

Chapter 1: Appointment & Qualification of Director

Sec 149(1) to (3): Min-Max Directors, Women Director & Resident Director

Why provision is made?

To ensure proper management of the Company, to entrust the responsibilities to an individual and restrict the min-max number of directors to ensure optimum size at optimum cost.

Applicable to:

Applicable to all companies.

1.1

Compulsory points (To be written in every answer)

1. i. Only **individuals** to be directors;
- ii. **Min-Max** no. of directors;

Company	Min.	Max.
Public	3	15
Private	2	

- iii. **1st Proviso**: Max. limit can be **extended by passing GM-SR (Exemption to Government Companies i.e. GM-OR is sufficient.)**
- iv. **2nd Proviso**: Appointment of **Women Directors**:
 - a. **Listed Companies**
 - b. **Public Company**: **Paid-up capital \geq 100 Cr. or; Turnover \geq 300 Cr.** (As per latest audited Financial Statement).
Appointment shall be **within 6 months from date of incorporation.**
Casual Vacancy to be filled by BOD not later than immediate BM or 3 months, whichever is later.
2. **At least 1 resident director** who has stayed in **India for not less than 182 days in current FY** on board is mandatory.

Optional Points (write only if asked)

AOA of a company can provide a number **lower than the statutory maximum limit** and the same can be **revised by passing GM-SR. Any appointment within the limit specified in AOA does not require GM-SR, GM-OR is sufficient.**

Bomber

- i. **AOA cannot provide a number lower than the statutory minimum limit.**
- ii. **If a company has only 1 designated woman director, then casual vacancy at such place shall be filled by a woman only. Casual vacancy at place of non-designated woman director can be filled up by male director.**

E – Form

Director to file **DIR-2** and Company to file **DIR-12**.

Sec 149(4)-(13): Independent Director

Why provision is made?

To ensure good corporate governance and prevention of fraud, ID is required.

Applicable to:

Types of Company	Minimum No.
Listed Public Company	Min 1/3 rd ID
Public Company having PUC \geq Rs. 10 Cr.	Min 2 ID
Public Company having Turnover \geq Rs. 100 Cr.	Min 2 ID
Public Company having Outstanding Loans, debentures & Deposits \geq Rs. 100 Cr.	Min 2 ID

Compulsory points (To be written in every answer)

1. Every ID shall declare that he meets the criteria of independence in 3 situations:
 - i. **1st BM after appointment;** ii. **1st BM of every year;**
 - iii. **Change in circumstances which may affect independence; declare in 1st BM after such change.**
2. **Terms of appointment**: **5 consecutive years.** Shall be eligible for **reappointment by passing of a GM-SR only & disclosure of such appointment in Board Report.** Shall **not hold office for more than 2 consecutive terms.** After completion of 2 terms, shall be eligible for appointment only after a **gap of 3 years.** **No association during the cooling period** of any manner is permitted.
3. **Meaning of ID**: i. shall be person of **integrity** and possesses relevant **expertise and experience.**
ii. Means a director **other than MD, WTD or Nominee Director.**
iii. Is **not a promoter** of the co., its Holding, Subsidiary or Associate Co.

- iv. **Not related to promoter or director** of the co., its Holding, Subsidiary or Associate Co.
- v. Has or had **no pecuniary relation (other than remuneration) > 10% of his total income** or amount prescribed by CG with the co. or its Holding, Subsidiary, Associate Co., promoter or director during **the 2 immediately preceding FYs or during Current Financial Year (CFY)**.
- vi. **None of whose relatives-**
 - a. Holding any **security of or interest of more than Rs. 50 Lacs or 2% of PUC or amount prescribed by CG** in the co., its holding, subsidiary or associate co. during the **2 immediately preceding FY or during the CFY**.
 - b. **Indebted** to co., its holding, subsidiary, associate co., promoter or director **in excess of such amount during the 2 immediately preceding FY or during the CFY**.
 - c. **Given guarantee or any security** in connection with the indebtedness of any third person to the co., its holding, subsidiary or associate co. or their promoters, or directors of such holding co., for such amount as may be prescribed during the **2 immediately preceding financial years or during the CFY**. (*To be noted: Guarantee to promoter of any Co. is covered, however, a guarantee to Director of only Holding Co. is considered*).
 - d. **Does not have any other pecuniary relation** with Co., Holding, Subsidiary or Associate co. amounting to **2% or more of its Gross Turnover or Total Income singly or in combination with transactions referred to in (a), (b) & (c)**.
- vii. Who **neither himself nor any of his relatives** holds or has held position of **KMP or employee** of the Co., Holding, Subsidiary or Associate co. in **3 immediately preceding financial year** in which he is proposed to be appointed. **However, in case of a relative who is an employee, restriction under the clause shall not apply for his employment during preceding 3 FYs.**
- viii. Who **neither himself nor any of his relatives** shall not hold or have held **employment, proprietorship, partnership** with a firm of auditors of CAs, CS, CMA or such legal or consulting firm of the Co., Holding, Subsidiary or Associate Co. in **3 immediately preceding financial years**. Such Legal or consulting firm are those whose income from Co., Holding, Subsidiary or Associate Co. amounts to **10% or more of the turnover of the firm**.
- ix. Who **neither himself nor any of his relatives** or together holds **2% or more of total voting power of the co.**
- x. Who **neither himself nor any of his relatives** is a **CEO or Director (including deemed director)** of any **Sec 8 Co.** that **receives 25% or more of its receipts** from the co., any of its promoters, directors or its holding, subsidiary or associate co. or that holds **2% or more of the total voting power of the co.**
- xi. Who possesses such **other qualifications** as may be prescribed.

Optional Points (write only if asked)

1. Casual **Vacancy** to be filled by **BOD** not later than **immediate BM or 3 months**, whichever is later.
2. If a Company **ceases to fulfil any of the 3 conditions** of applicability for **3 consecutive years**, compliance with this section is not required until it again meets any of the condition.
3. **Company and ID** shall follow the provisions of schedule IV of Companies Act, 2013
4. **ID** will not receive any stock option of shares but can receive remuneration or fee or reimbursement of expenses of BM or profit related commission.
5. Shall be held responsible only for the acts occurred within his knowledge and his consent or connivance.
6. **Provisions of sec 152(6) & (7)** shall not be applicable to ID.
7. **Fee of Rs. 1 Lac** is not required along with application for appointment.

Bomber

- i. If a person loses independence or contravenes the sec 149(6) during his independent directorship, he need not vacate but can continue as a NED or may be removed u/s 169.
- ii. Cooling period of 3 years shall be continuous and not in instalments or with breaks.
- iii. An ID appointed for less than 5 years, being reappointed after his term, will still need a GM-SR approval.
- iv. If an ID is being reappointed after the cooling period of 3 years, then GM-OR shall suffice.
- v. If an ID loses his independence after few years and continues as an NED and later again fulfils sec 149(6) , he cannot not be appointed as ID even with GM-SR.

E – Form

Director to file **DIR-2** and Company to file **DIR-12**.

Sec 151: Small Shareholder's Directors

Why provision is made?

SSD is required to represent Small investors in BOD who may not be in a position to take part in business and take

decisions on behalf of the Company.

Applicable to:

Only listed companies

Compulsory points (To be written in every answer)

- i. Listed Co. shall appoint 1 SSD in following 2 cases:
 - a. Listed Co. opts for appointment suo-motu by passing GM-OR
 - b. Application made by lower of in class meeting:
 - 1000 Small Shareholders
 - 1/10th of Small Shareholders
- ii. Small Shareholders (SS) mean shareholders holding shares of ≤ Rs. 20,000 at face value (Not paid-up or market value; Shares shall mean equity or preference shares both).
- iii. Small shareholders shall give notice of the intention of appointing SSD at least 14 days before meeting at registered office, along with certain details viz. name, address, sign, shares held, folio no., etc. of the SS and the proposed SSD. Details of shares and folio not required if proposed person does not hold shares.
- iv. Documents to be attached with the notice – Statement signed by the proposed nominee stating DIN held, qualified to be director & consent to act as director.
- v. SSD should be qualified to be Independent Director u/s 149(6) and shall also give declaration in such regard u/s 149(7).

Optional Points (write only if asked)

- i. SSD shall follow sec 152 as under:
 - Needs to hold DIN
 - Give declaration regarding DIN
 - File DIR 2 with ROC
 - ii. Tenure is max. 3 years and shall not retire by rotation. Further, cannot be reappointed for 3 years on completion of tenure in any capacity whatsoever.
 - iii. Person disqualified u/s 164 shall not be eligible for appointment as SSD.
 - iv. SSD shall vacate office if he incurs disqualification u/s 164(1) or (2), attracts sec 167 or ceases to be independent u/s 149(6).
- Can act as SSD in only 2 Non-Competing companies at any given time.

E – Form

Company shall file DIR-12. Resigning Director shall file DIR-11.

Sec 152(1): Appointment of First Director

Why provision is made?

Incorporation cannot be made without minimum directors, Directors cannot be appointed without GM and GM cannot be held before incorporation.

Applicable to:

All companies

Compulsory points (To be written in every answer)

- 1st preference: First director shall be appointed whose name is mentioned in the AOA
- 2nd preference: If directors' name is not mentioned in the AOA but provides a manner of appointment, the same shall be followed.
- 3rd preference: If the AOA does not provide a manner, all subscribers to the MOA who are individuals shall be deemed to be directors
- Tenure:** Until appointment of directors in the General Meeting (not AGM).

E – Form

Company to file Form DIR-12.

Just for Knowledge

DIR-2 is not required on appointment of First Directors; however, Instruction Kit of DIR-12 requires filing of DIR-12 on incorporation of Company.

Sec 152(2)-(5): Appointment of Directors

Why provision is made?

To bring uniformity in the appointment of directors and safeguard the interest of shareholders.

Applicable to:

All Companies. All Directors.

Compulsory points (To be written in every answer)

- 152(2):** Every director shall be appointed by the Company in the GM. However, the following can be appointed at the BOD meeting:
- Additional Director-161(1) - Alternate Director-161(2)
 - Nominee Director-161(3) - Casual Vacancy Director-161(4)
- 152(3):** Person appointed shall mandatorily hold DIN
- 152(4):** Every director before he assumes office shall declare that he is not disqualified under Companies Act and under any other Law and that he holds DIN.
- 152(5):** A person cannot act as director until he files his consent with ROC in Form No. DIR-2 within 30 days of appointment. Exception to director of Government company & Sec 8 Company. An Independent Director shall also file an explanatory statement suggesting that he fulfils all conditions as per sec 149(6)-(13), this shall also be annexed to notice of GM.

E – Form

Director to file DIR-2 and Company to file DIR-12.

Sec 152(6) &(7): Rotational & Non Rotational Directors; Retirement & Reappointment

Why provision is made?

To ensure that the directors work honestly & ethically and up to the expectations of the stakeholders & enable the shareholders to change or re-appoint the directors when needed.

Applicable to:

Public Companies & its subsidiaries only. NA to Private & Wholly Owned Government Cos.

Compulsory points (To be written in every answer)

- 152(6) – Rotational & Non-Rotational Directors & Retirement of Directors**
- i. Minimum $\frac{2}{3}$ rd of total directors appointed shall be rotational directors (Any fraction shall be rounded up to the nearest one). Hence, only maximum $\frac{1}{3}$ rd shall be non-rotational. Further, $\frac{1}{3}$ rd of such rotational directors shall retire at every AGM (Any fraction shall be rounded off or truncated to the nearest one).
 - ii. The AOA shall not provide for more than $\frac{1}{3}$ rd non-rotational. However, it can provide for 100% rotational and also can provide for retirement of all directors.
 - iii. The Rotational directors shall be appointed at GM. Non-Rotational directors too can be appointed at the GM however the AOA can provide otherwise.
 - iv. Term of Office: Rotational Directors – shall retire at every AGM unless AOA provides otherwise; Non-Rotational Directors – as per terms of appointment.
 - v. Retirement – a. Person longest in office shall retire; b. If 2 or more directors are appointed on the same day then they shall retire as per mutual agreement & if there is no agreement then as per draw of lots.
 - vi. The Company can appoint the retiring director in the same AGM in which they are retiring.
 - vii. For calculating the total no. of directors for arriving at rotational and non-rotational, shall not include the following: Proportional Representation Director, Small Shareholder Director, Additional Director, Nominee Director of BOD, Nominee Director by CG/CLT, Nominee Director by PFI, Nominee Director by BIFR and Independent Director.
- 152(7) – Reappointment of Directors**
- i. The retiring director can be re-appointed in AGM. However, the Company may instead decide to appoint some other person in place of the retiring director u/s 160.
 - ii. When vacancy of the retiring director is not filled & meeting has not resolved for not filling the vacancy the meeting shall be adjourned to same day, same time in next week.
 - iii. If vacancy is not filled in the adjourned meeting too and resolution for not filling such vacancy is not passed then retiring director gets automatically re-appointed.

Optional Points (write only if asked)

Exceptions to automatic re-appointment:

- Resolution put & lost - Retiring director expresses his unwillingness
- Director disqualified - Separate resolution required for appointment
- Original appointment in contravention of sec 162

Bomber

1. Nominee Directors appointed by Financial Institutions, CG or Third Party shall not be counted in the total number of directors for rotation purpose.

- If AGM is not held on the due date u/s 96, the retiring directors shall vacate office immediately. Decision given in Anantlakshmi Ammal Vs. Indian Trades and Investments Ltd.; B.N.N. Vishwanathan Vs. Tiffin's Barytes Asbestos & Paints Ltd., Hindustan Cooperative Insurance Ltd. & B.R. Kundra Vs. Motion Pictures Association. This view is upheld by Author supported by MCA's view. ICAI PM suggests continuation of office till GM.
- If MD or WTD are rotational then they shall vacate office at the time they retire u/s 152(6) i.e. max 3 years. However, on reappointment they can continue their remaining term as MD or WTD u/s 196.
- As SSD is considered at par with ID nature wise and also as they are appointed in the class meeting, SSD is excluded from total number of directors.
- As Additional Directors are not appointed in the AGM, company does not have any right to rotate them.
- Calculation of number in case of fractions:
Rotational ($2/3^{\text{rd}}$) – Rounded up; Retiring ($1/3^{\text{rd}}$) – Rounded up or truncated.

Double Bomber

Status of Rotational ED having employment tenure for 5 years.

The ED in capacity of NED shall rotate after 3 years of appointment. If he vacates office as NED then he shall not continue as ED too. However, if he is reappointed as NED, on account of the remaining tenure of 2 years as employee he may continue as an ED and for the remaining 1 year as NED.

E – Form

Director to file **DIR-2** in case of re-appointment/ appointment and Company to file **DIR-12** on account of change in Management.

Cross Ref.

Sec 163, 151, 161(1), 161(3), 242, 2(72), 149(6), 162

Sec 153-159: Procedure of Director Identification Number

Why provision is made?

- Mandatory for every person to hold the DIN for being director
- Expressed disqualification given u/s 164(1)(h)
- To provide procedure to be followed to obtain Directors Identification Number

Applicable to:

Individual intending to be director of company

Compulsory points (To be written in every answer)

- Sec 153: Application for DIN** - make application to CG in such forms DIR-3 & DIR-4 and manner given in rules
- Sec 154: Allotment of DIN** - CG shall allot DIN to directors within one month
- Sec 155: One individual shall hold only one DIN**
- Sec 156: Communication of DIN by Director** to Company **within 1 month**
- Sec 157: Communication of DIN by company** – to ROC or authority specified by CG **within 15 days** along with such **fees & such forms** as may be prescribed under section 403. **Failure** to furnish information within 15 days: **Company and every officer in default** shall be punishable with the **fine of Rs. 25,000 - Rs. 1,00,000**
- Sec 158: Indication of DIN on communication** – Director shall mention DIN on every official document, ROC communication, MCA filings, CG documents
- Sec 159: Contravention by applicants or directors** - in case of section 152,155,156 he shall be punishable with a **fine of Rs. 50,000 + Rs. 500 per day or imprisonment up to 6 months**

E – Form

DIR 3, DIR 4, DIR 5, DIR 6 & DIR 7

Just for Knowledge

Designated partners identification Number

In case of LLP, DPIN is required and same number is itself the DIN. So, if a person is holding DIN, he is assumed to be holding DPIN. A person can be director of an LLP if he holds DIN.

Cross Ref.

Rule no. 9 to Rule no. 12 of companies rules, 2014

Sec 160: Appointment of New Director (Director other than retiring director)

Why provision is made?

To increase, decrease and replace the director as per work requirements for its management

Applicable to:

Only applicable to **public company**. A fee of **Rs. 1 Lac** is not applicable to **Private Co**. **Not applicable to Government**

Companies and its Subsidiary.

Compulsory points (To be written in every answer)

1. A person who is **not a retiring director under section 152(6)** shall be appointed as per this section.
2. Any person who wants himself to be appointed or a member wants to nominate any person shall:
 - **apply at registered office** of company
 - **at least 14 days before the date of general meeting**
 - **with fees of Rs. 1,00,000 or higher amount** as may be prescribed. Such deposit will be **refunded to the person in whose favour the decision comes or who gets more than 25 percent of members present and voting.**
3. **Board of the directors shall inform the members at least 7 days of general meeting about the same by sending individual notices to members personally or through e-mail or by publishing notice in the newspaper of vernacular language & in English and by posting notice of such candidature or intention on website.**
4. Appointment shall be done passing **GM-OR.**

Optional Points (write only if asked)

Deposit of Rs. 1 Lac shall not be required in case of appointment of **Independent Directors or a director recommended by the Nomination and Remuneration Committee constituted u/s 178.**

E – Form

On appointment : File **DIR 2** by director with ROC and **DIR 12** for changes in BOD

Cross Ref.

Rule 13 of appointments and qualification of directors rules, 2014

Case Laws

1. Motion Pictures Association – Any person can stand for directorship at any GM not just AGM.
2. Dinekar Rai D. Desai Vs. R.P. Bhasin – A member cannot be debarred from contesting election at the BOD. Even AOA cannot impose such restriction.
3. Oriental Benefit & Deposit Society Ltd. Vs. Bharat Kumar K. Shah – No provision that nomination of director be tendered before particular time. Rejection of nomination after 3:30 pm is contravention of sec 160.
4. Prakash Roadlines Ltd. Vs. Vijaya Kumar Narang – Right to elect or remove director is considered as a right inherent in members. No individual member can directly participate in the management of company.

Sec 161(1): Additional Director

Why provision is made?

Company may urgently require a director in addition to those existing in case of increase in workload, non-availability of technical know-how, etc.

Applicable to:

All companies (Public or Private)

Compulsory points (To be written in every answer)

1. 2 ways of appointment: a. **AOA gives power – Pass BM-OR**; b. **AOA is silent – GM-OR to give power to Board then pass BM-OR** for appointment
2. Since, AOA can be amended on passing GM-SR, it can be said that AD can be appointed either by passing GM-SR to amend AOA or by giving power to Board through GM-OR.
3. Appointment to be within **maximum limit fixed by AOA.**
4. An individual **rejected/ lost** from being appointed as director by/at GM, **cannot be appointed as AD** by BM.
5. **Tenure: Till next AGM or actual date** of AGM, whichever is **earlier.**
6. Nature: **Generally, NED** but if company **complies with Sec 196 he can be ED** also.
7. A **resolution by** circulation is also sufficient for appointment.

Bomber

1. If AOA is silent, AD can be appointed by GM as per sec 152(2) and in such case sec 160 need not be complied. Further, AD can be appointed in GM though power is given to Board in AOA, only if there is a deadlock in management or BOD is incapable of appointing AD.
2. Does not retire but holds office until the next AGM (Due date or Actual date, earlier), till the commencement of AGM and not its conclusion. If the AGM is not held still the AD will have to vacate office.
3. AD shall be appointed within the limit of AOA.
4. AD can be appointed as MD or WTD and shall hold such office till the AGM.
5. AD can be appointed also in cases where the strength of BOD falls within the minimum as per AOA, Sec 149 or Quorum required for passing resolution.
6. Reappointment of AD shall be an ordinary business only.

- An individual who failed of being appointed as a director in the past shall not be appointed as AD for a lifetime, until the AGM re-approves the same.
- Additional director is neither rotational nor non-rotational. However, since sec 161 does not give any exemption of sec 152(6) & (7). Thus, AD shall be counted in the total number (As per ICAI). Author – Though the office of AD looks like non-rotational, no provision of the Act precludes the Co. from appointing AD in addition to max 1/3 non-rotational, therefore same shall not be counted in total.

E – Form

Director to file **DIR-2** and Company to file **DIR-12**.

Cross Ref.

Sec 152(6) & (7)

1.7

Sec 161(2): Alternate Director

Why provision is made?

To ensure smooth functioning of business, when a director is absent for longer than 3 months & is not in India, an Alternate Director working in place of such original director is required.

Applicable to:

All companies (Public or Private)

Compulsory points (To be written in every answer)

- When a director **absents himself from India for 3 months or more but less than 12 months** with notice, an **Alternate Director (ALD)** in his place shall be appointed.
- 2 ways of appointment: a. **AOA gives power – Pass BM-OR**; b. **AOA is silent – GM-OR to give power to Board then pass BM-OR** for appointment
- Since, AOA can be amended on passing GM-SR, it can be said that ALD can be appointed either by passing GM-SR to amend AOA or by giving power to Board through GM-OR.
- One person cannot be appointed as ALD in place of 2 or more directors** at the same time in the same company.
- In case if **Original Director (OD) is Independent Director** then **ALD shall also be Independent Director**.
- Tenure: Till time permissible to OD or OD returns to India**, whichever is **earlier**. If the OD is disqualifying, deceased, vacates, resigns, etc. then ALD shall also vacate.
- If **OD is terminated before he comes to India** and is **automatically re-appointed** u/s 152(7) then **ALD shall not be deemed** to be automatically re-appointed.
- A **resolution by circulation** is also sufficient for appointment.

Optional Points (write only if asked)

- ALD is a **director in his own rights** and shall **not act as representative or proxy** of OD.
- Rights and Liabilities of ALD are same** as that of OD.
- ALD shall make a **fair and independent decision** on his own accord.
- Interest of ALD** shall be considered and not that of OD for the purpose of Sec 188.

Bomber

- OD does not have right to appoint any ALD but has a right to decide tenure.
- If Co. has only 1 woman director designated at the position then ALD shall also be a woman. But if there are 2 or more woman directors, then ALD can be a male other than at the designated woman director's position.
- No prohibition on appointment as ALD for MD/WTD position.
- Evaluation of 'ALD cannot be appointed in place of 2 directors in same place':
 - Can be ALD only for 1 director in a company.
 - Can be ALD for same person in 2 or more different companies.
 - Can be appointed as ALD in place of 2 directors of different companies. Provided sec 203 is complied with when appointed as MD/ WTD.
 - Cannot be appointed as ALD for another director, when he is already holding a position as director in the same Co.
- ALD' ship shall be counted in the total no. of directorships as per sec 165.
- Absence of 3 months shall be continuous and not with breaks.
- Appointment of ALD is in the best interest of the Co.; hence BOD does not have the right to refuse the appointment of ALD.
- ALD is not an additional position but only a replacement, it is neither rotational nor non-rotational hence not considered for 152(6) & (7) at all.

E – Form

Director to file **DIR-2** and Company to file **DIR-12**.

Cross Ref.

Sec 203, Sec 165, Sec 152(6) & (7)

Sec 161(3): Nominee Director by BOD

Why provision is made?

Lending Companies (Banks or Financial Institutions), 3rd person as per agreement & CG if it is a shareholder in the Company have right to direct the BOD to appoint a Nominee (Representative) Director to ensure smooth functioning of business for prompt payments & for execution of agreement.

Applicable to:

All companies (Public or Private)

Compulsory points (To be written in every answer)

If **AOA permits appointment of a Nominee Director**, the **BOD can appoint any person as director** for:

- Any **institution** as per the provisions of other Law
- Any **3rd person** as per agreement entered with Co.
- **CG or SG** by virtue of holding shares in the Co.

E – Form

Director to file **DIR-2** and Company to file **DIR-12**.

Sec 161(4): Casual Vacancy Director

Why provision is made?

To ensure non-disruption in the operations of Company and smooth functioning of business, in case of contingencies caused by death, resignation, disqualification.

Applicable to:

All companies (Public or Private)

Compulsory points (To be written in every answer)

1. Casual Vacancy Director can be appointed by BOD in following **cases**:
 - OD is on leave **> 12 months**
 - OD **resigns** u/s 168
 - OD's office is vacated by **casualty**
 - Any vacancy **other than retirement**
2. BOD can fill casual vacancy created only at the place of a director appointed in GM.
3. **Act gives right to BOD** for such appointment. However, if AOA provides other process, CVD shall be appointed by BOD in such manner. Appointment shall be **subject to approval at next AGM**.
4. Tenure: Up to the date **until which the OD would have held the place** if it had not been vacated.
5. **If the OD is deceased, disqualified, etc. after transfer of office** to the CVD, it shall not affect the office of the CVD i.e. he will **continue to be CVD**.
6. CVD **cannot be appointed by a resolution by circulation**

Optional Points (write only if asked)

1. CVD can be **ED or NED** depending upon the **nature of OD**.
2. CVD shall be **ID** if **OD was ID**, to ensure compliance of sec 149(4).
3. If any director appointed by resolution, does not assume office even after appointment will not be considered as CV as there is no valid appointment of OD at all.
4. **Rejected/ Removed or Lost person cannot be appointed as CVD** as per sec 169.
5. CV at the place of MD/WTD shall be filled up by sec 203 (*As per ICAI*). Author: CV at the place of MD/WTD shall be filled up by sec 161(4).

Bomber

BOD can decide not to fill the position of casual vacancy and pass a resolution with that regard. Such decision shall be approved by a GM-OR.

E – Form

Director to file **DIR-2** and Company to file **DIR-12**.

Case Law

M.K. Srinivasan Vs. W.S. Subrahmanya Ayyar – Casual Vacancy is not vacancy caused due to efflux of time. It can be any vacancy not caused in ordinary course of business.

Cross Ref.

Sec 169

Sec 162(1)-(3): Appointment Of Directors to be voted individually

Why provision is made?

Every director has a unique combination of powers, traits, qualifications and experiences and comes with its own set of advantages and disadvantages. Hence, it is important to make independent evaluation and decision while choosing a director.

Applicable to:

Only applicable to Public Companies. Not applicable to wholly owned Government Co. and its subsidiary.

Compulsory points (To be written in every answer)

- i. Company shall not appoint 2 or more directors in one resolution.
- ii. However, if a company passes a 'Unanimous Resolution' motion to approve passing of Numbers of GM-OR for appointment of 2 or more directors in 1 resolution then same is permitted.

Optional Points (write only if asked)

- i. In case of **contravention**, the appointment shall be considered to be **void**, though no objection against was taken.
- ii. Nomination of person for appointment will be treated as the motion for appointment.
- iii. **No automatic re-appointment of retiring director** u/s 152.
- iv. **Acts of the all directors are valid until default is shown** to company u/s 176.

E – Form

On appointment: File **DIR-2** by Director & **DIR-12** by Company with ROC.

Cross Ref.

Sec 152 and Sec 176

1.9

Sec 163: Option to adopt principle of Proportional Representation for appointments of Directors

Why provision is made?

In instances of Oppression & Mismanagement, there is a need for directors who are also representative of minority.

Applicable to:

All Companies. NA to wholly owned Govt. Co. & its subsidiary.

Compulsory points (To be written in every answer)

1. This section has an **overriding effect** on entire Companies Act.
2. **AOA shall provide adoption of method** of PR. PR can also be adopted in case of **order by CG w.r.t. Oppression and Mismanagement**.
3. On adoption of this method, it is **mandatory to appoint min 2/3 directors** by this method.
4. Method of appointment can be by **Single transferable vote, Cumulative voting or any other method**. E.g. Shares*BOD say 200 shares*10 BOD= 2000 votes.
5. Tenure: **3 years**.
6. Nature: Can be **ED or NED** depending on compliance with sec 196.
7. **Casual vacancy** to be filled as per Sec 161(4).

Optional Points (write only if asked)

This is a parallel method to sec 160, 152(6) & (7) and hence these sections cannot be applied on adoption of sec 163.

E – Form

On appointment: File **DIR-2** by Director & **DIR-12** by Company with ROC

Sec 164: Disqualification for appointment of Director

Why provision is made?

