessary so that any piece-meal application does not prejudice the interest of shareholders.

Demand for Poll (Section 109)

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf by the following person(s):

- (a) in the case a company having a share capital: by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than Rs.5,00,000/- or such higher amount as may be prescribed, has been paid-up; and

(b) in the case of any other company: by any member or members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power. The demand for a poll may be withdrawn at any time by the persons who made the demand.

Time for taking poll and declaring the result

A poll shall be taken forthwith, if it is demanded for adjournment of the meeting or appointment of Chairman of the meeting.

A poll shall be taken at such time, not being later than 48 hours from the time when the demand was made on any other question.

Where a poll is to be taken, the Chairman of the meeting shall appoint such number of persons, as he deems necessary, to scrutinise the poll process and votes given on the poll and to report thereon to him in the manner as may be prescribed.

The result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken.

Manner the Chairman of Meeting get the poll process scrutinised and Report thereon

Rule 21 provides that the chairman of a meeting shall ensure that –

- The Scrutinizers are provided with the Register of Members, specimen signatures of the members, Attendance Register and Register of Proxies.
- The Scrutinizers are provided with all the documents received by the Company.
- The Scrutinizers initial the Polling papers and distribute them to the members and proxies present at the meeting. In case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio. The Polling paper shall be in Form No. MGT.12.
- The Scrutinizers keep a record of the polling papers issued.
- The Scrutinizers lock and seal an empty polling box in the presence of the members and proxies.
- The Scrutinizers open the Polling box in the presence of two persons as witnesses after the voting process is over.
- In case of ambiguity about the validity of a proxy, the Scrutinizers decide the validity in consultation with the Chairman.
- The Scrutinizers shall ensure that if a member who has appointed a proxy has voted in person, the proxy's vote shall be disregarded.
- The Scrutinizers count the votes cast on poll and prepare a report thereon addressed to the Chairman.
- Where voting is conducted by electronic means, the company shall provide all the necessary support, technical and otherwise, to the Scrutinizers in orderly conduct of the voting and counting the result thereof.
- The Scrutinizers' report state total votes cast, valid votes, votes in favour and against the resolution including the details of invalid polling papers and votes comprised therein.

- The Scrutinizers submit the Report to the Chairman who shall counter-sign the same.
- The Chairman declare the result of Voting on poll. The result may either be announced by him or a person authorized by him in writing.

The scrutinizer/s appointed for the poll, shall submit a report to the Chairman of the meeting in Form No. MGT No. 13. The report shall be signed by the scrutinizer / all the scrutinizers, in case there is more than one scrutinizer, and be submitted by them to the Chairman of the meeting within 7 days from the date the poll is taken.

As per section 2(65) “postal ballot” means voting by post or through any electronic mode. The Act provides that a company shall in respect of such items of business as the Central Government by notification declare shall be transacted only by postal ballot. Rule 22 provides as under with regard to conducting business through postal ballot.

The rules provide that the following items of business shall be transacted only by means of voting through a postal ballot-

- (a) Alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum;
- (b) Alteration of articles of association in relation to insertion or removal of provisions which, under sub-section (68) of section 2, are required to be included in the articles of a company in order to constitute it a private company;
- (c) Change in place of registered office outside the local limits of any city, town or village as specified in sub-section (5) of section 12;
- (d) Change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised under sub-section (8) of section 13;
- (e) Issue of shares with differential rights as to voting or dividend or otherwise under sub-clause (ii) of clause (a) of section 43;
- (f) Variation in the rights attached to a class of shares or debentures or other securities as specified under section 48;
- (g) Buy-back of shares by a company under sub-section (1) of section 68;
- (h) Election of a director under section 151 of the Act;
- (i) Sale of the whole or substantially the whole of an undertaking of a company as specified
- (j) Giving loans or extending guarantee or providing security in excess of the limit prescribed under sub-section (3) of section 186;

Section 110(1)(b) further provides that a company may pass any item of business, other than ordinary business and any business in respect of which director or auditors have a right to be heard.

Procedure for conducting business through postal ballot

- (1) Where a company is required or decides to pass any resolution by way of postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons therefore and requesting them to send their assent or dissent in

writing on a postal ballot or by electronic means within a period of thirty days from the date of dispatch of the notice.

(2) The notice shall be sent either (a) by Registered Post or speed post, or (b) through electronic means like registered e-mail id or (c) through courier service for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period of thirty days.

(3) An advertisement shall be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having dispatched the ballot papers and specifying therein, inter alia, the following matters:

- a statement to the effect that the business is to be transacted by postal ballot which includes voting by electronic means;
- the date of completion of dispatch of notices;
- the date of commencement of voting;
- the date of end of voting;
- the statement that any postal ballot received from the member beyond the said date will not be valid and voting whether by post or by electronic means shall not be allowed beyond the said date; a statement to the effect that members, who have not received postal ballot forms may apply to the company and obtain a duplicate thereof; and
- contact details of the person responsible to address the grievances connected with the voting by postal ballot including voting by electronic means.

(4) The notice of the postal ballot shall also be placed on the website of the company forthwith after the notice is sent to the members and such notice shall remain on such website till the last date for receipt of the postal ballots from the members.

(5) The Board of directors shall appoint one scrutinizer, who is not in employment of the company and who, in the opinion of the Board can conduct the postal ballot voting process in a fair and transparent manner.

(6) The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority.

(7) If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot including voting by electronic means, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

(8) Postal ballot received back from the shareholders shall be kept in the safe custody of the scrutinizer. After the receipt of assent or dissent of the shareholder in writing on a postal ballot, no person shall deface or destroy the ballot paper or declare the identity of the shareholder.

(9) The scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots but not later than seven days thereof;

(10) The scrutinizer shall maintain a register either manually or electronically to record their assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the shareholder, number of shares held by them, nominal value of such shares, whether the shares have differential voting rights, if any, details of postal ballots

which are received in defaced or mutilated form and postal ballot forms which are invalid;

(11) The postal ballot and all other papers relating to postal ballot including voting by electronic means, shall be under the safe custody of the scrutinizer till the chairman considers, approves and signs the minutes. Thereafter, the scrutinizer shall return the ballot papers and other related papers/register to the company who shall preserve such ballot papers and other related papers/register safely;

(12) The assent or dissent received after thirty days from the date of issue of notice shall be treated as if reply from the member has not been received;

(13) The results shall be declared by placing it, along with the scrutinizer's report, on the website of the company;

(14) The resolution shall be deemed to be passed on the date of declaration of its result;

(15) The provisions regarding voting by electronic means shall apply, as far as applicable, mutatis mutandis in respect of the voting by electronic means.

If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf. In case of One Person Company and other companies having members upto fifty are not required to transact any business through postal ballot.

Circulation of Members' Resolution (Section 111)

As per Section 111, a company shall, on requisition in writing of certain number of members, give notice to members of any proposed resolution intended to be moved in the meeting or circulate any statement with respect to matters referred in proposed resolution. The company shall be bound to give notice of resolution only if the requisition is deposited not less than six weeks before the meeting. In case of other requisition not less than 2 weeks before the meeting. The statement need not be circulated if the Central Government declares that the right conferred is being abused to secure needless publicity for defamatory matters. If default is made the company and every officer of the company shall be punishable with fine.

Representation of President and Governors in Meetings

Section 112 of the Act provides that President of India or the Governor of a State, if he is a member of a company, may appoint such person as he thinks fit, to act as his representative at any meeting of the company. The person so appointed shall be deemed to be a members and have the same rights including the right vote by proxy or postal ballot, as the President or Governor could exercise as a member of the company.

Representation of Corporations at Meeting of Companies and of Creditors

In terms of Section 113, where a body corporate is a member or a creditor including a holder of debentures of the company and it authorises any person as its representative at any meeting of the company or any class of members of the company or at any meeting of creditors of the company, such representative shall be entitled to exercise the same rights and powers including right to vote by proxy and by postal ballot on behalf of the body corporate which he represents.

Ordinary and Special Resolutions

Section 114 provides with regard to Ordinary and Special Resolution

Ordinary Resolution

A resolution shall be an ordinary resolution if the notice has been duly given and it is required to be passed by the votes cast, in favour of the resolution, including the casting vote, if any, of the Chairman, exceed the votes, if any, cast against the resolution.

Special Resolution

A resolution shall be a special resolution when:

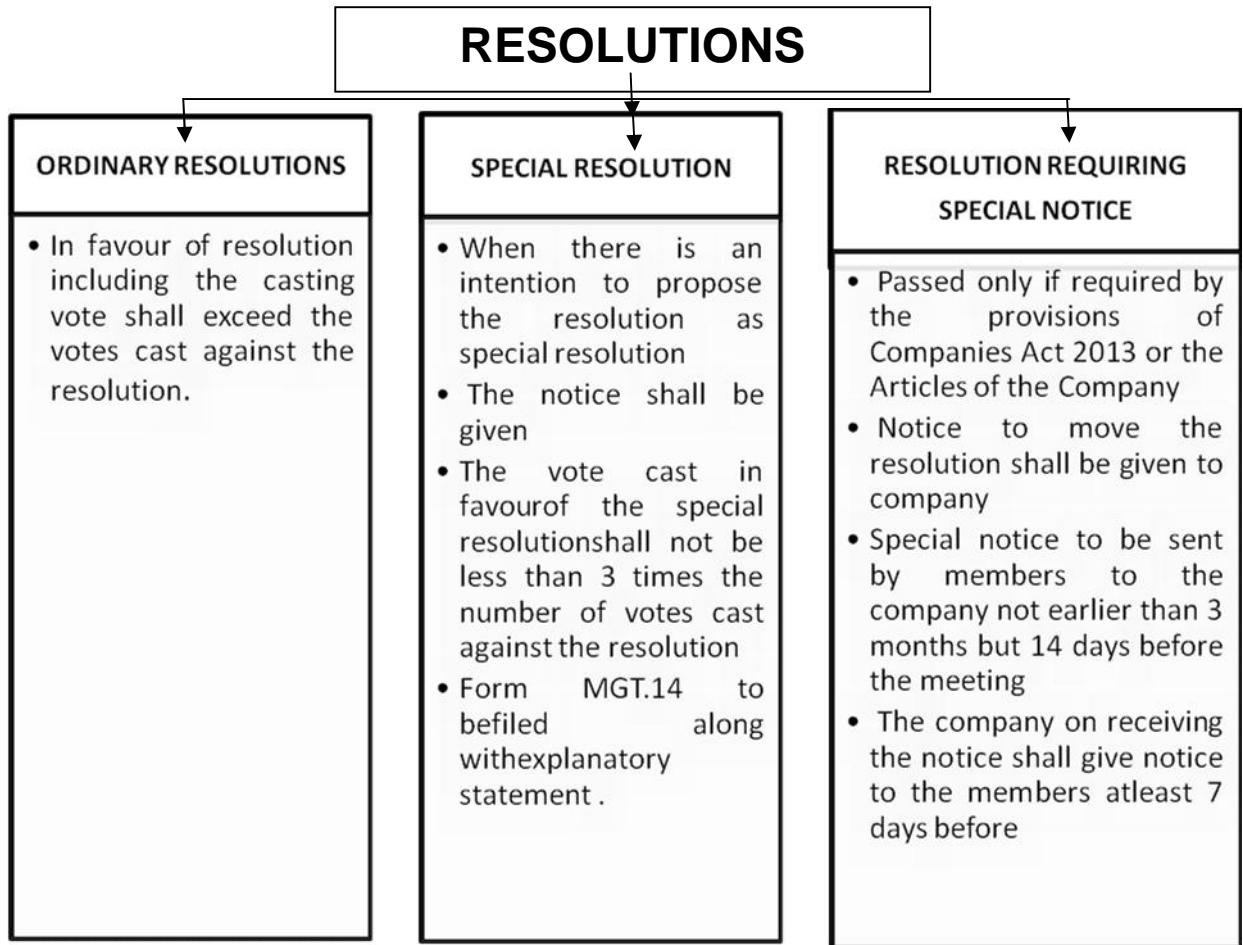
- (a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
- (b) the notice required under this Act has been duly given; and
- (c) the votes cast in favour of the resolution, are required to be not less than 3 times the number of the votes, if any, cast against the resolution.

Resolutions requiring Special Notice

Section 115 provides that where, by any provision contained in this Act or in the articles of a company, special notice is required of any resolution, notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of total voting power or holding shares on which such aggregate sum not exceeding Rs.5,00,000/- as may be prescribed has been paid-up and the company shall give its members notice of the resolution in the following manner as prescribed in Rules.

Procedure for special notice:

- A special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than five lakh rupees has been paid up on the date of the notice.
- Such notice shall be sent by members to the company not earlier than three months but at least 14 days before the date of the meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.
- The company shall immediately after receipt of the notice, give its members notice of the resolution at least seven days before the meeting , exclusive of the day of dispatch of notice and day of the meeting , in the same manner as it gives notice of any general meetings.
- Where it is not practicable to give the notice in the same manner as it gives notice of any general meetings, the notice shall be published in English language in English newspaper and in vernacular language in a vernacular newspaper, both having wide circulation in the State where the registered office of the Company is situated. Such notice shall also be posted on the website, if any, of the Company. Such notice shall be published at least seven days before the meeting, exclusive of the day of publication of the notice and day of the meeting.



Resolutions passed at Adjourned Meeting (Section 116)

As per Section 116 where a resolution is passed at an adjourned meeting of a company; or the holders of any class of shares in a company; or the Board of Directors, the resolution shall be treated as passed on the day it was actually passed and not on any earlier date.

Resolutions and Agreements to be filed with the Registrar (Section 117)

Section 117 provides that a copy of every resolution and an agreement in respect of matters specified therein together with a explanatory statement shall be filed in Form No. MGT.14 with the Registrar within thirty days of its passing. The Registrar shall register the same and in case of any default, a company and every officer who is in default including the liquidator shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Resolutions and agreements to be filed with the Registrar are as under:

- (a) special resolutions;
- (b) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;
- (c) any resolution of the Board of Directors of a company or agreement executed by a company,

relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director;

(d) resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members;

(e) resolutions passed by a company according consent to the exercise by its Board of Directors of any of the powers under clause (a) and clause (c) of sub-section (1) of section 180;

(f) resolutions requiring a company to be wound up voluntarily passed in pursuance of section 304;

(g) resolutions passed in pursuance of sub-section (3) of section 179; and

(h) any other resolution or agreement as may be prescribed and placed in the public domain.

Maintenance of Minutes of Meetings

Section 118 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of share holders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. In case of meeting of Board of Directors or of a committee of Board, the minutes shall contain name of the directors present and also name of dissenting director or a director who has not concurred the resolution. The chairman shall exercise his absolute discretion in respect of inclusion or non-inclusion of the matters which is regarded as defamatory of any person, irrelevant or detrimental to company's interest in the minutes. Minutes kept shall be evidence of the proceedings recorded in a meeting.

As per section 118(10) every company shall observe Secretarial Standards with respect to General and Board Meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980, and approved as such by the Central Government.

Rule 25 contains provisions with regards to minutes of meetings.