In absence of provision for requisite qualification or experience of an individual to be eligible to be a director and the need for restricting the appointment of director or their continuation in case of any discrepancy, section 164 providing for disqualification criteria is required

Applicable to:

- 164(1) – Applicable to all directors of all companies
 164(2) – Applicable to all companies except for Government Companies

Compulsory points (To be written in every answer)

164(1): Individual Default

a. unsound mind and stands so declared by a competent court	e. order disqualifying him has been passed by a court or Tribunal and the order is in force
b. undischarged insolvent	f. not paid any calls of any shares of the company held by him (alone/ jointly) & 6 months have elapsed from due date
c. applied to be adjudicated as an insolvent and his application is pending	g. convicted of an offence w.r.t. related party transactions u/s 188 any time during the last preceding 5 yrs
d. any offence & sentenced for ≥ 6 months & 5 years has not elapsed from the date of expiry of sentence. If sentenced for ≥ 7 years , he becomes ineligible for a lifetime	h. Non-compliance with section 152(3)

164(2): Company Default

- a) Co. has **not filed financial statements or annual returns** for any **continuous period of 3 FYs**.
- b) Co. has **failed to repay**:
 - **deposits** accepted by it or **interest thereon** or;
 - **debentures or pay interest** due thereon or;
 - pay any **dividend declared** and such **failure to pay continues for ≥1 year**
- The directors of such companies shall
 - **not be eligible to be re-appointed** as a director of the company **or appointed in other company** for a period of **5 years** from date of failure.
 - **continue in the defaulting Co.** until the compliance is done.
- If a person is **appointed as a director of a defaulting company** shall **not incur such disqualification until** a period of **6 months** from the date of his appointment.

Optional Points (write only if asked)

164(3): Additional disqualification criteria by Private Company

A **Private Company** may by its **Articles** provide for **additional disqualifications** over and above specified in (1) & (2) above. Provided that in case of disqualifications as per clause (d), (e) & (g) director shall be **disqualified from appointment in new company** but **need not vacate** office from the **existing companies**: a. for 30 days from conviction; (b) **appeal** is filed **within 30 days** then **until expiry of 7 days** from the date such appeal is **disposed of**; (c) **further appeal is filed within 7 days**, until such further appeal is **disposed of**.

Bomber

1. Following directors are not disqualified:
 - Nominee of CG
 - Nominee of PFI
 - Nominee of BIFR
 - Nominee of Third Party
2. **CCI Vs. Madhav L Apte (Bom)**: Public Co. is prohibited from inserting additional disqualification criteria in AOA.
3. **Ketan Harkishan Marvadi v. Saurashtra–Kutch Stock Exchange Ltd. (Guj)**: Public Co. is not prohibited from inserting additional disqualification criteria in AOA.
4. In case a company files Financial Statement and/or Annual Returns of the 1st & 2nd year before the end of 3rd year, there will be no disqualification.
5. In case a director resigns before date of disqualification, whether he is disqualified will be based on evidence. Whether director has made efforts to rectify the default or is resigning to escape the disqualification will be taken into consideration.

E – Form

Company shall file **DIR-12**

Just for Knowledge

- i. FI means LIC, IDFC, UTI, Institutions notified by CG, Institutions notified by CG in consultation with RBI
- ii. Deposits (Sec 2(31)) include any type of receipts of money by way of deposit or loan or any other form by a company does not include amount as prescribed in consultation with RBI

Cross Ref.

Sec 188, Sec 167

Sec 165: Maximum Number of Directorship

Why provision is made?

Acceptance of more and more directorships for earning more led to excess work load and hence, loss of interest in work and negligence of official duties. In order to curb this issue, sec 165 was made to control the number of

directorships especially in Public and Private Companies.

Applicable to:

- i. All types of directorships including Alternate Directorship;
- ii. All types of companies except Section 8 and Dormant companies

Compulsory points (To be written in every answer)

1. An individual can accept max 20 directorships including max 10 Public Companies (Holding or Subsidiary of Public Cos. to be also considered as Public Co. only).
2. Aforesaid number can be reduced further by passing Special Resolution. On imposition of such restriction by members there are 2 options with the Director: i. Continue with the restrictive limit and resign from other companies, if required; ii. Resign from the restricting Company and continue with the statutory limit.
3. Such options can also be considered when evaluating new acceptance of directorships in excess of the statutory limit.

Optional Points (write only if asked)

Contravention: Penalty of Rs. 5,000-25,000 per day/per company (+) Refund of original remuneration of the (additional) company last joined as acceptance of office is void-ab-initio.

Bomber

1. Executive directorship [MD in max. 2 cos. and WTD in 1 co.] are included the said limits specified by Sec 165, not only in max 20 but in max 10 for Public Companies too.
2. Manager is not counted in the limit. (Department is silent about the same)
3. Small Shareholder Directorship not only in max 20 but in max 10 for Public Cos. too.

E – Form

On appointment: File DIR-2 by Director & DIR-12 by Company with ROC.

Cross Ref.

Sec 203, Sec 151, Sec 149(4) to (13), Clause 49(II)(B)(2) of Listing agreement

Sec 166: Duties of Directors

Why provision is made?

To clear ambiguity about what duties directors are needed to perform.

Applicable to:

All companies (whether Public or Private)

Compulsory points (To be written in every answer)

1. Act in accordance with Articles.
2. Act in good faith to promote objects of the Co. for its members' benefits and the best interest of the Co. as a whole.
3. Exercise duties with due & reasonable care, skill, diligence & independent judgment.
4. Shall not get involved in a situation where he may have direct or indirect interest that conflicts or may conflict with the interest of the Co. (Sec 184, Sec 188)
5. Shall not achieve or attempt to achieve any undue gain or advantage to him, relatives, partners or associates. If found guilty, liable to pay the amount of gain to the Co.
6. Shall not assign his office. Any such assignment shall be void.

Optional Points (write only if asked)

Contravention: Fine Rs. 1 Lac – Rs. 5 Lac.

Sec 167: Vacation of office of Directors

Why provision is made?

Continuing position of director despite of being incapable to act for whatever reason may put the Company at risk. Hence, it is important for the directors to vacate office.

Applicable to:

All companies; All directors

Compulsory points (To be written in every answer)

Vacation criteria

- | | |
|---|--|
| a) incurs disqualification u/s 164 | b) absents himself from all meetings of the Board in 12 months; with or without notice |
| c) contravenes sec 184 - voting on such | d) contravenes sec 184 - not disclosing interest |

resolution in which he is interested	
e) disqualified by an order of Court/ Tribunal	f) convicted by court of any offence and imprisoned for ≥ 6 months. Need not vacate if appeal is made within 30 days of order & further appeal within 7 days.
g) removed u/s 169 or by CG/CLT	h) ceased to hold such employment by virtue of which was appointed as director.

Optional Points (write only if asked)

- Contravention:** a. imprisonment ≤ 1 yr; b. Fine of Rs. 1 Lac to 5 Lac; or c. both
- Where all directors vacate at the same time, Promoters of the Co. or in their absence CG shall appoint such required no. of directors till appointment of directors in GM.
- Private Co. can provide for additional vacation criteria.

Bomber

- Penalty provided is compoundable only after permission from Special Court is taken u/s 441(6) (a). Though offence is compounded, if jail ≥ 6 months still sec 164(1)(d) is applicable.
- Adjudged insolvent can be construed from the date court finds that director is insolvent or date on which he asks his creditors to accept composition.
- Undischarged insolvent shall be considered as discharged only on repayment of debts which will qualify him to be director. But that does not appoint such person as director automatically; entire process of re-appointment shall be followed.
- No appeal can be made on disqualification u/s 164(1)(g). It shall lead to immediate vacation.

E – Form

Company to file DIR-12 in case of vacation

Cross Ref.

Sec 164, Sec 137, Sec 92, Sec188, Sec152(3), Sec71, Sec76, Sec127, Sec184, Sec169, Sec203, Sec242 & Sec243

Sec 168(1): Resignation by Director and communication by company/Director to ROC

Why provision is made?

To enable the directors to resign from office when he thinks working with the Company is prejudicial to his own interest.

Applicable to:

All companies (whether Public or Private)

Compulsory points (To be written in every answer)

- The resignation shall be given to the Company in writing. Oral notice is not recognized.
- BOD shall record the notice on receipt. Resignation shall be effective from the date the notice is received from the Company or date specified by Director in notice, whichever is later. No resignation can be retrospectively dated.
- Within 30 days, the Company shall intimate the ROC in Form DIR-12 about the resignation and shall post the information on its website, if any. The resigning director shall forward a copy of the resignation with reasons in Form DIR-11 along with prescribed fees.

Optional Points (write only if asked)

In case all Directors resign at once, the duty devolves on the Promoter and where Promoter is not present, the Central government, to appoint requisite number of directors to hold office till Company appoints Directors in GM.

E – Form

Company shall file DIR-12. Resigning Director shall file DIR-11.

Cross Ref.

Companies (Appointment & Qualification of Directors) Rules, 2014: Rule 15 & Rule 16 & Sec 167.

Sec 169: Removal of Director

Why provision is made?

To give members a right to remove excess or fraudulent directors or someone who does not act in the best interest of the Company and also a procedure to be followed for such removal.

Applicable to:

All companies

Compulsory points (To be written in every answer)

1. **Statutory right given to members to remove by GM-OR.** It is not obligatory.
2. Following persons **cannot be removed**:
 - a. **appointed by CG u/s 242**
 - b. **Nominee Director** appointed by **Financial Institution**
 - c. Appointed by **Proportional Representation u/s 163**
3. **Special Notice u/s 115** is required for removal which means it shall be given by lower of:
 - a. **1% of voting power holder**
 - b. **Members holding Rs. 5 Lac shares** having **voting power**
4. Company shall **forthwith send a copy of the notice to the Director being removed** and shall be given an **opportunity of being heard**.
5. Director shall further have a **right to represent in writing** and request that the representation shall be sent to the members. In case the company **fails to circulate the copy to the members**, director shall be **allowed to read out the same in the meeting**. If this **right is abused by the Director to secure needless publicity**, on application by the Company, the **Tribunal shall confiscate such right and demand the cost** incurred by the Company.
6. 169(5)-For **appointment of a director in place of such removed director**, process u/s 160 shall be followed. This director shall hold office till the **completion of remaining period of removed director**.

1.13

Optional Points (write only if asked)

1. If Company **does not fill vacancy as per sec 169(5) as stated u/s 160** then such vacancy shall be filled u/s **161(4)-Casual Vacancy**. But a director who is **removed by members** cannot be appointed by Board u/s 161(4).
2. Removed Director shall **receive the compensation as per terms of agreement or terms of appointment**.

Bomber

1. All directors including the following can be removed u/s 169: Permanent Director, appointed as per AOA, appointed by Debenture-holders, appointed by Creditors. However, following cannot be removed: Director appointed by CG/CLT u/s 242, Financial Institutions as per their own laws or method of Proportional Representation u/s 163.
2. Since MD & WTD are NED with employment, hence it can be said that if they are removed from their NED position they will have to vacate their office as MD/WTD also. (However, ICAI PM suggests removal of MD/WTD u/s 203).
3. Sec 169 merely gives power to GM to remove a director, it does not confiscate the power from others viz. BOD to remove directors.
4. If a director omits to call meeting or avoids attending the meeting with a view to escape sec 169, the Court/CLT shall convene such meeting to remove directors. (Opera Photographic Ltd.; H.R. Paul and Son Ltd.).
5. Reason for removal: Required as upheld by Bombay HC in re. Escorts Ltd. vs. Union of India. Not required as upheld by Supreme Court in re. LIC Vs. Escorts Ltd.

E – Form

Company shall file **DIR-12 on removal**.

Cross Ref.

Sec 160, Sec 161(4)

Sec 170(1),(2): Register of Directors & KMP and their shareholding

Why provision is made?

To maintain details of director's interest, shareholding and keep control on changing position of Directors.

Applicable to:

All companies (whether Public or Private) **Except Wholly owned Government Co.**

Compulsory points (To be written in every answer)

1. Company shall **maintain a register of directors & KMP** at the **Registered Office** of the Co.
2. Register shall contain **details of securities** held by them in the **Company, Holding, Subsidiary or Associate Cos.**
3. On appointment of Director or KMP, **Company shall file DIR 12 with ROC within 30 days**.

Optional Points (write only if asked)

Contravention: Liable to **penalty u/s 172** of the Act.

Bomber

- i. Resignation made by Director shall be effective irrespective of whether DIR 12 is filed or not. Non-Filing of DIR-

12 does not affect the position (appointment/retirement).

- ii. Re-appointment of director as per sec 152(7) does not entail change in Management of the Company. Therefore, there is no need of filing DIR 12.
- iii. Company shall file DIR-12 even after appointment of ALD, AD or CVD as it is substantial change in management of the Company.

E – Form

For any change in BOD, Company shall file DIR-12.

Cross Ref.

Companies (Appointment & Qualification of Directors) Rules, 2014 – Rule 17 & Rule 18.

Sec 171: Member’s Right to Inspect

Why provision is made?

To protect member’s right to inspect the register of directors.

Applicable to:

All companies (whether Public or Private) Except Wholly owned Government Co.

Compulsory points (To be written in every answer)

The register maintained u/s 170 can be:

- Inspected by members during business hours.
- Copied by members and take extracts thereof.
- Provided to members free of cost on demand within 30 days.
- Kept open for inspection at every AGM.
- Made accessible to any person attending the meeting.

Optional Points (write only if asked)

On refusal to make the register available for inspection or for copy within 30 days then the ROC based on application, may order immediate inspection and supply copies thereof.

Sec 172: Punishment for contravention of provision of the chapter

Why provision is made?

To provide penalty for contraventions where section-wise penalty for non-compliance with Sec 149-171 are not provided.

Applicable to:

All companies (whether Public or Private).

Compulsory points (To be written in every answer)

Where no specific penalty is provided for contravention of any provision of this chapter then company and Officer in default shall be punishable with fine of Rs. 50,000 to Rs. 5,00,000.

Bomber

- i. Sec 450 is applicable to any contravention under the whole Act but sec 172 is applicable for contravention under the chapter ‘Appointment & Qualification of Directors’ specifically. Further, penalty provided u/s 450 is Rs. 10K – Rs. 1K per day and that under Sec 172 is Rs. 50K to Rs. 500K. Since, sec 172 is more stringent and more specific than sec 450, in case of contraventions under the said chapter, sec 172 shall apply.
- ii. Offences specified u/s 172 are compoundable u/s 441.

Cross Ref.

Sections where specific penalty is not provided, hence sec 172 shall apply:

149(1)(a)	1 st proviso to 149(1)	2 nd proviso to 149(1)	149(3) read with (5)
149(4)	149(7) 149(8)	150(2) 152	160(2) 170 171

Chapter 2: Meetings of Board & its Powers

Sec 104: Chairman of the BM

Why provision is made?

To appoint a person to preside over the meeting & to maintain decorum.

Applicable to

All Companies

Compulsory points (To be written in every answer)

1. The Chairman is **elected by BOD** for a certain period.
2. The Directors may appoint from **amongst themselves a Chairman if;**
3. **BOD has not already selected** a Chairman beforehand OR
4. If the **Chairman elected is not present within 5 minutes** of start of meeting
5. Chairman shall have a **Casting Vote only if AOA provides** for the same.
6. Casting Vote is an **additional or deciding** vote to be used in case of **deadlock or equal votes**. Hence, if casting vote is not cast in case of deadlock, the **resolution is lost**.
7. **Casting Vote is discretion of the Chairman; he may choose not to cast it.**

Optional Points (write only if asked)

Functions of the Chairman:

- Preserve order at the Meeting
- Convening of meeting and its proper conduct
- Conduct of business of BM as per Law
- Purpose of the meeting is properly implemented

Bomber

1. Shareholding is no criteria for selection as Chairman.
2. Chairman of BM and Chairman of Committee Meetings need not be the same person.

Sec 118: Minutes of Board Meeting

Why provision is made?

To record detail of events at a BM, acting as proof for future reference, and ensure consensus amongst the directors.

Applicable to:

All Companies

Compulsory points (To be written in every answer)

1. Minutes are to be **recorded within 30 days of conclusion** of meeting.
2. **Signing** of minutes shall be **within reasonable time**. No time limit specified.
3. Minutes are **prepared as per the Chairman**. Inclusions and exclusions from the minutes shall be decided by the Chairman.
4. **Defamatory items, Irrelevant or Immaterial items** and items **detrimental to the interest** of the company shall be **kept out of the minutes** by the Chairman.
5. **Signing** of Minutes can be done by the Chairman of the **same BM or of succeeding BM**.
6. **Directors can inspect Minutes of meeting**
7. **Members can inspect Minutes only if AOA provides for the same.**

Optional Points (write only if asked)

- i. **Loose leaf should not be usually used** to write Minutes, and not to be attached to Minutes Book by pasting.
- ii. Loose leaves **can be used if:**
 - a. They are **numbered serially**.
 - b. They are **safeguarded from falsification**. And **properly locked to prevent irregular removal**.
 - c. The Loose leaves are **bound into a book at a 6 months interval**

Sec 173: Board meetings & Its notice

Why provision is made?

To provide procedure for conducting of BM to ensure proper & co-operative functioning of the Board of Directors.

Applicable to:

All companies (whether Public or Private)

Compulsory points (To be written in every answer)

Section 173(1): Number of BMs:

- a. Hold 1st BM within 30 days of its incorporation
- b. Shall conduct minimum 4 BMs in a calendar year
- c. Consecutive meetings should not have a gap of more than 120 days
- d. Central government may by notification provide for exemption, modification, condition.

Section 173(2): Participation in BM - Modes of being present at a BM:

- i. In Person
- ii. Video conferencing
- iii. Any Audio visual means capable of recording the proceedings and storing them with date & time.

Rule 4 of the Companies (Meetings of the Board and its Powers) Rules, 2014 - Following matters shall not be dealt with through video conferencing or audio visual means:

- a. Approval of Annual Financial Statements;
- b. Approval of Board's Report;
- c. Approval of Prospectus
- d. Audit Committee Meetings for approval of FS
- e. Approval of matters relating to amalgamation, merger, demerger, acquisition, takeover

Section 173(3) : a. Notice of BM shall be:

- given at least 7 days before meeting at registered address of each Director.
 - given to Original director, Alternate director & Interested director.
 - by Hand delivery or Post or Electronic means
- b. Notice of less than 7 days' notice can be given to transact URGENT business, provided one Independent Director (ID) is in attendance at that meeting.
 - c. If ID is not present at that meeting, then the decisions taken can still be ratified by circulating it to ALL Directors and at least one ID should approve it.

Section 173(5): Number of board meetings by OPC/Dormant company/Sec 8 Cos-

- i. OPC and Dormant Company are needed to conduct minimum one meeting in each half year, i.e. 2 meetings overall.
- ii. Gap between meetings should be at least 90 days
- iii. If more than two meeting held then the 90 days gap shall be between first and last meeting.
- iv. In case of OPC having only one director, sec 173 (BM) and sec 174 (Quorum) shall not apply.

Optional Points (write only if asked)

Contravention & penalty - Failure to give notice of BM, the officer in default shall be liable to penalty of RS. 25,000.

Bomber

1. If meeting is called in 120 days but could not be held for want of quorum, it will still be a valid conduct of meeting.
2. BM can be held at any time, any place or any day unless provided in AOA. If AOA does not provide the day, time and place for BM notice of such BM shall not be given. In case Co. wants to conduct extra BM, it can be any time/place/day other than that mentioned in AOA.
3. Where date, time & place of the next BM is decided in previous BM then no notice is required for the same until & unless there is any change in them.
4. Circulation of Agenda of meeting is not compulsory but is recommended. However, this agenda need not be followed as it is & new transactions can be executed.
5. Sending of notice to directors is mandatory. Even if a director requests not to send a notice to him the notice shall still be sent.
6. If notice is not sent to even 1 director, the meeting shall be considered invalid. If the notice is not sent and yet the director attends the BM, the meeting is valid.
7. Notice to a director staying abroad shall be given at his foreign address. It can also be given by electronic mode.
8. Where the adjourned meeting will be held is held as per AOA or at the same time, day & place in the next week of original meeting, no notice is required. However, if the meeting is adjourned for indefinite period then the notice shall be given. (ICAI PM: Notice shall be given if adjournment as per AOA).
9. If notice of BM is not received by director, the proof of burden lies with Company and not on the director.
10. There is no maximum limit on the number of BMs to be held in a year.

Cross Ref.

Rule 4 of the Companies (Meetings of the Board and its Powers) Rules, 2014

Sec 174: Quorum & Adjournment of Board Meeting

Why provision is made?

To lay down rules regarding the attendance to BM, ensure decision making is not concentrated in very few director and deal with absentees from BM.

Applicable to:

All Companies

Compulsory points (To be written in every answer)

Quorum

- i. When directors present themselves at the meetings in the permissible modes (in person, video conferencing, other Audio-Visual means), they are counted for quorum.
- ii. Quorum for BM: Higher of $1/3^{\text{rd}}$ of total Directors or 2 Directors. For sec 8 Company, Quorum is LOWER of $1/4^{\text{th}}$ of total directors or 8 Directors
- iii. When Quorum is not sufficient, the continuing directors can:
 - a. Act to bring the quorum to requisite number OR
 - b. Summon a GM, whereat the directors shall be appointed to meet the quorum for BM
- iv. Interested Directors u/s 184 cannot be counted for purpose of Quorum.
- v. If more than $2/3^{\text{rd}}$ directors are Interested Directors, and hence quorum is less than $1/3^{\text{rd}}$ then the remaining directors shall be considered to be the quorum, provided they are atleast 2 in number. Therefore, if Disinterested Directors are < 2 , resolution passed shall be void.

Adjournment of BM

- i. There is no restriction on the number of times BM is adjourned. BM can be adjourned for Unfinished Business, Insufficient Quorum or Other contingency (e.g. calamity).
- ii. Adjourned Meeting shall be held as the AOA specifies, if not then at same place, same time, same day, next Week, if not then BM shall be Indefinitely adjourned. (Separate notice is required to convene this meeting).
- iii. Meeting adjourned for insufficient Quorum, will be held on the next succeeding day after National holiday, if the date to which the meeting is adjourned falls on a national holiday.
- iv. Meetings adjourned for all other reasons (e.g. Unfinished Business), will be held on the day to which they have been adjourned therefore adjourned BM on National Holiday is permitted.

Bomber

1. AOA can prescribe a HIGHER quorum but can't lower it.
2. Quorum is to be present throughout meeting, failing which; resolutions passed with lower quorum shall be void.
3. Quorum shall be calculated separately for every resolution, as Interested Directors are to be excluded in such quorum, and Interested Directors vary from resolution to resolution.
4. If the original meeting which was held on a Public Holiday gets adjourned due to want of quorum and the adjourned BM falls on a Public Holiday then the adjourned BM shall be held on next succeeding day.
5. Contract entered with a 3^{rd} party, through a resolution passed without sufficient quorum, is binding on the company based on the principle 'Doctrine of Indoor Management'.
6. Resolution passed at Adjourned meeting will bear date of that meeting and not of the Original meeting.

Case Laws

1. **Alma Spinning Co.:** Quorum is mandatory, not Directory.
2. **Amrit Kaur Puri:** Quorum can be increased, never decreased from the specified number under the Act.
3. **Rajan Nagindas Joshi:** In case sole Director left on BOD, only calling GM is valid, all other actions are void.
4. **Maharashtra Power Developmet Corporation:** When number of Directors is below quorum, they can act only to bring the number upto quorum.
5. **Col. Kuldeep Singh Dhillon:** Directors not suffering from disability shall be considered for Quorum.

Sec 175: Resolution by Circulation

Why provision is made?

To have a procedure in place for passing resolutions when all Directors can't make it to the BM on short notice.

Applicable to:

All Companies (Whether Public or Private)

Compulsory points (To be written in every answer)

- i. Resolutions can be passed by circulation by BOD as well as Committees of the Board.
- ii. Draft of the resolution shall be made and sent to ALL the Directors/Members of the Board or Committee at

Chapter 2 Meeting of Boards and its Powers

- their address or by **post/Courier** or by **hand** or through **Electronic means**.
- iii. **Majority** amongst those who are **entitled to vote** shall **approve** the resolution.
- iv. If **1/3rd of the total BOD demand** the resolution to be **passed at a BM**, then it shall be passed at BM accordingly, and **not through circulation**.
- v. The resolution passed by circulation shall **form part of Minutes of next BM**, and be noted thereat.

Bomber

1. Following resolutions cannot be passed by circulation:
- i. Sec 68-Buy Back of shares by BOD upto 10%.
 - ii. Sec 161(4)-Filing of Casual Vacancy.
 - iii. Sec 179-Powers of BM specified in 179(3) & Rule 8 to Companies (BM and it's Powers) Rules, 2014
 - iv. Sec 184-Disclosure of Interest by Directors and passing of resolution where Director is interested.
 - v. Sec 182-Prohibition & restriction on Political contribution
 - vi. Sec 305-Declaration of Solvency in case of voluntary winding up.
 - vii. Sec 186 -Loans and investments by Companies
 - viii. Sec 203 -Appointment of KMP
2. Passing resolutions by circulation does not dispense the requirement of holding minimum number of Board Meetings in a year.

Sec 176: Validity of Acts of Directors

Why provision is made?

To give protection to 3rd parties contracting with the Company as they need not be aware of the internal irregularities of the Company – **Doctrine of Indoor Management**.

Applicable to:

All companies (whether Public or Private)

Compulsory points (To be written in every answer)

If the appointment of the director is irregular or disqualified or defective and the **fact is not known to the Company** and such **appointment was made in good faith**, then all acts of such directors:

- a. **till the date the defect comes to the knowledge** of the Company - **Valid**
- b. **done after such defect comes to notice** – **Invalid**

Bomber

Illegal or void acts cannot be considered valid by sec 176.

Cross Ref.

Can be used in case of all types of defects the director incurs.

Sec 177: Audit Committee

Why provision is made?

To have a select Committee to oversee certain key aspects of transparency in business with the key target of achieving integrity in business functions and oversight on Company's Risk Management Policies and programs.

Applicable to:

- i. **Listed Companies**
- ii. **Public Companies**
 - a. **PUC ≥ Rs.10 crores** or;
 - b. **Turnover ≥ Rs. 100 crores** or;
 - c. **Outstanding loans, or borrowings, or debentures, or deposits ≥ 50 crores (In aggregate)**
(Amounts to determine applicability of this section shall be determined from last audited Financial Statements)

Compulsory points (To be written in every answer)

- i. **The Composition of Audit Committee (All conditions to be satisfied):**
 - a. **Minimum 3 Directors** should be **members**.
 - b. **Majority of members** should be **Independent Directors (except in sec 8 Companies)**
 - c. **Majority of members and the Chairman** shall be **able to read and understand Financial Statements**.
- ii. Audit Committee constituted under Companies Act 1956 shall be reconstituted under this section within 1 year of this provision
- iii. **Functions of Audit Committee:**
 - a. **Recommending the Appointment**, terms thereof, and **remuneration** of Company's Auditor (**Not Applicable to Govt. Co. as CAG appoints auditor**).
 - b. Review and monitor **auditor's independence, performance and effectiveness** of audit process.

- c. Examining financial statements & auditor's report thereon.
- d. Approving and modifying subsequently transactions of company with related parties.
- e. Scrutinizing inter-corporate loans and investments.
- f. Valuation of undertakings or assets of the Company, wherever necessary

The Audit Committee in accordance with Companies Amendment Act 2015 conditions may make omnibus approvals for related party transactions.

- g. Evaluation of Internal Financial Controls and Risk Management systems
 - h. Monitoring end-use of funds raised through public offers and related matters.
- iv. The Audit Committee may call for comments from auditor on following areas
- a. Internal Control System
 - b. Observations of audit
 - c. Scope of audit
 - d. Review of financial statements
- v. The issues of Internal and Statutory audit shall be discussed. Also the auditor's comments shall be submitted to BOD.
- vi. Inspection & Investigation of matters u/s 177(4) can be made by Audit Committee. For this purpose, the Audit Committee can obtain information through professional sources and have full access to Company's records.
- vii. In the meetings of Audit Committee to consider Audit Report, the Auditor and KMP have right to be heard, but have no right to participate and vote in other matters.
- viii. BOD shall in the BOD's Report disclose the
- a. Composition of Audit Committee
 - b. And the recommendation of Audit Committee not accepted or implemented along with reason thereof.

Optional Points (write only if asked)

- i. Vigil Mechanism for employees and directors of following Companies as per 177(9) to report genuine concerns:
 - a. Companies accepting deposits from public.
 - b. Companies who have borrowed money from Banks and Public Financial Institutions in excess of 50 crores.
- ii. Provision to protect the person making use of Vigil Mechanism from being victimized must be in place & in exceptional cases direct access to Audit Committee Chairperson shall be made available. Further, suitable action against a person involved in such wrong doing shall be taken.
- iii. The details of establishment of Vigil Mechanism must be disclosed by Co. on its website and Board's Report.

Bomber

1. Difference between Audit Committee of Sec 177 and Clause 49 of Listing Agreement

Particulars	Sec 177	Clause 49 of Listing Agreement
1. Composition	Minimum 3 directors. Majority – ID	Minimum 3 directors. Minimum 2/3 rd – ID
2. Chairman	Any director	Only Independent director
3. Financial Literacy	Majority	All members
4. Presence of others	Auditors and KMO shall have a right to be heard but no right to vote.	Invite such executives as it considers appropriate. Not mandatory.

2. Penalty u/s 178(8) for non-constitution of Audit Committee u/s 177 & Remuneration Committee u/s 178 is as under:

- Company – Upto Rs. 5 Lacs
- Every Officer in default - Imprisonment – Upto 1 year; or Fine – Rs. 25000 to Rs. 1 Lac; or Both

3. Vigil Mechanism means Whistle Blowing Policy. It involves of a person reporting to the management instances of unethical behaviour, actual or suspected fraud or violation of the Company's code of conduct or ethics policy. Such reporting may be internal (i.e. to people within the organization) or external (i.e. to the Media, Law enforcement Agencies). The Complaint systems shall offer absolute confidentiality of the whistle blower.

178-Nomination & Remuneration Committee and Stakeholders Grievances Committee

Why provision is made?

To ensure a structured remuneration arrangement supporting strategic aims of the business and enable the recruitment, motivation and retention of senior executives while complying with the requirement of regulations.

Applicable to:

- i. Listed Companies
- ii. Public Companies
 - a. PUC ≥ Rs.10 crores or;
 - b. Turnover ≥ Rs. 100 crores or;

c. Outstanding loans, or borrowings, or debentures, or deposits ≥ 50 crores (In aggregate)
(Amounts to determine applicability of this section shall be determined from last audited Financial Statements)

Not Applicable to Sec 8 Companies.

Compulsory points (To be written in every answer)

A. Nomination & Remuneration Committee

- 1. Composition:** a. 3 or more NED as min members; b. Min $\frac{1}{2}$ shall be ID;
c. Chairperson shall be member. Not necessarily be appointed as chairman of the Committee.
- 2. Functions:** Find a qualified person to become director of company, recommend such person to BOD, and recommend to BOD about removal of director, evaluation of performance of every director.
- 3. Powers of Committee regarding remuneration:** Recommend to the BOD a Remuneration policy depending on Qualification, Expertise, Positive Attribute, Independence of director & other criteria.
- 4. Policy formulation by remuneration committee** shall ensure: Remuneration is reasonable and sufficient such that it motivates the director to run the company successfully, meets performance benchmark, balanced between fixed and variable pay to achieve short term & long term objective. Remuneration policy shall be disclosed in Board Report.

B. Stakeholder Relationship Committee:

- 1. Applicability:** A company consisting of min 1000 shareholders, min 1000 debenture holders or min 1000 of any other security-holders shall constitute such Committee. Chairperson of Committee shall be NED. Number of other directors as the BOD may decide.
- 2. Function:** Consider and resolve the grievances of security holders of the company.
- 3. Powers of chairman of committee:** Attend the general meeting either by himself in person or through a representative appointed by him from among the members of the Committee.

Optional Points (write only if asked)

Penalty u/s 178(8) for non-constitution of Audit Committee u/s 177 & Remuneration Committee u/s:

- Company – Upto Rs. 5 Lacs

- Every Officer in default - Imprisonment – Upto 1 year; or Fine – Rs. 25000 to Rs. 1 Lac; or Both

Complaints not considered by Stakeholder Relationship Committee in good faith shall not be considered as any contravention.

Cross Ref.

Sec 177

Sec 179: Powers of BM

Why provision is made?

BOD needs to have a free hand for regulating day to day decisions of the Company.

Applicable to:

To all companies

Compulsory points (To be written in every answer)

- BOD is expected to do all acts rationally and its powers shall be exercised as follows:
 - In compliance of Companies Law or any other law;
 - In compliance of MOA/ AOA
 - Any regulation made for such acts including regulations made in GM.
- BM shall not exercise any power which shall be exercised by GM only. Similarly, powers of BOD cannot be exercised by the GM, even by passing GM-SR.
- However, powers of BM can be altered by amending the AOA of the Company by passing a GM-SR. But, acts done by BOD in the past cannot be invalidated by GM by any such amendments.
- The BOD shall exercise following powers by passing BM resolution: (Hint: A to G & O)
 - to approve Amalgamation, merger or reconstruction;
 - to take over a company or Acquire a controlling or substantial stake in another company;
 - to authorize Buy-back of securities under section 68;
 - to Borrow monies;
 - to make Calls on shareholders in respect of money unpaid on their shares;
 - to issue securities, including Debentures, whether in or outside India;
 - to Diversify the business of the company;
 - to invest the Funds of the company;
 - to approve Financial statement and the Board's report;

- x. to grant loans or give Guarantee or provide security in respect of loans;
 - xi. any Other matter which may be prescribed.
5. Rule 8 of Companies (Meetings of Board and its Powers) Rules, 2014 - Additional Powers:
- i. to make political contributions;
 - ii. to appoint or remove key managerial personnel (KMP);
 - iii. to take note of appointment(s) or removal(s) of one level below the Key Management Personnel;
 - iv. to appoint internal auditors and secretarial auditor;
 - v. to take note of the disclosure of director's interest and shareholding;
 - vi. to buy, sell investments held by the company (other than trade investments), constituting five percent or more of the paid up share capital and free reserves of the investee company;
 - vii. to invite or accept or renew public deposits and related matters;
 - viii. to review or change the terms and conditions of public deposit;
 - ix. to approve quarterly, half yearly and annual financial statements or financial results as the case may be.

Optional Points (write only if asked)

- i. BOD may delegate the following powers with conditions such max. limit, time of authorization, etc.
- ii. Borrow monies - Total amount outstanding at any point of time up to which money may be borrowed by delegate.
- iii. Invest funds of the Company – Amount upto which funds may be invested; Nature of investment.
- iv. To grant loans or give guarantees or provide security in respect of loans - Amount permitted and purpose in each case.
- v. Delegation can be done only to following persons:
 - a. Committee of directors
 - b. Managing Directors
 - c. Manager
 - d. Any other principal office of the Co./ Branch (of such Branch only)
- vi. The acceptance of deposit or giving of loan by Banking Co. in ordinary course of business will not be constituted as borrowing or Loan (respectively).
- vii. Inter Bank Borrowings for meeting short term liquidity or long term liquidity will not be considered as borrowing.
- viii. Normal or Day-to-Day availing of Overdraft facility will not be considered as borrowing under this section.
- ix. Company in GM can limit or condition any of the powers of BOD from being exercised in BM.

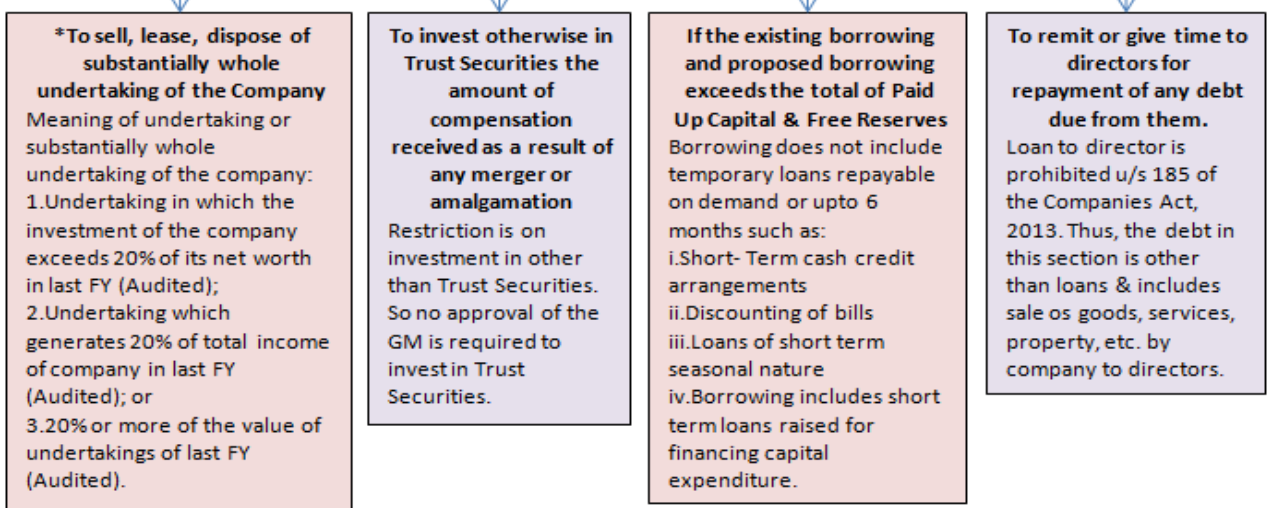
Bomber

BOD cannot amend MOA or AOA of the Company. It is an exclusive power of GM.

Sec 180: Powers of GM

Compulsory points (To be written in every answer)

Approval by GM-SR



Why provision is made?

To give power to members to control substantial transactions in order to ensure that such transactions are

conducted in the best interest of the Company.

Applicable to:

Public Companies only

Optional Points (write only if asked)

- *1. If as per MOA, selling or leasing of property is in ordinary business, no approval of GM is required.
2. If buyer acts in good faith and exercise due caution & care his title to the property is not affected.
3. GM-SR shall provide the conditions regarding use, disposal and investment of the sale proceeds.
4. Acceptance of deposits by Banking company is not considered in the borrowing mentioned in this section.

Sec 184 – Disclosure of Interest by Director

Why provision is made?

To make the director responsible for disclosure of interest in contracts.

Applicable to:

All directors of all companies

Compulsory points (To be written in every answer)

1. The Director shall disclose all his interest in Company, Body Corporate (BC), Firms or AOI on following occasions:
 - 1st BM in which he participates as director - 1st BM of every FY - 1st BM after change in interest
2. Any director of Company who is directly or indirectly concerned or interested in contract or arrangement or proposed contract or proposed arrangement entered or to be entered shall disclose his interest when:
 - a. Contract entered with BC – holds himself or all interested directors together hold more than 2% of shareholding of that BC or is a Promoter, Manager and CEO of such BC.
 - b. Contract entered with Firm or other Artificial Person – in which he is a Partner or Owner or Member.
3. The Director shall disclose his interest in the BM in which contract with above mentioned person is being discussed. He shall neither participate nor vote on such resolution. He shall also not be counted for quorum.
4. If disinterested directors fall below quorum u/s 174 then the remaining disinterested directors will be considered as quorum only if they are 2 or above. This means if quorum of disinterested directors fall below 2 then resolution automatically becomes void.
5. If director becomes interested after execution of certain contract then he shall disclose his interest in the 1st BM after being interested.

Optional Points (write only if asked)

1. Contract entered in contravention i.e. without disclosing interest or participating in such resolution or voting on such resolution, shall be voidable at the option of the Company.
2. In case of such contravention, director shall be liable to - Jail up to 1 year &/or Fine up to Rs. 1 Lac. Also, shall be liable for vacation of office. If the director does not vacate, he shall be liable to pay a fine of Rs. 1 Lac to Rs. 5 Lac.
3. No prohibition on any Director on having interest in any contract as required by law or where the interest of directors (individually or jointly) is 2% or less.
4. Interested Director of a Private Co. can participate after disclosing interest, can be counted for quorum and vote on interested resolution.
5. After submission of form MBP-1, director shall disclose the same at 1st BM.
6. All notices submitted by the directors shall be kept at the Registered Office of Company for a period of 8 years in custody of Company Secretary or person authorized by BOD.

Sec 185: Loans to Directors

Why provision is made?

In order to avoid possibility of fraud by directors.

Applicable to

All Companies

Compulsory points (To be written in every answer)

1. A Company shall not directly or indirectly, advance any loan (including any loan represented by a book debt) to, or give any guarantee or provide any security in connection with any loan taken by:
 - a. any director of company or its holding company or partner or relative of any such director; or
 - b. any firm in which any such director or relative is a partner.

However, the same may be extended to an interested party which shall be subject to GM-SR. The notice of such GM shall be appended by an explanatory statement that discloses the full particulars of the loans or guarantee or security provided and the purpose for the same for which it is proposed to be utilized by the recipient of such loan or guarantee or security and the loans are utilized by the borrowing company for its principal business activities.

2. For this purpose the term "any person in whom any of the director of the company is interested" means:
 - a. Any Private Company of which any such director is a director or member;
 - b. Any Body Corporate of which 25% or more of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
 - c. Any Body Corporate of which the BOD, MD or Manager is accustomed to act in accordance with the directions of the Board, or of any director or directors, of the lending company.

3. The above provisions shall not apply to:

Not applicable to	Particulars
giving of any loan to a managing or whole-time director	i. as a part of conditions of services by Company to all its employees; or ii. as approved by the members by a special resolution.
a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan	in respect of such loans interest is charged at a rate not less than the rate of prevailing yield of 1 year, 3 years, 5 years or 10 years (Government Security (closest)).
any loan or guarantee or security made by a holding company to its wholly owned subsidiary company.	
any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company.	Provided that the loans made are utilized by the subsidiary company for its principal business activities.

Optional Points (write only if asked)

Contravention & Consequences:

- a. the company shall be punishable with: Fine which shall not be less than Rs. 5 lacs but which may extend to Rs. 25 Lacs;
- b. Every defaulting officer:
 - i. imprisonment for a term which may extend to 6 months; or
 - ii. fine - not be less than Rs. 5 lac but which may extend to Rs. 25 Lacs
- c. the director or the other person involved in such transaction:
 - i. imprisonment which may extend to 6 months; or
 - ii. fine which shall not be less than Rs. 5 lacs but which may extend to Rs. 25 Lacs or with both.

Bombers

1. 'Directly or indirectly' means loan by agency or one or more intermediaries. Does not include converted loans. Eg. Credit sales.
2. Specific cases excluded from the purview of sec 185:
 - i. Any loan or advance made to a Trust in which directors are Trustees.
 - ii. Any quasi-loan
 - iii. Any advance or deposit made in connection with leasing/ hire purchase transaction
 - iv. Any advance payment of salary to an employee who is a relative of director as per rules of the Company.
 - v. Any investment made in acquiring residential accommodation for directors(s) whether by way purchase or lease.
 - vi. Any loan made to a Registered Co-operative Society
 - vii. Any loan given by a holding company to any director of its subsidiary company
 - viii. Advance given for securities to be rendered or goods to be supplied
 - ix. Sale of Companies Flat to directors on credit basis.
3. Sec 185 shall not apply retrospectively:
 - a. If Company gives loan to a person who is later appointed as its director.
 - b. If loan is given to a Body Corporate in whom later interest is created by directors
4. In order to ensure that salary advance given to relative of director is not loan:
 - a. Beneficiary is bonafide employee of the Company
 - b. Whether advance given is according to general scheme of advance for all employees.
 - c. Amount paid is appropriate to salary of the employee

- d. Conditions for repayment
- e. Laxity in recovering advance
- f. What is the capacity of person receiving advance?

Sec 186: Loan & Investment by Company

Why provision is made?

To govern the loans & investments to be made by company in ordinary course of business.

Applicable to:

All companies **EXCEPT** (Sec 186(12)):

- Banking Companies
- Insurance Companies
- Housing Finance Company
- A company formed with objective of the financing infrastructural activities
- The NBFC whose principal business is the acquisition of shares, stock, debentures or other securities. Exemption is only for investment & lending activity & not for guarantee or security.
- Company whose main business is acquisition of securities.
- Government Company who is engaged in defense production or Company who takes approval of CG/ SG.

Compulsory points (To be written in every answer)

1. Companies can make **maximum 2 layers of Investment Companies** as Investment Subsidiaries. However, the Company can create **any layer of subsidiaries if those are not Investment Companies**.
2. However, following **ARE EXEMPTED** from above provision:
 - a. A company can create **any no. of layers of subsidiaries of Foreign Investment Companies**.
 - b. A company can create **any number of layers of subsidiaries of Investment Company** if it is requirement of **any specific law**.
3. The **Existing (Loan + Investments + Guarantee + Security) + Proposed (Loan/ Investment/ Guarantee/ Security)** together shall **not exceeds** higher of:
 - a. **60% of (Paid-up Capital + Free Reserves + Securities Premium), or**
 - b. **100% (Free Reserve + Securities Premium)**

Investment in this case means subscription, purchase in securities of any other Body Corporate.
4. If the **existing (L+I+G+S)+ Proposed (L+I+G+S)** exceeds higher of the following then **Company needs to pass GM-SR** for such Proposed (L/I/G/S):
 - a. **60% of (Paid-up Capital + Free Reserves + Securities Premium), or**
 - b. **100% (Free Reserve + Securities Premium)**
5. Disclosure to GM of the full particulars of L/I/G/S and purpose for which it shall be used.
6. The Company shall obtain the **BOD-UR for every transaction of L/I/G/S**. If the Company has taken loan from any PFI, then **prior approval of such PFI** is also required to be taken if any of the following conditions are fulfilled:
 - a. The **default** is made in **repayment** of loan of such PFI &
 - b. The **existing (L+I+G+S)+ Proposed (L+I+G+S)** exceeds higher of:
 - i. **60% of (Paid-up Capital + Free Reserves + Securities Premium), or**
 - ii. **100% (Free Reserve + Securities Premium)**
7. In case of **Companies registered u/s 12** of the SEBI Act, such Stock Brokers, Sub Brokers, Share Transfer Agent, etc. shall **not take Inter-Corporate loan or deposit exceeding the limits prescribed by SEBI/ CG** in this behalf. These Companies shall furnish details of the same in its Financial Statements.
8. The interest rate on such loans shall not be less than prevailing yield rate of 1 yr, 3 yrs, 5 yrs or 10 yrs Government Security.
9. If the **Company has defaulted in repayment of deposits u/s 76** then such **company cannot give L/I/G/S** in any case **unless the same has been paid off**.
10. Company shall **maintain the register of L/I/G/S** as stated u/s 187 **at the Registered Office** of the Company. The register shall be **open to inspection and extracts may be taken by members** and copies thereof may be furnished to any member of the company on payment of such fees as may be prescribed.
11. The CG shall have power to make rules for this purpose.

Optional Points (write only if asked)

Contravention:

- a. Company shall be punishable with **fine of Rs. 25,000 to Rs. 5 Lacs**;
- b. Every **Officer in default** shall be punishable:

- i. Imprisonment upto 2 years &
- ii. Fine of Rs. 25,000 to Rs. 1 Lac.

Bomber

A. Procedure for entering into loan and investments:

1. Take prior approval of members by SR if the specified limit is exceeded.
2. File return with ROC in form MGT-14 with copy of SR.
3. Take prior approval of PFI in case any term loan is subsisting and there is any default in repayment of loans and/ or payment of interest or if the total amount of specified transactions is exceeding limit as specified above.
4. Pass BM-UR.
5. File return with ROC in form MGT 14 with copy of Board Resolution.
6. Disclosure to be made in the FS about the L/I/G/S and its purpose.
7. Particulars of L/I/G/S to maintained in a Register at Registered Office which shall be kept open for inspection and extracts may be taken by members on payment of prescribed fees.

B. Free Reserves means:

Securities Premium: Yes	Capital Redemption Reserve: No	Fixed Asset Revaluation Reserve: No
Share Application Money: No	Sinking Fund: No	Dividend Equalisation Reserve: Yes

- C. In case of default in repayment of loan, section shall apply only in case of PFI and not in case of Normal FIs. Hence, prior approval needs to be sought only in case of PFIs.

Just for Knowledge

Schedule VI defines the Infrastructural Facilities

- | | |
|--|-----------------------|
| i. Transportation (including inter modal transportation) | ii. Agriculture |
| iii. Water Management | iv. Telecommunication |
| v. Industrial, Commercial and Social Development and maintenance | vi. Power |
| vii. Petroleum and Natural Gas | viii. Housing |
| ix. Other miscellaneous facilities/ services | |

Sec 187: Investment of Company is to be held in its own name

Why provision is made?

The Company shall hold all its investments in its own name to protect the investments from being misused and sold without any benefit passed on to the Company.

Applicable to:

All companies

Compulsory points (To be written in every answer)

1. A company shall hold all the investments in following in its own name:
 - a. Property
 - b. Security
 - c. Other Asset

But it can hold shares in subsidiaries by name of its nominee/s if it is necessary to maintain the statutory limit of holdings in the subsidiary.
2. The section is **NOT APPLICABLE** if:
 - a. Company deposits the shares or debentures or securities with the Banker of the Company for collection of dividend or any income.
 - b. The Company holds the shares and the securities in the name of SBI or any scheduled Commercial Bank. However, the shares shall be retransferred to the Company within 6 months of such transfer.
 - c. The Company transfers shares or securities to any person for the repayment of loan to the Company. Such transfer can also be made if the Company for completion of obligation which company had agreed as per terms of contract.
 - d. Company holds investment in dematerialized form in the name of depository such as NSDL or CDSL (As in this case Company is only a beneficial owner). In this case the Company shall maintain a register for the same which shall be kept open for inspection by members or debenture holders of the Company. Such inspection shall be allowed free of cost and during business hours of the company, subject to reasonable restrictions as it may think fit.
3. The Company shall maintain a register of the investments in its own name and in name of other person, in

Form MBP-3. All particulars shall be maintained in chronological order. If the securities are maintained in the name of any other person then the relationship of company with him or contract shall be disclosed.

4. The register shall be maintained at the Registered Office of the Company with the Company Secretary or in his absence with the person authorised by BOD.
5. The CS or in his absence the person authorised by BOD shall authenticate all the entries made in register of investment.

E – Form

Company shall maintain the register in E-form MBP-3.

Sec 188: Related Party Transaction

Why provision is made?

In order to safeguard Company's interest against contracts entered into by the Directors with their Related Parties against secret profit or fraud.

Applicable to

All Companies. EXCEPT contract between 2 Govt. Cos. & Govt. Cos. who take prior approval of CG/SG before entering into RPT.

Compulsory points (To be written in every answer)

Sec 188(1): Restriction on type of contracts in RPT

i. If a Company wants to enter into any of the following contracts with a Related Party then it needs to pass BM-OR for the same:

a. Contract regarding goods or services	b. Contract of Immovable Property
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. Appointment of any RP as employee (<i>holding place of profit</i>) in the Co., its subsidiary or associate co.
g. Underwriting for any securities or derivatives of the company	

ii. Company can provide for additional conditions or restrictions as required.

iii. Transactions exceeding such amount as may be specified in Rule 15 of the Companies (Meetings of Boards & its Powers) Rules, 2014 shall be executed only after approval by GM-OR. In this case, member of the Company who is a related party to such contract shall not vote on such resolution. However, where 90% or more of the members are relatives then such members are allowed to vote.

iv. This sub-section shall NOT APPLY to transactions done in ordinary course of business AND at an arm's length price.

v. Transactions entered into between a holding company and its wholly owned subsidiary co. whose accounts are consolidated with Holding and are presented before the GM for approval, shall be EXEMPT from GM-OR.

Optional Points (write only if asked)

Sec 188(2): Disclosure in BOD Report: Contracts entered into with Related Parties shall be disclosed in Board Report along-with reasons and justifications for executing the contract.

Sec 188(3): Ratification of contract or consequence of contravention on contract: Any contract entered into by Directors and not ratified by the Board or the shareholders at a meeting within 3 months shall be voidable at the option of the Board. If such contract is with a related party of the Director, such director shall indemnify the Company for any loss incurred and further will be disqualified for a term of 5 years u/s 164(1)(g), vacate office u/s 167(1)(a) and on non-vacation, penalty of Rs. 1 Lac to Rs. 5 Lac and/or jail up to 1 year shall be imposed.

Sec 188(4): Right of company against the director of the company: In case loss incurred by Co., the Co. may file a suit against such director or person involved & recover entire loss from such director.

Sec 188(5): Contravention & Consequences: Defaulting Director or officer be imposed;

a. Listed Cos. – Imprisonment ≤ 1 year & Fine-Rs. 25,000 to 5 Lacs; b. Other Cos. –Fine of Rs. 25,000 to 5 Lacs.

Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014:

1. Co. shall enter in any contract or arrangement with a related party on a condition that agenda to the BM shall disclose: name & nature of relation with the RP, nature & duration of the contract, material terms of contract including value, advance paid or received, pricing terms and commercial terms, all relevant factors considered & any other information.

2. Interested Director shall not participate in such resolution, not be counted for quorum and shall not vote on such resolution.

3. Transactions that can be executed only after GM-OR: Any RPT involving following exceeding lower of:

- Sale or Supply or Purchase of goods – 10% of Turnover or Rs. 100 Cr.
 - Selling/ Disposing/ Buying any Property - 10% of Net-worth or Rs. 100 Cr.
 - Leasing of Property - 10% of Turnover or 10% of Net-worth or Rs. 100 Cr.
 - Availing or rendering of services - 10% of Turnover or Rs. 50 Cr.
 - Any RPT regarding appointment at Office or Place of Profit – Rs. 2.5 Lacs per month
 - Underwriting where remuneration to underwriter – 1% of Net worth
- Transactions shall be considered individually or cumulatively for entire FY. Turnover or Net Worth shall be based on audited FS of preceding year.

Bomber

Will Sec 188 apply retrospectively? Company entering into contract for leasing:

- with an employee who is later appointed as Director – No
- with any person who later becomes Director or a Relative of any existing Director – No
- with any person who later transfers such property to RP – Yes, as it leads to renewal of contract.

Cross Ref.

Sec 164, Sec 167 and Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014.

2.13

Section 189 – Register of contracts or arrangements in which directors are interested

Why provision is made?

To keep track of transaction with related parties and to report the same in GM.

Applicable to:

All companies (whether Public or Private)

Compulsory points (To be written in every answer)

- The company shall maintain a register for disclosure of interest u/s 184 & RPT u/s 188 at the registered office of the company.
- Such register shall be placed in the BM and be signed and approved by all directors.
- Every director or KMP shall on his appointment & on his vacation of office shall disclose his interest in sec 184 & such disclosure shall be updated in the register of Company.
- The register shall be kept open for inspection by members in business hours and can take copies thereof. Co. shall furnish all information on payment of fees by members.
- The register shall be presented in the AGM and be open for inspection by any person who is eligible for attending the AGM.
- The transaction shall not be included in register if the value of such contract regarding goods, material, services does not exceeds Rs. 5 lacs in any year or transaction is regarding collection of the bills by banking company in its ordinary business.

Optional Points (write only if asked)

Contravention: On failure to comply with the provision of this section and the maintenance of register the director will be liable to a penalty of RS. 25,000/-

Cross Ref.

Sec 184 & Sec 188

Section 190 Contract of employment with managing and whole time director

Why provision is made?

To keep the contract of the company with ED and for making the same available to members for inspection.

Applicable to:

Only to public company (Sec 190(4): Exemption to Private Company)

Compulsory points (To be written in every answer)

- The Company shall keep a copy of the contract made with the MD or WTD at its registered office.
- If the contract is not in writing then the terms of such contract shall be noted in memorandum.
- Copies of contract/ memorandum shall be kept open for inspection by members with no fees.

Optional Points (write only if asked)

Contravention: Company shall be liable to fine of Rs. 25,000; Every officer in default with fine of Rs. 5,000 for each default.

Section 191 – Compensation for the loss of office to Director

Why provision is made?

To provide eligibility parameters for compensation for premature termination of directors, other reasons.

Applicable to:

Only **Public Companies**

Compulsory points (To be written in every answer)

1. The **director will receive compensation only if the amount** of compensation is **approved by company GM-OR** in 2 cases:
 - a. Loss of office by transfer of undertaking or property of the company;
 - b. Transfer of shares to any person against offer made as under:
 - to all shareholders - by Body Corporate to create subsidiary or sister concern
 - by individual for min 1/3 voting powers of the company - any other conditional offer
2. If **compensation amount is not disclosed in GM or resolution not obtained, Co. is not liable** to pay compensation to director.
3. **NOT APPLICABLE** to **Executive Directors** i.e. MD/ WTD/ Manager, as it is covered in sec 202.
4. If **resolution in favor of directors** was not passed or could **not be passed due to want of quorum either in the original GM or adjourned GM, no compensation** shall be made to directors.
5. Any disclosure under this section to GM shall not contravene any other section of the act or any other law.

Optional Points (write only if asked)

1. If the director receives any **compensation without approval of GM**, such payment will be **invalid**. This amount **can be subsequently approved by GM-OR or it shall be refunded to the Co.**
2. **Contravening Director** shall be punishable with **fine of Rs. 25,000 to Rs. 1,00,000**

Section 192 - Restriction on non-cash transaction involving directors

Why provision is made?