A distinct minute book shall be maintained for each type of meeting namely:

- (i) general meetings of the members;
- (ii) meetings of the creditors;
- (iii) meetings of the Board; and
- (iv) meetings of the committees of the Board.

It may be noted that resolutions passed by postal ballot shall be recorded in the minute book of general meetings as if it has been deemed to be passed in the general meeting. In no case the minutes of proceedings of a meeting or a resolution passed by postal ballot shall be pasted to any such book. In case of every resolution passed by postal ballot, a brief report on the postal ballot conducted including the resolution proposed, the result of the voting thereon and the summary of the scrutinizer's report shall be entered in the minutes book of general meetings along with the date of such entry within thirty days from the date of passing of resolution

Minutes of proceedings of each meeting shall be entered in the books maintained for that purpose along with the date of such entry within thirty days of the conclusion of the meeting. Each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by:

- in the case of minutes of proceedings of a meeting of the Board or of a committee thereof, by the chairman of the said meeting or the chairman of the next succeeding meeting;
- in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose;
- in case of every resolution passed by postal ballot, by the chairman of the Board within the aforesaid period of thirty days or in the event of there being no chairman of the Board or the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

Minute books of general meetings shall be kept at the registered office of the company. Minutes of the Board and committee meetings shall be kept at the registered Office or at such other place as may be approved by the Board. Minutes books shall be preserved permanently and kept in the custody of the company secretary of the company or any director duly authorized by the Board for the purpose and shall be kept in the registered office or such place as the members may decide by passing special resolution pursuant to requirement of section 88 read with section 94 of the Act.

Inspection of Minute book of General Meeting

In terms of Section 119, the minute's book of general meetings shall be kept at the registered office of a company and shall be open for inspection to members during business hours without any charge subject to such restrictions as the company may impose. A member shall be entitled for a copy of any minutes subject to payment of fees as may be specified in the Articles of Association of the company, but not exceeding a sum of ten rupees for each page or part of any page. The copy should be made available to him within seven days of his making request.

Any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, with a copy of any minutes of any general meeting, on payment of such sum as may be specified in the articles of the company but not exceeding a sum of ten rupees for each page or part of any page. A member who has made a request for provision of soft copy in respect of minutes of any previous general meetings held during a period of immediately preceding three financial years shall be entitled to be furnished, with the same free of cost.

Where the company refuses inspection or fails to furnish a copy of minutes within specified time, the Tribunal is empowered to direct immediate inspection or sending a copy of minutes in the matter and the company and every officer of the company shall be punishable with fine.

Maintenance and Inspection of Document in Electronic Form

According to section 120 the documents, records, registers, minutes may be kept and inspected in electronic form.

According to Rule 27, every listed company or a company having not less than one thousand share holders, debenture holders and other security holders, shall maintain its records, as required to be maintained under the Act or rules made there under, in electronic form.

The records in electronic form shall be maintained in such manner as the Board of directors of the company may think fit, provided that-

- the records are maintained in the same formats and in accordance with all other requirements as provided in the Act or the rules made there under;
- the information as required under the provisions of the Act or the rules made there under should be adequately recorded for future reference;
- the records must be capable of being readable, retrievable and reproducible in printed form;
- the records are capable of being dated and signed digitally wherever it is required under the provisions of the Act or the rules made there under;
- the records, once dated and signed digitally, shall not be capable of being edited or altered;
- the records shall be capable of being updated, according to the provisions of the Act or the rules made there under, and the date of updation shall be capable of being recorded on every updation;

It may be noted that the term “records” means any register, index, agreement, memorandum, minutes or any other document required by the Act or the rules made there under to be kept by a company.

Security of Records maintained in electronic form

The Managing Director, Company Secretary or any other director or officer of the company as the Board may decide shall be responsible for the maintenance and security of electronic records.

The person who is responsible for the maintenance and security of electronic records shall-

- provide adequate protection against unauthorized access, alteration or tampering of records;
- ensure against loss of the records as a result of damage to, or failure of the media on which the records are maintained;
- ensure that the signatory of electronic records does not repudiate the signed record as not genuine;
- ensure that computer systems, software and hardware are
- adequately secured and validated to ensure their accuracy, reliability and consistent intended performance;
- ensure that the computer systems can discern invalid and altered records;
- ensure that records are accurate, accessible, and capable of being reproduced for reference later;
- ensure that the records are at all times capable of being retrieved to a readable and printable form;

- ensure that records are kept in a non-rewriteable and non-erasable format like pdf. version or some other version which cannot be altered or tampered;
- ensure that at least two backups, taken at a periodicity of not exceeding one day, are kept of the updated records kept in electronic form, every backup is authenticated and dated and such backups shall be securely kept at such places as may be decided by the Board;
- limit the access to the records to the managing director, company secretary or any other director or officer as may be authorized by the Board in this behalf;
- ensure that any reproduction of non-electronic original records in electronic form is complete, authentic, true and legible when retrieved;
- arrange and index the records in a way that permits easy location, access and retrieval of any particular record; and
- take necessary steps to ensure security, integrity and confidentiality of records.

Inspection and Copies of Records maintained in Electronic Form

Where a company maintains its records in electronic form, any duty imposed by the Act or rules made there under to make those records available for inspection or to provide copies of the whole or a part of those records, shall be construed as a duty to make the records available for inspection in electronic form or to provide copies of those records containing a clear reproduction of the whole or part thereof, as the case may be.

Penalty

If any default is made in compliance with any of the provisions of this rule, the company and every officers or such other person who is in default shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues.

Report on Annual General Meeting

In terms of section 121(1) every listed public company required to prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the Act and the rules made thereunder. A copy of the report is to be filed with the Registrar in Form No. MGT. 15 within thirty days of the conclusion of annual general meeting along with the prescribed fee.

According to Rule 31, the report shall be prepared in the following manner:

- (a) A report under this section shall be prepared in addition to the minutes of the general meeting.
- (b) The report shall be signed and dated by the Chairman of the meeting or in case of his inability to sign, by any two directors of the company, one of whom shall be the Managing director, if there is one.
- (c) Such report shall contain the details in respect of the following:
 - The day, date, hour and venue of the annual general meeting.
 - Confirmation with respect to appointment of Chairman of the meeting.
 - Number of members attending the meeting.
 - Confirmation of quorum.
 - Confirmation with respect to compliance of the Act and the Rules, secretarial standards made there under with respect to calling, convening and conducting the meeting.

- Business transacted at the meeting and result thereof.
- Particulars with respect to any adjournment, postponement of meeting, change in venue.
- Any other points relevant for inclusion in the Report.

(d) Such Report shall contain fair and correct summary of the proceedings of the meeting.

MEETINGS OF BOARD AND ITS POWERS

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 in the notification.

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

(3) A meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means: 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.

(4) Every officer of the company 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.

(5) A One Person Company, small company and dormant company shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days: Provided that nothing contained in this sub-section and in section 174 shall apply to One Person Company in which there is only one director on its Board of Directors.

Section 174.

(1) The quorum for a meeting of the Board of Directors of a company shall be one third of its total strength or two directors, whichever is higher, and 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.

(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.

(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.

Explanation.—For the purposes of this sub-section, “interested director” means a director within the meaning of sub-section (2) of section 184.

(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.

Explanation.—For the purposes of this section,—

(i) any fraction of a number shall be rounded off as one;

(ii) “total strength” shall not include directors whose places are vacant.

Section :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 as may be prescribed and has been approved by a majority of the directors or members, who are entitled to vote on the resolution: 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.

(2) A resolution under sub-section (1) shall be noted at a subsequent meeting of the Board or the committee thereof, as the case may be, and made part of the minutes of such meeting.

Section 176.

No act done by a person as a director shall be deemed to be invalid, notwithstanding that it was subsequently noticed that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles of the company: Provided that nothing in this section shall be deemed to give validity to any act done by the director after his appointment has been noticed by the company to be invalid or to have terminated.

Section:177

(1) The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee.

(2) The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority: Provided that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.

(3) Every Audit Committee of a company existing immediately before the commencement of this Act shall, within one year of such commencement, be reconstituted in accordance with sub-section (2).

(4) 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;
 - (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.
- (5) 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.
- (6) The Audit Committee shall have authority to investigate into any matter in relation to the items specified in sub-section (4) 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.
- (7) 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.
- (8) The Board's report under sub-section (3) 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 therefore.
- (9) 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.
- (10) The vigil mechanism under sub-section (9) 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: Provided that the details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board's report.

Section:178.

- (1) The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one-half shall be independent directors: Provided that 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.
- (2) The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance.
- (3) The Nomination and Remuneration Committee 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.

(4) The Nomination and Remuneration Committee shall, while formulating the policy under sub-section (3) ensure 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 disclosed in the Board's report.

(5) 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.

(6) The Stakeholders Relationship Committee shall consider and resolve the grievances of security holders of the company.

(7) 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.

(8) In case of any contravention of the provisions of section 177 and this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both: Provided that non-consideration of resolution of any grievance by the Stakeholders

Relationship Committee in good faith shall not constitute a contravention of this section.

Explanation.—The expression “senior management” means personnel of the company who are members of its core management team excluding Board of Directors comprising all members of management one level below the executive directors, including the functional heads.

Section:179.

(1) 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: Provided that in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations not inconsistent therewith and duly made there under, including regulations made by the company in general meeting: Provided further that the 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.

(2) 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.

(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:

Provided that 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:

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.

Explanation I.—Nothing in clause (d) shall apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State Bank of India or any other banks established by or under any Act.

Explanation II.—In respect of dealings between a company and its bankers, the exercise by the company of the power specified in clause (d) shall mean the arrangement made by the company with its bankers for the borrowing of money by way of overdraft or cash credit or otherwise and not the actual day-to-day operation on overdraft, cash credit or other accounts by means of which the arrangement so made is actually availed of.

(4) Nothing in this section shall be deemed to affect the right of the company in general meeting to impose restrictions and conditions on the exercise by the Board of any of the powers specified in this section.

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.

Explanation.—For the purposes of this clause,—

(i) “undertaking” shall mean an undertaking in which the investment of the company exceeds twenty per cent. of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates twenty per cent. of the total income of the company during the previous financial year;

(ii) the expression “substantially the whole of the undertaking” in any financial year shall mean twenty per cent. or more of the value of the undertaking as per the audited balance sheet of the preceding financial year;

(b) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;

(c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business: 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.

Explanation.—For the purposes of this clause, the expression “temporary loans” means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature;

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

(2) 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.

(3) Nothing contained in clause (a) of sub-section (1) shall affect—

(a) 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; or

(b) 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.

(4) 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: Provided that this sub-section shall not be deemed to authorise the company to effect any reduction in its capital except in accordance with the provisions contained in this Act.

(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: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 five per cent. of its average net profits for the three immediately preceding financial years.

Section: 182.

(1) Notwithstanding anything contained in any other provision of this Act, a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party: Provided that the amount referred to in sub-section (1) or, as the case may be, the aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half per cent. of its average net profits during the three immediately preceding financial years:

Provided further that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and

such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.

(2) Without prejudice to the generality of the provisions of sub-section (1),—

(a) a donation or subscription or payment caused to be given by a company on its behalf or on its account 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 or made, can reasonably be regarded as likely to affect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;

(b) the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed,—

(i) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and

(ii) where such publication is not by or on behalf of, but for the advantage of a political party, to be a contribution for a political purpose.

(3) Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party to which such amount has been contributed.

(4) If a company makes any contribution in contravention of the provisions of this section, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.

Explanation.—For the purposes of this section, “political party” means a political party registered under section 29A of the Representation of the People Act, 1951.

Section:183.

(1) 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.

(2) Every company shall disclose in its profits and loss account the total amount or amounts contributed by it to the Fund referred to in sub-section (1) during the financial year to which the amount relates.

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.

(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—

(a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or

(b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be, 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.

(3) 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.

(4) If a director of the company contravenes the provisions of sub-section (1) or subsection (2), such director shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees, or with both.

(5) 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 where any of the directors of the one company or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company.

Section:185.

(1) Save as otherwise provided in this Act, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person: Provided that nothing contained in this sub-section shall apply to—

(a) the giving of any loan to a managing or whole-time director—

(i) as a part of the conditions of service extended by the company to all its employees; or

(ii) pursuant to any scheme approved by the members by a special resolution; or

(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.

Explanation.—For the purposes of this section, the expression “to any other person in whom director is interested” means—

(a) any director of the lending company, or of a company which is its holding company or any partner or relative of any such director;

(b) any firm in which any such director or relative is a partner;

(c) any private company of which any such director is a director or member;

(d) 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

(e) 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.

(2) If any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of sub-section (1), the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.

Section:186.

(1) Without prejudice to the provisions contained in this Act, 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.

(2) No company shall directly or indirectly —

(a) give any loan to any person or other body corporate;

(b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and

(c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate, exceeding sixty per cent. of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more.

(3) Where the giving of any loan or guarantee or providing any security or the acquisition under sub-section (2) exceeds the limits specified in that sub-section, prior approval by means of a special resolution passed at a general meeting shall be necessary.

(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.

(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.

(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.

(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.

(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 there on, shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting.

(9) 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.

(10) 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 15 of 1992.

(b) extracts may be taken there from by any member, and copies thereof may be furnished to any member of the company on payment of such fees as may be prescribed.

(11) Nothing contained in this section, except sub-section (1), shall apply—

(a) to a loan made, guarantee given or security provided by a banking company or an insurance company or a housing finance company in the ordinary course of its business or a company engaged in the business of financing of companies or of providing infrastructural facilities;

(b) to any acquisition—

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

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

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

(12) The Central Government may make rules for the purposes of this section.

(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.

Explanation.—For the purposes of this section,—

(a) the expression “investment company” means a company whose principal business is the acquisition of shares, debentures or other securities;

(b) the expression “infrastructure facilities” means the facilities specified in Schedule VI.

Section:187.

(1) 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: Provided that the company may hold any shares in its subsidiary company in the name of any nominee or nominees of the company, if it is

necessary to do so, to ensure that the number of members of the subsidiary company is not reduced below the statutory limit.

(2) 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.

(3) Where in pursuance of clause (d) of sub-section (2), any shares or securities in which investments have been made by a company are not held by it in its own name, the company shall maintain a register which shall contain such particulars as may be prescribed and such register shall be open to inspection by any member or debenture-holder of the company without any charge during business hours subject to such reasonable restrictions as the company may by its articles or in general meeting impose.

(4) 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 twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

Section:188.

(1) Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to—

(a) sale, purchase or supply of any goods or materials;

(b) selling or otherwise disposing of, or buying, property of any kind;

(c) leasing of property of any kind;

(d) availing or rendering of any services;

(e) appointment of any agent for purchase or sale of goods, materials, services or property;

(f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and

(g) underwriting the subscription of any securities or derivatives thereof, of the company:

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, shall be entered into except with the prior approval of the company by a special

resolution: Provided further that no member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party: Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis.

Explanation.— In this sub-section,—

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

(i) 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;

(ii) where such office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

(b) the expression “arm's length transaction” means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

(2) Every contract or arrangement entered into under sub-section (1) shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement.