To save the company from delayed payments by Directors for credit transactions.

Applicable to:

Only **public companies**

Compulsory points (To be written in every answer)

Approval for non cash transaction: Prior approval by passing GM-OR is required if Company is entering into a non-cash transaction with the **director of the Company**, its **Holding, Subsidiary or Associate Company**.

Notice of the meeting: shall include:

- a) **All particulars** of such contract;
- b) **Valuation** of such asset made by **Registered and Independent valuer**.

Optional Points (write only if asked)

Contravention:

- a. Contract shall be **voidable** at the option of the company if the section is not complied with.
- b. If any **person indemnifies for the loss** caused to company then contract is **enforceable** against the Co. by director.
- c. If any **right is acquired by any person** from such contract **after the payment** and if he has acted in **good faith without knowledge** of contravention the contract is **not voidable** at the option of the company

Section 193: Contract by One Person Company

Why provision is made?

To protect interest of creditors or lenders to OPC.

Applicable to:

One Person company

Compulsory points (To be written in every answer)

Restriction on Contract by OPC with its sole member: Contract with its sole member who is also a director of the company can be done only if contract is in writing and terms of contract are as per MOA. Further, the contract terms shall be recorded in the MOM of the 1st BM held after such contract. **However, if the company enters into contract in ordinary course of business then the section not applicable to such OPC.**

Filing with the ROC: The **minutes and record** of such contract shall be **filed with ROC within 15 days**.

Even if the OPC does not have any borrowing from Bank or FI, the OPC shall file with ROC though it increases cost.

Additional Information (write only if asked)

- 1. Meaning of Political Contribution:** Any contribution directly or indirectly to any Political Party or any person for political purpose. Any donation, subscription or payment. Expenditure incurred by Company on advertising in any Publication as a Souvenir, Brochure, Tract, Pamphlet on behalf of Political Party.
- 2. Mode of Political Contribution:** Shall be made by an Account Payee Cheque or Account Payee Bank Draft or Electronic Clearing System. Any instrument issued pursuant to any scheme notified under any law for the time being in force is also allowed.

Chapter 3: Managerial Personnel & Remuneration

Sec 196: Appointment of Managing Director, Whole-Time Director and Manager

Why provision is made?

To appoint a best suited managerial person as MD, WTD or Manager to conduct Company's day to day business.

Applicable to:

1. **Listed Company, 2. Public Companies** having **PC \geq INR 10 Cr.** and all Public Companies appointing ED voluntarily. **3. Sec 196(2)(4)(5) does not apply to Government Companies.**

Compulsory points (To be written in every answer)

1. Company shall **not appoint MD and Manager at the same time.**
2. Maximum term of **appointment is 5 years.** Reappointment can be made only in the last year.
3. Appointment of an individual whose age is **between 21-70 yrs: GM-OR** shall be passed. **70 yrs and above: GM-SR** shall be passed **or GM-OR along with prior approval of CG.**
4. **Individual disqualifications:** a. **Adjudged or un-discharged insolvent;** b. **suspended payment to creditors or made composition with them.** c. **convicted by court and sentenced to jail for min 6 months.**
5. **Terms of appointment:** a. as per **schedule V & Sec 197;** b. approval by **BOD-OR and GM-OR/GM-SR;** c. approval of **CG on non-compliance with Schedule V (not required for Private Companies).**

Optional Points (write only if asked)

1. **Notice convening the BM or GM shall include the terms and conditions** of appointment viz. Remuneration, Interest of Directors and any other matter.
2. He must be **present in India during the last 12 months** before appointment.
3. If individual so appointed by the BM are **disapproved at the GM** then the **acts conducted** by such director **from date of BM to GM** shall be deemed to be **valid.**
4. In case of **contravention, CG may** adopt the following: a. **reference to NCLT;** b. **order termination of appointment;** c. **termination leads to vacation of office, acts done till date shall be valid, refund of entire remuneration received, waiver of refund by the Company is not permitted.**

Bomber

Company shall not appoint MD and Manager at the same time means that the two positions cannot be filled up at the same time. Hence, the following combinations are possible: MD + WTD; MD + MD; WTD + Manager; WTD + WTD; Manager + Manager.

E – Form

On **appointment:** File **MR-1, DIR-2 & DIR-12** with ROC. On **non-compliance of Schedule V:** File **MR-2** for obtaining **CG approval.**

Just for Knowledge

Use of American Nomenclature "President and Vice-President" is permitted; however, it has to be stated clearly in the Company's AOA and Public Announcements and to the prospective investors regarding the usage of such terms and the context in which the same is used.

Cross Ref.

Sec 203 - Whole Time KMP

Sec 197: Managerial Remuneration

Why provision is made?

To determine an absolute method to decide the remuneration of BOD that is reasonable for the Co. & motivating to the BOD to perform efficiently.

Applicable to:

Public Companies. Government Co. can pay any amount of remuneration in case of loss.

Compulsory points (To be written in every answer)

1. Company can **pay managerial remuneration maximum 11% of Net Profit (not Gross Profit) to all MD, WTD, Manager & Other NED.** Net Profit shall be calculated as per Sec 198.
2. The Company can pay remuneration **above 11% of Net Profits after passing GM-SR.**
3. **The remuneration of ED will be as follows:**
 - a. **5% of Net Profit** if there is **only one ED;**
 - b. **10% of Net Profit to all ED** if there are **2 or more EDs****The remuneration of NED will be as follows:**
 - a. If the Co. has **appointed ED: 1% of Net Profit to all NED**
 - b. If the Co. has **not appointed ED: 3% of Net Profit to all NED****The remuneration in excess of above limit can only be with the approval of GM-SR.**

4. If default is made in payment to Financial Creditor then remuneration can be paid only with after its approval is obtained before GM.
5. % mentioned above is exclusive of sitting fees payable to directors u/s 197(5).
6. In case of loss, only ED is eligible for remuneration. NED will not receive any remuneration in case of loss. Remuneration to ED in such situation shall be paid as mentioned in Schedule V. In excess of the same shall be paid on passing GM-SR.
7. In case of loss or inadequate profit, remuneration to ED shall be given on compliance of 2 conditions say (A) & (B).

Condition (A) has 4 pre-requisites:

- i. ED should function in professional capacity;
- ii. Not having any interest in capital of the Company or its Holding Company or any of its subsidiaries, directly or indirectly;
- iii. Not having any, direct or indirect interest or relation to directors or promoters of the Co. or its Holding Co. or any of its subsidiaries at any time during last 2 years;
- iv. Possesses graduate level qualification with expertise and specialized knowledge in the field in which the company operates.

Condition (B) Remuneration shall be based on Effective Capital:

Effective Capital	Option 1	Option 2	Option 3
EC < 5 Cr.	60 Lacs	120 Lacs	Exceeding limit of option 2
5 Cr. ≤ EC < 100 Cr.	84 Lacs	168 Lacs	
100 Cr. ≤ EC < 250 Cr.	120 Lacs	240 Lacs	
EC ≥ 250 cr.	120 Lacs + 0.01% of EC ≥ 250 Cr.	240 Lacs + 0.01% of EC ≥ 250 Cr.	

Effective Capital: PUC (+) Free Reserves (+) Securities Premium (+) Long Term Loan (+) Long Term Deposits (+) Debentures (-) Investment (-) Preliminary Expenses (-) Accumulated Losses.

Selection of options can be done provided the conditions are followed:

Option 1: GM-OR on appointment, Remuneration is approved by Remuneration committee and there is no default on payment of debentures, debts, deposits and interest for 30 days in preceding FY of appointment.

Option 2: Follow conditions of option 1 and pass GM-SR. Resolution shall be valid for 3 consecutive years.

Option 3: Comply conditions of option 2 and prior CG approval.

8. Remuneration in excess of limits specified in Section I & II of permitted to a Foreign Company or a Company which opts for Option 2, provided the amount is treated as Managerial Remuneration & is within limit prescribed u/s 197.
9. Where the company is a newly incorporated company for a period of 7 years from the date of incorporation OR Sick Companies for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction or NCLT for 5 years from the date of sanction of such scheme, may pay remuneration twice the permissible amount.
10. If the company wants to provide for lower level of remuneration then it has to be as per AOA or GM-OR or GM-SR (If AOA requires such resolution).
11. This remuneration shall be inclusive of remuneration of all services provided by him in any other capacity. **Except** for following services shall not be considered: Services of professional nature and possesses necessary qualification and experience for such services and is approved of by Remuneration Committee u/s 178.
12. Sitting Fees shall be paid to ED & NED for BMs, Committee Meetings, other meeting decided by Board. A maximum of Rs. 1 Lac is allowed, however, a lower amount can be decided by the BOD. **Sitting Fees to ID and 1 woman Director shall not be less than amount paid to others.**
13. No restriction on the method of disbursement of remuneration. May be paid monthly/annually/semi-annually or in % or combination of both.
14. ID will not receive any stock option of shares but can receive remuneration or fee or reimbursement of expenses of BM or profit related commission.
15. **Refund of excess remuneration:**
 - a. Remuneration in excess of amount mentioned in Schedule V or as per GM-SR, shall be refunded to the Company within max. 2 years or time specified by Company, whichever is lower.
 - b. The Company shall not waive such refund unless approved by GM-SR within two years from the date the sum becomes refundable.
 - c. Where the company has defaulted in payment of dues to Financial Creditor, prior approval from them shall be obtained by the company before obtaining approval of such waiver from GM.
16. Listed Co. shall disclose in the Board's Report, the ratio of remuneration of each director to the median of employee's remuneration and other details prescribed.

17. Premium paid on insurance taken by Co. on behalf of its MD, WTD, Manager, CEO, CFO or CS for indemnifying the Co. against liability in respect of negligence, fraud, and misfeasance, breach of duty or breach of trust shall be treated as an expense to the Company. However, if the person is proved guilty, the premium paid shall be treated as part of the remuneration.
18. Director receiving the remuneration from the Company can also hold the directorship and receive the remuneration from Holding and Subsidiary Company.
19. The auditor of the company shall report in his Audit Report u/s 143, whether the remuneration paid by the company to its directors is within limits prescribed.
20. Remuneration in excess of prescribed limits: All pending CG approvals or CG approvals already given (as per earlier provisions of sec 197, now repealed) will be invalid and Co. shall pass GM-SR within 1 year.

Optional Points (write only if asked)

1. Contravention & Consequences: Fine \leq Rs. 1 Lac which may extend to Rs. 5 Lacs and refund as applicable.
2. Perquisites such as Children's education allowance, Holiday passage, Leave Travel concession, gratuity, contribution to PF, encashment of leave & Leave Travel Concession are not included in managerial remuneration.

Bomber

1. Remuneration to NED in case of loss can be paid **only if** Company approves by passing SR.
2. If person is appointed as MD/ WTD/ Manager in the year of incorporation of Co. the effective capital shall be counted as on the date of appointment. Other cases, it shall be as on last day of the preceding FY.
3. Remuneration can be paid in case of negative effective capital also.
4. Guarantee Commission is paid for the risk he bears which has nothing to do with the directorship and hence is not considered as managerial remuneration (Suessen Textile Bearings Ltd. Vs. UOI).
5. Subject to provisions of sec 197 read with Schedule V, a managerial person shall draw remuneration from 2 companies, provided that the companies shall be Holding or Subsidiary Company. And the person is appointed as MD/WTD in both the companies. WTD can hold only 1 office; hence the question of remuneration to WTD from 2 offices does not exist.

Cross Ref.

Sec 198

Sec 198: Calculation of Profit

Why provision is made?

To ensure that the net profits based on which remuneration is calculated is derived on a fair basis.

Applicable to:

All Companies

Compulsory points (To be written in every answer)

198(2) Items to be credited to P&L: Government Grants, Bounties and the subsidies. However, if CG directs any other treatment, it shall be treated accordingly.

198(3) Items not to be credited to P&L:

- a. profits by way of premium on shares or debentures issued unless Co. is an Investment Co. u/s 186;
- b. profits on sales by the company of forfeited shares;
- c. profits of a capital nature including profits from the sale of the undertaking or of any part thereof;
- d. profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets;

Provided that where the Sales value of fixed asset exceeds the WDV thereof, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its WDV;

- e. any change in carrying amount of an asset or of a liability recognized in equity reserves including surplus in profit and loss due to revaluation of assets or liabilities at fair value.
- f. any amount representing unrealized gains, notional gains & revaluation gains.

198(4) Items to be debited to P&L:

- a. all the usual working charges;
- b. directors' remuneration
- c. bonus or commission paid or payable to any member of the company, staff, or to any engineer, technician or person employed or engaged by the company (whole-time or on a part-time basis)
- d. any tax notified by the Central Government as being in the nature of a tax on excess or abnormal profits

- e. any **tax on business profits** imposed for special reasons or in special circumstances and notified by CG
- f. **interest on debentures** issued by the company
- g. **interest on mortgages** executed by the company and **on loans and advances secured by a charge on its fixed or floating assets**;
- h. **interest on unsecured loans and advances**;
- i. **expenses on repairs**, whether to immovable or to movable property, provided the repairs are **not of a capital nature**;
- j. **outgoings inclusive of contributions** made under **section 181**;
- k. **depreciation to the extent specified in section 123**;
- l. the **excess of expenditure over income**, which had arisen in computing the net profits in accordance with this section in **any year** which begins at or after the commencement of this Act, in **so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained**;
- m. any **compensation or damages** to be paid in virtue of any **legal liability including a liability arising from a breach of contract**;
- n. any **sum paid by way of insurance against the risk of meeting any liability** such as is referred to in clause (m);
- o. **debts considered bad and written off or adjusted** during the year of account.

198(5) Items not to be debited to P&L:

- a. **income-tax and super-tax payable** by the company under the Income-tax Act, 1961 (43 of 1961), or any other tax on the income of the company not falling under clauses (d) and (e) of sub-section (4);
- b. any **compensation, damages or payments made voluntarily**, that is to say, **otherwise than in virtue of a liability** such as is referred to in clause (m) of sub-section (4);
- c. **loss of a capital nature** including loss on sale of the undertaking or any of the undertakings of the company or of any part thereof not including any excess of the written-down value of any asset which is **sold, discarded, demolished or destroyed over its sale proceeds or its scrap value**;
- d. **any change in carrying amount of an asset or of a liability** recognized in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.

Cross Ref.

Sec 186, Sec 123, Sec 181

Sec 199: Recovery of Remuneration in certain cases

Why provision is made?

To enable the Company to recover excess remuneration paid based on Net Profit before making changes.

Applicable to:

All Companies

Compulsory points (To be written in every answer)

1. Restatements in net profit may happen due to following reasons: **Fraud, Non-Compliance of any requirement, Operation of Law or to give True & Fair view, etc.**
2. This change in profit will **lead to change in Managerial Remuneration** thereby leading to either **refund** or pay extra.
3. This section gives **power to the Company to recover such excess remuneration paid (including stock options) from present as well as past MD/ WTD/ CEO/ Manager.**

Bomber

1. Though the section does not specifically mention NED, taking in view that the CEO who leads the Company and receives remuneration or commission based on Net Profit of the Co. is considered in the section, an NED can also be considered for this section.
2. As it is specifically provided in the section about recoverability of stock options, the Company can recover any stock options granted to any BOD or CEO in case of restatement of accounts.

Sec 200: CG or Company to fix limit of remuneration

Why provision is made?

To enable CG to restrict the remuneration paid to directors in case where it is of the opinion that remuneration is against the interest of the Public or Stakeholders or that director is involved in fraud or Mismanagement.

Applicable to:

All companies

Compulsory points (To be written in every answer)

If at the time of approving u/s 196, CG feels that the Companies profits are not sufficient then CG may put a higher limit to the remuneration as specified in the Act with regards to:

- the financial position of the company
- the remuneration or commission drawn by the individual concerned in any other capacity;
- the remuneration or commission drawn by him from any other company;
- professional qualifications and experience of the individual concerned;

Such other matters as may be prescribed.

Optional Points (write only if asked)

Rule 6 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 - The CG or the company shall have regard to the following:

- Financial and operating performance of the company during the three preceding financial years.
- Relationship between remuneration and performance.
- Principle of proportionality of remuneration within the company, ideally by a rating methodology which compares the remuneration of directors to that of other directors on the board who receives remuneration and employees or executives of the company.
- Whether remuneration policy for directors differ from remuneration policy for other employees and if so, an explanation for the difference.

Securities held by the director, including options and details of the shares pledged as at the end of the preceding financial year.

Cross Ref.

Rule 6 of Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014

Sec 201: Forms of and procedure in relation to certain applications.

Applicable to:

All companies

Compulsory points (To be written in every answer)

- Every application made to the Central Government under this Chapter shall be in such form as may be prescribed.
- Before any application is made by a company to CG under any of the aforesaid sections, a general notice to the members shall be issued indicating the nature of the application proposed to be made.
- Such notice shall be published at least once in a newspaper in the principal language and in an English newspaper of the district in which the registered office of the company is situated.
- Copies of the notices and certificate by the company as to the publication shall be attached to the application.
- As prescribed under Rule 7 of Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014:
 - Every application made to the Central Government under the provisions of Chapter XIII shall be made in Form No. MR.2 and shall be accompanied by fee as may be specified for the purpose.
 - Companies other than listed companies and subsidiary of a listed company may without Central Government approval pay remuneration to its managerial personnel, in the event of no profit or inadequate profit beyond ceiling specified in Section II, Part II of Schedule V, subject to complying with the following conditions namely:
 - Payment of remuneration is approved by BM-OR and, in the case of a company covered u/s 178(1) also by the Nomination and Remuneration Committee, if any, and while doing so record in writing the clear reason and justification for such excess payment.
 - Company has not made any default in repayment of any of its debts (including public deposits) or debentures or preference shares or interest or dividend payable thereon for a continuous period of thirty days in the preceding financial year before the date of payment to such managerial personnel;
 - Approval by GM-SR for payment of remuneration for a period not exceeding 3 years.
 - Statement along-with a notice calling the general meeting shall contain such information including reasons and justification for payment of remuneration beyond the said limit.
 - Company has filed Balance Sheet and Annual Return which are due to be filed with the Registrar of Companies.
- Every such application seeking approval shall be made to the Central Government within a period of ninety days from the date of such appointment.

E – Form

Form MR-2

Cross Ref.

Rule 7 of Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014

Sec 202: Compensation for loss of office of MD/ WTD/ Manager**Why provision is made?**

To safeguard interest of ED by compensating him when prematurely terminated from office for no default by him.

Applicable to:

All Companies

Compulsory points (To be written in every answer)

1. A company may pay compensation for loss of office or for retirement to ED but not to an NED under this section.
2. **Maximum compensation = Period of compensation * Average yearly compensation earned.**
Period of compensation = Remaining period of office or 3 years, whichever is lower;
Average yearly compensation earned = Average remuneration of period served 3 years, whichever is lower.
3. Where Company enters into **winding up within 12 months of an ED's retirement** can pay compensation to ED only if they are able to repay money of equity shareholders including premium.

Optional Points (write only if asked)

1. **No compensation** shall be paid in following cases:
 - a. Director **resigns from his office due to reconstruction or amalgamation** and is appointed as an ED in the new company.
 - b. Director **resigns** from his office **voluntarily**.
 - c. Office of the director is **vacated u/s 167(1)**;
 - d. Company is being **wound up due to negligence or default of director, by an order of Tribunal or voluntarily**.
 - e. Director has been **guilty of fraud or breach of trust or gross negligence or gross mismanagement** of the affairs of the company or any subsidiary company or holding company.
 - f. Director **instigated or has taken part** directly or indirectly in bringing about, the **termination of his office**.
2. **Payment to ED in any other capacity** will be paid **in addition to the compensation** of this section.

Cross Ref.

Sec 167(1)

Sec 203: Whole Time Key Managerial Personnel**Why provision is made?**

To safeguard interest of public in case of big companies where the risk of fraud and misfeasance is high in the areas such as Higher Management, Legal Compliance and Finance.

Applicable to:

- **Listed Companies**
- **Public Companies having PC \geq INR 10 Cr**
- **Company (Public or Private) having PC \geq INR 5 Cr.**
- **Not applicable for Government Companies.**

Compulsory points (To be written in every answer)

1. Companies belonging to such class shall (Listed & Paid Up capital \geq 10 cr) **appoint** the following:
 - a. **MD or CEO or Manager** and in their absence, **WTD**
 - b. **CS**
 - c. **CFO**
2. Only CS for Public or private company having PC \geq 5 cr.
3. **MD or CEO shall not be appointed as Chairman** of the Company. However, same shall be **allowed if**: a. **AOA approves**; b. **Company does not have multiple businesses**. In case of multiple businesses, **only a company having different CEOs for each business** can so appoint them as Chairman. As per notification SO 1913(E), 2014, **Public Companies having PUC \geq Rs. 100 Cr. and Annual Turnover \geq Rs. 1000 Cr** that are engaged in **multiple businesses** and have appointed **CEO for each business**, may appoint them as Chairman. PUC and Turnover to be as per latest audited BS.
4. WTKMP shall be **appointed by BOD-OR**. Resolution **must mention** the **conditions of appointment** including remuneration.
5. WTKMP shall **hold only one office at a time**. If an individual is **WTKMP at Holding Company**, he can be **WTKMP at subsidiary also**. However, if an individual is **WTKMP at Subsidiary Company** then subsequently

holding position in Holding Company is not allowed. However, they can become director except MD or WTD, in other company.

6. In case of persons holding 2 or more offices of WTKMP at commencement of this section shall choose only one of them and vacate all others within 6 months.
7. An individual holding position as MD/ Manager in one company can be appointed as MD in another company with BOD-UR only.
8. Casual Vacancy shall be filled by BOD-OR within 6 months of vacancy. However, vacancy by MD/ WTD shall be filled as per sec. 161(4).

Optional Points (write only if asked)

Contravention of this section will cause: a. Company to pay penalty of Rs. 1 Lac to Rs. 5 Lacs; b. Every defaulting director or KMP to pay fine of Rs. 50,000 to Rs. 1000 per day for continuing offence.

Bombers

1. Since sec 169 talks only about removal of directors and appointment of filling of casual vacancy is filled by BM-OR, it can be assumed that WTKMP (except MD/WTD) can be removed by GM-OR only based on principle of natural justice. However, ICAI RTP May 2018 mentions that any WTKMP can be removed by BM-OR including MD and WTD.
2. The terms of appointment, remuneration and removal of CEO, CFO, Manager and CS shall be done by a Board Resolution.
3. A director can be appointed as CEO, Manager, CS or CFO.

Cross Ref.

Sec 196, Sec 160, Sec 169, Sec 161(4), Sec 200, Sec 197 and Rule 3, Rule 8 & Rule 8A of Companies Appointment and Remuneration of Managerial Personnel) Rule, 2014.

Sec 204: Secretarial Audit for bigger companies

Why provision is made?

To ensure better legal compliance as it is one of the risky areas apart from Finance and Top Management.

Applicable to:

1. Listed Company;
2. Public Companies: Having PUC \geq Rs. 50 Cr. or Turnover \geq Rs. 250 Cr.

Compulsory points (To be written in every answer)

1. CS shall be appointed for Secretarial Audit by passing BM-OR.
2. The Secretarial Audit Report shall be attached to the Board Report and submitted in the GM.
3. The Secretarial Audit Report shall be submitted in the Form MR-3.
4. The Company shall give complete assistance and facilities to the Company Secretary for conduct of such Audit. The Board shall explain in full any qualification or observation or other remarks made by CS in his report.

Optional Points (write only if asked)

Contravention: Every person in default (Company, Officer or CS) shall be liable to a fine of Rs. 1 Lac – Rs. 5 Lac.

E – Form

Form MR-3

Sec 205: Functions of Secretary

Why provision is made?

To define what functions are to be performed by a CS Auditor.

Applicable to:

All companies to which appointment of CS is applicable.

Compulsory points (To be written in every answer)

Functions of CS

1. Report to the BOD about the compliance with the Act, rules and laws applicable to the Company.
2. Ensure that Company complies with the applicable secretarial standards.
3. Perform other duties prescribed under Rule 10 of Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014 as under:
 - a. To guide the directors of the company with regards to their duties, responsibilities and powers.
 - b. Facilitate the convening of the meeting and attend Board Committee & GM and maintain MOM.
 - c. Obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act
 - d. Represent before various regulators and other authorities under the Act for discharge of various duties.

- e. Assist the Board in the conduct of the affairs of the company;
- f. Assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices;
- g. Discharge such other duties as have been specified under the Act or rules and such other duties as may be assigned by the Board from time to time.

Optional Points (write only if asked)

The acts done by CS shall not affect the functions of the BOD, Chairman and MD/WTD.

Cross Ref.

Rule 10 of Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014



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Chapter 4: Inspection & Inquiry & Investigation

Sec 206: Power to call for information, inspect books and conduct inquiries

Why provision is made?

To give power to inspect the affairs of a company in case of suspicion that the affairs are not managed as per sound business practices or are fraudulently managed.

Applicable to:

All companies

Compulsory points (To be written in every answer)

1. ROC can demand the documents from the company for scrutiny. If the documents submitted are not found sufficient, the ROC has power to demand further information.
2. The ROC may give a written notice on the Company to demand the documents, information and explanation as required.
3. On receipt of notice it is the duty of the Company & the officers to supply required information to ROC within time allowed in notice.
4. In case of past information is required by ROC then ex-officers who were in-charge of such information may also be called.
5. The ROC has power to call for further information or books or records and record reasons for the same in writing if:
 - a. Information/ explanation are not furnished to the ROC within the time specified.
 - b. ROC is of the opinion that the information/ explanation furnished is inadequate/ false.
6. ROC can demand inspection at specific place, time and day.
7. The ROC may serve written order demanding answers for the following questions and conduct its inquiry:
 - a. Whether business is carried fraudulently?
 - b. Whether business is carried for unlawful purpose?
 - c. Whether complaints of the investors are resolved properly?
8. In such situation the CG will allow the ROC to appoint an officer to conduct the inquiry.
9. If it is proved that the business of the Company is being carried on fraudulently the officer in default will be liable to penalty u/s 447, under which penalty shall be the amount of fraud or upto 3 times the amount of fraud.
10. If the circumstances so require, the CG may require the Inspector to conduct an inspection of the books and papers after conducting the inquiry.
11. If CG thinks necessary it can by general or special order direct the inspection by any statutory Authority of the books of specific class of companies.

Optional Points (write only if asked)

Contravention: If company fails to furnish any information or explanation or produce any document required under this section – The company and every officer in default shall be punishable with a fine which may extend to Rs. 1 Lac.

In case of a continuing failure - Additional fine which may extend to five hundred rupees for every day after the first during which the failure continues shall be imposed.

Bomber

1. When a company becomes a partner in the firm, it gets right under section to inspect and copy any of the books of the firm and to make them available to the inspecting officer.
2. The inspecting officer can seek information about the company's joint ventures with other bodies that are not companies as the intention is to provide as much relevant information as possible to Government.

Case Laws

Standard Brands Ltd: Where a company was consistently violating provisions of act and carrying on substantial business, Registrar was competent to take steps for investigation of affairs of company.

C.V. Karuppunni v. Joint Director, Inspection, company law board : In case the person concerned is required to inspect books and documents other than the books of account and other books and papers including Ledgers and vouchers, he should seek appropriate directions from the NCLT.

Coimbatore Spg. & Wvg. Co. Ltd. v. M.S. Shrivasan : It is not necessary that sole object of operation complained of should be fraudulent or unlawful. It is sufficient if one of objects (not necessarily the dominant object) is

fraudulent or unlawful.

4.2

Sec 207 : Conduct of inspection and inquiry

Why provision is made?

Provides powers to conduct inspection and that can be exercised on every officer or employee of the company.

Applicable to:

All companies

Compulsory points (To be written in every answer)

- If the ROC or the inspector appointed by ROC u/s 206 calls for information or books the officers of the company shall comply with the duty as follows.
 - Produce all required documents to ROC;
 - Give information and explanation in the required form to ROC;
 - Give all assistance to inspector and ROC regarding inspection.
- ROC and inspector for inspection of books can :
 - Take duplicate copies of the books;
 - If any books are inspected then mark them as inspected.
This will save the duplication of work of inspection and the books need not be removed from the registered office of the company.
- The inspector appointed by ROC/CG for the purpose of the inspection will have all the powers of the civil court as follows:
 - Discovery and the production of books of accounts and other documents at required time and the place.
 - Calling a person or witness and make him take an oath for any true fact and sign an affidavit.
 - Inspection of any books, papers or documents including concealed documents relating to company at any other place.

Optional Points (write only if asked)

Contravention of this section can be made by company or officers as follows:

- Disobeying the directions of ROC /Inspector.
- Not providing the information required.
- Not following the required procedure
- Not to attend when called up.

Consequences will be applicable:

- Imprisonment upto 1 year;
- Fine of Rs. 25,000 to Rs. 1 lakh.
- Vacation of office from the date the director or officer in default is convicted.
- Not be able to hold any office at any other company from the date of conviction till the date decided by ROC or Inspector by an order.

Sec 208: Report on inspection made

Why provision is made?

As the power of investigation lies with the CG, the ROC and inspector can make recommendation to CG regarding the same under this section by providing reports on facts and discrepancies.

Applicable to:

All companies.

Compulsory points (To be written in every answer)

- After making the inspection u/s 206 & exercising the powers u/s 207, the ROC or the inspector shall make report to CG.
- The report shall be made with supporting documents.
- If the ROC or the inspector based on the inspection thinks that further investigation shall be made in the company to find the fraud or mismanagement, then ROC or inspector shall mention such facts in report and make recommendation to CG for conducting investigation along with reasons and evidences for the same.

Sec 209: Search and seizure

Why provision is made?

In the above case there is requirement of power to seize the books and keep them safe. Provides power on compliance of specific given conditions and the power to seize books when deemed fit.

Applicable to:

All companies.

Compulsory points (To be written in every answer)

- If the ROC is of any of the following opinion, then it can seize the books of the company or any officer of the

- company.
- a. The book will be **destroyed**.
 - b. The book will be **mutilated**.
 - c. The book will be **altered**.
 - d. The book will be **secreted**.
 - e. The book will be **falsified**.
2. On the basis of the above facts the ROC can seize the books as per following **process**:
- a. ROC shall **take prior approval of the special court** for seizure of books.
 - b. **Enter the premises** or places where the **books are kept**.
 - c. **Allow the company to take the copies**, extracts of the books first. The cost shall be borne by company.
 - d. **Seize the books** of the company after company finished to take the copies of the same.
3. Returning the books seized:
- a. The ROC **shall return the books to the company within 180 days of seizure**.
 - b. **If the ROC further requires** the books it can **call the books for further 180 days** by making an order in writing.
 - c. The ROC and inspector can take **the copies of the books or take the extracts from the same or mark them as identified or verified** or do any other act regarding the books as required and return the same to the company.

Optional Points (write only if asked)

The provisions of the code of criminal procedure, 1973 relating to searches or seizures shall apply, mutatis mutandis, to every search and seizure made under this section.

Sec 210: Investigation into the affairs of company

Why provision is made?

The provision is made to define the circumstances of the investigation and the powers of CG regarding the same.

Applicable to:

All companies.

Compulsory points (To be written in every answer)

1. The **CG may order the investigation of the company** based on the following points.
 - a. **On the report (including recommendations) made by inspector or ROC u/s 208.**
 - b. **If the members pass the GM-SR for conduct of the investigation.**
 - c. **CG may suo motu start investigation in the company in public interest.**
2. **Where an order is passed by court or the Tribunal in any proceeding before it that the affairs of the company ought to be investigated, the central government shall order an investigation into the affairs of the company.**
3. The **CG can appoint officers or persons for:**
 - a. **Inspecting or investigating into affairs of the company.**
 - b. **Reporting after conducting and completing the investigation.**

Sec 211: Establishment of SFIO

Why provision is made?

To empower the Government to constitute the Authority for investigations.

Applicable to:

All Companies

Compulsory points (To be written in every answer)

1. **SFIO stands for Serious Fraud Investigation Office** which shall be **established by the CG** by notification to **investigate frauds relating to a company.**
2. SFIO shall **consists of directors and experts appointed by CG** having experience in the following fields:

i. Banking	ii. Corporate affairs
iii. Taxation	iv. Forensic Audit
v. Capital Markets	vi. Information Technology
vii. Law	viii. Such other fields as prescribed
3. **CG shall appoint a Director** in the SFIO, who shall be an officer **not below the rank of a Joint Secretary to the GOI having knowledge** and experience in dealing with matters relating **to corporate affairs.**
4. **CG may appoint** such experts and other officers and employees in the SFIO **as it considers necessary** for the efficient discharge of its functions under this Act.
5. The **terms and conditions** of service of Director, experts, and other officers and employees of the SFIO shall be such as **may be prescribed.**

Optional Points (write only if asked)

Companies (Inspection, Investigation & Inquiry) Rules 2014

Rule 3: Appointment of persons having expertise in various fields -CG may appoint persons having expertise in the fields of investigations, cyber forensics, financial accounting, management accounting, cost accounting and any other fields as may be necessary for the efficient discharge of SFIO functions under the Act.

Rule 4: Terms and Condition of service of:

- a. **Appointment of Director** shall be governed by the deputation rules under the Central Staffing Scheme of Government of India (GOI);
- b. **Experts and other officers & employees** from the CG or the CG or Union territory Government, Public Sector Undertaking, Autonomous Bodies and such other organizations shall be as per the recruitment rules which may be duly notified by the Central Government under article 309 of the Constitution of India; CG may appoint experts or consultants or other professionals or professional firms on contractual basis as per the scheme of engagement of experts or consultants which may be duly approved by CG.

Cross Ref.

Companies (Inspection, Investigation & Inquiry) Rules 2014: Rule 3 & Rule 4

Sec 212 : Investigation in the affairs of the Company by SFIO

Why provision is made?

This provision gives insight into "Investigation ordered by the CG", the grounds for it, and Reporting and Prosecution arising from it.

Applicable to:

All Companies

Compulsory points (To be written in every answer)

1. The **Investigation** shall be called upon under this Section **by CG through SFIO** by appointing such number of officers as required:
 - a. **on receipt of a report of the Registrar or Inspector under section 208;**
 - b. **on intimation of a GM-SR that its affairs are required to be investigated;**
 - c. **CG can pass order suo motu in public interest; or**
 - d. **on request from any Department of the CG or a SG based on supporting evidence.**
2. The **number of Inspectors** assigned for investigation shall be **decided by the Director of SFIO.**
3. If the investigation is passed by CG to SFIO then **any other agency of the CG or SG shall not investigate** such case, or if it already investigating **it should stop the same & pass relevant documents thereto to the SFIO.**
4. **SFIO** shall conduct Investigation in the manner and procedure provided in this Chapter and **report to CG within period** as ordered by CG.
5. **Investigating Officer** as **appointed by Director** shall **have powers u/s 217** to investigate the affairs of the company.
6. The **company, its officers and employees shall cooperate** by giving requisite information & assistance to the Investigation Officer when called upon.
7. **Any person who attracts punishment u/s 447 or 448 for fraud under offences listed in Sec 212(6) shall not be released on bail, or his own bond. But, if the Public Prosecutor has been given opportunity to oppose bail application and the Court is of opinion that person is not guilty and won't be committing any offence whilst on bail, and then such person can be given bail.**
8. **Special Court can also grant bail to person who is under 16 years or woman or sick or infirm.**
9. **Special Court will NOT entertain** any case under this section **UNLESS** the application is made by following persons:
 - a. **Director of SFIO** or
 - b. **Officer authorized by CG in writing.**
10. The **Director of SFIO has reason to believe** that a **person is guilty and punishable, ARREST** such person and as soon as possible **and inform** arrested person of the **grounds of arrest.**
11. **Record in writing the reason of believing** that such person is guilty and **forward to SFIO** the "material" which gives him reason to believe that person is guilty in a sealed envelope.
12. **Person arrested** shall **within 24 hours** (excluding travel time from arrest to court) be **presented with Judicial or Metropolitan Magistrate.**
13. **CG may require Interim Report** from SFIO too. **Once Investigation is done, Investigation Report** thereof is to be submitted to CG by SFIO.
14. Investigation report filed with Special Court will be assumed to be filed by Police Officer u/s 173 of Code of

Criminal Procedure, 1973.

15. After examining Report and taking legal advice, CG may direct SFIO to initiate prosecution of :
 - a. Company
 - b. Officers & Employees (who are or were employed)
 - c. Person directly or indirectly connected with affairs of Company
16. SG, Police, Income Tax, and other agencies shall assist SFIO with information related to offences investigated by SFIO, and vice versa.

Sec 213: Investigation into company's affairs in other cases

Why provision is made?

This provision gives insight into Investigation in cases other than those which are already covered by the preceding sections.

Applicable to:

All Companies

Compulsory points (To be written in every answer)

1. The Investigation under this section is ordered by the Tribunal. Inspector(s) shall be appointed by CG.
2. Application is made to the Tribunal by following number of Applicants along with evidence that there is need for investigation:
 - a. In case of Company with Share Capital:
 - i. Not less than 100 members , or
 - ii. Members holding not less than 1/10th of total voting power.
 - b. In case of Guarantee Company:
Not less than 1/5th of the members on Company's Register of members.
 - c. In case application is made by persons other than above, Tribunal shall first be satisfied that:
 - i. the business of the company is being conducted with intent to defraud, or for a fraudulent, or unlawful purpose, or the Company was "formed" for that purpose
 - ii. persons involved in the formation of the company or management have been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or
 - iii. the members of the company have not been given information including that relating to the calculation of the commission payable to a M.D. / Officer / Manager.
3. Tribunal shall order Investigation after giving Opportunity to be heard to both parties
4. On Report, the guilty persons shall be dealt with under section 447 in case:
 - i. the business of the company is being "conducted" with intent to defraud, or for a fraudulent, or unlawful purpose, or the Company was "formed" for that purpose
 - ii. persons concerned in the formation of the company or management have been guilty of fraud.

Sec 214: Security for payment of costs and expense of Investigation

Why provision is made?

To provide for financial burden on Applicants so as to discourage unfounded Complaints, and meet charges related to Investigation.

Applicable to:

All Companies & All Applicants

Compulsory points (To be written in every answer)

1. Security is applicable to only 2 investigations:
 - i. u/s 210(1)(b) made by CG
 - ii. u/s 213 made by Tribunal.
2. Security to be given before CG appoints Inspector(s) in either case.
3. Security shall not exceed 25,000/-
4. If post Investigation, there is any prosecution, the amount shall be refunded to the Applicant.
5. In case of Investigation u/s 210(1)(b) made by CG the Security Amount differs as follows:
 - i. Turnover < 50 Crore – Rs. 10,000/-
 - ii. Turnover 50 to 200 Crore – Rs. 15,000/-
 - iii. Turnover > 200 Crores - Rs. 25,000/-

Sec 215: Firm, Body Corporate or association not to be appointed as inspector/ only individual to be inspector.

Why provision is made?

CG/ CLT/ ROC being Artificial persons cannot think or work on its own. Thus, there is a need for an individual to be an Inspector.

Applicable to:

Firm, Body Corporate or Association shall not be appointed as Inspectors. **Only individuals can be appointed as Inspector.**

Sec 216: Investigation of ownership of company**Why provision is made?**

To help find out the actual culprit behind the fraud, misfeasance, etc. by investigating the owners of the Company as they are the ones who will actually benefit due to such acts.

Applicable to:

All Companies

Compulsory points (To be written in every answer)

1. The CG may appoint inspector to report on the membership of the Company to determine the true persons:
 - a. Who will be financially interested in the success or failure, whether real or apparent, of the Company or
 - b. Who are able to materially influence or control the policy of the company.
2. The Tribunal may also direct the CG for appointment of an inspector for such investigation & reporting.
3. The CG can decide the scope of investigation viz.
 - a. Matter
 - b. Period of investigation
 - c. Investigation in case of shares or debentures
4. Powers of the Inspector extend to Investigation of any circumstances suggesting any undertaking which can be legal or illegal, binding or not binding by law and relevant for investigation.

Sec 217: Procedures, powers, etc. of inspectors**Why provision is made?**

To define powers of the inspector and procedure for the same.

Applicable to:

All companies

Compulsory points (To be written in every answer)

1. Duty of all officers, employees and agents of the company in case of investigation:
 - a. Maintain & give to inspector all books and papers of the Company
 - b. Assist Inspector for the purpose of investigation in a way reasonably possible.
2. Inspector may demand the books of any Body Corporate for collecting the information during investigation. For this, the inspector shall have proper reason to demand the books.
3. It is the duty of such company to produce all such books to the Inspector & the duty of Inspector to return the books he received within 180 days from the day he received the same.
4. If the inspector further requires the books then he may further demand the same for the purpose of the investigation for 180 days by making order in writing.
5. An Inspector may examine on oath any person referred to above and with prior approval of CG in case of any other person in relation to the affairs of the Company and require them to appear in person. However, in case of investigation u/s 212, the prior approval of Director, SFIO shall be sufficient.
6. The matters examined on oath shall be written & signed by the person and & may be used in evidence against him.
7. The Inspector shall have all powers as are vested in Civil Court of Code of Civil Procedure, 1908 while trying a suit:
 - a. Discovery and production of books of account & other docs at such place & time as may be specified by such person.
 - b. Summoning & enforcing the attendance of persons and examining them on oath; &
 - c. Inspection of books, registers & other documents of the Company at any place.
8. The CG may enter into an agreement with the Government of a Foreign State for reciprocal arrangements to assist in an inspection, inquiry, or investigation under this Act or under the corresponding law in force in State. The application be made subject to such modifications, exceptions, conditions & qualifications as may be deemed expedient for implementing the agreement with that State.

Optional Points (write only if asked)

Contravention & Consequences:

1. Any person who does not comply with the requirements of the ROC or the he will be liable to:
 - a. Jail upto 1 year &

- b. Fine of Rs. 25,000 to Rs. 1,00,000 &
 - c. Vacate office and be deemed to be disqualified from holding office in any other Company.
2. If any person fails without cause or he refuses to:
- a. Produce books or papers which are under his duty to producer; or
 - b. Furnish information which is his duty to furnish;
 - c. Appear before inspector personally to take oath; or
 - d. Answer the question of inspector; or
 - e. To sign the affidavit for his oath.
- Then he shall be liable to:
- a. Jail upto 6 months; and
 - b. Fine of Rs. 25,000 to Rs. 1,00,000; and
 - c. Fine of Rs. 2000 per day for every day of continuation of offence.

Sec 218: Protection of employees during investigation

Why provision is made?

To protect employees from unnecessarily being harassed in the course of Investigation.

Applicable to:

All Companies

Compulsory points (To be written in every answer)

1. If during the course of Investigation or pendency of any proceeding it is proposed to discharge or suspend any employee; or to punish (i.e. dismiss, remove, reduce rank) or change the terms of employment to employee's disadvantage, the same shall be done by permission of Tribunal only.
2. The proposed actions shall be conducted only if the Tribunal permits or if no objection is received from Tribunal within 30 days of application.
3. If the company, other body corporate or person concerned is dissatisfied with the objection raised by the Tribunal, it may, within a period of 30 days of the receipt such objection, prefer an appeal to NCLAT in such manner and on payment of such fees as may be prescribed.
4. The decision of the Appellate Tribunal on such appeal shall be final and binding on the Tribunal and on the company, other body corporate or person concerned.
5. This section shall have an overriding effect on all other law for the time being in force.

Sec 219: Power of inspector to conduct investigation into affairs of related companies, etc.

Why provision is made?

To give powers to investigate in related companies and the persons to trace entire matter of fraud when there is high suspicion about the involvement of related companies in case of fraud.

Applicable to:

All companies

Compulsory points (To be written in every answer)

The Inspector investigating the Company, may on CG approval, extend investigation into affairs of:

1. A body corporate which is the Investigated Company's
 - i. Holding Company, or
 - ii. Subsidiary Company, or
 - iii. Subsidiary of its Holding Company
2. A Body Corporate whose M.D. or Manager was also M.D. or manager of the Investigated Company.
3. A Body Corporate whose BOD comprises of nominees of Investigated Company.
4. A Body Corporate whose BOD is accustomed to act under directions of Investigated Company or it's Directors.
5. Any person who is or has been the Investigated Company's:
 - i. M.D
 - ii. Manager
 - iii. Employee
6. Such investigation shall be carried if results thereof are relevant to Investigation of the Company for which he was initially appointed.
7. Inspector should have been appointed u/s 210/212/213. All the above relations under 1. to 5. shall be existing at "relevant time" of Investigation.

Sec 220 : Seizure of documents by Inspector

Why provision is made?

To clarify the procedure for seizure of documents in case of undergoing Investigation.

Applicable to:

All Companies

Compulsory points (To be written in every answer)

1. The Inspector shall have ground to believe that books and papers relating to Company, Body Corporate, M.D. or Manager are likely to be destroyed, mutilated, altered, falsified or secreted.
2. The Inspector may then:
 - a. Enter the place(s) where such books and papers are kept; and
 - b. Seize them as necessary; and
 - c. Allow the Company to make requisite copies thereof
3. The Inspector can hold these books upto conclusion of Investigation.
4. The books shall thereafter be returned from where and whom they were seized.
5. Before returning these, the Inspector can make copies and affix identification marks thereon.

Sec 221: Freezing of assets of Company on Inquiry and Investigation

Why provision is made?

In order to curb unethical use of assets of the company in specific cases.

Applicable to:

All Companies

Compulsory points (To be written in every answer)

1. Reference shall be made to the Tribunal for obtaining order under this section.
2. Reference shall be made :
 - i. By Central Government; or
 - ii. In connection to any inquiry or investigation; or
 - iii. Complaint by specified number of members u/s 244(1); or
 - iv. Creditor having at least Rs. 1,00,000/- outstanding; or
 - v. Any person with grounds to believe that assets will be used prejudicially to stakeholders' interests.
3. The Tribunal may order restrictions like no transfer, removal, disposal of assets, funds, properties upto max of 3 years.
4. Failure to comply attracts:
 - i. To Company- Fine of Rs. 1,00,000/- to Rs. 25,00,000/-
 - ii. To Defaulting officers- Fine Rs. 50,000/- to Rs. 5,00,000/-
Imprisonment to 3 years
Or both

Sec 222: Imposition of Restrictions upon Securities

Why provision is made?

In order to aid investigations w.r.t. Securities issued of the company.

Applicable to:

All Companies

Compulsory points (To be written in every answer)

1. The Tribunal in connection to any investigation u/s 216; or on a complaint by any person has reason to find out "facts about securities issued or to be issued".
2. Also, it feels that prior restrictions are needed for finding out such "facts".
3. Then, for a maximum of 3 years, the Tribunal can impose such restrictions.
4. Failure to comply with "restrictions" attracts:
 - i. To Company- Fine of Rs. 1,00,000/- to Rs. 25,00,000/-
 - ii. To Defaulting officers- Fine Rs. 25,000/- to Rs. 5,00,000/- or Imprisonment to 6 months or Both.

Sec 223: Inspector's Report/ Investigation Report

Why provision is made?

To give legality to the Report of the Inspector.

Applicable to:

All Companies

Compulsory points (To be written in every answer)

1. This section is not applicable to Investigation by SFIO.
2. On conclusion of Investigation, the Inspector is bound to file "Final Report" thereon.
3. If directed by CG, he may also be needed to file "Interim Report".
4. The Report shall be Written or Printed as the CG directs.

5. Copy of Report can be obtained through application to CG.
6. To be admissible as legal evidence, Report shall be authenticated.
7. "Authentication" can be by
 - i. Seal of the Company so Investigated.
 - ii. Certificate of Public Officer having custody of Report.

Sec 224: Actions to be taken pursuant to inspector's Report

Why provision is made?

To detail the steps which follow in the aftermath of a Investigation Report.

Applicable to:

All Companies

Compulsory points (To be written in every answer)

1. If Investigation Report names any person guilty and criminally liable to CG, such person shall be prosecuted.
2. Officers and Employees are bound by this section to assist CG in prosecution.
3. On basis of a Report u/s 223 if it expedient so to do, and
If circumstances exist as mentioned u/s 213, (i.e. formation and/or conduct of Company is fraudulent)
Then, the CG shall authorize to be presented to Tribunal:
 - i. Petition for winding up on 'just and equitable' grounds, or
 - ii. Application u/s 241, or
 - iii. Both.Unless, such winding up is already ordered.
4. Where any company/ body corporate, whose Investigation Report, requires proceedings for:
 - i. Recovery of damages in respect of fraud, misfeasance or other misconduct in promotion, formation or management; or
 - ii. Recovery of property, misapplied or wrongfully retained,Then the CG shall itself bring such "proceedings for winding up".
5. The CG shall be indemnified for cost and expenses of proceedings by Company/Body Corporate.
6. Where Investigation Report states fraud has taken place, and it benefited unduly any Director, KMP, other Officer, Person or Entity, the CG may file to Tribunal for disgorgement (to get rid) of such benefit from the beneficiary. And to hold them personally liable without limitation.

Sec 225: Expenses of Investigation

Why provision is made?

To provide for the payment of costs of different nature, and clarify the doubt as to who is liable to pay for it.

Applicable to:

All Companies

Compulsory points (To be written in every answer)

1. Expenses of Inspection shall be paid firstly by the CG.
2. Expenses referred in this section do not include Security provided u/s 214 which is borne by Applicant (refunded to them if end result is Prosecution).
3. The Expenses shall later be reimbursed to CG by:
 - i. Person who is convicted in prosecution, or ordered to pay damages, or restore property. "Extent" shall be determined by the court itself.
 - ii. Any Company or Body Corporate on whose name the proceedings are brought. "Extent" shall be sum recovered.
 - iii. If 'prosecution' did not result out of investigation:
 - a. Company, M.D., Manager dealt with by the Report, and
 - b. Applicants (where Inspector was appointed u/s 213).

Sec 226: Voluntary Winding Up not to stop Investigation

Why provision is made?

To categorically state that Winding Up shall not be solution to correct offences committed and Investigation shall proceed as normal even in Winding Up and offenders shall be liable for those offences.

Applicable to:

All Companies

Compulsory points (To be written in every answer)

1. The Investigation shall not be stopped on grounds that:
 - i. Application for relief in cases of Oppression u/s 241 is made; or

- ii. Special resolution is passed by the Company for voluntary Winding Up; or
 - iii. Proceedings for Winding Up are pending at the Tribunal.
2. Where the proceeding was pending at the Tribunal, if Winding Up order is passed, the Tribunal shall be informed about the pendency of the Investigation by the inspector.
3. The director or employee of Company cannot be absolved from participating in investigation, or any liability arising therefrom, just by virtue of Winding Up order being passed.

Sec 227: Legal Advisors and Bankers not to disclose certain information

Why provision is made?

To maintain and protect the lawyer-client privileges. Such that they are in no responsibility to disclose the privy information. Hence making it possible to seek proper counsel.

Applicable to:

All Companies

Compulsory points (To be written in every answer)

The following shall **NOT** be disclosed to Tribunal, CG, Registrar, or Inspector:

- i. Any privileged communication made to a legal advisor in that capacity, shall not be disclosed by that legal advisor.
- ii. Bankers of any Company, Body Corporate or other person shall **NOT** disclose the affairs of **ANY OTHER** of their customers.

Sec 228: Investigation, etc, of foreign companies

Why provision is made?

To avoid separate Act and provisions needed to cover and deal with Foreign Companies

Compulsory points (To be written in every answer)

The Chapter applies to the Inspection, Inquiry or Investigation of foreign companies too.

Sec 229: Penalty for furnishing false statement, mutilation, destruction of documents

Why provision is made?

To provide course of action to deal with a severe matter of defacing of document.

Compulsory points (To be written in every answer)

The following offences shall be dealt with u/s 447:

- i. A person who does or is party to destruction, mutilation, falsification, concealment, tampering, unauthorized removal of documents relating to property, assets or affairs of the Company.
- ii. A person who makes or is party to making of false entry in any document concerning the Company.
- iii. A person makes explanation knowing it to be false.

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Chapter 5: Compromise, Arrangement & Amalgamation

Sec 230 & 231: Compromise & Arrangement

Why provision is made?

The process of compromise is applied when there is a severe dispute between company and stakeholders. The process of compromise & arrangement may look like a negotiation where Tribunal is a Mediator and decides the terms of compromise & arrangement.

5.1

Compulsory points (To be written in every answer)

Step 1 - Application to NCLT:

- i. Compromise is between **Company & Creditor/ Member**
- ii. The **application** can be made by:
 - a. **Company**
 - b. **Member**
 - c. **Creditor**
 - d. **Liquidator** in case of Winding Up
- iii. The **scheme** (Terms) of Compromise & Arrangement **shall be attached** to application.

Step 2 - Disclosure by applicant to NCLT

- i. All **Material facts**, Latest Financial Position, Auditors Report, Investigation.
- ii. **Reduction of share capital** in CAA.
- iii. **Scheme of corporate debt restructuring**, Creditor's Responsibility Statement, safeguards of other creditors, satisfactory liquidity, compliance of RBI guidelines, valuation report on shares & property of company.

Step 3 - Notice of Meeting on order of NCLT

- i. Notice shall be sent **to all creditors, members**.
- ii. **Annexure** shall contain scheme, valuation report explaining effect on creditors, KMP, Promoters, BOD, Debenture holders.
- iii. Such notice & documents shall be **published on website of company & to SEBI** in case of **listed company**.
- iv. The advertisement of the notice shall state the **date of disclosure of scheme at the RO of company**.

Step 4 - Voting on C&A

- i. The member may vote in meeting by **themselves or by proxy**.
- ii. Members can also vote by **postal ballot within 1 month from receipt** of such notice.
- iii. **Objection** to such scheme can be made by:
 - a. Min **10% Shareholders** or;
 - b. Min **5% of outstanding debt**.

Step 5 - Notice to Authorities

- i. Notice and all the documents prescribed shall be sent to the **CG, Income-Tax Authorities, RBI, SEBI, ROC, Respective stock exchanges, Official Liquidator, CCI** and such other **Sectoral Regulators** or Authorities.
- ii. Such Authorities shall make **representations within 30 days or no objection shall be presumed**.

Step 6 - Approval of C & A

- i. The approval of C&A shall be given by **majority in number & 75% of value** of each **class of creditors & members** separately in **person, by proxy or postal ballot**.
- ii. The **Tribunal** has **power to sanction or reject** the same C&A.
- iii. If **NCLT approves** such C&A then such scheme shall be **binding on the Company, Creditors, Liquidators, BOD, and Contributories**.

Step 7 - Details of Order of NCLT

- i. **Conversion of Preference to equity** and payment of **arrears of dividend**.
- ii. **Protection of class of creditors**.
- iii. **Variation of shareholders rights to be approved u/s 48** (Class Meeting – SR & Objection by 10%).
- iv. Proceedings **pending before NCLT for Sick Companies**.
- v. Such other matters including **exit offer to dissenting shareholders**.

Step 8 - Filing of Order of NCLT with ROC

The order of Tribunal shall be **filed with the ROC within 30 days** of the receipt of the order along with following:

- | | |
|-----------------------------|-------------------------|
| a. Scheme of C&A | b. Audited FS |
| c. Auditors Report | d. MOA & AOA |

Step 9 - Miscellaneous Provisions

- i. NCLT may dispense the meeting of creditor if **90% value of creditors agrees** to C&A by affidavit.

- ii. Buy-Back under C&A will require compliance of sec 68.
- iii. C&A can include takeover offer but it shall be as per SEBI in case of Listed Company.
- iv. Any aggrieved party can apply to NCLT against takeover offer other than for Listed Cos.

Step 10 - Implementation, Supervision & Modification

The NCLT after sanctioning the scheme can:

- i. Supervise the implementation of C&A and
- ii. Give directions or make such modifications in the C&A as it considers necessary.

Step 11 - Winding up

The NCLT on satisfaction of non-working of the C&A scheme even after modifications, then:

- i. NCLT on its own or;
- ii. On application by interested person in affairs of the Company.
- iii. Make an order of winding up u/s 273.

Sec 232: Amalgamation by sale of undertaking

For such amalgamation approval of Sec 230 is required in Transferor & Transferee Cos, both.

Application for Reconstruction or merger:

To NCLT for the purpose of:

- a. Merger or Amalgamation of 2 companies
- b. Transfer of Undertaking by 1 Company to another.
- c. Demerger (Division of undertaking)

On such application NCLT will call a meeting of members & Creditors to approve the Amalgamation or Demerger.

Circulation of information & notice of meeting

- a. Give a notice to members & creditors with the draft of merger accepted by BOD.
- b. File such a notice and draft to ROC.
- c. Details regarding effects of C&A and exchange ratio.
- d. Property valuation report by Expert.
- e. Other accounting statements.

Order of Tribunal

- a. Transfer of undertaking.
- b. Transfer of shares and Purchase Consideration.
- c. Transfer of pending litigations.
- d. Dissolution of Transferor Company.
- e. Any report regarding dissenting shareholders and non-resident shareholders.
- f. Transfer of employment contracts.