(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 special resolution in the general meeting under sub-section (1) and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the Board 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.

(4) Without prejudice to anything contained in sub-section (3), 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 this section for recovery of any loss sustained by it as a result of such contract or arrangement.

(5) Any director or any other employee of a company, who had entered into or authorized the contract or arrangement in violation of the provisions of this section shall,—

(i) in case of listed company, be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both; and

(ii) in case of any other company, be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

Section:189.

(1) Every company shall keep one or more registers giving separately the particulars of all contracts or arrangements to which sub-section (2) of section 184 or section 188 applies, in such manner and containing such particulars as may be prescribed and after entering the particulars, such register or registers shall be placed before the next meeting of the Board and signed by all the directors present at the meeting.

(2) Every director or key managerial personnel shall, within a period of thirty days of his appointment, or relinquishment of his office, as the case may be, disclose to the company the particulars specified in sub-section (1) of section 184 relating to his concern or interest in the other associations which are required to be included in the register under that sub-section or such other information relating to himself as may be prescribed.

(3) The register referred to in sub-section (1) shall be kept at the registered office of the company and it shall be open for inspection at such office during business hours and extracts may be taken therefrom, 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.

(4) 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.

(5) Nothing contained in sub-section (1) shall apply to any contract or arrangement—

(a) for the sale, purchase or supply of any goods, materials or services if the value of such goods and materials or the cost of such services does not exceed five lakh rupees in the aggregate in any year; or

(b) by a banking company for the collection of bills in the ordinary course of its business.

(6) 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.

Section:190

. (1) Every company shall keep at its registered office,—

(a) where a contract of service with a managing or whole-time director is in writing, a copy of the contract; or

(b) where such a contract is not in writing, a written memorandum setting out its terms.

(2) The copies of the contract or the memorandum kept under sub-section (1) shall be open to inspection by any member of the company without payment of fee.

(3) If any default is made in complying with the provisions of sub-section (1) or sub-section (2), the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for each default.

(4) The provisions of this section shall not apply to a private company.

Section:191

. (1) No director of a company shall, in connection with—

(a) the transfer of the whole or any part of any undertaking or property of the company; or

(b) the transfer to any person of all or any of the shares in a company being a transfer resulting from—

(i) an offer made to the general body of shareholders;

(ii) 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;

(iii) 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

(iv) 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.

(5) 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 twenty-five thousand rupees but which may extend to one lakh rupees.

(6) 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.

Section:192.

(1) No company shall enter into an arrangement by which—

(a) a director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or

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

(2) The notice for approval of the resolution by the company or holding company in general meeting under sub-section (1) shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.

(3) 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—

(a) 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

(b) any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.

Section:193

(1) Where One Person Company limited by shares or by guarantee enters into a contract with the sole member of the company who is also the director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in a memorandum or are recorded in the minutes of the first meeting of the Board of Directors of the company held next after entering into contract: Provided that nothing in this sub-section shall apply to contracts entered into by the company in the ordinary course of its business.

(2) The company shall inform the Registrar about every contract entered into by the company and recorded in the minutes of the meeting of its Board of Directors under sub-section (1) within a period of fifteen days of the date of approval by the Board of Directors.

Section:194.

(1) No director of a company or any of its key managerial personnel shall buy in the company, or in its holding, subsidiary or associate company—

(a) a right to call for delivery or a right to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures; or

(b) a right, as he may elect, to call for delivery or to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures.

(2) If a director or any key managerial personnel of the company contravenes the provisions of sub-section (1), such director or key managerial personnel shall be punishable with imprisonment for a term which may extend to two years or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

(3) Where a director or other key managerial personnel acquires any securities in contravention of sub-section (1), he shall, subject to the provisions contained in sub-section (2), be liable to surrender the same to the company and the company shall not register the securities so acquired in his name in the register, and if they are in dematerialised form, it shall inform the depository not to record such acquisition and such securities, in both the cases, shall continue to remain in the names of the transferors.

Explanation.—For the purposes of this section, “relevant shares” and “relevant debentures” mean shares and debentures of the company in which the concerned person is a whole-time director or other key managerial personnel or shares and debentures of its holding and subsidiary companies.

Section:195.

(1) No person including any director or key managerial personnel of a company shall enter into insider trading: Provided that nothing contained in this sub-section shall apply to any communication required in the ordinary course of business or profession or employment or under any law.

Explanation.—For the purposes of this section,—

(a) “insider trading” means—

(i) an act of subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities by any director or key managerial personnel or any other officer of a company either as principal or agent if such director or key managerial personnel or any other officer of the

company is reasonably expected to have access to any non-public price sensitive information in respect of securities of company; or

(ii) an act of counselling about procuring or communicating directly or indirectly any non-public price-sensitive information to any person;

(b) “price-sensitive information” means any information which relates, directly or indirectly, to a company and which if published is likely to materially affect the price of securities of the company.

(2) If any person contravenes the provisions of this section, he shall be punishable with imprisonment for a term which may extend to five years or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher, or with both.

Appointment of key managerial personnel (Section 203)

(1) Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,—

(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 :

Provided that an individual shall not be appointed or reappointed as the 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,—

(a) the articles of such a company provide otherwise; or

(b) the company does not carry multiple businesses:

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.

(2) Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

(3) A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time: Provided that nothing contained in this subsection 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.

(4) 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.

(5) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every director and key managerial personnel of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

205. Functions of company secretary

(1) The functions of the company secretary shall include,—

- (a) to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;
- (b) to ensure that the company complies with the applicable secretarial standards;
- (c) to discharge such other duties as may be prescribed.

Explanation.—For the purpose of this section, the expression “secretarial standards” means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government.

(2) The provisions contained in section 204 and section 205 shall not affect the duties and functions of the Board of Directors, chairperson of the company, managing director or whole-time director under this Act, or any other law for the time being in force.

WINDING UP

Modes of winding up (Section 270)

(1) The winding up of a company may be either—

- (a) by the Tribunal; or
- (b) Voluntary.

(2) Notwithstanding anything contained in any other Act, the provisions of this Act with respect to winding up shall apply to the winding up of a company in any of the modes specified under sub-section (1).

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

(1) A company may, on a petition under section 272, be wound up by the Tribunal,—

- (a) if the company is unable to pay its debts;
- (b) if the company has, by special resolution, resolved that the company be wound up by the Tribunal;
- (c) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;
- (d) if the Tribunal has ordered the winding up of the company under Chapter XIX;

(e) if on an application made by the Registrar or any other person authorized by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;

(f) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or

(g) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

(2) A company shall be deemed to be unable to pay its debts,—

(a) if a creditor, by assignment or otherwise, to whom the company is indebted for an amount exceeding one lakh rupees then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand requiring the company to pay the amount so due and the company has failed to pay the sum within twenty-one days after the receipt of such demand or to provide adequate security or re-structure or compound the debt to the reasonable satisfaction of the creditor;

(b) if any execution or other process issued on a decree or order of any court or tribunal in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) if it is proved to the satisfaction of the Tribunal that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Tribunal shall take into account the contingent and prospective liabilities of the company

Petition for winding up (Section 272)

(1) Subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by—

(a) the company;

(b) any creditor or creditors, including any contingent or prospective creditor or creditors;

(c) any contributory or contributories;

(d) all or any of the persons specified in clauses (a), (b) and (c) together;

(e) the Registrar;

(f) any person authorised by the Central Government in that behalf; or

(g) in a case falling under clause (c) of sub-section (1) of section 271, by the Central Government or a State Government.

(2) A secured creditor, the holder of any debentures, whether or not any trustee or trustees have been appointed in respect of such and other like debentures, and the trustee for the holders of debentures shall be deemed to be creditors within the meaning of clause (b) of sub-section (1).

(3) A contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his

name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.

(4) The Registrar shall be entitled to present a petition for winding up under subsection (1) on any of the grounds specified in sub-section (1) of section 271, except on the grounds specified in clause (b), clause (d) or clause (g) of that sub-section: Provided that the Registrar shall not present a petition on the ground that the company is unable to pay its debts unless it appears to him either from the financial condition of the company as disclosed in its balance sheet or from the report of an inspector appointed under section 210 that the company is unable to pay its debts: Provided further that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition: Provided also that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.

(5) A petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed.

(6) Before a petition for winding up of a company presented by a contingent or prospective creditor is admitted, the leave of the Tribunal shall be obtained for the admission of the petition and such leave shall not be granted, unless in the opinion of the Tribunal there is a prima facie case for the winding up of the company and until such security for costs has been given as the Tribunal thinks reasonable.

(7) A copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition.

Powers of Tribunal (Section: 273)

(1) The Tribunal may, on receipt of a petition for winding up under section 272 pass any of the following orders, namely:—

- (a) dismiss it, with or without costs;
- (b) make any interim order as it thinks fit;
- (c) appoint a provisional liquidator of the company till the making of a winding up order;
- (d) make an order for the winding up of the company with or without costs; or
- (e) any other order as it thinks fit:

Provided that an order under this sub-section shall be made within ninety days from the date of presentation of the petition: Provided further that before appointing a provisional liquidator under clause (c), the Tribunal shall give notice to the company and afford a reasonable opportunity to it to make its representations, if any, unless for special reasons to be recorded in writing, the Tribunal thinks fit to dispense with such notice: Provided also that the Tribunal shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged for an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where a petition is presented on the ground that it is just and equitable that the company should be wound up, the Tribunal may refuse to make an order of winding up, if it is of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing the other remedy.

Directions for filing statement of affairs (Section. 274)

(1) Where a petition for winding up is filed before the Tribunal by any person other than the company, the Tribunal shall, if satisfied that a prima facie case for winding up of the company is made out, by an order direct the company to file its objections along with a statement of its affairs within thirty days of the order in such form and in such manner as may be prescribed:

Provided that the Tribunal may allow a further period of thirty days in a situation of contingency or special circumstances: Provided further that the Tribunal may direct the petitioner to deposit such security for costs as it may consider reasonable as a precondition to issue directions to the company.

(2) A company, which fails to file the statement of affairs as referred to in sub-section (1), shall forfeit the right to oppose the petition and such directors and officers of the company as found responsible for such non-compliance, shall be liable for punishment under sub-section (4).

(3) The directors and other officers of the company, in respect of which an order for winding up is passed by the Tribunal under clause (d) of sub-section (1) of section 273, shall, within a period of thirty days of such order, submit, at the cost of the company, the books of account of the company completed and audited up to the date of the order, to such liquidator and in the manner specified by the Tribunal.

(4) If any director or officer of the company contravenes the provisions of this section, the director or the officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

(5) The complaint may be filed in this behalf before the Special Court by Registrar, provisional liquidator, Company Liquidator or any person authorised by the Tribunal.

Company Liquidators and their appointments (Section.275)

(1) For the purposes of winding up of a company by the Tribunal, the Tribunal at the time of the passing of the order of winding up, shall appoint an Official Liquidator or a liquidator from the panel maintained under sub-section (2) as the Company Liquidator.

(2) The provisional liquidator or the Company Liquidator, as the case may be, shall be appointed from a panel maintained by the Central Government consisting of the names of chartered accountants, advocates, company secretaries, cost accountants or firms or bodies corporate having such chartered accountants, advocates, company secretaries, cost accountants and such other professionals as may be notified by the Central Government or from a firm or a body

corporate of persons having a combination of such professionals as may be prescribed and having at least ten years' experience in company matters.

(3) Where a provisional liquidator is appointed by the Tribunal, the Tribunal may limit and restrict his powers by the order appointing him or it or by a subsequent order, but otherwise he shall have the same powers as a liquidator.

(4) The Central Government may remove the name of any person or firm or body corporate from the panel maintained under sub-section (2) on the grounds of misconduct, fraud, misfeasance, breach of duties or professional incompetence: Provided that the Central Government before removing him or it from the panel shall give him or it a reasonable opportunity of being heard.

(5) The terms and conditions of appointment of a provisional liquidator or Company Liquidator and the fee payable to him or it shall be specified by the Tribunal on the basis of task required to be performed, experience, qualification of such liquidator and size of the company.

(6) On appointment as provisional liquidator or Company Liquidator, as the case may be, such liquidator shall file a declaration within seven days from the date of appointment in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal and such obligation shall continue throughout the term of his appointment.

(7) While passing a winding up order, the Tribunal may appoint a provisional liquidator, if any, appointed under clause (c) of sub-section (1) of section 273, as the Company Liquidator for the conduct of the proceedings for the winding up of the company.

Removal and replacement of liquidator (Section 276)

(1) The Tribunal may, on a reasonable cause being shown and for reasons to be recorded in writing, remove the provisional liquidator or the Company Liquidator, as the case may be, as liquidator of the company on any of the following grounds, namely:—

- (a) misconduct;
- (b) fraud or misfeasance;
- (c) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;
- (d) inability to act as provisional liquidator or as the case may be, Company Liquidator;
- (e) conflict of interest or lack of independence during the term of his appointment that would justify removal.

(2) In the event of death, resignation or removal of the provisional liquidator or as the case may be, Company Liquidator, the Tribunal may transfer the work assigned to him or it to another Company Liquidator for reasons to be recorded in writing.

(3) Where the Tribunal is of the opinion that any liquidator is responsible for causing any loss or damage to the company due to fraud or misfeasance or failure to exercise due care and diligence

in the performance of his or its powers and functions, the Tribunal may recover or cause to be recovered such loss or damage from the liquidator and pass such other orders as it may think fit.

(4) The Tribunal shall, before passing any order under this section, provide a reasonable opportunity of being heard to the provisional liquidator or, as the case may be, Company Liquidator.

Intimation to Company Liquidator, provisional liquidator and Registrar (Section 277)

(1) Where the Tribunal makes an order for appointment of provisional liquidator or for the winding up of a company, it shall, within a period not exceeding seven days from the date of passing of the order, cause intimation thereof to be sent to the Company Liquidator or provisional liquidator, as the case may be, and the Registrar.

(2) On receipt of the copy of order of appointment of provisional liquidator or winding up order, the Registrar shall make an endorsement to that effect in his records relating to the company and notify in the Official Gazette that such an order has been made and in the case of a listed company, the Registrar shall intimate about such appointment or order, as the case may be, to the stock exchange or exchanges where the securities of the company are listed.

(3) The winding up order shall be deemed to be a notice of discharge to the officers, employees and workmen of the company, except when the business of the company is continued.

(4) Within three weeks from the date of passing of winding up order, the Company Liquidator shall make an application to the Tribunal for constitution of a winding up committee to assist and monitor the progress of liquidation proceedings by the Company Liquidator in carrying out the function as provided in sub-section (5) and such winding up committee shall comprise of the following persons, namely:—

- (i) Official Liquidator attached to the Tribunal;
- (ii) nominee of secured creditors; and
- (iii) a professional nominated by the Tribunal.

(5) The Company Liquidator shall be the convener of the meetings of the winding up committee which shall assist and monitor the liquidation proceedings in following areas of liquidation functions, namely:—

- (i) taking over assets;
- (ii) examination of the statement of affairs;
- (iii) recovery of property, cash or any other assets of the company including benefits derived there from;
- (iv) review of audit reports and accounts of the company;
- (v) sale of assets;
- (vi) finalisation of list of creditors and contributories;
- (vii) compromise, abandonment and settlement of claims;
- (viii) payment of dividends, if any; and

(ix) any other function, as the Tribunal may direct from time to time.

(6) The Company Liquidator shall place before the Tribunal a report along with minutes of the meetings of the committee on monthly basis duly signed by the members present in the meeting for consideration till the final report for dissolution of the company is submitted before the Tribunal.

(7) The Company Liquidator shall prepare the draft final report for consideration and approval of the winding up committee.

(8) The final report so approved by the winding up committee shall be submitted by the Company Liquidator before the Tribunal for passing of a dissolution order in respect of the company.

Effect of winding up order (Section.278)

The order for the winding up of a company shall operate in favour of all the creditors and all contributories of the company as if it had been made out on the joint petition of creditors and contributories

Stay of suits, etc., on winding up order (Section. 279)

(1) When a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose: Provided that any application to the Tribunal seeking leave under this section shall be disposed of by the Tribunal within sixty days.

(2) Nothing in sub-section (1) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

Jurisdiction of Tribunal (Section. 280)

The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of,—

- (a) any suit or proceeding by or against the company;
- (b) any claim made by or against the company, including claims by or against any of its branches in India;
- (c) any application made under section 233;
- (d) any scheme submitted under section 262;
- (e) any question of priorities or any other question whatsoever, whether of law or facts, including those relating to assets, business, actions, rights, entitlements, privileges, benefits, duties, responsibilities, obligations or in any matter arising out of, or in relation to winding up of the company, whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made or such scheme has been submitted, or is submitted, before or after the order for the winding up of the company is made.

Submission of report by Company Liquidator (Section. 281)

(1) Where the Tribunal has made a winding up order or appointed a Company Liquidator, such liquidator shall, within sixty days from the order, submit to the Tribunal, a report containing the following particulars, namely:—

- (a) the nature and details of the assets of the company including their location and value, stating separately the cash balance in hand and in the bank, if any, and the negotiable securities, if any, held by the company: Provided that the valuation of the assets shall be obtained from registered valuers for this purpose;
- (b) amount of capital issued, subscribed and paid-up;
- (c) the existing and contingent liabilities of the company including names, addresses and occupations of its creditors, stating separately the amount of secured and unsecured debts, and in the case of secured debts, particulars of the securities given, whether by the company or an officer thereof, their value and the dates on which they were given;
- (d) the debts due to the company and the names, addresses and occupations of the persons from whom they are due and the amount likely to be realised on account thereof;
- (e) guarantees, if any, extended by the company;
- (f) list of contributories and dues, if any, payable by them and details of any unpaid call;
- (g) details of trade marks and intellectual properties, if any, owned by the company;
- (h) details of subsisting contracts, joint ventures and collaborations, if any;
- (i) details of holding and subsidiary companies, if any;
- (j) details of legal cases filed by or against the company; and
- (k) any other information which the Tribunal may direct or the Company Liquidator may consider necessary to include.

(2) The Company Liquidator shall include in his report the manner in which the company was promoted or formed and whether in his opinion any fraud has been committed by any person in its promotion or formation or by any officer of the company in relation to the company since the formation thereof and any other matters which, in his opinion, it is desirable to bring to the notice of the Tribunal.

(3) The Company Liquidator shall also make a report on the viability of the business of the company or the steps which, in his opinion, are necessary for maximising the value of the assets of the company.

(4) The Company Liquidator may also, if he thinks fit, make any further report or reports.

(5) Any person describing himself in writing to be a creditor or a contributory of the company shall be entitled by himself or by his agent at all reasonable times to inspect the report submitted in accordance with this section and take copies thereof or extracts there from on payment of the prescribed fees.

Directions of Tribunal on report of Company Liquidator (Section. 282)

(1) The Tribunal shall, on consideration of the report of the Company Liquidator, fix a time limit within which the entire proceedings shall be completed and the company be dissolved: Provided that the Tribunal may, if it is of the opinion, at any stage of the proceedings, or on examination of the reports submitted to it by the Company Liquidator and after hearing the Company Liquidator, creditors or contributories or any other interested person, that it will not be

advantageous or economical to continue the proceedings, revise the time limit within which the entire proceedings shall be completed and the company be dissolved.

(2) The Tribunal may, on examination of the reports submitted to it by the Company Liquidator and after hearing the Company Liquidator, creditors or contributories or any other interested person, order sale of the company as a going concern or its assets or part thereof: Provided that the Tribunal may, where it considers fit, appoint a sale committee comprising such creditors, promoters and officers of the company as the Tribunal may decide to assist the Company Liquidator in sale under this sub-section.

(3) Where a report is received from the Company Liquidator or the Central Government or any person that a fraud has been committed in respect of the company, the Tribunal shall, without prejudice to the process of winding up, order for investigation under section 210, and on consideration of the report of such investigation it may pass order and give directions under sections 339 to 342 or direct the Company Liquidator to file a criminal complaint against persons who were involved in the commission of fraud.

(4) The Tribunal may order for taking such steps and measures, as may be necessary, to protect, preserve or enhance the value of the assets of the company.

(5) The Tribunal may pass such other order or give such other directions as it considers fit.

Custody of company's properties. (Section 283)

(1) Where a winding up order has been made or where a provisional liquidator has been appointed, the Company Liquidator or the provisional liquidator, as the case may be, shall, on the order of the Tribunal, forthwith take into his or its custody or control all the property, effects and actionable claims to which the company is or appears to be entitled to and take such steps and measures, as may be necessary, to protect and preserve the properties of the company.

(2) Notwithstanding anything contained in sub-section (1), all the property and effects of the company shall be deemed to be in the custody of the Tribunal from the date of the order for the winding up of the company.

(3) On an application by the Company Liquidator or otherwise, the Tribunal may, at any time after the making of a winding up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent, officer or other employee of the company, to pay, deliver, surrender or transfer forthwith, or within such time as the Tribunal directs, to the Company Liquidator, any money, property or books and papers in his custody or under his control to which the company is or appears to be entitled.

Promoters, directors, etc., to cooperate with Company Liquidator (section. 284)

(1) The promoters, directors, officers and employees, who are or have been in employment of the company or acting or associated with the company shall extend full cooperation to the Company Liquidator in discharge of his functions and duties.

(2) Where any person, without reasonable cause, fails to discharge his obligations under sub-section (1), he shall be punishable with imprisonment which may extend to six months or with fine which may extend to fifty thousand rupees, or with both

Settlement of list of contributories and application of assets. (Section.285)

(1) As soon as may be after the passing of a winding up order by the Tribunal, the Tribunal shall settle a list of contributories, cause rectification of register of members in all cases where rectification is required in pursuance of this Act and shall cause the assets of the company to be applied for the discharge of its liability: Provided that where it appears to the Tribunal that it would not be necessary to make calls on or adjust the rights of contributories, the Tribunal may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the Tribunal shall distinguish between those who are contributories in their own right and those who are contributories as being representatives of, or liable for the debts of, others.

(3) While settling the list of contributories, the Tribunal shall include every person, who is or has been a member, who shall be liable to contribute to the assets of the company an amount sufficient for payment of the debts and liabilities and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, subject to the following conditions, namely:—

(a) a person who has been a member shall not be liable to contribute if he has ceased to be a member for the preceding one year or more before the commencement of the winding up;

(b) a person who has been a member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(c) no person who has been a member shall be liable to contribute unless it appears to the Tribunal that the present members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

(d) in the case of a company limited by shares, no contribution shall be required from any person, who is or has been a member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as such member;

(e) in the case of a company limited by guarantee, no contribution shall be required from any person, who is or has been a member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up but if the company has a share capital, such member shall be liable to contribute to the extent of any sum unpaid on any shares held by him as if the company were a company limited by shares.

Obligations of directors and managers (Section. 286)

In the case of a limited company, any person who is or has been a director or manager, whose liability is unlimited under the provisions of this Act, shall, in addition to his liability, if any, to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of winding up, a member of an unlimited company:

Provided that —

(a) a person who has been a director or manager shall not be liable to make such further contribution, if he has ceased to hold office for a year or upwards before the commencement of the winding up;

(b) a person who has been a director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;

(c) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the Tribunal deems it necessary to require the contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

Advisory committee. (section.287)

(1) The Tribunal may, while passing an order of winding up of a company, direct that there shall be, an advisory committee to advise the Company Liquidator and to report to the Tribunal on such matters as the Tribunal may direct.

(2) The advisory committee appointed by the Tribunal shall consist of not more than twelve members, being creditors and contributories of the company or such other persons in such proportion as the Tribunal may, keeping in view the circumstances of the company under liquidation, direct.

(3) The Company Liquidator shall convene a meeting of creditors and contributories, as ascertained from the books and documents, of the company within thirty days from the date of order of winding up for enabling the Tribunal to determine the persons who may be members of the advisory committee.

(4) The advisory committee shall have the right to inspect the books of account and other documents, assets and properties of the company under liquidation at a reasonable time.

(5) The provisions relating to the convening of the meetings, the procedure to be followed thereat and other matters relating to conduct of business by the advisory committee shall be such as may be prescribed.

(6) The meeting of advisory committee shall be chaired by the Company Liquidator

Submission of periodical reports to Tribunal. (Section.288)

(1) The Company Liquidator shall make periodical reports to the Tribunal and in any case make a report at the end of each quarter with respect to the progress of the winding up of the company in such form and manner as may be prescribed.

(2) The Tribunal may, on an application by the Company Liquidator, review the orders made by it and make such modifications as it thinks fit

Power of Tribunal on application for stay of winding up (Section.289)

(1) The Tribunal may, at any time after making a winding up order, on an application of promoter, shareholders or creditors or any other interested person, if satisfied, make an order that it is just and fair that an opportunity to revive and rehabilitate the company be provided staying the proceedings for such time but not exceeding one hundred and eighty days and on such terms and conditions as it thinks fit: Provided that an order under this sub-section shall be made by the Tribunal only when the application is accompanied with a scheme for rehabilitation.

(2) The Tribunal may, while passing the order under sub-section (1), require the applicant to furnish such security as to costs as it considers fit.

(3) Where an order under sub-section (1) is passed by the Tribunal, the provisions of Chapter XIX shall be followed in respect of the consideration and sanction of the scheme of revival of the company.

(4) Without prejudice to the provisions of sub-section (1), the Tribunal may at any time after making a winding up order, on an application of the Company Liquidator, make an order staying the winding up proceedings or any part thereof, for such time and on such terms and conditions as it thinks fit.

(5) The Tribunal may, before making an order, under this section, require the Company Liquidator to furnish to it a report with respect to any facts or matters which are in his opinion relevant to the application.

(6) A copy of every order made under this section shall forthwith be forwarded by the Company Liquidator to the Registrar who shall make an endorsement of the order in his books and records relating to the company.

Powers and duties of Company Liquidator (Section.290)

(1) Subject to directions by the Tribunal, if any, in this regard, the Company Liquidator, in a winding up of a company by the Tribunal, shall have the power—

- (a) to carry on the business of the company so far as may be necessary for the beneficial winding up of the company;
- (b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose, to use, when necessary, the company's seal;
- (c) to sell the immovable and movable property and actionable claims of the company 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;
- (d) to sell the whole of the undertaking of the company as a going concern;
- (e) to raise any money required on the security of the assets of the company;
- (f) to institute or defend any suit, prosecution or other legal proceeding, civil or criminal, in the name and on behalf of the company;
- (g) to invite and settle claim of creditors, employees or any other claimant and distribute sale proceeds in accordance with priorities established under this Act;
- (h) to inspect the records and returns of the company on the files of the Registrar or any other authority;
- (i) to prove rank and claim in the insolvency of any contributory for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors;
- (j) to draw, accept, make and endorse any negotiable instruments including cheque, bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if such instruments had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;

(k) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases, the money due shall, for the purpose of enabling the Company Liquidator to take out the letters of administration or recover the money, be deemed to be due to the Company Liquidator himself;

(l) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities and for protection of the assets of the company, appoint an agent to do any business which the Company Liquidator is unable to do himself;

(m) to take all such actions, steps, or to sign, execute and verify any paper, deed, document, application, petition, affidavit, bond or instrument as may be necessary,—

(i) for winding up of the company;

(ii) for distribution of assets;

(iii) in discharge of his duties and obligations and functions as Company Liquidator; and

(n) to apply to the Tribunal for such orders or directions as may be necessary for the winding up of the company.

(2) The exercise of powers by the Company Liquidator under sub-section (1) shall be subject to the overall control of the Tribunal.

(3) Notwithstanding the provisions of sub-section (1), the Company Liquidator shall perform such other duties as the Tribunal may specify in this behalf.

Provision for professional assistance to Company Liquidator (Section.292)

(1) The Company Liquidator may, with the sanction of the Tribunal, appoint one or more chartered accountants or company secretaries or cost accountants or legal practitioners or such other professionals on such terms and conditions, as may be necessary, to assist him in the performance of his duties and functions under this Act.

(2) Any person appointed under this section shall disclose forthwith to the Tribunal in the prescribed form any conflict of interest or lack of independence in respect of his appointment

Exercise and control of Company Liquidator's powers (Section. 292)

(1) Subject to the provisions of this Act, the Company Liquidator shall, in the administration of the assets of the company and the distribution thereof among its creditors, have regard to any directions which may be given by the resolution of the creditors or contributories at any general meeting or by the advisory committee.

(2) Any directions given by the creditors or contributories at any general meeting shall, in case of conflict, be deemed to override any directions given by the advisory committee.

(3) The Company Liquidator—

- (a) may summon meetings of the creditors or contributories, whenever he thinks fit, for the purpose of ascertaining their wishes; and
- (b) shall summon such meetings at such times, as the creditors or contributories, as the case may be, may, by resolution, direct, or whenever requested in writing to do so by not less than one-tenth in value of the creditors or contributories, as the case may be.

(4) Any person aggrieved by any act or decision of the Company Liquidator may apply to the Tribunal, and the Tribunal may confirm, reverse or modify the act or decision complained of and make such further order as it thinks just and proper in the circumstances.

Books to be kept by Company Liquidator. (Section. 293)

(1) The Company Liquidator shall keep proper books in such manner, as may be prescribed, in which he shall cause entries or minutes to be made of proceedings at meetings and of such other matters as may be prescribed.

(2) Any creditor or contributory may, subject to the control of the Tribunal, inspect any such books, personally or through his agent.

Audit of Company Liquidator's accounts (Section.294)

(1) The Company Liquidator shall maintain proper and regular books of account including accounts of receipts and payments made by him in such form and manner as may be prescribed.

(2) The Company Liquidator shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, present to the Tribunal an account of the receipts and payments as such liquidator in the prescribed form in duplicate, which shall be verified by a declaration in such form and manner as may be prescribed.