Effect of order of Tribunal

- a. Property shall stand transferred
- b. File all details with ROC (step 8 of C&A (Sec 230))
- c. Declare effective date of scheme
- d. Shall file a statement of amalgamation every year certified by CA where process runs over many years.

Contravention

Transferor &/or Transferee Co. shall be punishable fine of Rs. 1 Lac to Rs. 25 Lacs. Officer will liable for jail upto 1 year and fine from Rs. 1 Lac to Rs. 3 Lacs.

Sec 233: Amalgamation by sale of shares

Proposed schemes of amalgamation

- a. The Acquirer Co. shall propose a scheme of acquisition inviting objections & suggestions from ROC & Liquidator within 30 days.
- b. Objections & Suggestions received shall be considered in GM and approved by 90% of total no. of shares.
- c. Both companies shall give declaration of solvency to respective ROCs.
- d. 90% of value of creditors shall also approve the scheme in a meeting for which notice of 21 days shall be given.

Filings and Orders

- a. The Acquirer Co. shall file a copy with CG, ROC, and Liquidator where its Registered Office is situated.
- b. If CG receives an objection from ROC or Liquidator, shall file the same with NCLT within 60 days of receipt.
- c. The NCLT shall pass an order by recording a reason to either accept or reject the scheme.
- d. If CG does not have any objection then it shall not make an application to NCLT.

Effect of Registration & Approval

- a. The order shall be filed with ROC with 30 days – Scheme, audited FS, Audit Report, and MOA & AOA.
- b. Here, Acquiree Co. will be either WOS of Acquirer or it will be dissolved.
- c. All Assets & Liabilities, Proceedings, Charges, Contracts of Acquiree will be transferred to Acquirer.
- d. The Acquirer Co. shall file application with ROC with the scheme to increase the Authorised Capital subject to Amalgamation.

Sec 234: Merger or Amalgamation of Company with Foreign Company

Compulsory points (To be written in every answer)

Foreign Co. with Indian Co.: after obtaining prior approval of RBI and after complying with the provisions of Sections 230 to 232 of the Act and relevant rules.

Indian Co. with Foreign Co.:

- i. An Indian company may merge with a Foreign Co. incorporated outside India in any of the **jurisdictions specified by the CG in consultation with RBI** and after complying with provisions of Sections 230 to 232 of the Act and relevant rules.
- ii. The **scheme** of merger may provide for the **payment of consideration to the shareholders** of the merging company as per the drawn scheme, in **Cash or Depository Receipts or Partly in Cash or Depository Receipts**.

Sec 235: Power to acquire shares of shareholders dissenting from Scheme or Contracts approved by majority.

Why provision is made?

To ensure that the entire business is transferred to the new majority shareholder, under terms and conditions to which old majority shareholders have no objection.

Applicable to:

All Companies

Compulsory points (To be written in every answer)

1. Basic requirement for acquisition:

- a. The scheme of transfer shall be approved by holders of **not less than 90% in value** whose transfer is involved.
- b. This approval shall be **received within 4 months** after making an offer by Transferee Co.
- c. Shares already **held by Transferee Co.**, or by **nominee** of transferee Co. or its **subsidiary** shall **not be counted in above**.
- d. Transferee Co. shall **express its desire to purchase the shares of dissenting shareholder within two months** after the **expiry** of the said **four months** by giving notice in the prescribed manner.

2. Order of Tribunal to acquire shares of dissenting shareholders

If an **application is not made by the dissenting shareholder** to the Tribunal, within **one month** from the date on which the notice was given and if the **Tribunal thinks fit to order acquisition** of shares held by dissenting shareholders, the **Transferee Co. shall be entitled to and bound to acquire** those shares.

3. Application by dissenting shareholders

1. Based on application received from dissenting shareholders, **Tribunal can reject** the **scheme & amalgamation** if it feels that scheme is **unfair**.
2. The Transferor Co. shall **register the Transferee Co.** as the holder of those shares **and within a month** of date of registration, **inform the dissenting shareholders** of such **registration** and the **receipt of consideration** payable to them by Transferee Co.

4. Separate Bank account for disbursement to entitled shareholders

Amount received by Transferor Co. shall be paid into **separate bank account**. Such sum received or any other **consideration** shall be held as a **Trust** and be disbursed to the entitled shareholders **within 60 days**.

5. Scheme/ Contract made before the commencement of Act

Scheme/ Contract in earlier Act will continue as it is.

Sec 236: Purchase of Minority Shareholding

Why provision is made?

To lay down procedure for actions in Sec 235.

Applicable to:

All Companies

Compulsory points (To be written in every answer)

1. When an acquirer becomes a **registered holder of 90 %** or more of the issued equity share capital of a company by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, such acquirer, shall **notify the company of their intention to buy the remaining equity shares**.
2. They shall **offer to buy the equity shares held by minority shareholders** at a price determined on the basis of **valuation by a registered valuer** in accordance with such rules as may be prescribed.
3. The majority shareholders shall **deposit** an amount equal to the value of shares to be acquired by them in a **separate bank account** operated by the transferor company for **at least one year** for payment to the minority shareholders and such amount shall be disbursed to the entitled shareholders **within sixty days**.
4. The disbursement shall continue to be made to the entitled shareholders for a period of one year who could not be paid in the sixty days.
5. Transferor Company shall act as a **Transfer Agent** for receiving and paying the **price** to the minority shareholders and for taking & delivering such **shares** to the majority.
6. If the shares are **not delivered within the specified time** the **share certificates** shall be deemed to be **cancelled**

and the transferor company shall be authorised to issue shares in lieu of the cancelled shares and complete the transfer in accordance with law and **make payment of the price out of deposit in advance**.

- In case of **deceased** shareholders whose heirs, successors, administrators or assignees **have not been brought on record by transmission**, the **right** of such shareholders to make an offer for sale of minority equity shareholding shall **continue** and be available for a period of **three years** from the date of acquisition.
- Where the shares of minority shareholders have been acquired and as on or prior to the date of transfer, the shareholders holding **75% or more** **negotiate or reach an understanding on a higher price** for any transfer, proposed or agreed upon the **majority shareholders shall share the additional compensation** so received by them with such minority shareholders on a **pro rata basis**.
- Though the shares of the company of the residual minority equity shareholder had been **delisted** and **period of 1 year** or the period specified in the regulations made by the SEBI Act has **elapsed majority shareholders shall continue to apply to the Residual Minority Equity Shareholders**.

Sec 237: Power of CG to provide for Amalgamation of Cos. in Public Interest

Compulsory points (To be written in every answer)

- CG may order the amalgamation of 2 companies if it thinks it necessary in **Public Interest** by notifying in the **Official Gazette**. The **property, powers, rights, interests, authorities**, etc. shall stand **transferred**.
- Legal proceedings** by or against the transferor company along with **all consequential provisions** shall be **continued by the Transferee Company**.
- The **rights of every member, creditor, and debenture holder shall remain the same** in the Transferee Co., if however, the rights or interests are **reduced** they shall be **compensated** to that extent. This shall be **assessed** by such Authority as prescribed which shall be **published** in the **Official Gazette**.
- Any person **aggrieved by the assessment** shall **within 30 days** from date of publication of assessment **file an appeal to the Tribunal** and the assessment shall be made by the Tribunal which shall be final and **non-questionable**.
- Before passing an order the CG shall:**
 - Send a **copy of the proposed order** (draft) to **both** the companies
 - time for preferring an appeal has expired** or such appeal has been **finally disposed off**; and
 - CG shall make **modifications** in the order as it deems fit based on **suggestions and objections received**, **within a period not being less than 2 months** from the date on which the copy aforesaid is received by that Company.
 - The **final copies** of every order as soon as it is made shall be **laid before each House of Parliament**.

Sec 238: Registration of offer of Schemes involving transfer of shares

Applicable to:

All companies

Compulsory points (To be written in every answer)

- Every **circular** containing such **offer & recommendation to members** of Transferor Company by its directors to accept such offer shall be **accompanied by such information in manner prescribed in Rule 28**.
- Every such **offer** shall contain a **statement on behalf of Transferee Co. disclosing steps** it has to take ensure necessary **cash will be available**.
- Every such **circular** shall be **presented to the ROC for registration** and shall be issued only after registration.

Sec 239: Preservation of Books & Papers of Amalgamated Companies

Compulsory points (To be written in every answer)

- The **books and papers** of an **Amalgamated Company or Acquiree Company** under this Chapter shall not be **disposed of without the prior permission of CG**.
- The **CG may before granting such permission, appoint a person** to examine the books and papers or any of them to ascertain whether they contain any **evidence of offence** in connection with the promotion or formation, or the management of the affairs, of the transferor company or its amalgamation or the acquisition of its shares.

Sec 240: Liability of offices in respect of offences committed prior to merger, amalgamation, etc.

Compulsory points (To be written in every answer)

The liability in respect of offences committed under this Act by the officers in default, of the transferor company prior to its merger, amalgamation or acquisition shall **continue after such merger, amalgamation or acquisition**.

Chapter 6: Oppression & Mismanagement

Cases on Oppression

Needle Industries (India) Ltd Vs. Needle Industries Newey (India) Holding Ltd.

An act which is contrary to the law may not necessarily be in violation of the law. An unwise or careless act does not imply oppression.

Sindhri Iron Foundry (P) Ltd.

A single act of oppression having continuous impact could also constitute oppression

Rao (V.M.) v. Rajeshwari Ramakrishnan

Oppression complained off must affect a person in his capacity or character as a member of the company; harsh or unfair treatment in other capacity, e.g., as a director or a creditor is outside the purview of this chapter.

Seth Mohanlal Ganpatram Vs. Sayaji Jubilee Cotton & Jute Mills Co. Ltd

1. Illegal, Invalid and irregular acts if not oppressive to any shareholder or prejudicial to the interest of the company can be set aside in petition u/s 241.
2. The exercise of the power under law or doing of the act prescribed by the law, even if coercive shall not amount to oppression.

Chander Krishnan Gupta Vs. Pannalal Girdhari Lal (P) Ltd.

Non-declaration of dividend not amount to oppression.

Rashmi Seth Vs. Chemin (India) Pvt. Ltd.

The illegal issue of the shares turning the majority in the minority is oppressive in itself. Such allotments are set aside. Thus section 397 can be used by majority of the shareholders on oppression against them.

V Sebastian Vs City Hospital Ltd; Jalandhar Chakravorthy Vs. Power Tool & Appliances Co Ltd.

The majority can also claim the relief u/s 241.
Increase or decrease in the capital of the company shall not be called as oppression until and unless it changes the pattern of shareholding and turns out the majority in the minority.

Allianz Securities Ltd. Vs. Regal Industries Ltd; Shantidevi Gaikwad Vs. Sangramsingh P. Gaikwad

Omission to give the notice of the meeting is also called as oppression. Not sending the notice of the meeting and passing of the resolution intentionally is also the act of oppression.
Giving the short notice of meeting is not oppression. The provisions of the act regarding the length of the notice are directory and not mandatory.

Cases on Mismanagement

SM Ramakrishna Rao Vs. Bangalore Race Club Ltd.

Violation of the condition of MOA by person in-charge of Management leads to mismanagement.

Malayalam Plantations (India) Ltd.

Selling of the asset of the company without complying with requirements u/s 180 at low price is act of mismanagement.

Suresh Kumar Sangai Vs. Supreme Motors Ltd.

Dispute among directors resulting in serious prejudice to the interest of the company.

RS Mathur Vs. HS Mathur

The application about the past acts or wrong done shall not be maintained. Mismanagement shall be present and continuous.

Sec 241: Criteria of member to apply

Applicable to:

All Companies

Compulsory points (To be written in every answer)

1. **Any member conferred with a right to apply u/s 244 (given below) may apply to Tribunal to complain that:**
 - a. Affairs of the Company is being conducted in a manner which is prejudicial or oppressive to:
 - Public Interest or;
 - him or any other member or;
 - Company
 - b. Material change in the management or control whether by change alteration in BOD or Manager or ownership of the Company's shares or membership (No share capital Co.) which makes it likely that the affairs of the company will be conducted in a detrimental manner.
2. **CG to apply suo motu to Tribunal** when CG is of the opinion that Company's affairs are being conducted prejudicially.

Sec 244: Right of members to apply

Compulsory points (To be written in every answer)

- Company having share capital:** Lower of: a. 100 members; b. 1/10th of total no. of members; c. members holding not less than 1/10th of issued share capital.
- Company not having share capital (i.e. Guarantee Company):** not less than 1/5th of total number of members.
- However, on application, Tribunal may waive such requirement stated above and enable members to apply u/s 241.
- Member making application on behalf of other members shall obtain consent in writing of the rest of the members applying to the same regards.

Bomber

Analysis of members making application

Persons	Can make application or not? & How?
Unpaid calls on shares	No
Joint Holders	Yes, but counted as 1 member
Member in case of Dematerialized securities	Yes, but by Beneficial Owner not Depository
Preference Shareholders	Yes
Share Warrant holder	No, because he is not a member
Transferee until transfer is registered	No, until transfer is registered
Holding decree for rectifying register of members	Yes, though his name is not on register of members
Legal Representative of Deceased member	Yes, even before transmission of shares

Cse laws:

Jagdish Chandra Mehra Vs. New India Embroidery Mills: The requirement of the minimum shareholding is applicable only at time of making application. If some of the applicant cease to be member after making application does not revoke the application.

Sayedabad Tea Company Ltd. Vs. Saarendra Nath Ghattak: The name of the applicant struck off from the registrar of member for unstamped transfer will not make application invalid.

Makhanlal Jain Vs. Amrit Banspati Company Ltd: The consent of all the members shall be taken in writing before making application. The consent taken after making application is ineffective.

Shanker Vs. South Indian Concerns Ltd: Only giving consent is not important. Consent must show application of mind for giving consent.

Rajahmundri Electric Supply Corporation Vs. Nageshwara Rao: The withdrawal of the consent during the proceeding and after application does not affect the validity of the application.

Sindri Iron Foundry Pvt Ltd: Company Law Tribunal can intervene if majority proves about the oppression on them.

242: Order passed by the tribunal

Order by Tribunal against:

Shareholding & Membership	Management	3 rd Party
Sale of shares by one member to other	Terminate or Modify the agreement of director/ Manager	Conduct of affairs in future
Reduction of Capital	Recover undue gain from any Director/ Manager & transfer it to IEPF/ Victims	Impose cost and any other order
Restrict transfer/allotment of shares	Appointment of Nominee Director Manner of appointment of New BOD/ Manager – Sec 163	Set aside any contract of goods, services, property and payment of 3 last months before application.

Powers of CLB

General Relief: Pass an order to end Oppression & Mismanagement.

Interim Order: - Own discretion & on application made by part to proceeding.
- May contain conditions as required by CLT.

Alter MOA/ AOA: - To end Oppression & Mismanagement.

- Alteration shall be valid even if it is inconsistent with Companies Act, 2013.
- Alteration inconsistent with CLT shall require approval of CLT.

• Every order of Tribunal shall be filed with ROC original or altered within 30 days.

• **Contravention:** Penalty ≤ Rs. 25000 to 1 Lac; Jail ≤ 6 months..

245: Filing of application before the Tribunal on behalf of the members or depositors

Compulsory points (To be written in every answer)

1. Application to Tribunal shall be made by:

Company having share capital: Lower of: a. 100 members; b. 10% of total no. of members or c. members holding not less than 10% of issued share capital.

Company not having share capital (i.e. Guarantee Company): not less than 1/5th of total number of members.

Depositors: 100 Depositors or 10% of total no. of depositors or 10% of issued deposit holders.

2. Tribunal shall consider:

- Whether member or depositor is acting in good faith?
 - Any evidence before it as to the involvement of any 3rd person
 - Whether the cause of action is one of member's or depositor's right?
 - Any evidence before it as to the views of the members or depositors of the Company
3. If the Application filed is **frivolous or vexatious** then application is **rejected**, notice to the **applicant** is sent to **bear the cost**.
4. If application is **accepted**, Notice to all members and depositors is given, all similar applications are consolidated into one, no similar application is allowed during the same and cost will be paid by company or defaulting party.

5. Tribunal shall order either of the following:

Against MOA/AOA - Restrict ultra-vires against MOA/ AOA; Restrict from committing breach of any provision; Resolution of alteration is void.

Against Members resolution - Restrict companies from acting against resolution of the members; Restrict companies from doing any act against the law.

Others – Claim damages from Company or director; Auditor or Audit firm; or Expert, Advisor or Consultant.

Sec: 243 Termination or modification of agreements

Compulsory points (To be written in every answer)

1. If an order u/s 242, **terminates, sets aside or modifies an agreement** referred to in 242(2) then:
 - a. **No compensation shall be paid to any such director or manager or officer** of the company;
 - b. Such MD, director or manager of the company shall not be eligible to be appointed as the director of the same company unless approved by tribunal.
2. Tribunal shall **not grant leave** under this clause until notice of the intention to apply for leave has been given to **Central Government** and that Government has been given a **reasonable opportunity of being heard** in the matter.
3. Contravention: Imprisonment ≤ 6 months or Fine ≤ Rs 5 Lac or Both.

Chapter 8: Removal of Name of companies

Sec 248: Removal of Name of Companies from Register of Companies

Why provision is made?

To lay down finalising actions resulting in bringing the status of Company to an end.

Applicable to:

All companies

Compulsory points (To be written in every answer)

Power of Registrar:

1. Where the Registrar believes that -
 - a. A company has **failed to commence its business within 1 year of its incorporation** or;
 - b. A company is **not carrying on any business for a period of 1 immediately preceding FY & has not applied** within such period for obtaining the status of a **dormant company** under section 455.
2. He shall send a **notice to the company and all the directors** of the company about his intention to remove the name of the company from the register of companies and requesting them to send their representation along with copies of the relevant documents, if any.
3. The **representation** shall be sent within a period of **30 days** from the date of the notice.

Application to Registrar by company for removal of name:

1. A co. may after paying off all its liabilities pass a **special resolution or consent of 75% members** in terms of paid up share capital file an application in the prescribed manner to the Registrar for removal of Co.'s Name.
2. Registrar shall cause a **public notice** to be issued in the prescribed manner.

Exemption to section 8 companies: from section 248(2).

Strike off of names from register of companies: On **expiry of the time mentioned in the notice**, the ROC may, strike off its name from the register of companies **and publish notice** thereof in **official gazette**

Provisions for the realization of amount: 1. The ROC before passing an order shall ensure that **sufficient provision** has been made for the realization of amount **due to the company** for the payment and discharge of its liabilities and obligation by the company within a reasonable period of time.

2. Obtain **necessary undertakings** from MD, or other persons in charge of Management Company.
3. However, the company shall make its assets available for the payment or **discharge of all its liabilities** even after the date of the order removing the name of the company from the register of companies.

Persistence of the liability The liability of every **director, manager or other officer** who was exercising any power of management and every **member** shall continue and may be enforced **as if the Co. had not been dissolved**.

Not affecting the power of tribunal: The power of Tribunal **to wind up** of such a company shall not be affected.

Sec 249: Prohibition to remove name in case of Merger & Amalgamation of Companies

Why provision is made?

To provide specific instances where the application for removal of name is not admissible.

Applicable to:

All companies

Compulsory points (To be written in every answer)

Non acceptance of application in specific cases: An application to remove the name of the company shall not be made if at any time in the previous 3 months, the company:

- a) **Changed its name or shifted** its registered office
- b) Made a **disposal** for value of property or rights
- c) Engaged in any **other activity**
- d) Made an **application to the Tribunal** for the sanctioning of a **compromise** or matter that has been not concluded
- e) is being **wound up** under **chapter XX** of this Act or under **IBC, 2016**

Violation of above conditions on filing of application u/s 248: **punishable with fine which may extend to Rs. 1 Lac.**

Rights of registrar on **non-compliance of conditions** by the company: The Application filed under section 248(2) shall be **withdrawn by the company or rejected by the ROC**.

Sec 250: Effect of the company notified as dissolved

Compulsory points (To be written in every answer)

On and from the date mentioned in the notice Company shall **cease to operate** as a company and **Certificate of incorporation** issued to it shall be **deemed to have been cancelled** from such date

Sec 251: Fraudulent application for the removal of Name

Compulsory points (To be written in every answer)

1. On finding that an application by a company has been made with the:
 - i. Object of **evading the liabilities** of the company, or
 - ii. With the intention to **deceive the creditors**
 - iii. To **defraud** any other person
2. The **persons in charge** of the management of the company shall:
 - i. Be **jointly and severally liable** to any person or persons who had incurred loss or damage
 - ii. Be **punishable for fraud** in the manner as provided in **section 447**.
3. The registrar may also recommend prosecution of the person responsible for the filing of an application.

Sec 252: Appeal to Tribunal

Compulsory points (To be written in every answer)

Aggrieved person to file an appeal against the order of registrar:

1. **Reasonable opportunity of representation shall be given to registrar** for making presentation
2. Company name has been **struck off** from the register of companies either **inadvertently** or on the basis of the **incorrect information** furnished by the company or its directors, which requires restoration in the register of companies, **ROC may file an application to Tribunal seeking restoration within a period of 3 years** from the date of passing of the dissolving order u/s 248

Order of Tribunal to be filed with register: A copy of the order passed by the Tribunal shall be filed by the company with the ROC **within 30 days** from the date of the order. The ROC shall cause the name of the company to be **restored in the register of companies** and shall issue a **fresh certificate of incorporation**.

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Chapter 11: Winding Up

Sec 271: Circumstances in which company may be wound up by Tribunal

Compulsory points (To be written in every answer)

- a. company is **unable to pay its debts**
- b. **company passes special resolution to be wound up** by the Tribunal;
- c. 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. **Tribunal has ordered the winding up** of the company under Chapter XIX;
- e. On application by **registrar/ person authorized by CG**, the tribunal is of opinion that:
 - i. company has **conducted fraudulent affairs** or
 - ii. company is formed for **fraudulent purpose** or
 - iii. persons in **formation or management of affairs** of company are found guilty and it is proper to wind up the company.
- f. company has made a **default in filing its financial statements or annual returns with ROC for immediately preceding 5 consecutive FYs**; or
- g. **Tribunal is of the opinion** that it is **just and equitable** that the company should be wound up.

10.1

Optional Points (write only if asked)

A company shall be deemed to be **unable to pay its debts**:

- a. If **creditor** to whom company is indebted for **amount exceeding 1 lakh** has sent **notice to registered office** demanding amount due from company **but the company has failed**:
 - i) to **pay it within 21 days** after receipt of such demand or
 - ii) to provide **adequate security or restructure or compound the debt to reasonable satisfaction** of the creditor;
- b. If any **decree or order of court or tribunal** which is in **favour of creditor of company** is **returned unsatisfied** in whole or part; or
- c. If it is proved to the **satisfaction of the Tribunal** that the company is unable to pay its debts. But here, the Tribunal should take into account the contingent and prospective liabilities of the company.

Sec 272: Petition of Winding Up

1. The following are permitted to present the petition for Winding Up of company, to the Tribunal:
 - i. **Company** - A petition must be **accompanied by a statement of affairs** in prescribed form and manner, before submitting to the Tribunal.
 - ii. **any contributory or contributories** - 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. Contributory can file petition **ignoring** the following points:
 - a. He may be the **holder of fully paid-up shares**.
 - b. The company **may have no assets at all**.
 - c. The company **may have no surplus assets left for distribution** among the shareholders after the satisfaction of its liabilities.
 - iii. **any creditor or creditors, including any contingent or prospective creditor or creditors** - Contingent or prospective creditor shall **obtain permission of the Tribunal** before petition is admitted. Tribunal shall grant such leave if in its opinion there is prima facie case for winding up and reasonable security for costs has been given.
 - iv. all or any of the persons specified in clauses (a), (b) and (c) together;
 - v. **Registrar** - Registrar shall be entitled to present a petition for winding up u/s 271 (except clause (a) or (e)) after obtaining the **prior sanction of the CG**. CG shall give the Company **reasonable opportunity of making representations**, before approving such sanction. Registrar shall **not present a petition** on the ground that the company is unable to pay its debts **unless** 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** it appears to him that the company is unable to pay its debts.

- vi. any person authorised by the CG in that behalf; or
 - vii. in case falling u/s 271(b), by the CG or a State Government.
2. In all above cases, 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.

Sec 273: Powers of Tribunal

1. The Tribunal may, on receipt of a petition for winding up u/s 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
2. Time limit of 90 days from the date of filing of petition for the above orders is prescribed.
3. Before appointing a provisional liquidator, Tribunal shall give notice to the company, and give a reasonable opportunity to make its representations, if any. Tribunal can dispense the notice for special reasons which shall be recorded in writing.
4. Tribunal shall not refuse to make a winding up order on the ground 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.
5. 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.

Sec 274: Directions for Filing Statement of Affairs

1. Tribunal, if prima facie satisfied that a case for winding up is made by petitioner other than the Company; may direct the Company to file its objections along with a statement of its affairs within 30 days of the order of winding up.
2. Extension of time for filing: Further 30 days in a situation of contingency or special circumstances.
3. Tribunal may direct the petitioner to deposit reasonable security for costs as a pre-condition to issue directions to the company.
4. Failure to file such statement of affairs by the Company, shall result in:
 - i. Forfeiture of the Company's right to oppose the petition for winding up, and
 - ii. Directors and Officers found responsible shall be punishable:
 - a. Imprisonment upto 6 months; or
 - b. Fine 25000 upto 500000; or
 - c. Both
5. Directors and Officers of the company, within 30 days of order by Tribunal, shall submit to the liquidator, books of accounts, completed and audited at Company's cost upto date of order.
6. Complaint to be filed before "Special Court" by,
 - i. Registrar
 - ii. Provisional Liquidator
 - iii. Company Liquidator
 - iv. Person authorized by Tribunal

Sec 275: Company Liquidator and their Appointment

1. Provisional Liquidator u/s 273(1)(d) is appointed up until Winding Up order is made. At the time of passing order for the Winding Up, Tribunal appoints the Company Liquidator who is an Official liquidator or liquidator from a panel maintained for that purpose.
2. Such appointment is made from amongst the insolvency professionals registered under IBC, 2016.
3. Provisional Liquidator shall have same powers of a liquidator, except where the Tribunal restricts such power via the Order appointing such person or subsequent orders.
4. Terms and conditions of appointment and fees payable shall be determined by the Tribunal. Such decision is based on Company size; qualification and experience of professional; and task to be performed.
5. Professionals shall be removed from 'panel of professionals' on grounds of misconduct, fraud, misfeasance,

breach of duties, professional incompetence. Opportunity of being heard shall be given.

6. Provisional Liquidator or Liquidator shall file a declaration within 7 days of appointment regarding conflict of interest or lack of independence. This obligation shall continue throughout the term of appointment.

Sec 276: Removal and Replacement of Liquidator

1. Tribunal can remove the liquidator appointed on reasonable cause being shown and for reasons recorded in writing. Grounds for removal:
 - i. misconduct;
 - ii. fraud or misfeasance;
 - iii. professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;
 - iv. inability to act as provisional liquidator or as the case may be, Company Liquidator;
 - v. 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 Liquidator, Tribunal may transfer the work assigned to that Liquidator to another Liquidator, by recording the reasons thereof in writing.
3. 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. Before removal of liquidator under this section, reasonable opportunity of being heard shall be given to the liquidator being removed.