(3) The Tribunal shall cause the accounts to be audited in such manner as it thinks fit, and for the purpose of the audit, the Company Liquidator shall furnish to the Tribunal with such vouchers and information as the Tribunal may require, and the Tribunal may, at any time, require the production of, and inspect, any books of account kept by the Company Liquidator.

(4) When the accounts of the company have been audited, one copy thereof shall be filed by the Company Liquidator with the Tribunal, and the other copy shall be delivered to the Registrar which shall be open to inspection by any creditor, contributory or person interested.

(5) Where an account referred to in sub-section (4) relates to a Government company, the Company Liquidator shall forward a copy thereof—

- (a) to the Central Government, if that Government is a member of the Government company; or
- (b) to any State Government, if that Government is a member of the Government company; or
- (c) to the Central Government and any State Government, if both the Governments are members of the Government company.

(6) The Company Liquidator shall cause the accounts when audited, or a summary thereof, to be printed, and shall send a printed copy of the accounts or summary thereof by post to every creditor and every contributory: Provided that the Tribunal may dispense with the compliance of the provisions of this sub-section in any case it deems fit.

Payment of debts by contributory and extent of set-off (Section.295)

(1) The Tribunal may, at any time after passing of a winding up order, pass an order requiring any contributory for the time being on the list of contributories to pay, in the manner directed by the order, any money due to the company, from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The Tribunal, in making an order, under sub-section (1), may,—

(a) in the case of an unlimited company, allow to the contributory, by way of setoff, any money due to him or to the estate which he represents, from the company, on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and

(b) in the case of a limited company, allow to any director or manager whose liability is unlimited, or to his estate, such set-off.

(3) In the case of any company, whether limited or unlimited, when all the creditors have been paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call

Power of Tribunal to make calls (Section. 296)

The Tribunal may, at any time after the passing of a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company,—

(a) make calls on all or any of the contributories for the time being on the list of the contributories, to the extent of their liability, for payment of any money which the Tribunal considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves; and

(b) make an order for payment of any calls so made

Adjustment of rights of contributories (Section. 297)

The Tribunal shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto

Power to order costs. (section.298)

The Tribunal may, in the event of the assets of a company being insufficient to satisfy its liabilities, make an order for the payment out of the assets, of the costs, charges and expenses incurred in the winding up, in such order of priority inter se as the Tribunal thinks just and proper

Power to summon persons suspected of having property of company, etc. (Section.299)

(1) The Tribunal may, at any time after the appointment of a provisional liquidator or the passing of a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property or books or papers, of the company, or known or suspected to be indebted to the company, or any person whom the Tribunal thinks to be capable of giving information concerning the promotion, formation, trade, dealings, property, books or papers, or affairs of the company.

(2) The Tribunal may examine any officer or person so summoned on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories or on affidavit and may, in the first case, reduce his answers to writing and require him to sign them.

(3) The Tribunal may require any officer or person so summoned to produce any books and papers relating to the company in his custody or power, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to such lien, and the Tribunal shall have power to determine all questions relating to that lien.

(4) The Tribunal may direct the liquidator to file before it a report in respect of debt or property of the company in possession of other persons.

(5) If the Tribunal finds that—

(a) a person is indebted to the company, the Tribunal may order him to pay to the provisional liquidator or, as the case may be, the liquidator at such time and in such manner as the Tribunal may consider just, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the Tribunal thinks fit, with or without costs of the examination;

(b) a person is in possession of any property belonging to the company, the Tribunal may order him to deliver to the provisional liquidator or, as the case may be, the liquidator, that property or any part thereof, at such time, in such manner and on such terms as the Tribunal may consider just.

(6) If any officer or person so summoned fails to appear before the Tribunal at the time appointed without a reasonable cause, the Tribunal may impose an appropriate cost.

(7) Every order made under sub-section (5) shall be executed in the same manner as decrees for the payment of money or for the delivery of property under the Code of Civil Procedure, 1908.

(8) Any person making any payment or delivery in pursuance of an order made under sub-section (5) shall by such payment or delivery be, unless otherwise directed by such order, discharged from all liability whatsoever in respect of such debt or property.

Power to order examination of promoters, directors, etc (Section.300)

(1) Where an order has been made for the winding up of a company by the Tribunal, and the Company Liquidator has made a report to the Tribunal under this Act, stating that in his opinion a fraud has been committed by any person in the promotion, formation, business or conduct of affairs of the company since its formation, the Tribunal may, after considering the report, direct

that such person or officer shall attend before the Tribunal on a day appointed by it for that purpose, and be examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as an officer thereof.

(2) The Company Liquidator shall take part in the examination, and for that purpose he or it may, if specially authorised by the Tribunal in that behalf, employ such legal assistance as may be sanctioned by the Tribunal.

(3) The person shall be examined on oath and shall answer all such questions as the Tribunal may put, or allow to be put, to him.

(4) A person ordered to be examined under this section—

(a) shall, before his examination, be furnished at his own cost with a copy of the report of the Company Liquidator; and

(b) may at his own cost employ chartered accountants or company secretaries or cost accountants or legal practitioners entitled to appear before the Tribunal under section 432, who shall be at liberty to put to him such questions as the Tribunal may consider just for the purpose of enabling him to explain or qualify any answers given by him.

(5) If any such person applies to the Tribunal to be exculpated from any charges made or suggested against him, it shall be the duty of the Company Liquidator to appear on the hearing of such application and call the attention of the Tribunal to any matters which appear to the Company Liquidator to be relevant.

(6) If the Tribunal, after considering any evidence given or hearing witnesses called by the Company Liquidator, allows the application made under sub-section (5), the Tribunal may order payment to the applicant of such costs as it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, a copy be supplied to him and may thereafter be used in evidence against him, and shall be open to inspection by any creditor or contributory at all reasonable times.

(8) The Tribunal may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the Tribunal so directs, be held before any person or authority authorised by the Tribunal.

(10) The powers of the Tribunal under this section as to the conduct of the examination, but not as to costs, may be exercised by the person or authority before whom the examination is held in pursuance of sub-section (9).

Arrest of person trying to leave India or abscond. (Section.301)

At any time either before or after passing a winding up order, if the Tribunal is satisfied that a contributory or a person having property, accounts or papers of the company in his possession is about to leave India or otherwise to abscond, or is about to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, the Tribunal may cause—

- (a) the contributory to be detained until such time as the Tribunal may order; and
- (b) his books and papers and movable property to be seized and safely kept until such time as the Tribunal may order

Dissolution of company by Tribunal (Section.302)

(1) When the affairs of a company have been completely wound up, the Company Liquidator shall make an application to the Tribunal for dissolution of such company.

(2) The Tribunal shall on an application filed by the Company Liquidator under sub-section (1) or when the Tribunal is of the opinion that it is just and reasonable in the circumstances of the case that an order for the dissolution of the company should be made, make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(3) A copy of the order shall, within thirty days from the date thereof, be forwarded by the Company Liquidator to the Registrar who shall record in the register relating to the company a minute of the dissolution of the company.

(4) If the Company Liquidator makes a default in forwarding a copy of the order within the period specified in sub-section (3), the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

Appeals from orders made before commencement of Act. (section.303)

Nothing in this Chapter shall affect the operation or enforcement of any order made by any Court in any proceedings for the winding up of a company immediately before the commencement of this Act and an appeal against such order shall be filed before such authority competent to hear such appeals before such commencement

Appeals from orders made before commencement of Act.(section.303)

Nothing in this Chapter shall affect the operation or enforcement of any order made by any Court in any proceedings for the winding up of a company immediately before the commencement of this Act and an appeal against such order shall be filed before such authority competent to hear such appeals before such commencement.

Circumstances in which company may be wound up voluntarily. (Section. 304)

A company may be wound up voluntarily,—

(a) if the company in general meeting passes a resolution requiring the company to be wound up voluntarily as a result of the expiry of the period for its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company should be dissolved; or

(b) if the company passes a special resolution that the company be wound up voluntarily

Declaration of solvency in case of proposal to wind up voluntarily. (section.305)

(1) Where it is proposed to wind up a company voluntarily, its director or directors, or in case the company has more than two directors, the majority of its directors, shall, at a meeting of the Board, make a declaration verified by an affidavit to the effect that they have made a full inquiry

into the affairs of the company and they have formed an opinion that the company has no debt or whether it will be able to pay its debts in full from the proceeds of assets sold in voluntary winding up.

(2) A declaration made under sub-section (1) shall have no effect for the purposes of this Act, unless—

(a) it is made within five weeks immediately preceding the date of the passing of the resolution for winding up the company and it is delivered to the Registrar for registration before that date;

(b) it contains a declaration that the company is not being wound up to defraud any person or persons;

(c) it is accompanied by a copy of the report of the auditors of the company prepared in accordance with the provisions of this Act, on the profit and loss account of the company for the period commencing from the date up to which the last such account was prepared and ending with the latest practicable date immediately before the making of the declaration and the balance sheet of the company made out as on that date which would also contain a statement of the assets and liabilities of the company on that date; and

(d) where there are any assets of the company, it is accompanied by a report of the valuation of the assets of the company prepared by a registered valuer.

(3) Where the company is wound up in pursuance of a resolution passed within a period of five weeks after the making of the declaration, but its debts are not paid or provided for in full, it shall be presumed, until the contrary is shown, that the director or directors did not have reasonable grounds for his or their opinion under sub-section (1).

(4) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full from the proceeds of assets sold in voluntary winding up shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

Meeting of creditors. (Section.306)

(1) The company shall along with the calling of meeting of the company at which the resolution for the voluntary winding up is to be proposed, cause a meeting of its creditors either on the same day or on the next day and shall cause a notice of such meeting to be sent by registered post to the creditors with the notice of the meeting of the company under section 304.

(2) The Board of Directors of the company shall—

(a) cause to be presented a full statement of the position of the affairs of the company together with a list of creditors of the company, if any, copy of declaration under section 305 and the estimated amount of the claims before such meeting; and

(b) appoint one of the directors to preside at the meeting.

(3) Where two-thirds in value of creditors of the company are of the opinion that—

- (a) it is in the interest of all parties that the company be wound up voluntarily, the company shall be wound up voluntarily; or
- (b) the company may not be able to pay for its debts in full from the proceeds of assets sold in voluntary winding up and pass a resolution that it shall be in the interest of all parties if the company is wound up by the Tribunal in accordance with the provisions of Part I of this Chapter, the company shall within fourteen days thereafter file an application before the Tribunal.

(4) The notice of any resolution passed at a meeting of creditors in pursuance of this section shall be given by the company to the Registrar within ten days of the passing thereof.

(5) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees and the director 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 fifty thousand rupees but which may extend to two lakh rupees, or with both.

Publication of resolution to wind up voluntarily. (section. 307)

(1) Where a company has passed a resolution for voluntary winding up and a resolution under sub-section (3) of section 306 is passed, it shall within fourteen days of the passing of the resolution give notice of the resolution by advertisement in the Official Gazette and also in a newspaper which is in circulation in the district where the registered office or the principal office of the company is situate.

(2) If a company contravenes the provisions of sub-section (1), the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees for every day during which such default continues

Commencement of voluntary winding up. (section.308)

A voluntary winding up shall be deemed to commence on the date of passing of the resolution for voluntary winding up under section 304

Effect of voluntary winding up. (Section. 309)

In the case of a voluntary winding up, the company shall from the commencement of the winding up cease to carry on its business except as far as required for the beneficial winding up of its business: Provided that the corporate state and corporate powers of the company shall continue until it is dissolved.

Appointment of Company Liquidator. (section. 310)

(1) The company in its general meeting, where a resolution of voluntary winding up is passed, shall appoint a Company Liquidator from the panel prepared by the Central Government for the purpose of winding up its affairs and distributing the assets of the company and recommend the fee to be paid to the Company Liquidator.

(2) Where the creditors have passed a resolution for winding up the company under sub-section

(3) of section 306, the appointment of the Company Liquidator under this section shall be effective only after it is approved by the majority of creditors in value of the company: Provided that where such creditors do not approve the appointment of such Company Liquidator, creditors shall appoint another Company Liquidator.

(3) The creditors while approving the appointment of Company Liquidator appointed by the company or appointing the Company Liquidator of their own choice, as the case may be, pass suitable resolution with regard to the fee of the Company Liquidator.

(4) On appointment as Company Liquidator, such liquidator shall file a declaration in the prescribed form within seven days of the date of appointment disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the company and the creditors and such obligation shall continue throughout the term of his or its appointment.

Power to remove and fill vacancy of Company Liquidator. (Section.312)

(1) A Company Liquidator appointed under section 310 may be removed by the company where his appointment has been made by the company and, by the creditors, where the appointment is approved or made by such creditors.

(2) Where a Company Liquidator is sought to be removed under this section, he shall be given a notice in writing stating the grounds of removal from his office by the company or the creditors, as the case may be.

(3) Where three-fourth members of the company or three-fourth of creditors in value, as the case may be, after consideration of the reply, if any, filed by the Company Liquidator, in their meeting decide to remove the Company Liquidator, he shall vacate his office.

(4) If a vacancy occurs by death, resignation, removal or otherwise in the office of any Company Liquidator appointed under section 310, the company or the creditors, as the case may be, fill the vacancy in the manner specified in that section.

Notice of appointment of Company Liquidator to be given to Registrar. (Section. 312)

(1) The company shall give notice to the Registrar of the appointment of a Company Liquidator along with the name and particulars of the Company Liquidator, of every vacancy occurring in the office of Company Liquidator, and of the name of the Company Liquidator appointed to fill every such vacancy within ten days of such appointment or the occurrence of such vacancy.

(2) If a company contravenes the provisions of sub-section (1), the company and every officer of the company who is in default shall be punishable with fine which may extend to five hundred rupees for every day during which such default continues.

Cesser of Board's powers on appointment of Company Liquidator. (section.313)

On the appointment of a Company Liquidator, all the powers of the Board of Directors and of the managing or whole-time directors and manager, if any, shall cease, except for the purpose of giving notice of such appointment of the Company Liquidator to the Registrar.

Powers and duties of Company Liquidator in voluntary winding up. (Section.314)

(1) The Company Liquidator shall perform such functions and discharge such duties as may be determined from time to time by the company or the creditors, as the case may be.

(2) The Company Liquidator shall settle the list of contributories, which shall be prima facie evidence of the liability of the persons named therein to be contributories.

(3) The Company Liquidator shall call general meetings of the company for the purpose of obtaining the sanction of the company by ordinary or special resolution, as the case may require, or for any other purpose he may consider necessary.

(4) The Company Liquidator shall maintain regular and proper books of account in such form and in such manner as may be prescribed and the members and creditors and any officer authorised by the Central Government may inspect such books of account.

(5) The Company Liquidator shall prepare quarterly statement of accounts in such form and manner as may be prescribed and file such statement of accounts duly audited within thirty days from the close of each quarter with the Registrar, failing which the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.

(6) The Company Liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(7) The Company Liquidator shall observe due care and diligence in the discharge of his duties.

(8) If the Company Liquidator fails to comply with the provisions of this section except subsection (5) he shall be punishable with fine which may extend to ten lakh rupees

Appointment of committees. (section.315)

Where there are no creditors of a company, such company in its general meeting and, where a meeting of creditors is held under section 306, such creditors, as the case may be, may appoint such committees as considered appropriate to supervise the voluntary liquidation and assist the Company Liquidator in discharging his or its functions.

Company Liquidator to submit report on progress of winding up. (Section.316)

(1) The Company Liquidator shall report quarterly on the progress of winding up of the company in such form and in such manner as may be prescribed to the members and creditors and shall also call a meeting of the members and the creditors as and when necessary but at least one meeting each of creditors and members in every quarter and apprise them of the progress of the winding up of the company in such form and in such manner as may be prescribed.

(2) If the Company Liquidator fails to comply with the provisions of sub-section (1), he shall be punishable, in respect of each such failure, with fine which may extend to ten lakh rupees.

Report of Company Liquidator to Tribunal for examination of persons. (section.317)

(1) Where the Company Liquidator is of the opinion that a fraud has been committed by any person in respect of the company, he shall immediately make a report to the Tribunal and the Tribunal shall, without prejudice to the process of winding up, order for investigation under section 210 and on consideration of the report of such investigation, the Tribunal may pass such order and give such directions under this Chapter as it may consider necessary including the direction that such person shall attend before the Tribunal on a day appointed by it for that purpose and be examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as officer thereof or otherwise.

(2) The provisions of section 300 shall mutatis mutandis apply in relation to any examination directed under sub-section (1)

Final meeting and dissolution of company. (section.318)

(1) As soon as the affairs of a company are fully wound up, the Company Liquidator shall prepare a report of the winding up showing that the property and assets of the company have been disposed of and its debt fully discharged or discharged to the satisfaction of the creditors and thereafter call a general meeting of the company for the purpose of laying the final winding up accounts before it and giving any explanation therefore.

(2) The meeting referred to in sub-section (1) shall be called by the Company Liquidator in such form and manner as may be prescribed.

(3) If the majority of the members of the company after considering the report of the Company Liquidator are satisfied that the company shall be wound up, they may pass a resolution for its dissolution.

(4) Within two weeks after the meeting, the Company Liquidator shall—

(a) send to the Registrar—

(i) a copy of the final winding up accounts of the company and shall make a return in respect of each meeting and of the date thereof; and

(ii) copies of the resolutions passed in the meetings; and

(b) file an application along with his report under sub-section (1) in such manner as may be prescribed along with the books and papers of the company relating to the winding up, before the Tribunal for passing an order of dissolution of the company.

(5) If the Tribunal is satisfied, after considering the report of the Company Liquidator that the process of winding up has been just and fair, the Tribunal shall pass an order dissolving the company within sixty days of the receipt of the application under sub-section (4).

(6) The Company Liquidator shall file a copy of the order under sub-section (5) with the Registrar within thirty days.

(7) The Registrar, on receiving the copy of the order passed by the Tribunal under subsection (7), shall forthwith publish a notice in the Official Gazette that the company is dissolved.

(8) If the Company Liquidator fails to comply with the provisions of this section, he shall be punishable with fine which may extend to one lakh rupees.

Power of Company Liquidator to accept shares, etc., as consideration for sale of property of company. (Section. 319)

(1) Where a company (the transferor company) is proposed to be, or is in the course of being, wound up voluntarily and the whole or any part of its business or property is proposed to be transferred or sold to another company (the transferee company), the Company Liquidator of the transferor company may, with the sanction of a special resolution of the company conferring on him either a general authority or an authority in respect of any particular arrangement,—

(a) receive, by way of compensation wholly or in part for the transfer or sale of shares, policies, or other like interest in the transferee company, for distribution among the members of the transferor company; or

(b) enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interest or in addition thereto, participate in the profits of, or receive any other benefit from, the transferee company: Provided that no such arrangement shall be entered into without the consent of the secured creditors.

(2) Any transfer, sale or other arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) Any member of the transferor company who did not vote in favour of the special resolution and expresses his dissent therefrom in writing addressed to the Company Liquidator, and left at the registered office of the company within seven days after the passing of the resolution, may require the liquidator either—

(a) to abstain from carrying the resolution into effect; or

(b) to purchase his interest at a price to be determined by agreement or the registered valuer.

(4) If the Company Liquidator elects to purchase the member's interest, the purchase money, raised by him in such manner as may be determined by a special resolution, shall be paid before the company is dissolved.

Distribution of property of company. (section. 320)

Subject to the provisions of this Act as to overriding preferential payments under section 326, the assets of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu* and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

Arrangement when binding on company and creditors. (section.321)

(1) Any arrangement other than the arrangement referred to in section 319 entered into between the company which is about to be, or is in the course of being wound up and its creditors shall be binding on the company and on the creditors if it is sanctioned by a special resolution of the company and acceded to by the creditors who hold three-fourths in value of the total amount due to all the creditors of the company.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, apply to the Tribunal and the Tribunal may thereupon amend, vary, confirm or set aside the arrangement.

Power to apply to Tribunal to have questions determined, etc. (Section. 322)

(1) The Company Liquidator or any contributory or creditor may apply to the Tribunal—
(a) to determine any question arising in the course of the winding up of a company; or
(b) to exercise as respects the enforcing of calls, the staying of proceedings or any other matter, all or any of the powers which the Tribunal might exercise if the company were being wound up by the Tribunal.

(2) The Company Liquidator or any creditor or contributory may apply to the Tribunal for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up.

(3) The Tribunal, if satisfied on an application under sub-section (1) or sub-section (2) that the determination of the question or the required exercise of power or the order applied for will be just and fair, may allow the application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks fit.

(4) A copy of an order staying the proceedings in the winding up, made under this section, shall forthwith be forwarded by the company, or otherwise as may be prescribed to the Registrar, who shall make a minute of the order in his books relating to the company.

Costs of voluntary winding up. (Section. 323)

All costs, charges and expenses properly incurred in the winding up, including the fee of the Company Liquidator, shall, subject to the rights of secured creditors, if any, be payable out of the assets of the company in priority to all other claims.

Debts of all descriptions to be admitted to proof. (section. 324)

In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act or of the law of insolvency), all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency, or may sound only in damages, or for some other reason may not bear a certain value

Application of insolvency rules in winding up of insolvent companies. (Section. 325)

(1) In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to—

- (a) debts provable;
- (b) the valuation of annuities and future and contingent liabilities; and
- (c) the respective rights of secured and unsecured creditors, as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent: Provided that the security of every secured creditor shall be deemed to be subject to a pari passu charge in favour of the workmen to the extent of the workmen's portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debts, opts to realise his security,—
 - (i) the liquidator shall be entitled to represent the workmen and enforce such charge;
 - (ii) any amount realised by the liquidator by way of enforcement of such charge shall be applied rateably for the discharge of workmen's dues; and
 - (iii) so much of the debts due to such secured creditor as could not be realized by him or the amount of the workmen's portion in his security, whichever is less, shall rank pari passu with the workmen's dues for the purposes of section 326.

(2) All persons under sub-section (1) shall be entitled to prove and receive dividends out of the assets of the company under winding up, and make such claims against the company as they respectively are entitled to make by virtue of this section: Provided that if a secured creditor, instead of relinquishing his security and proving his debts, proceeds to realise his security, he shall be liable to pay his portion of the expenses incurred by the liquidator, including a provisional liquidator, if any, for the preservation of the security before its realisation by the secured creditor.

Explanation.—For the purposes of this sub-section, the portion of expenses incurred by the liquidator for the preservation of a security which the secured creditor shall be liable to pay shall be the whole of the expenses less an amount which bears to such expenses the same proportion as the workmen's portion in relation to the security bears to the value of the security.

(3) For the purposes of this section, section 326 and section 327,—

(a) “workmen”, in relation to a company, means the employees of the company, being workmen within the meaning of clause (s) of section 2 of the Industrial Disputes Act, 1947;

(b) “workmen’s dues”, in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely:—

(i) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947;

(ii) all accrued holiday remuneration becoming payable to any workman or, in the case of his death, to any other person in his right on the termination of his employment before or by the effect of the winding up order or resolution;

(iii) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen’s Compensation Act, 1923, rights capable of being transferred to and vested in the workmen, all amount due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company;

(iv) all sums due to any workman from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the workmen, maintained by the company;

(c) “workmen’s portion”, in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen’s dues bears to the aggregate of the amount of workmen’s dues and the amount of the debts due to the secured creditors.

Illustration: The value of the security of a secured creditor of a company is Rs. 1,00,000. The total amount of the workmen’s dues is Rs. 1,00,000. The amount of the debts due from the company to its secured creditors is Rs. 3,00,000. The aggregate of the amount of workmen’s dues and the amount of debts due to secured creditors is Rs. 4,00,000. The workmen’s portion of the security is, therefore, one-fourth of the value of the security, that is Rs. 25,000.

Overriding preferential payments. (Section. 326)

(1) Notwithstanding anything contained in this Act or any other law for the time being in force, in the winding up of a company,—

(a) workmen’s dues; and

(b) debts due to secured creditors to the extent such debts rank under clause (iii) of the proviso to sub-section (1) of section 325 pari passu with such dues, shall be paid in priority to all other debts: Provided that in case of the winding up of a company, the sums towards wages or salary referred to in sub-clause (i) of clause (b) of sub-section (3) of section 325, which are payable for a period of two years preceding the winding up order or such other period as may be prescribed, shall be paid in priority to all other debts

(including debts due to secured creditors), within a period of thirty days of sale of assets and shall be subject to such charge over the security of secured creditors as may be prescribed.

(2) The debts payable under the proviso to sub-section (1) shall be paid in full before any payment is made to secured creditors and thereafter debts payable under that sub-section shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions

Preferential payments. (section. 327)

(1) In a winding up, subject to the provisions of section 326, there shall be paid in priority to all other debts,—

(a) all revenues, taxes, cesses and rates due from the company to the Central Government or a State Government or to a local authority at the relevant date, and having become due and payable within the twelve months immediately before that date;

(b) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any employee in respect of services rendered to the company and due for a period not exceeding four months within the twelve months immediately before the relevant date, subject to the condition that the amount payable under this clause to any workman shall not exceed such amount as may be notified;

(c) all accrued holiday remuneration becoming payable to any employee, or in the case of his death, to any other person claiming under him, on the termination of his employment before, or by the winding up order, or, as the case may be, the dissolution of the company;

(d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company, all amount due in respect of contributions payable during the period of twelve months immediately before the relevant date by the company as the employer of persons under the Employees' State Insurance Act, 1948 or any other law for the time being in force;

(e) unless the company has, at the commencement of winding up, under such a contract with any insurer as is mentioned in section 14 of the Workmen's Compensation Act, 1923, rights capable of being transferred to and vested in the workmen, all amount due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any employee of the company:

Provided that where any compensation under the said Act is a weekly payment, the amount payable under this clause shall be taken to be the amount of the lump sum for which such weekly payment could, if redeemable, be redeemed, if the employer has made an application under that Act;

(f) all sums due to any employee from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the employees, maintained by the company; and

(g) the expenses of any investigation held in pursuance of sections 213 and 216, in so far as they are payable by the company.

(2) Where any payment has been made to any employee of a company on account of wages or salary or accrued holiday remuneration, himself or, in the case of his death, to any other person claiming through him, out of money advanced by some person for that purpose, the person by

whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid-up to the amount by which the sum in respect of which the employee or other person in his right would have been entitled to priority in them winding up has been reduced by reason of the payment having been made.

(3) The debts enumerated in this section shall—

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(b) so far as the assets of the company available for payment to general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(4) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the debts under this section shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given under clause (d) of sub-section (1), formal proof thereof shall not be required except in so far as may be otherwise prescribed.

(5) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months immediately before the date of a winding up order, the debts to which priority is given under this section shall be a first charge on the goods or effects so distrained on or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(6) Any remuneration in respect of a period of holiday or of absence from work on medical grounds through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period.

Explanation.—For the purposes of this section,—

(a) the expression “accrued holiday remuneration” includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment including any order made or direction given there under, are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday, had his employment with the company continued until he became entitled to be allowed the holiday;

(b) the expression “employee” does not include a workman; and

(c) the expression “relevant date” means—

(i) in the case of a company being wound up by the Tribunal, the date of appointment or first appointment of a provisional liquidator, or if no such appointment was made, the date of the winding up order, unless, in either case, the company had commenced to be wound up voluntarily before that date; and

(ii) in any other case, the date of the passing of the resolution for the voluntary winding up of the company.

Fraudulent preference. (Section.328)

(1) Where a company has given preference to a person who is one of the creditors of the company or a surety or guarantor for any of the debts or other liabilities of the company, and the company does anything or suffers anything done which has the effect of putting that person into a position which, in the event of the company going into liquidation, will be better than the position he would have been in if that thing had not been done prior to six months of making winding up application, the Tribunal, if satisfied that, such transaction is a fraudulent preference may order as it may think fit for restoring the position to what it would have been if the company had not given that preference.

(2) If the Tribunal is satisfied that there is a preference transfer of property, movable or immovable, or any delivery of goods, payment, execution made, taken or done by or against a company within six months before making winding up application, the Tribunal may order as it may think fit and may declare such transaction invalid and restore the position

Transfers not in good faith to be void. (section. 329)

Any transfer of property, movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrance in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up by the Tribunal or the passing of a resolution for voluntary winding up of the company, shall be void against the Company Liquidator

Certain transfers to be void. (section.330)

Any transfer or assignment by a company of all its properties or assets to trustees for the benefit of all its creditors shall be void

Liabilities and rights of certain persons fraudulently preferred (Section.331)

(1) Where a company is being wound up and anything made, taken or done after the commencement of this Act is invalid under section 328 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then, without prejudice to any rights or liabilities arising, apart from this provision, the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as a surety for the debt, to the extent of the mortgage or charge on the property or the value of his interest, whichever is less.

(2) The value of the interest of the person preferred under sub-section (1) shall be determined as at the date of the transaction constituting the fraudulent preference, as if the interest were free of all encumbrances other than those to which the mortgage or charge for the debt of the company was then subject.

(3) On an application made to the Tribunal with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the Tribunal shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the

payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose, may give leave to bring in the surety or guarantor as a third party as in the case of a suit for the recovery of the sum paid.

(4) The provisions of sub-section (3) shall apply mutatis mutandis in relation to transactions other than payment of money.

Effect of floating charge. (Section. 332)

Where a company is being wound up, a floating charge on the undertaking or property of the company created within the twelve months immediately preceding the commencement of the winding up, shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except for the amount of any cash paid to the company at the time of, or subsequent to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum or such other rate as may be notified by the Central Government in this behalf.

Disclaimer of onerous property. (Section.333)

(1) Where any part of the property of a company which is being wound up consists of—

- (a) land of any tenure, burdened with onerous covenants;
- (b) shares or stocks in companies;
- (c) any other property which is not saleable or is not readily saleable by reason of the possessor thereof being bound either to the performance of any onerous act or to the payment of any sum of money; or
- (d) unprofitable contracts, the Company Liquidator may, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto or done anything in pursuance of the contract, with the leave of the Tribunal and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the Tribunal, disclaim the property:

Provided that where the Company Liquidator had not become aware of the existence of any such property within one month from the commencement of the winding up, the power of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the Tribunal.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights, interest or liabilities of any other person.