10.3

Sec 277: Intimation to Company Liquidator, Provisional Liquidator and Registrar

1. Tribunal shall, on passing order appointing the provisional or Company Liquidator, send intimation thereof within seven days to:
 - i. Provisional or Company Liquidator (as the case may be) and
 - ii. Registrar
2. Registrar on receipt of intimation shall;
 - i. Make endorsement to that effect in his records, and
 - ii. Notify in the Official Gazette about the same, and
 - iii. Notify exchange/(s) where the securities are listed (in case of Listed Companies).
3. In case business of Company is not continued, the 'Order of Winding Up' by Tribunal shall be deemed as 'notice of discharge' to officers, employees, workmen. In case business is continued, deemed 'notice of discharge' is not applicable.
4. Company Liquidator shall make application to Tribunal within 3 weeks from passing of Winding Up order for the constitution of winding Up Committee.
5. Winding Up Committee consists of:
 - i. Official Liquidator attached to tribunal,
 - ii. Nominee of secured Creditors, and
 - iii. Professional nominated by the Tribunal
6. Winding Up Committee assists and monitors the progress of liquidation proceeding by the Company Liquidator.
7. Powers of 'Professional nominated by the Tribunal':
 - a. taking over assets;
 - b. examination of the statement of affairs;
 - c. recovery of property, cash or any other assets of the company including benefits derived therefrom;
 - d. review of audit reports and accounts of the company;
 - e. sale of assets;
 - f. finalization of list of creditors and contributories;
 - g. compromise, abandonment and settlement of claims;
 - h. payment of dividends, if any; and any other function, as the Tribunal may direct from time to time.
8. 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.
9. Draft final report is compiled by the Company Liquidator for approval of the Winding Up Committee,

thereafter **once approved this report is placed before the Tribunal for passing a 'Dissolution order'**

Sec 278: Effect of Winding up order

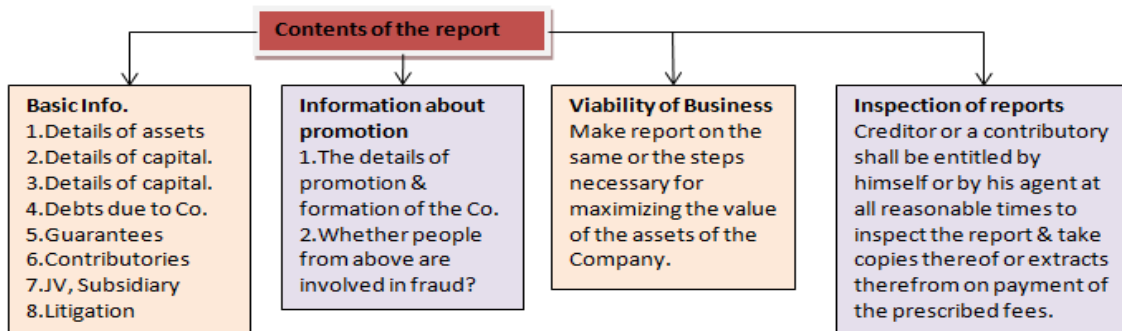
The order for the winding up of a company shall operate in **favour of all the creditors and all contributories** of the company as if it had been made out on the joint petition of creditors and contributories.

Sec 279: Stay of Suits, etc. on winding up order

1. When the provisional Liquidator is appointed or the order is passed for winding up:
 - i. **No new suit or legal proceeding** shall be commenced by or against the company, or
 - ii. If suit is **already pending on that date, it shall not be proceeded with.**
2. New suit is allowed to be commenced or existing suit is allowed to be proceeded with **only after permission from Tribunal is taken. This permission shall be given within 60 days.**
3. This is **not applicable to appeal pending with High Court and Supreme Court.**

281: Submission of Report by Company Liquidator (Important)

1. **Within 60 days from the date of order of winding up or appointment** of Company Liquidator, Liquidator should submit report to the Tribunal.



Sec 282: Directions of Tribunal on Report of Company Liquidator

Time Limit & Revision: Tribunal shall fix a time limit for completion of Winding Up proceeding and eventual dissolution. Tribunal **can revise the time limit** at any stage based on inputs received from parties concerned.

Order of Tribunal: Tribunal on inputs received from concerned parties, **order sale of company as going concern or of its assets or part** thereof. In order to **assist in sale** of the Company or assets as above the Tribunal may appoint a **Sale Committee** comprising of Creditors, Promoters, and Officers of the Company.

Order for investigation in case of fraud: In case the Company Liquidator reports **fraud** to the Tribunal, it may order an investigation u/s 210 and on report arising from investigation pass order u/s 339 to 342 or direct Liquidator to file criminal complaint against the involved persons.

Tribunal may order steps to protect, preserve and enhance value of assets.

Tribunal may pass other orders it thinks fit.

Sec 284: Promoters, Directors, etc., to cooperate with Company Liquidator

1. Promoters, Directors, Officers, Employees, whether in employment or previously in employment, or acting or associated with the company shall **extend full cooperation** to Company Liquidator.
2. In case of **failure** without reasonable cause:
 - a. Imprisonment **upto 6 months** or
 - b. Fine **upto Rs. 50,000** or
 - c. **Both.**

Sec 285: Settlement of List of Contributories and Application of Assets

1. Tribunal shall after passing order of Winding Up:
 - i. **Settle a list of contributories,**
 - ii. Where required, **cause rectification in register of members,** and
 - iii. **Cause assets to be applied to discharge of liabilities** of Company.

2. Where it appears to Tribunal that calls shall not be needed to be made or rights of contributories not be adjusted, settlement of a list of contributories may be dispensed.
3. Tribunal shall distinguish contributories as:
 - i. Those in their own right
 - ii. Those who are representatives or are liable for debts of others.
4. Contributories 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.
5. List of contributories shall include every person who is or has been a member.
6. 'Person who has been a member' shall only be liable to contribute if current members are unable to pay their share, as per the Tribunal. But is NOT liable to contribute in following cases:
 - i. If he ceased to be member for one year or more before the commencement of winding up,
 - ii. Debt or liability is contracted after he ceased to be a member
7. In case of a Company:
 - i. Limited by shares amount payable - shall not exceed the unpaid amount on shares
 - ii. Limited by guarantee - 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

Sec 286: Obligations of Directors and Managers

- i. Where a Director or Manager has unlimited liability, he shall first pay his dues, if any, as an ordinary member, and thereafter be called to pay further dues.
- ii. The Director or Manager shall not be liable to make any contribution:
 - a. Where after ceasing to be Director or Manager, one or more year has elapsed upto commencement of winding up, or
 - b. Debt or liability was contracted after ceasing to be Director or Manager.
- iii. They shall be needed to make contribution only if Tribunal deems necessary, subject to articles.

Sec 287: Advisory Committee

1. An 'Advisory Committee' to advise the Company Liquidator and to report to the Tribunal on such matters as directed may be formed under Tribunal's direction.
2. Composition: Not exceeding 12 members, and
 - i. Includes a proportion of creditors and contributories of the company or others;
 - ii. Proportion shall be as per Tribunal's discretion in regard to the company's circumstance
 - iii. Creditors and contributories are determined through a meeting convened by Company Liquidator within 30 days from date of order of winding up.
 - iv. Company Liquidator shall be Chairperson of advisory committee.
3. Advisory committee shall have the right to inspect the books of account and other documents, assets and properties of the company under liquidation.

Sec 288: Submission of Periodical Reports to Tribunal

1. Company Liquidator to submit periodical reports regarding progress of winding up.
2. Company Liquidator is compulsorily required to make Quarter end report on progress.
3. Tribunal may review its orders on application made by Company Liquidator, and make modifications if necessary.

Sec 290: Powers and Duties of Company Liquidator

Powers		Duties	
<u>Power to</u> carry business, to do all acts on behalf of the company, sell undertaking, raise money, file or defend	<u>Take Assistance</u> 1. Liquidator can appoint any CA, CS< CMA or any other professional to assist him in the process.	<u>Directions to CL</u> 1. Listen to the directions of (1 st) the creditors & Contributories and (2 nd) Advisory	<u>Maintenance of Books</u> 1. Maintain the books & make entries of MOM. 2. Any creditor or Contributory can inspect the books.

litigation, settle claims of creditors, inspect records, Draw or accept any instrument, obtain professional help, etc.	2. Disclose conflict of interest or lack of independence in respect of appointment.	Committee. 2. Summon the meetings suo-motu or on application by 1/10 th of value holders of above person.	<u>Audit of Accounts</u> 1. Furnish receipt & payments. 2. Furnish all vouchers & information. 3. File copy of accounts with Tribunal. 4. Give copy to CG or SG in case of Government Co. 5. Summary A/c to every Creditor & Contributory.
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Sec 291: Provision for Professional Assistance to Company Liquidator

1. Company Liquidator can appoint one or more CA\CS\Cost Accountants\Legal Practitioners\Such other professionals to assist in conduct of its duties.
2. Sanction of tribunal is needed for the same.
3. Appointee shall disclose any conflict of interest or lack of independence in respect of his appointment.

Sec 292: Exercise and Control of Company Liquidator's Powers

- i. 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.
- ii. Resolution of the creditors or contributories at any general meeting overrides directions by the Advisory Committee.
 - a. CL may summon Creditors and Contributories meeting to ascertain their wishes.
 - b. Shall summon if
 - i. directed by way of resolution by the Creditors and contributories; or
 - ii. Shall summon if requested in writing by not less than 1/10th in value of such creditors and contributories.
 - b. Person aggrieved by Company Liquidators decision may apply to Tribunal; Tribunal can confirm, reverse, modify and make further orders.

Sec 293: Books to be kept by Company Liquidator

1. CL shall maintain entries or minutes of proceedings at meeting.
2. Creditor and contributories, can inspect the same personally or through agent, under tribunal's control

Sec 294: Audit of Company Liquidator's accounts

1. CL to maintain Books of Accounts with account of Receipts & Payments (R&P) made by him.
2. CL to give R&P account in duplicate with prescribed 'Declaration' to Tribunal.
3. Such account shall not be given less than twice every year of tenure in office.
4. Tribunal shall audit the account; CL shall make available required vouchers and information and keep them available for inspection.
5. Audited accounts of the company shall be sent to Tribunal and Registrar.
6. Registrar to keep them open to inspection by Creditor and contributories and other interested persons.
7. If the company is a Government company, copy shall be sent to the respective government.
8. CL to send summary of account printed, to every creditor and contributory.
9. Tribunal may dispense with any requirement in this section

Sec 295: Payment of debts by contributory and extent of set-off

1. Tribunal may require any Creditor or contributory to pay any amount owed to the company other than the amount payable by call.
2. Order of Tribunal
 - c. Unlimited Company - Tribunal may allow set off by Contributory, of any amount owed by the company to

such Contributory, for any independent deal or contract. However, amount owed by company as dividend or profit, payable to contributory cannot be set off.

- d. Limited Company - Director or Manager with unlimited liability is also entitled to set off amount owed by company.
3. Limited and Unlimited Company - When all the creditors are paid off, Set off against subsequent call of an amount payable to Contributory by company can be done.

Sec 296: Power of Tribunal to make calls

1. Tribunal may, before or after ascertaining the sufficiency of assets to meet liabilities, make call on the contributories for the amount due.
2. Subsequently, it may make order to make payment on such calls.

10.7

Sec 297: Adjustment of rights of contributories

The Tribunal shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

Sec 298: Power to order costs.

In case of insufficiency of assets to meet liabilities, the costs, charges and expenses incurred in winding up, may be paid in priority as the Tribunal may decide.

Sec 299: Tribunals' Power to Summon Persons Suspected of Having Property of Company, etc

1. **Summons:** Once order appointing provisional liquidator or winding up order is passed, may summon:
 - i. any officer of the company or
 - ii. person known or
 - iii. suspected to have in his possession any property or books or papers, of the company, or
 - iv. known or suspected to be indebted to the company, or
 - v. 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. **Examination on oath:** Examine any officer or person so summoned on oath concerning the matters aforesaid, either by
 - a. word of mouth (may put them in writing and require him to sign them)
 - b. on written interrogatories or
 - c. on affidavit
3. **Production of books & papers:** Require 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 Tribunal shall have power to ask 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 person is indebted to the company it may order him to pay the amount in which he is indebted, or any part thereof.
6. If the Tribunal finds that a person is in possession of any property belonging to the company, it may order him to deliver that property or any part thereof.
7. In case of failure to appear when summoned, appropriate cost may be imposed.

Sec 300: Power to order Examination of Promoter & Director

1. **Power to order attendance & be examined:** In case where CL has made a report to the Tribunal, that in his opinion a fraud has been committed by any person in the promotion, formation, business or conduct of affairs.
2. CL shall attend along with legal assistance if authorized by Tribunal.
3. Shall be examined on oath.
4. The person appearing can obtain at his own cost:
 - i. Copy of CL's report

- ii. **Employ CA/CS/Cost Accountants/ Legal practitioner entitled to appear before Tribunal**
5. The person appearing may **apply to Tribunal to be exculpated from any charges**, the **CL shall be present at such hearing**, and if the Tribunal allows such application, it shall order payment of costs to such person.
6. **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.
7. **Examination can be before any person/ authority.**

Sec 301: Arrest of Person Trying to Leave India or Abscond

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 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:

- i. the contributory to be **detained until such time** as the Tribunal may order; and
- ii. his books and papers and movable property to be **seized** and **safely kept until such time** as the Tribunal may order.

Sec 326: Overriding Preferential Payments

1. Following debts are to be **paid in priority** to other debts:
 - i. **Workmen's dues; and**
 - ii. a. **Dues remaining outstanding to secured creditors, after realising the asset, against which such dues were originally secured, or**
b. **the amount of the money paid to workmen out of secured creditors security (if payable under law), whichever is less; amount thus selected from a. and b. shall rank pari passu (i.e. at similar ranking) with the workmen's dues.**
2. **"Workmen's dues 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** (other debts means "workmen's dues NOT payable for a period of two years preceding the winding up order" and "debts due to secured creditors mentioned above (in point ii. a. & b.)"), 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.

Just for Knowledge

- i. **"Workmen's dues payable for a period of two years preceding the winding up order or such other period as may be prescribed" shall be paid first.**
- ii. **Other Workmen's dues shall rank with unsettled dues of Sundry Creditors.**

Sec 327: Preferential Payments

1. This provision is **subject to provisions of sec 326** (i.e. Overriding preferential Payments)
2. The following shall be **paid in priority to all other debts**:
 - i. **all revenues, taxes, cesses and rates due from the company** to the CG or SG or local authority **within 12 months immediately preceding that date.**
 - ii. **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, **due for a period not exceeding 4 months within the 12 months immediately before the relevant date**
 - iii. **all accrued holiday remuneration becoming payable to any employee** (or claimant in case of his death), **on the termination of his employment** done before winding up order, or by the winding up order, or on the dissolution of the company;
 - iv. **all employer's contributions payable during the period of twelve months** immediately before the relevant date **under the Employees' State Insurance Act, 1948 or any other law** for the time being in force, unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company;
 - v. **all amount due in respect of any compensation or liability for compensation** under the **Workmen's Compensation Act** in respect of the death or disablement of any employee of the company. In case of weekly payments, lump sum amount shall be considered.
 - vi. **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;
- vii. the expenses of any investigation held in pursuance of sections 213 and 216, in so far as they are payable by the company.
3. Where any payment has been made to any employee of a company, out of money advanced by some "person", on account of:
 - i. wages or salary of the employee, or
 - ii. accrued holiday remuneration, either to employee (or claimant in the case of his death),
 then such "person giving advance" shall be paid in priority and the maximum due to "employees" shall be paid.
 4. 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 are insufficient to meet payment to general creditors they 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.

Sec 328: Fraudulent Preference

1. If upto 6 months prior to filing of winding up application, the Company does an action, which prefers and puts:
 - b. one of the creditors of the company, or
 - c. a surety or guarantor for any of the debts or other liabilities of the company,
 In a position better than before, so as to benefit from liquidation, then the Tribunal can reverse the benefit through an order to that effect.
2. If the Tribunal is satisfied that there is a preference in -
 - i. transfer of property, movable or immovable, or
 - ii. any delivery of goods,
 - iii. payment, execution made, taken or done by or against a company
 within six months before making winding up application, the Tribunal may declare such transaction invalid and restore the position.

Sec 329: Transfers Not in Good Faith to be Void

If in a period of 1 year before filing the petition for winding up:
 any transfer of property, movable or immovable, or any delivery of goods, made by a company:

- i. Not being made in the ordinary course of its business, or
- ii. Not being in favour of a purchaser or encumbrance in good faith and for valuable consideration,

Then such transfer shall be void against the Company Liquidator.

Sec 330 : Certain Transfers to be Void

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.

Sec 332 : Effects of Floating charge

1. Where within the 12 months immediately preceding the commencement of the winding up, any floating charge on the undertaking or property of the company is created; it shall be invalid, unless it is proved that the company immediately after the creation of the charge was solvent.
2. If amount is paid as cash to the company in consideration for 'the charge' at the time of, or subsequent to the creation of 'the charge', together with interest on that amount at the rate of 5% p.a. or such other rate as may be notified by the CG in this behalf, then to such extent 'the charge' shall NOT be invalid.

Sec 331: Liabilities and Rights of Certain Persons Fraudulently Preferred

1. If any person is fraudulently preferred by "mortgaging company's assets or creating any charge on company's assets" to secure payment of debt by the company to him, then that person shall be subject to the same liabilities, and have the same rights, as if he had undertaken to be "personally liable as a surety for the debt

- payable to him” in case the company cannot pay the same,
- i. to the extent of the mortgage or charge on the property, or
 - ii. the “value of his interest”, whichever is less.
2. Under Sec 328 the original transaction shall be invalid, and as per this section, the fraudulently preferred person shall be liable as a surety to his claim.
 3. The “value of his interest” shall be determined as at the date of the transaction of 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.
 4. On an application made to the Tribunal with respect to any ‘payment made’ by which a surety or guarantor were relieved of their liability to make that payment instead (i.e. they were fraudulently preferred). Then the Tribunal shall have jurisdiction to determine:
 - i. any questions with respect to the ‘payment’ arising between the ‘person to whom the payment was made’ and ‘the surety or guarantor who were relieved as a result’ and
 - ii. to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up,
 - iii. and, may give permission 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.
 5. The provisions also apply mutatis mutandis in relation to transactions ‘other than payment of money’.

Sec 333: Disclaimer of Onerous Property

1. Where any part of the “property” of a company which is being wound up consists of-
 - i. land of any tenure, burdened with onerous (loss making) covenants;
 - ii. shares or stocks in companies;
 - iii. 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
 - iv. unprofitable contractsthe Company Liquidator may in writing and notwithstanding things already done to such property, with the permission of the Tribunal, at any time within 12 months after the commencement of the winding up or such extended period allowed by the Tribunal, disclaim the property.
2. If the existence of such property was not known to the CL within 1 month of commencement of winding up, the time of 12 months or extended time shall be calculated after he became aware of the property.
3. Disclaimer shall not affect rights, interest, liabilities of other person; but operate to change Company’s own.
4. Tribunal before providing permission to CL to disclaim gives notice to interested persons.
5. The person interested in the property or contract can apply asking the CL whether or not CL will disclaim.
6. If CL has not responded to such person that he intends to apply to the Tribunal for permission to disclaim, within 28 days of the application made by that interested person, CL loses his entitlement to disclaim.
7. The contract or property shall be deemed to have been adopted in such case.
8. Tribunal may extend 28 days’ limit in which CL has to respond to interested person.
9. W.r.t property which is a contract: Any person who is to benefit from or is in burden of “the contract” may make an application
10. On such application the Tribunal may make an order:
 - i. Rescinding contract with payment of ‘damages’ for nonperformance, by or to, either the Company or applicant, as the case may be,
 - ii. Such damages may be proved by that person during winding up in order for its recovery.
11. An application may be made also by any person who either claims any interest in or any liability not discharged in respect of any disclaimed property.
12. Tribunal may order for:
 - i. vesting of the property in, or
 - ii. 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.
13. In case property disclaimed is of leasehold nature wherein the Company was a lessee: 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-
 - i. liabilities and obligations are same as those to which the company was subject or

- ii. 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
 - iii. and in either event as if the lease had comprised only the property comprised in the vesting order
14. 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 may vest the estate and interest of the company in the property in any person liable, either personally or as a representative, 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.
15. Person affected by the disclaimer shall be deemed creditor to the extent of amount payable by company and may accordingly prove the amount as a debt in the winding up.

Sec 334: Transfers, etc., After Commencement of Winding Up to be Void

Unless Tribunal orders otherwise:

- i. Any disposition of the “property (including actionable claims)”, of the company and
- ii. Any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up shall be void.

Sec 335: Certain Attachments, Executions, etc., in Winding Up by Tribunal to be Void

Unless Tribunal permits:

- i. any attachment, distress or execution put in force, against the estate or effects of the company, or
- ii. any sale held, of any of the properties or effects of the company, shall be void after the commencement of the winding up.

This is not applicable to recovery of any tax or impost or any dues payable to the Government.

Sec 336: Offences by Officers of Companies in Liquidation

1. Any person who, at the time when the company is being wound up or subsequently to be ordered to wind up by the Tribunal, commits any offence as under this section:
2. Shall be:
 - i. Imprisoned for 3 to 5 years, and
 - ii. Fined 1 to 3 lakhsUnless 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.
3. The offences listed for this section are:
 - i. does not, 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;
 - ii. does not deliver, 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;
 - iii. 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;
 - iv. within the 12 months immediately before the commencement of the winding up or at any time thereafter:
 - a. 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;
 - b. fraudulently removes any part of the property of the company to the value of one thousand rupees or more;
 - c. conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to, the property or affairs of the company;
 - d. 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;
 - e. 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;
- f. 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;
 - g. 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
 - h. 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;
- v. makes any material omission in any statement relating to the affairs of the company;
 - vi. 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;
 - vii. 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;
 - viii. 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
 - ix. 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,
4. Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence as per above, 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:
 - a. imprisonment of 3 to 5 years and
 - b. fine of 3 to 5 lakhs.

Sec 337: Penalty for Frauds by Officers

1. Any person who, at the time when the company is being wound up or subsequently to be ordered to wind up by the Tribunal, commits any offence under this section:
2. Shall be:
 - a. Imprisoned for 1 to 3 years, and
 - b. Fined 1 to 3 lakhs
3. The offences listed for this section are:
 - (a) by false pretences or by means of any other fraud, induce any person to give credit to the company;
 - (b) with intent to defraud creditors of the company or any other person, make or cause to make 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, 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.

Sec 338: Liability Where Proper Accounts Not Kept

1. Where Company does not maintain proper books of account:
 - i. throughout 2 years immediately preceding the commencement of the winding up, or
 - ii. between 'incorporation' and 'commencement of the winding up', whichever is shorter, then every officer in default who is unable to show that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable:
2. Shall be:
 - a. Imprisoned for 1 - 3 years, and
 - b. Fined 1 - 3 lakhs
3. It shall be deemed that proper books of account have not been kept:
 - 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 except in the case of goods sold by way of ordinary retail trade in sufficient detail to enable those goods and those buyers and sellers to be identified, have not been kept.**

Sec 339: Liability for Fraudulent Conduct of Business

10.13

1. The Tribunal, **on the application of the –**
 - a. **Official Liquidator, or**
 - b. **Company Liquidator or**
 - c. **any creditor or contributory** of the company,
may declare 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 **with intent to defraud** creditors of the company or any other persons or **to be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company.**
2. Tribunal may give **further directions** such as:
 - a. **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. **such other necessary orders.**
3. **Persons “who were knowingly parties”** to commit such acts as above shall be **liable for action u/s 447.**
4. This section shall apply even if person is liable under any other law.

Sec 340: Power of Tribunal to Assess Damages Against Delinquent Directors, etc.

1. The Tribunal, **on the application of the –**
 - a. **Official Liquidator, or**
 - b. **Company Liquidator or**
 - c. **any creditor or contributory** of the company
inquire into the conduct of the ‘person who has taken part in the promotion or formation of the company’, director, manager, Company Liquidator or officer if it appears that he has:
 - i. **misapplied, or retained, or become liable or accountable** for, any money or property of the company; or
 - ii. **has been guilty of any misfeasance or breach of trust** in relation to the company,
and order him to **repay or restore** the money or property with interest considered **just and proper**, or to **contribute such sum to the assets of the company** by way of compensation.
2. **Application** shall be made **within five years** from
 - i. **the date of the winding up order, or**
 - ii. **of the first appointment of the Company Liquidator** in the winding up, **or**
 - iii. **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

Sec 341: Liability Under Sections 339 and 340 to Extend to Partners or Directors in Firms or Companies

Where u/s 339 a declaration and u/s 340 an order is made in respect of Firm or Body Corporate, the same can be done to the Partners, and Directors thereof, at relevant time.

Sec 342: Prosecution of Delinquent Officers and Members of Company

1. On the **application of:**
 - a. **any person interested in the winding up, or**
 - b. **suo motu,**
it **appears to the Tribunal** during Winding Up that
 - i. **an officer, or**
 - ii. **any member**

- has been **guilty of any offence** in relation to the company, it may direct the liquidator
- i. to **prosecute** the offender or
 - ii. to **refer the matter to the Registrar**
2. 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 **failing** which, he shall be liable to pay **fine of 25,000 to 1,00,000**.

Sec 343: Company Liquidator to Exercise Certain Powers Subject to Sanction

1. The CL may, with the sanction of the Tribunal, when the company is being wound up by the Tribunal:
 - 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. The **CG may make rules on conditions, which allow the CL to exercise powers** under ii. & iii. above **without sanction of Tribunal**.
3. Any **creditor or contributory may apply to Tribunal** on aspects **about CL's exercise of powers** and Tribunal can **pass order that it deems fit after giving reasonable opportunity to both parties of being heard**.

Sec 344: Statement that Company is in Liquidation

1. Where a company is being wound up, whether by
 - a. the Tribunal or
 - b. voluntarily,every invoice, order for goods or business letter issued
 - i. by or on behalf of the company or
 - ii. a Company Liquidator of the company, or
 - iii. a receiver or
 - iv. 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. **Fine shall be 50,000 upto 3,00,000** for non-compliance

Sec 345: Books and Papers of Company to be Evidence

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**

Sec 346: Inspection of Books and Papers by Creditors and Contributories

Any creditor or contributory of the company may at any time after making order of Winding up inspect the books and papers of the company subject to such conditions prescribed. This doesn't preclude any rights bestowed: (a) on the CG 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.

Sec 347: Disposal of Books and Papers of Company

When the **affairs of a company have been completely wound up and it is about to be dissolved**, the **books and papers of such company and those of the Company Liquidator may be disposed** of in such manner as the Tribunal directs.

If any book or paper is not being forthcoming to any person claiming to be interested therein after the expiry of 5 years from the dissolution of the company, no responsibility shall devolve-

- i. on the company,
- ii. the Company Liquidator, or
- iii. any person to whom the custody of the books and papers has been entrusted.

CG may make rule to:

- (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 CG in respect above matters and appeal to the Tribunal for any order which may be made by the CG in the matter.
- Contravention shall result in Imprisonment upto 6 months and fine upto 50,000 or both.

10.15

Sec 348: Information as to Pending Liquidations

1. Where winding up is not concluded within 1 year of commencement, then
 - i. within 2 months of expiry of that year, and thereafter
 - ii. at intervals of not more than 1 year, or at such shorter prescribed interval,the CL shall file an audited form with prescribed details about the proceedings and position on liquidation to:
 - a. the Tribunal along with a copy to Registrar, in case of Winding up by Tribunal.
 - b. the Registrar in case of voluntary Winding up.
 - c. the CG\SG\both in case of Government Company as and where they are members failing which he shall be liable to fine of 5,000 per day till failure continues.
2. If statement is 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 6 months or with fine which may extend to Rs. 1 lakh, or with both.
3. 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, and to receive a copy, or an extract therefrom.
4. In case of person fraudulently stating himself to be a creditor or contributory on the application of the Company Liquidator, be punishable under section 182 of the Indian Penal Code (45 of 1860).
5. No audit required if provisions of sec 294 apply.

Sec 349: Official Liquidator to Make Payments into Public Account of India

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.

Sec 350: Company Liquidator to Deposit Monies into Scheduled Bank

1. Every Company Liquidator shall 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.
2. Tribunal may permit the account to be opened in such other bank specified by it if it is advantageous for the creditors or contributories or the company.
3. If any Company Liquidator at any time retains for more than 10 days a sum exceeding five thousand rupees or such other amount as the Tribunal may, authorize him to retain, then, he shall
 - i. pay interest on the amount so retained in excess, @ 12 % p.a. and also penalty; and
 - ii. be liable to pay any expenses occasioned by reason of his default; and also
 - iii. be liable to have all or such part of his remuneration, as the Tribunal may consider just and proper, disallowed, or
 - iv. may also be removed from his office.

Sec 351: Liquidator Not to Deposit Monies into Private Banking Account

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.

Sec 352: Company Liquidation Dividend and Undistributed Assets Account

1. The liquidator shall deposit into "Company Liquidation Dividend and Undistributed Assets Account" maintained in a scheduled bank, any money representing:
 - i. dividends payable to any creditor but which had remained unpaid for 6 months after the date on which they were declared; or
 - ii. assets refundable to any contributory which have remained undistributed for 6 months after the date on which they become refundable
 - iii. on the dissolution of the company, unpaid dividends or undistributed assets at the date of dissolution.

On such deposits the Liquidator is entitled to receipt, which is his effectual discharge of duty thereto.