(3) The Tribunal, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Tribunal considers just and proper.

(4) The Company Liquidator shall not be entitled to disclaim any property in any case where an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim and the Company Liquidator has not, within a period of twenty-eight days after the receipt of the application or such extended period as may be allowed by the Tribunal, give notice to the applicant that he intends to apply to the Tribunal for leave to disclaim, and in case the property is under a contract, if the Company Liquidator after such an application as aforesaid does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

(5) The Tribunal may, on the application of any person who is, as against the Company Liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Tribunal considers just and proper, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The Tribunal may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged under this Act in respect of any disclaimed property, and after hearing any such persons as it thinks fit, make an order for the vesting of the property in, or the delivery of the property to, any person entitled thereto or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Tribunal considers just and proper, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person named therein in that behalf without any conveyance or assignment for the purpose:

Provided that where the property disclaimed is of a leasehold nature, the Tribunal shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee or holder of a charge by way of demise, except upon the terms of making that person—

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or

(b) if the Tribunal thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date, and in either event as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in, and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the Tribunal shall have power to vest the estate and interest of the company in the property in any person liable, either personally or in a representative character, and either alone or jointly with the company, to perform the covenants of the lessee in the lease, free and discharged from all estates, encumbrances and interests created therein by the company.

(7) Any person affected by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the compensation or damages payable in respect of such effect, and may accordingly prove the amount as a debt in the winding up.

Transfers, etc., after commencement of winding up to be void. (Section. 334)

(1) In the case of a voluntary winding up, any transfer of shares in the company, not being a transfer made to or with the sanction of the Company Liquidator, and any alteration in the status of the members of the company, made after the commencement of the winding up, shall be void.

(2) In the case of a winding up by the Tribunal, any disposition of the property, including actionable claims, of the company, and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up, shall, unless the Tribunal otherwise orders, be void

Certain attachments, executions, etc., in winding up by Tribunal to be void. (Section.335)

(1) Where any company is being wound up by the Tribunal,—

- (a) any attachment, distress or execution put in force, without leave of the Tribunal against the estate or effects of the company, after the commencement of the winding up; or
- (b) any sale held, without leave of the Tribunal of any of the properties or effects of the company, after such commencement, shall be void.

(2) Nothing in this section shall apply to any proceedings for the recovery of any tax or impost or any dues payable to the Govern

Offences by officers of companies in liquidation. (Section. 336)

(1) If any person, who is or has been an officer of a company which, at the time of the commission of the alleged offence, is being wound up, whether by the Tribunal or voluntarily, or which is subsequently ordered to be wound up by the Tribunal or which subsequently passes a resolution for voluntary winding up,—

- (a) does not, to the best of his knowledge and belief, fully and truly disclose to the Company Liquidator all the property, movable and immovable, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary course of the business of the company;
- (b) does not deliver up to the Company Liquidator, or as he directs, all such part of the movable and immovable property of the company as is in his custody or under his control and which he is required by law to deliver up;
- (c) does not deliver up to the Company Liquidator, or as he directs, all such books and papers of the company as are in his custody or under his control and which he is required by law to deliver up;
- (d) within the twelve months immediately before the commencement of the winding up or at any time thereafter,—
 - (i) conceals any part of the property of the company to the value of one thousand rupees or more, or conceals any debt due to or from the company;

- (ii) fraudulently removes any part of the property of the company to the value of one thousand rupees or more;
 - (iii) conceals, destroys, mutilates or falsifies, or is privy to the conceal destruction, mutilation or falsification of, any book or paper affecting or relating to, the property or affairs of the company;
 - (iv) makes, or is privy to the making of, any false entry in any book or paper affecting or relating to, the property or affairs of the company;
 - (v) fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making of any omission in, any book or paper affecting or relating to the property or affairs of the company;
 - (vi) by any false representation or other fraud, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for;
 - (vii) under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or
 - (viii) pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing of the property is in the ordinary course of business of the company;
- (e) makes any material omission in any statement relating to the affairs of the company;
- (f) knowing or believing that a false debt has been proved by any person under the winding up, fails for a period of one month to inform the Company Liquidator thereof;
- (g) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the property or affairs of the company;
- (h) after the commencement of the winding up or at any meeting of the creditors of the company within the twelve months next before the commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses; or
- (i) is guilty of any false representation or fraud for the purpose of obtaining the consent of the creditors of the company or any of them, to an agreement with reference to the affairs of the company or to the winding up, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees:
- Provided that it shall be a good defence if the accused proves that he had no intent to defraud or to conceal the true state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under sub-clause (viii) of clause (d) of sub-section (1), every person who takes in pawn or pledge or otherwise receives the property, knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid, shall be punishable with imprisonment for a term

which shall not be less than three years but which may extend to five years and with fine which shall not be less than three lakh rupees but which may extend to five lakh rupees.

Explanation.—For the purposes of this section, the expression “officer” includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

Penalty for frauds by officers.(Section. 337)

If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the Tribunal or which subsequently passes a resolution for voluntary winding up,—

- (a) has, by false pretences or by means of any other fraud, induced any person to give credit to the company;
- (b) with intent to defraud creditors of the company or any other person, has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the levying of any execution against, the property of the company; or
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since the date of any unsatisfied judgment or order for payment of money obtained against the company or within two months before that date, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees

Liability where proper accounts not kept (Section. 338)

(1) Where a company is being wound up, if it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable, be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.

(2) For the purposes of sub-section (1), it shall be deemed that proper books of account have not been kept in the case of any company,—

- (a) if such books of account as are necessary to exhibit and explain the transactions and financial position of the business of the company, including books containing entries made from day-to-day in sufficient detail of all cash received and all cash paid, have not been kept; and
- (b) where the business of the company has involved dealings in goods, statements of the annual stock takings and, except in the case of goods sold by way of ordinary retail trade, of all goods sold and purchased, showing the goods and the buyers and the sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified, have not been kept.

Liability for fraudulent conduct of business. (Section.339)

(1) If in the course of the winding up of a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company or any other persons or for any fraudulent purpose, the Tribunal, on the application of the Official Liquidator, or the Company Liquidator or any creditor or contributory of the company, may, if it thinks it proper so to do, declare that any person, who is or has been a director, manager, or officer of the company or any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Tribunal may direct: Provided that on the hearing of an application under this sub-section, the Official Liquidator or the Company Liquidator, as the case may be, may himself give evidence or call witnesses.

(2) Where the Tribunal makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration and, in particular,—

(a) make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf;

(b) make such further order as may be necessary for the purpose of enforcing any charge imposed under this sub-section.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be liable for action under section 447.

(4) This section shall apply, notwithstanding that the person concerned may be punishable under any other law for the time being in force in respect of the matters on the ground of which the declaration is to be made.

Explanation.—For the purposes of this section,—

(a) the expression “assignee” includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest was created, but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters on the ground of which the declaration is made;

(b) the expression “officer” includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

Power of Tribunal to assess damages against delinquent directors, etc. (Section.340)

(1) If in the course of winding up of a company, it appears that any person who has taken part in the promotion or formation of the company, or any person, who is or has been a director, manager, Company Liquidator or officer of the company—

- (a) has misapplied, or retained, or become liable or accountable for, any money or property of the company; or
- (b) has been guilty of any misfeasance or breach of trust in relation to the company, the Tribunal may, on the application of the Official Liquidator, or the Company Liquidator, or of any creditor or contributory, made within the period specified in that behalf in sub-section
- (2), inquire into the conduct of the person, director, manager, Company Liquidator or officer aforesaid, and order him to repay or restore the money or property or any part thereof respectively, with interest at such rate as the Tribunal considers just and proper, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Tribunal considers just and proper.
- (2) An application under sub-section (1) shall be made within five years from the date of the winding up order, or of the first appointment of the Company Liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer.
- (3) This section shall apply, notwithstanding that the matter is one for which the person concerned may be criminally liable

Liability under sections 339 and 340 to extend to partners or directors in firms or companies. (Section. 341)

Where a declaration under section 339 or an order under section 340 is made in respect of a firm or body corporate, the Tribunal shall also have power to make a declaration under section 339, or pass an order under section 340, as the case may be, in respect of any person who was at the relevant time a partner in that firm or a director of that body corporate

Prosecution of delinquent officers and members of company. (Section. 342)

- (1) If it appears to the Tribunal in the course of a winding up by the Tribunal, that any person, who is or has been an officer, or any member, of the company has been guilty of any offence in relation to the company, the Tribunal may, either on the application of any person interested in the winding up or suo motu, direct the liquidator to prosecute the offender or to refer the matter to the Registrar.
- (2) If it appears to the Company Liquidator in the course of a voluntary winding up that any person, who is or has been an officer, or any member, of the company has been guilty of any offence in relation to the company under this Act, he shall forthwith report the matter to the Registrar and shall furnish to him such information and give to him such access to and facilities for inspecting and taking copies of any books and papers, being information or books and papers in the possession or under the control of the Company Liquidator and relating to the matter in question, as the Registrar may require.
- (3) Where any report is made under sub-section (2) to the Registrar,—

(a) if he thinks fit, he may apply to the Central Government for an order to make further inquiry into the affairs of the company by any person designated by him and for conferring on such person all the powers of investigation as are provided under this Act;

(b) if he considers that the case is one in which a prosecution ought to be instituted, he shall report the matter to the Central Government, and that Government may, after taking such legal advice as it thinks fit, direct the Registrar to institute prosecution:

Provided that no report shall be made by the Registrar under this clause without first giving the accused person a reasonable opportunity of making a statement in writing to the Registrar and of being heard thereon.

(4) If it appears to the Tribunal in the course of a voluntary winding up that any person, who is or has been an officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the Company Liquidator to the Registrar under sub-section (2), the Tribunal may, on the application of any person interested in the winding up or suo motu, direct the Company Liquidator to make such a report, and on a report being made, the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of sub-section (2).

(5) When any prosecution is instituted under this section, it shall be the duty of the liquidator and of every person, who is or has been an officer and agent of the company to give all assistance in connection with the prosecution which he is reasonably able to give.

Explanation.—For the purposes of this sub-section, the expression “agent”, in relation to a company, shall include any banker or legal adviser of the company and any person employed by the company as auditor.

(6) If a person fails or neglects to give assistance required by sub-section (5), he shall be liable to pay fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Company Liquidator to exercise certain powers subject to sanction. (section. 343)

(1) The Company Liquidator may—

(a) with the sanction of the Tribunal, when the company is being wound up by the Tribunal; and

(b) with the sanction of a special resolution of the company and prior approval of the Tribunal, in the case of a voluntary winding up,—

(i) pay any class of creditors in full;

(ii) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, against the company, or whereby the company may be rendered liable; or

(iii) compromise any call or liability to call, debt, and liability capable of resulting in a debt, and any claim, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or alleged to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending

liability to the company, and all questions in any way relating to or affecting the assets or liabilities or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) Notwithstanding anything contained in sub-section (1), in the case of a winding up by the Tribunal, the Central Government may make rules to provide that the Company Liquidator may, under such circumstances, if any, and subject to such conditions, restrictions and limitations, if any, as may be prescribed, exercise any of the powers referred to in subclause (ii) or sub-clause (iii) of clause (b) of sub-section (1) without the sanction of the Tribunal.

(3) Any creditor or contributory may apply in the manner prescribed to the Tribunal with respect to any exercise or proposed exercise of powers by the Company Liquidator under this section, and the Tribunal shall after giving a reasonable opportunity to such applicant and the Company Liquidator, pass such orders as it may think fit.

Statement that company is in liquidation (section. 344)

(1) Where a company is being wound up, whether by the Tribunal or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a Company Liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If a company contravenes the provisions of sub-section (1), the company, and every officer of the company, the Company Liquidator and any receiver or manager, who wilfully authorises or permits the non-compliance, shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees

Books and papers of company to be evidence (Section. 345)

Where a company is being wound up, all books and papers of the company and of the Company Liquidator shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be recorded therein.

Inspection of books and papers by creditors and contributories (Section. 346)

(1) At any time after the making of an order for the winding up of a company by the Tribunal, any creditor or contributory of the company may inspect the books and papers of the company only in accordance with, and subject to such rules as may be prescribed.

(2) Nothing contained in sub-section (1) shall exclude or restrict any rights conferred by any law for the time being in force—

- (a) on the Central Government or a State Government;
- (b) on any authority or officer thereof; or
- (c) on any person acting under the authority of any such Government or of any such authority or officer.

Disposal of books and papers of company (section. 347)

(1) When the affairs of a company have been completely wound up and it is about to be dissolved, its books and papers and those of the Company Liquidator may be disposed of as follows:—

- (a) in the case of winding up by the Tribunal, in such manner as the Tribunal directs; and
- (b) in the case of voluntary winding up, in such manner as the company by special resolution with the prior approval of the creditors direct.

(2) After the expiry of five years from the dissolution of the company, no responsibility shall devolve on the company, the Company Liquidator, or any person to whom the custody of the books and papers has been entrusted, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) The Central Government may, by rules,—

- (a) prevent for such period as it thinks proper the destruction of the books and papers of a company which has been wound up and of its Company Liquidator; and
- (b) enable any creditor or contributory of the company to make representations to the Central Government in respect of the matters specified in clause (a) and to appeal to the Tribunal from any order which may be made by the Central Government in the matter.

(4) If any person acts in contravention of any rule framed or an order made under sub-section (3), he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees, or with both.

Information as to pending liquidations. (section. 348)

(1) If the winding up of a company is not concluded within one year after its commencement, the Company Liquidator shall, unless he is exempted from so doing either wholly or in part by the Central Government, within two months of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals, if any, as may be prescribed, file a statement in such form containing such particulars as may be prescribed, duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation,—

- (a) in the case of a winding up by the Tribunal, with the Tribunal; and
- (b) in the case of a voluntary winding up, with the Registrar:

Provided that no such audit as is referred to in this sub-section shall be necessary where the provisions of section 294 apply.

(2) When the statement is filed with the Tribunal under clause (a) of sub-section (1), a copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.

(3) Where a statement referred to in sub-section (1) relates to a Government company in liquidation, the Company Liquidator shall forward a copy thereof—

(a) to the Central Government, if that Government is a member of the Government company;

(b) to any State Government, if that Government is a member of the Government company; or

(c) to the Central Government and any State Government, if both the Governments are members of the Government company.

(4) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement referred to in sub-section (1), and to receive a copy thereof or an extract therefrom.

(5) Any person fraudulently stating himself to be a creditor or contributory under subsection (4) shall be deemed to be guilty of an offence under section 182 of the Indian Penal Code, and shall, on the application of the Company Liquidator, be punishable accordingly.

(6) If a Company Liquidator contravenes the provisions of this section, the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.

(7) If a Company Liquidator makes wilful default in causing the statement referred to in sub-section (1) audited by a person who is not qualified to act as an auditor of the company, the Company Liquidator shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one lakh rupees, or with both.

Official Liquidator to make payments into public account of India **(Section. 349)**

Every Official Liquidator shall, in such manner and at such times as may be prescribed, pay the monies received by him as Official Liquidator of any company, into the public account of India in the Reserve Bank of India

Company Liquidator to deposit monies into scheduled bank. (Section. 350)

(1) Every Company Liquidator of a company shall, in such manner and at such times as may be prescribed, deposit the monies received by him in his capacity as such in a scheduled bank to the credit of a special bank account opened by him in that behalf:

Provided that if the Tribunal considers that it is advantageous for the creditors or contributories or the company, it may permit the account to be opened in such other bank specified by it.

(2) If any Company Liquidator at any time retains for more than ten days a sum exceeding five thousand rupees or such other amount as the Tribunal may, on the application of the Company Liquidator, authorise him to retain, then, unless he explains the retention to the satisfaction of the Tribunal, he shall—

- (a) pay interest on the amount so retained in excess, at the rate of twelve per cent. per annum and also pay such penalty as may be determined by the Tribunal;
- (b) be liable to pay any expenses occasioned by reason of his default; and
- (c) also be liable to have all or such part of his remuneration, as the Tribunal may consider just and proper, disallowed, or may also be removed from his office.

Liquidator not to deposit monies into private banking account.(Section.351)

Neither the Official Liquidator nor the Company Liquidator of a company shall deposit any monies received by him in his capacity as such into any private banking account.

Company Liquidation Dividend and Undistributed Assets Account. (Section. 352)

(1) Where any company is being wound up and the liquidator has in his hands or under his control any money representing—

- (a) dividends payable to any creditor but which had remained unpaid for six months after the date on which they were declared; or
- (b) assets refundable to any contributory which have remained undistributed for six months after the date on which they become refundable, the liquidator shall forthwith deposit the said money into a separate special account to be known as the Company Liquidation Dividend and Undistributed Assets Account maintained in a scheduled bank.

(2) The liquidator shall, on the dissolution of the company, pay into the Company Liquidation Dividend and Undistributed Assets Account any money representing unpaid dividends or undistributed assets in his hands at the date of dissolution.

(3) The liquidator shall, when making any payment referred to in sub-sections (1) and (2), furnish to the Registrar, a statement in the prescribed form, setting forth, in respect of all sums included in such payment, the nature of the sums, the names and last known addresses of the persons entitled to participate therein, the amount to which each is entitled and the nature of his claim thereto, and such other particulars as may be prescribed.

(4) The liquidator shall be entitled to a receipt from the scheduled bank for any money paid to it under sub-sections (1) and (2), and such receipt shall be an effectual discharge of the Company Liquidator in respect thereof.

(5) Where a company is being wound up voluntarily, the Company Liquidator shall, when filing a statement in pursuance of sub-section (1) of section 348, indicate the sum of money which is payable under sub-sections (1) and (2) of this section during the six months preceding the date on which the said statement is prepared, and shall, within fourteen days of the date of filing the said statement, pay that sum into the Company Liquidation Dividend and Undistributed Assets Account.

(6) Any person claiming to be entitled to any money paid into the Company Liquidation Dividend and Undistributed Assets Account, whether paid in pursuance of this section or under the provisions of any previous company law may apply to the Registrar for payment thereof, and the

Registrar, if satisfied that the person claiming is entitled, may make the payment to that person of the sum due: Provided that the Registrar shall settle the claim of such person within a period of sixty days from the date of receipt of such claim, failing which the Registrar shall make a report to the Regional Director giving reasons of such failure.

(7) Any money paid into the Company Liquidation Dividend and Undistributed Assets Account in pursuance of this section, which remains unclaimed thereafter for a period of fifteen years, shall be transferred to the general revenue account of the Central Government, but a claim to any money so transferred may be preferred under sub-section (6) and shall be dealt with as if such transfer had not been made and the order, if any, for payment on the claim will be treated as an order for refund of revenue.

(8) Any liquidator retaining any money which should have been paid by him into the Company Liquidation Dividend and Undistributed Assets Account under this section shall—

(a) pay interest on the amount so retained at the rate of twelve per cent. Per annum and also pay such penalty as may be determined by the Registrar: Provided that the Central Government may in any proper case remit either in part or in whole the amount of interest which the liquidator is required to pay under this clause;

(b) be liable to pay any expenses occasioned by reason of his default; and

(c) where the winding up is by the Tribunal, also be liable to have all or such part of his remuneration, as the Tribunal may consider just and proper, to be disallowed, and to be removed from his office by the Tribunal.

Liquidator to make returns, etc (Section. 353)

(1) If any Company Liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the Tribunal may, on an application made to it by any contributory or creditor of the company or by the Registrar, make an order directing the Company Liquidator to make good the default within such time as may be specified in the order.

(2) Any order under sub-section (1) may provide that all costs of, and incidental to, the application shall be borne by the Company Liquidator.

(3) Nothing in this section shall prejudice the operation of any enactment imposing penalties on a Company Liquidator in respect of any such default as aforesaid

Meetings to ascertain wishes of creditors or contributories (Section.354)

(1) In all matters relating to the winding up of a company, the Tribunal may—

(a) have regard to the wishes of creditors or contributories of the company, as proved to it by any sufficient evidence;

(b) if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Tribunal may direct; and

(c) appoint a person to act as chairman of any such meeting and to report the result thereof to the Tribunal.

(2) While ascertaining the wishes of creditors under sub-section (1), regard shall be had to the value of each debt of the creditor.

(3) While ascertaining the wishes of contributories under sub-section (1), regard shall be had to the number of votes which may be cast by each contributory

Court, tribunal or person, etc., before whom affidavit may be sworn.
(Section. 355)

(1) Any affidavit required to be sworn under the provisions, or for the purposes, of this Chapter may be sworn—

(a) in India before any court, tribunal, judge or person lawfully authorised to take and receive affidavits; and

(b) in any other country before any court, judge or person lawfully authorised to take and receive affidavits in that country or before an Indian diplomatic or consular officer.

(2) All tribunals, judges, Justices, commissioners and persons acting judicially in India shall take judicial notice of the seal, stamp or signature, as the case may be, of any such court, tribunal, judge, person, diplomatic or consular officer, attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of this Chapter

Powers of Tribunal to declare dissolution of company void (section. 356)

(1) Where a company has been dissolved, whether in pursuance of this Chapter or of section 232 or otherwise, the Tribunal may at any time within two years of the date of the dissolution, on application by the Company Liquidator of the company or by any other person who appears to the Tribunal to be interested, make an order, upon such terms as the Tribunal thinks fit, declaring the dissolution to be void, and thereupon such proceedings may be taken as if the company had not been dissolved.

(2) It shall be the duty of the Company Liquidator or the person on whose application the order was made, within thirty days after the making of the order or such further time as the Tribunal may allow, to file a certified copy of the order with the Registrar who shall register the same, and if the Company Liquidator or the person fails so to do, the Company Liquidator or the person shall be punishable with fine which may extend to ten thousand rupees for every day during which the default continues.

Commencement of winding up by Tribunal (section. 357)

(1) Where, before the presentation of a petition for the winding up of a company by the Tribunal, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Tribunal, on proof of fraud or mistake, thinks fit to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the Tribunal shall be deemed to commence at the time of the presentation of the petition for the winding up

Exclusion of certain time in computing period of limitation (Section. 358)

Notwithstanding anything in the Limitation Act, 1963, or in any other law for the time being in force, in computing the period of limitation specified for any suit or application in the name and on behalf of a company which is being wound up by the Tribunal, the period from the date of commencement of the winding up of the company to a period of one year immediately following the date of the winding up order shall be excluded.

Appointment of Official Liquidator. (Section. 359)

(1) For the purposes of this Act, so far as it relates to the winding up of companies by the Tribunal, the Central Government may appoint as many Official Liquidators, Joint, Deputy or Assistant Official Liquidators as it may consider necessary to discharge the functions of the Official Liquidator.

(2) The liquidators appointed under sub-section (1) shall be whole-time officers of the Central Government.

(3) The salary and other allowances of the Official Liquidator, Joint Official Liquidator, Deputy Official Liquidator and Assistant Official Liquidator shall be paid by the Central Government

Powers and functions of Official Liquidator (Section. 360)

(1) The Official Liquidator shall exercise such powers and perform such duties as the Central Government may prescribe.

(2) Without prejudice to the provisions of sub-section (1), the Official Liquidator may—
(a) exercise all or any of the powers as may be exercised by a Company Liquidator under the provisions of this Act; and
(b) conduct inquiries or investigations, if directed by the Tribunal or the Central Government, in respect of matters arising out of winding up proceedings

Summary procedure for liquidation. (Section. 361)

(1) Where the company to be wound up under this Chapter, —
(i) has assets of book value not exceeding one crore rupees; and
(ii) belongs to such class or classes of companies as may be prescribed, the Central Government may order it to be wound up by summary procedure provide dunder this Part.

(2) Where an order under sub-section (1) is made, the Central Government shall appoint the Official Liquidator as the liquidator of the company.

(3) The Official Liquidator shall forthwith take into his custody or control all assets, effects and actionable claims to which the company is or appears to be entitled.

(4) The Official Liquidator shall, within thirty days of his appointment, submit a report to the Central Government in such manner and form, as may be prescribed, including a report whether in his opinion, any fraud has been committed in promotion, formation or management of the affairs of the company or not.

(5) On receipt of the report under sub-section (4), if the Central Government is satisfied that any fraud has been committed by the promoters, directors or any other officer of the company, it may direct further investigation into the affairs of the company and that a report shall be submitted within such time as may be specified.

(6) After considering the investigation report under sub-section (5), the Central Government may order that winding up may be proceeded under Part I of this Chapter or under the provision of this Part.

Sale of assets and recovery of debts due to company. (Section 362)

(1) The Official Liquidator shall expeditiously dispose of all the assets whether movable or immovable within sixty days of his appointment.

(2) The Official Liquidator shall serve a notice within thirty days of his appointment calling upon the debtors of the company or the contributories, as the case may be, to deposit within thirty days with him the amount payable to the company.

(3) Where any debtor does not deposit the amount under sub-section (2), the Central Government may, on an application made to it by the Official Liquidator, pass such orders as it thinks fit.

(4) The amount recovered under this section by the Official Liquidator shall be deposited in accordance with the provisions of section 349.

Settlement of claims of creditors by Official Liquidator. (Section.363)

(1) The Official Liquidator within thirty days of his appointment shall call upon the creditors of the company to prove their claims in such manner as may be prescribed, within thirty days of the receipt of such call.

(2) The Official Liquidator shall prepare a list of claims of creditors in such manner as may be prescribed and each creditor shall be communicated of the claims accepted or rejected along with reasons to be recorded in writing

Appeal by creditor.(Section. 364)

(1) Any creditor aggrieved by the decision of the Official Liquidator under section 363 may file an appeal before the Central Government within thirty days of such decision.

- (2) The Central Government may after calling the report from the Official Liquidator either dismiss the appeal or modify the decision of the Official Liquidator.
- (3) The Official Liquidator shall make payment to the creditors whose claims have been accepted.
- (4) The Central Government may, at any stage during settlement of claims, if considers necessary, refer the matter to the Tribunal for necessary orders

Order of dissolution of company. (Section. 365)

- (1) The Official Liquidator shall, if he is satisfied that the company is finally wound up, submit a final report to—
 - (i) the Central Government, in case no reference was made to the Tribunal under sub-section (4) of section 364; and
 - (ii) in any other case, the Central Government and the Tribunal.
- (2) The Central Government, or as the case may be, the Tribunal on receipt of such report shall order that the company be dissolved.
- (3) Where an order is made under sub-section (2), the Registrar shall strike off the name of the company from the register of companies and publish a notification to this effect.

Winding up of unregistered companies. (Section. 375)

- (1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act, in such manner as may be prescribed, and all the provisions of this Act, with respect to winding up shall apply to an unregistered company, with the exceptions and additions mentioned in sub-sections (2) to (4).
- (2) No unregistered company shall be wound up under this Act voluntarily.
- (3) An unregistered company may be wound up under the following circumstances, namely:—
 - (a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
 - (b) if the company is unable to pay its debts;
 - (c) if the Tribunal is of opinion that it is just and equitable that the company should be wound up.
- (4) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts—
 - (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding one lakh rupees then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary, or some director, manager or principal officer of the company, or by otherwise serving in such manner as the Tribunal may approve or direct, a demand under his hand requiring the company to pay the sum so

due, and the company has, for three weeks after the service of the demand, neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;

(b) if any suit or other legal proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character as a member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, manager or principal officer of the company or by otherwise serving the same in such manner as the Tribunal may approve or direct, the company has not, within ten days after service of the notice,—

(i) paid, secured or compounded for the debt or demand;

(ii) procured the suit or other legal proceeding to be stayed; or

(iii) indemnified the defendant to his satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;

(c) if execution or other process issued on a decree or order of any Court or Tribunal in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied in whole or in part;

(d) if it is otherwise proved to the satisfaction of the Tribunal that the company is unable to pay its debts.

Explanation.—For the purposes of this Part, the expression "unregistered company"—

(a) shall not include—

(i) a railway company incorporated under any Act of Parliament or other Indian law or any Act of Parliament of the United Kingdom;

(ii) a company registered under this Act; or

(iii) a company registered under any previous companies law and not being a company the registered office whereof was in Burma, Aden, Pakistan immediately before the separation of that country from India; and

(b) save as aforesaid, shall include any partnership firm, limited liability partnership or society or co-operative society, association or company consisting of more than seven members at the time when the petition for winding up the partnership firm, limited liability partnership or society or co-operative society, association or company, as the case may be, is presented before the Tribunal.

Power to wind up foreign companies, although dissolved. (section. 376)

Where a body corporate incorporated outside India which has been carrying on business in India, ceases to carry on business in India, it may be wound up as an unregistered company under this Part, notwithstanding that the body corporate has been dissolved or otherwise ceased to exist as such under or by virtue of the laws of the country under which it was incorporated.

Provisions of Chapter cumulative. (section. 377)

(1) The provisions of this Part, with respect to unregistered companies shall be in addition to and not in derogation of, any provisions hereinbefore in this Act contained with respect to the winding up of companies by the Tribunal.

(2) The Tribunal or Official Liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by the Tribunal or Official Liquidator in winding up of companies formed and registered under this Act: Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part

Saving and construction of enactments conferring power to wind up partnership firm, association or company, etc., in certain cases (Section.378)

Nothing in this Part, shall affect the operation of any enactment which provides for any partnership firm, limited liability partnership or society or co-operative society, association or company being wound up, or being wound up as a company or as an unregistered company, under the Companies Act, 1956, or any Act repealed by that Act: Provided that references in any such enactment to any provision contained in the Companies Act, 1956 or in any Act repealed by that Act shall be read as references to the corresponding provision, if any, contained in this Act

Application of Act to foreign companies. (Section. 379)

Where not less than fifty per cent. of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.