2. Failing to deposit, the Liquidator shall:
 - i. pay interest on the amount so retained @12% p.a. and also pay such penalty as may be determined by the Registrar, the CG may also 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;
 - ii. be liable to pay any expenses occasioned by reason of his default; and
 - iii. 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.
3. Liquidator shall furnish to the Registrar, a statement detailing 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. Any person claiming to be entitled to any money paid into this account shall: 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 within a period of 60 days from the date of receipt of such claim, failing which Registrar shall make a report to the Regional Director giving reasons of such failure
5. Amount in that account which remains unclaimed for a period of 15 years, shall be transferred to the general revenue account of the CG, but claim to any money so transferred may be made as above 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.

Sec 353: Liquidator to Make Returns, etc.

On an application made to Tribunal by any-

- a. contributory or creditor of the company or
- b. by the Registrar

regarding Company Liquidator who has made any default-

- i. in filing, delivering or making any return, account or other document, or
- ii. in giving any notice which he is by law required to file, deliver, make or give, and
- iii. fails to make good the default within fourteen days after the service on him of a notice requiring him to do so,

then the Tribunal may make an order directing the Company Liquidator to make good the default within such time as may be specified in the order.

The costs of and incidental to the application shall be borne by the CL.

This doesn't preclude penalties to be imposed under other sections on the CL.

Sec 354: Meetings to Ascertain Wishes of Creditors or Contributories

To have regard to the wishes of creditors or contributories, Tribunal may call direct meetings of the creditors or contributories. And appoint a Chairman who shall convey to Tribunal result thereof.

- i. Value of debt of creditor, and
 - ii. Number of votes which may be cast by each contributory,
- shall be given due regard while ascertaining their wishes.

Sec 355: Court, Tribunal or Person, etc., Before Whom Affidavit May be Sworn

Any affidavit required to be sworn under this Chapter may be sworn –

- a. In India
 - b. In any other Country
- before any court, tribunal, judge or person lawfully authorised to take and receive affidavits

Sec 356: Powers of Tribunal to Declare Dissolution of Company Void

On application by:

- i. the Company Liquidator of the company or
- ii. by any other person who appears to the Tribunal to be interested,

Tribunal may make an order at any time within 2 years of the date of dissolution, declaring it to be void.

Applicant shall within thirty days after the making of the order or such further time allowed, file a certified copy of the order with the Registrar who shall register the same, failing which 10,000 per day fine will be imposed.

10.17

Sec 357: Commencement of Winding Up by Tribunal

The winding up of a company by the Tribunal under this Act shall be deemed to commence at the time of the presentation of the petition for the winding up.

Sec 358: Exclusion of Certain Time in Computing Period of Limitation

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 while calculating period of limitations for suits.

Sec 359: Appointment of Official Liquidator

So far as it relates to the “winding up of companies by the Tribunal”, the CG may appoint as many Official Liquidators, Joint, Deputy or Assistant Official Liquidators, who are whole-time officers of the CG, as it may consider necessary. CG shall pay salary and other allowances.

Sec 360: Powers and Functions of Official Liquidator

- i. Official Liquidators can exercise powers bestowed by CG
- ii. It has all powers under Act given to CL
- iii. On CG/Tribunal directions, it can conduct inquiries or investigations

Sec 361: Summary Procedure for Liquidation

1. CG may order Company to be wound up by ‘summary procedure’ if:
 - i. it has assets of book value not exceeding one crore rupees; and
 - ii. belongs to such class or classes of companies as may be prescribed
2. CG shall appoint the Official Liquidator to take into his custody or control all assets, effects and actionable claims to which the company is or appears to be entitled.
3. Official Liquidator shall, within thirty days of his appointment submit:
 - i. a report to the CG in such manner prescribed and,
 - ii. a report whether in his opinion, any fraud has been committed in promotion, formation or management of the affairs of the company or not.
4. Investigation into the affairs of the company shall be conducted, if CG is satisfied that fraud is committed. After considering Investigation report, CG may order winding up.

Sec 362: Sale of Assets and Recovery of Debts Due to Company

1. Official Liquidator shall expeditiously dispose of all the assets whether movable or immovable within 60 days of his appointment.
2. Official Liquidator shall serve a notice within thirty days of his appointment calling upon the debtors of the company or the contributories to deposit within 30 days, the amount payable to the company.
3. CG may pass orders if debtors do not contribute.

Sec 363: Settlement of Claims of Creditors by Official Liquidator

Official Liquidator within 30 days of his appointment shall call upon the creditors of the company to prove their claims within 30 days of the receipt of such call. Each creditor shall be communicated of the claims accepted or rejected along with reasons to be recorded in writing.

Sec 364: Appeal by Creditor

Any creditor aggrieved by the decision of the Official Liquidator u/s 363 may file an appeal before the CG within 30 days of such decision. CG may after calling the report from the Official Liquidator either dismiss the appeal or modify the decision of the Official Liquidator. The Official Liquidator shall make payment to the creditors whose claims have been accepted.

Sec 365: Order of Dissolution of Company

The Official Liquidator shall, if he is satisfied that the company is finally wound up, submit a final report to—

- a. the CG, in case no reference was made to the Tribunal u/s 364(4); and
- b. in any other case, the CG and the Tribunal.

The CG or the Tribunal on receipt of such report shall order that the company be dissolved. Thereafter the ROC shall strike off the name of the company from the register of companies and publish a notification to this effect

Chapter 12: Foreign Company/Company Registered outside India

Sec 2(42) & 379: Foreign Company & Its Meaning

Why provision is made?

To define what is Foreign Company. Same meaning will be carried throughout the Act.

Compulsory points (To be written in every answer)

12.1

Sec 2(42): The essential conditions of a Foreign Company are:

- Must be company or body corporate.
- Company shall be incorporated outside India.
- Company shall have place of business (POB) in India by agent or physically or electronically.
- Conducts business activity in India in any manner.

Sec 379: Application of Act to Foreign Companies

If minimum 50% of PUC of above mentioned Foreign Company is held by following then provisions of Companies Act, 2013 shall apply to such Company:

- One or more citizen or citizens of India; or/&
- One or more companies in India; or/&
- One or more bodies corporate in India.

Foreign Companies not complying these conditions, the provisions of this Chapter shall apply.

Bomber

- Under Companies Act, 2013 the Foreign LLP are also considered as Foreign LLPs.
- Merely having a Place of Business (POB) in India does not qualify for the definition of Foreign Company. Conduct of business is also necessary to qualify.
- An electronic Portal conducting business in India is also a place of business in India. Eg. Amazon India. Rule 2(1)(h) of the Companies (Specification of Definitions Details) Rules, 2014 provides that Electronic mode for 2(42) means carrying out business in India, whether main server is in India or not, including: B2B and B2C transactions, other digital supply, data interchange offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities in India or from citizens of India, financial settlements, web based marketing, telecommuting, advisory and transactional services, database services and products, supply chain management, online services (telemarketing, telecommuting, education and information research and all related data communication services; whether conducted by email, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.
- Rule 3 of the Companies (Registration Office and fees) Rules, 2014 provides same as mentioned above, shall be deemed to have carried out business in India.

Cross Ref.

Rule 3 of the Companies (Registration Office and fees) Rules, 2014; Rule 2(1)(h) of the Companies (Specification of Definitions Details) Rules, 2014

Sec 380: Documents, etc., to be delivered to Registrar by foreign companies

Why provision is made?

To gather all relevant & necessary documents of Foreign Company.

Applicable to:

To all foreign companies

Compulsory points (To be written in every answer)

- Every foreign company shall, within 30 days of the establishment of its place of business (POB) in India, deliver to the Registrar for registration—
 - a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified English translation;
 - the full address of the registered or principal office of the company;
 - a list of the directors and secretary of the company containing such particulars as may be prescribed;
 - the name and address person/s resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;

- e. the full address of the office of the company in India deemed to be its principal POB in India;
 - f. particulars of opening and closing of a place of business in India on earlier occasion/s;
 - g. declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad;
 - h. any other information as may be prescribed.
2. Existing Foreign Company who has not filed the documents and particulars u/s 592(1) of the Companies Act, 1956 shall file u/s 380 of the Companies Act, 2013.
 3. If any alteration is made in the documents delivered to the Registrar, same shall be filed within 30 days of such alteration with the ROC in the prescribed form.

Optional Points (write only if asked)

Rule 3 of Companies (Registration of Foreign Companies) Rules, 2014

1. Every foreign company within 30 days of establishment of POB in India, in addition to the particulars specified in sec 380(1) of the Act, deliver to the ROC for registration, a list of directors and Secretary of such Co.
2. The list of directors and secretary or equivalent (by whatever name called) of the foreign company shall contain the following particulars, for each of the persons included in such list, namely:

<ol style="list-style-type: none"> a. personal name and surname in full c. father's or mother's name & spouse's name e. residential address g. if the present nationality is not the nationality of origin, his nationality of origin i. PAN, if applicable k. whether directorship in any other Indian company, DIN, Name and CIN of the company in case of holding directorship m. Membership Number (for Secretary only); 	<ol style="list-style-type: none"> b. any former name/s & surname/s in full d. date of birth f. nationality h. passport no., date of issue & country of issue; (if a person holds more than one passport then details of all passports to be given) j. occupation, if any l. other directorship or directorships, held by him n. E-mail ID.
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3. A Foreign Company within a period of 30 days of establishment of its POB in India file with the registrar Form FC-1 with such fee and such documents required for registration by a foreign company u/s 380 along with an attested copy of approval from RBI under FEMA or Regulations, and also from other regulators, if any, approval is required by such foreign company to establish a POB in India or a declaration from the authorised representative of such foreign company that no such approval is required.
4. If any alteration is made in the documents delivered to the Registrar, same shall be filed within 30 days of such alteration with the ROC in Form FC-2 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 containing the particulars of the alteration.

E – Form

Form FC-1: Filing of details of Foreign Co. u/s 380

Form FC-2: Filing of changed details of Foreign Co. u/s 380

Cross Ref.

Rule 3 of Companies (Registration of Foreign Companies) Rules, 2014

Sec 381: Accounts of foreign company

Why provision is made?

To provide types of accounts to be maintained by the Foreign Company.

Applicable to:

To all foreign companies.

Compulsory points (To be written in every answer)

In every calendar year:

- a. make out a balance sheet and profit and loss account in such form, containing such particulars and including or having annexed or attached thereto such documents as may be prescribed
- b. deliver a copy of those documents to the Registrar along with a certified translation thereof in the English language and list of all places of business established by the company in India as on date.

The Central Government may direct any foreign company or class of foreign companies, that clause (a) shall not apply, or apply subject to such exceptions and modifications as may be specified in the notification.

Optional Points (write only if asked)

Rule 5 of Companies (Registration of Foreign Companies) Rules, 2014:

1. Every foreign company shall get its **accounts, pertaining to the Indian business operations audited** by a **practicing CA in India or a firm or LLP of practicing CAs**.
2. The **provisions of Chapter X i.e. Audit and Auditors and rules** made there under, as far as applicable, shall apply, **mutatis mutandis**, to the foreign company.

E – Form

Form FC-3: Filing of list of POB in India with ROC as on date of making the Balance Sheet.

Sec 382: Display of name, etc., of foreign company

Why provision is made?

To streamline the process of disclosure by Foreign Co. to make the public aware of certain facts of the Company.

Applicable to:

To all foreign companies.

Compulsory points (To be written in every answer)

Every foreign company shall display the **name of the company**, the **country in which it is incorporated** and that the **liability of the members** of the company is limited in **English in easily legible letters** and also in the characters of the **language in general use in the locality** in which the office or place is situated

- i. on the **outside of every office or POB** in India
- ii. in **all business letters, billheads and letter paper, and in all notices, and other official publications** of the company

Sec 383: Service of foreign company

Why provision is made?

To protect the ROC in service of notice to incorrect address if such address is provided by the Foreign Company itself.

Applicable to:

To all foreign companies.

Compulsory points (To be written in every answer)

Any **process, notice, or other document** required to be served on a foreign company shall be deemed to be sufficiently served,

- a. if **addressed to any person whose name and address have been delivered to the ROC u/s 380**; and
- b. **left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode**.

Sec 384: Debentures, annual return, registration of charges, books of account & their inspection

Why provision is made?

To state the chapters and provisions additionally applicable to the Foreign Company.

Applicable to:

To all foreign companies.

Compulsory points (To be written in every answer)

The following sections shall apply *mutatis mutandis* to Foreign company unless provided otherwise:

1. **Section 71 related to Debentures**
2. **Section 92 relating to annual returns subject to** such exceptions, modifications and adaptations, if any
3. **Section 128 relating to Books of Accounts** to the extent of requiring it to keep at its principal POB in India, the books of account referred to in that section, with respect to monies received and spent, sales and purchases made, and assets and liabilities, in the course of or in relation to its business in India.
4. **Chapter VI (Sec 77 to 87) to charges on properties** which are created or acquired by any foreign company.
5. **Chapter XIV (Sec 206 to 240) relating to inspection, inquiry & investigation**.

Companies (Registration of Foreign Companies) Rules, 2014

File Annual Return in Form FC-4 along with such fee as prescribed **with ROC ≤ 60 days from the last day of FY**.

E – Form

Form FC-4

Sec 385: Fee for registration of documents

Fees as may be prescribed shall be paid to the Registrar for registering any document.

Sec 386: Interpretation

- a. 'Certified' means certified in the prescribed manner to be a true copy or a correct translation;
- b. 'Director' in relation to a foreign company, includes any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act; and
- c. 'Place of business' includes a share transfer or registration office.

Sec 387: Dating of prospectus and particulars to be contained therein

Why provision is made?

To keep the prospectus under surveillance as any discrepancy may lead to loss of public money.

Applicable to:

To all companies incorporated outside India issuing prospectus in India.

Compulsory points (To be written in every answer)

- 1. The following companies can issue a prospectus in India:
 - a. Company incorporated outside India or to be incorporated outside India
 - b. Foreign incorporated company having a POB in India or have not established a POB in India or who will establish POB in India.
- 2. Prospectus shall mandatorily have following contents:
 - a. Constitutional documents of company
 - b. Law under which incorporated
 - c. Place in India where draft copy of such law is kept in English language
 - d. Date on which and the country in which company is incorporated or to be incorporated
 - e. List of POBs in India and Principle place from them.

And shall mandatorily have matters specified u/s 26 in addition to matters stated above.
If the company issues the prospectus after 2 years from the eligibility to commence the business the prospectus need not contain matters specified in (a), (b) & (c).
- 3. Following conditions shall be void:
 - a. Requiring or binding an applicant for securities to waive compliance with any requirements as above.
 - b. Falsely presenting the applicant with notice of any contract, documents or matter not specifically referred to in the prospectus.
- 4. Form of application shall be issued for securities in India only if:
 - a. Company complies with the provisions of this chapter
 - b. Such issue does not contravene the provision of sec 388.

However, even without compliance of above requirements, a company can issue form of application to underwriter for entering into underwriting agreement in a bona-fide manner.
- 5. Above provisions shall not be applicable for issue of prospectus:
 - a. To existing shareholders or debenture holders irrespective of whether they renounce the shares or not.
 - b. For securities of the same nature which are already issued by company and are listed on recognized stock exchange.

However, the provisions shall be applicable to issue of prospectus or form of application of securities issued for formation of company or future formation of company.
- 6. Any liability of any person under any law for the time being in force shall remain unaffected.

Sec 388: Provisions as to expert's consent and allotment

Why provision is made?

To protect the Indian investors from being induced by malafide expert consents and allotments conditions.

Applicable to:

To all foreign companies incorporated outside India issuing prospectus in India.

Compulsory points (To be written in every answer)

- 1. Any Foreign Company shall not issue prospectus in India if such prospectus:
 - a. Contains such opinion in the name of expert:
 - i. Which such expert has not given or
 - ii. Is withdrawn by such expert before delivery of the prospectus.
 - b. Does not have a binding effect on all applicants as per the provisions of sec 33 (issue of application for

subscription of securities) & sec 40 (dealing of securities on the Stock Exchange).

2. If any **statement is contained in the MOA or Report** which is included in prospectus then such statement is deemed to be included in the prospectus of the company.

Sec 389: Registration of prospectus

Why provision is made?

To authenticate the prospectus and registration before issuing the same to Public.

Applicable to:

To all foreign incorporated issuing prospectus in India.

Compulsory points (To be written in every answer)

1. Foreign Companies can issue prospectus to Indian Public on if the Prospectus is:
 - a. **Signed by the Chairman & 2 other directors** of the Company.
 - b. Approved by the **resolution of the MD.**
 - c. **Delivered to ROC** for registration
 - d. Stating that it is being delivered to ROC & **consent is rightfully obtained u/s 388** as stated above.
2. Documents to be **annexed as per Rule 11 of Companies (Registration of Foreign Companies), 2014:**
 - a. any **consent to the issue** of the prospectus required from any person as an expert;
 - b. a **copy of contracts for appointment of managing director or manager** and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;
 - c. a copy of any **other material contracts, not entered in the ordinary course of business**, but entered **within preceding two years**;
 - d. a copy of **underwriting agreement**; and
 - e. a copy of **power of attorney**, if prospectus is signed through duly authorized agent of directors.

12.5

Sec 390: Offer of Indian Depository Receipts

Why provision is made?

To give power to CG for making the rules for issued of IDR to the public in India.

Applicable to:

To all foreign incorporated companies

Compulsory points (To be written in every answer)

CG may make rules for the following:

- a. **Offer** of Indian Depository Receipts.
 - b. They shall make rule w.r.t. **disclosures** required to be made in prospectus or letter of offer issued in connection with Indian Depository Receipts.
 - c. Manner in which the Indian Depository Receipts shall be **dealt with in a depository mode and by custodian & underwriters**; &
 - d. Manner of **sale, transfer or transmission** of Indian Depository Receipts
- by a company **incorporated or to be incorporated outside India** irrespective of whether the company has or has not established, or will or will not establish, any place of business in India.

Sec 391: Application of sections 34 to 36 and Chapter XX

Compulsory points (To be written in every answer)

1. The provisions relating to **Civil Liability/ Criminal Liability** for misstatements in Prospectus/Fraudulently inducing the investors to invest (Sections 34 to 36) shall apply to:
 - i. **Issue of a prospectus by a Co.** incorporated outside India u/s 389 as they apply in case of Indian Co.
 - ii. Issue of **Indian Depository Receipts** by a foreign company.
2. The provisions of **Chapter XX (Winding Up)** shall apply **mutatis mutandis** for closure of the place of business of a foreign company in India as if it were a company incorporated in India.

Sec 392: Punishment for contravention

Why provision is made?

To state consequences of contravention of the provisions.

Applicable to:

To all foreign companies

Compulsory points (To be written in every answer)

Consequences of contravention of any provisions of this Chapter:

- a. Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 3 lakh;
- b. **Continuing offence** –
Company: Additional fine which may extend to Rs. 50 thousand for every day after the first
Every officer in default:
 - i. Imprisonment which may extend to 6 months or;
 - ii. Fine which shall not be less than Rs. 25 thousand but which may extend to Rs. 5 lakh or;
 - iii. Both.

Sec 393: Company's failure to comply with provisions of this Chapter not to affect validity of contracts, etc.**Why provision is made?**

To protect the interest of 3rd Parties against the contraventions conducted by Foreign Companies.

Applicable to:

To all foreign companies

Compulsory points (To be written in every answer)

- a. Shall **not affect the validity** of any contract or any act entered into by the company or its liability to be sued
- b. **Company shall not be entitled to bring any suit, claim any set-off**, make any counter-claim or institute any legal proceeding until the company has complied with the provisions of this Act applicable to it.

Chapter 13: Government Company

Sec 2(45): Definition of Government Company

Compulsory points (To be written in every answer)

Government Companies means:

- a. Company in which 51% or more paid up share capital is held by:
 - i. Central Government; or/ &
 - ii. State Government; or/ &
 - iii. State Governments
- b. Company which is subsidiary of Government Company.

13.1

Sec 394: Annual reports on Government companies

Why provision is made?

To streamline the reporting made by government company to CG in case the CG is member

Applicable to

Only to government company

Compulsory points (To be written in every answer)

If the CG is a member of Government Company, then such company shall comply with the following:

1. Prepare an annual report within 3 months from the date of AGM in which the CAG gave comment on the audit report u/s 143(6).
2. Place before both houses of parliament the following document as soon as it is prepared:
 - Annual Report
 - Audit Report
 - Comments of CAG

If SG is also member of Government Company in addition to CG the above mentioned documents shall be laid before the state legislature.

Cross Ref.

Sec 143(6)

Sec 395: Annual reports where one or more State Governments are members of companies

Why provision is made?

To state the process to report to the SG in case if the SG is member of government company and CG is not.

Applicable to:

Only to government company

Compulsory points (To be written in every answer)

1. If the CG is not the member of Government company and only SG or SG(S) are the members of government company then such company shall comply with the following :
 - i. Prepare an annual report within 3 months from the date of AGM in which the CAG gave comment on the audit report u/s 143(6)
 - ii. Place before both houses state legislature the following document as soon as it is prepared.
 - Annual Report
 - Audit Report
 - Comments of CAG
2. Provisions of Sec 395 & Sec 394 are applicable even in case of Liquidation.

Government Company exemptions

Exemption & Particulars	Applicable to	Effect of Exemption
Chapter VIII, Sec 123(1)-2nd proviso: Declaration of dividend	WOS	In case of inadequate profit in the Current Year the Government Co. can declare the dividend out of accumulated profit without compliance of the rules.
Chapter VIII, Sec 123(4): Transfer of dividend to separate account	WOS	The requirement of depositing dividend amount (incl. interim dividend) to be deposited in a separate scheduled Bank in a separate account within five days from the date of declaration does not apply to Govt. Co.
Chapter IX, Sec 129:	Defence Production	No compliance with AS 17 is required.

Financial Statements		
Chapter IX, Sec 134(3)(e): Contents of Board's Report	All Gov companies	Requirement that the Board's report shall disclose the company's policy on director's appointment, remuneration, and criteria for determining qualifications, positive attributes, independence of director and other matters provided under sec 178(3) shall not apply.
Chapter IX, Sec 134(3)(p): Contents of Board's Report	Where evaluation is made by Dept. of CG	Requirement of indicating the manner in which formal evaluation has been made by the board of its own performance and that of its committees and individual directors; shall not apply in case the directors are evaluated by the MCA or Dept. of CG which is administratively in charge of the co. the SG, as per its own revaluation methodology.
Chapter XI, Sec 149(1)(b) & Sec 149(1) 1st proviso: Min/max directors, 1 woman director	All Govt. Companies	Government Companies can appoint maximum no. of directors above 15 without passing GM-SR. They can be appointed by GM-OR.
Chapter XI, Sec 149(6)(a): Independent Director	Where Evaluation is made by Dept of CG	Integrity and relevant expertise & experience needed to be possessed by an ID will be tested by Ministry or Department of the Central Government.
Chapter XI, Sec 149(6)(c): Independent Director	All Gov. Companies	ID shall not have/ had pecuniary relationship with the Co., its holding, subsidiary or associate co., or their promoters, or directors, during the 2 immediately preceding FYs or during the current FY. This shall not apply to a Government Company.
Chapter XI, Sec 152(5): Consent to act as director	All Gov. Companies	Newly appointed director of Government Company need not file his consent to act as director under DIR-2 after appointment.
Chapter XI, Sec 152(6) & (7): Rotation of directors and filling up of vacancy of retiring director	WOS and its subsidiaries	The BOD need not be rotational or non-rotational & may have fix tenure. Process of re-appointment or automatic re-appointment is also not applicable.
Chapter XI, Sec 160: Appointment of the new director.	WOS and its subsidiaries	The process of the appointment of New director & notice of 14 days & deposit of Rs. 1 Lac is not applicable.
Chapter XI, Sec 162: Restriction on 2 or more directors in one resolution.	WOS and its subsidiaries.	Government companies can appoint 2 or more directors in the one resolution without passing GM-UR i.e. only by GM-OR.
Chapter XI, Sec 163: Proportional Representation.	WOS and its subsidiaries.	Adoption of appointment by proportional representation method is not applicable.
Chapter XI, Sec 164(2): Company default disqualification	All Gov Companies	Attraction of disqualification u/s 164(2) does not disqualify all the directors of government company.
Chapter XI, Sec 170: Register of Key Managerial Persons	WOS	Need not maintain Register of directors & KMP. Also, does not require the filling of DIR 12 with ROC in case of change.
Chapter Xi, Sec 171: Inspection of register	WOS	No register u/s 170, no question of inspection by members arises.
Chapter XII, Sec 177(4) Audit Committee	All Govt. Companies	As appointment of auditor of Govt. Co. is made by CAG u/s 139, Audit committee can only recommend the

		remuneration.
Chapter XII, Sec 178(2),(3),(4): Remuneration committee	All Govt. companies	Provisions relating induction of directors, criteria/qualifications does not apply to Govt. Co. Nomination and Remuneration Committee of Govt. co. will lay down for senior management only and other employees.
Chapter XII, Sec 185: Loan to Director	If the approval of the MCA or Dept. of CG or SG, as the case may be, is obtained before making any loan or giving any guarantee or providing any other security then it shall not apply to Gov Co.	
Chapter XII, Sec 186: Loans and investment by company	It shall not apply to – a. Govt. Co. engaged in defense production; b. Govt. Co., other than a Listed Co., in case approval of the MCA or Dept. of CG or SG, as the case may be, is obtained before making any loan or giving any security and giving or making any investment	
Chapter XIII, 1 st and 2 nd proviso to Sec 188(1): Related parties transaction	It shall not apply to – a. A Govt. Co. in respect of contracts or arrangements entered into by it with any other Govt. Co. A Govt. Co., other than a Listed Company, in respect of contracts and arrangements other than those referred to in clause (a), in case such company obtains approval of the MCA or Dept. of CG which is administratively in charge of the company, or as the case may be, SG before entering into such arrangement or contracts.	
Chapter XIII. Sec 196(2),(4) & (5): Appointment of executive director	All Govt. Cos.	These provisions are not applicable to Govt. Co.: a. Sec 196(2)-Term of MD not to exceed five years. b. Sec 196(4)-Approval of members/ CG as the case may be for appointment of MD. c. Sec 196(5)-Approval of members/ CG for appointment of MD. d. Sec 196(5)-Validity of acts of MD if his appointment is not approved at the GM
Chapter XIII, Sec 197: Managerial remuneration	All Gov Companies	Provision related to maximum remuneration in case of loss or inadequacy of profits as given in sec 197 does not apply to Govt. Co. Thus, they can pay any amount of remuneration to the director even in case of loss.
Chapter XIII, Sec 203 (2),(3), (4): Appointment of WTKMP	All Gov companies	Sec 203(4):"Provisions of Sec 203(1),(2),(3)&(4) shall not apply to MD or CEO or Manager or WTD of the Govt. Co."

Ch. 14: REGISTRATION & FEES

Section 396 to Section 404

Every Company can do following things electronically:

- a. **Sec 396-397:** Accept documents as evidence.
 - b. **Sec 398:** File application, documents and inspection in electronic form.
 - c. **Sec 399-400:** Use Electronic Form alternatively for physical form.
 - d. **Sec 401:** Give Value Added Services.
 - e. **Sec 402:** Apply Information Technology Act, 2000.
 - f. **Sec 403:** File return, pay fees within time or delayed time electronically.
- Sec 404:** Credit fees to Public Account electronically.

14-16.1

Ch. 15: POWER TO DEMAND INFORMATION & STATISTICS

Sec 405: Power to demand information & statistics

CG shall have power to demand information from specific companies or class of companies for the purpose of looking into the compliance of Companies Act, 2013. If any Company, does not comply with the same, the Company will be liable to a penalty of Rs. 25,000 and every officer will be liable to jail up to 6 months and fine from Rs. 25000 to Rs. 3 lacs

Ch 16: NIDHI COMPANIES

Sec 406: Power to modify Act in its application to Nidhis

1. Nidhi Company means a company with an object of developing a habit of saving amongst its members for mutual benefit and lending to each other or 3rd Party.
 2. Unless CG says the provisions of this Act are not applicable to Nidhi Company or it will be applicable with exceptions, modifications or adaptations as CG decides, all provisions shall apply.
 3. Nidhi Company incorporated under this Act shall be a Public Company with a minimum PUC of Rs. 5 Lacs and it can also issue Preference Shares.
 4. Every Nidhi Company within a period of 1 year shall ensure
 - a. Minimum 200 members;
 - b. Net Owned Funds of 10 Lacs or more;
 - c. Unencumbered Deposits of 10%;
 - d. Ratio of NOF to Deposits can be 1:20.
 5. Every Nidhi Company shall file a return of statutory compliance in Form NDH-1 \leq 90 days of end of FY.
 6. Every Nidhi Company complying with all of above provisions shall file Form NDH-2 \leq 30 days of end of first FY except for the requirement of Annual Returns.
 7. A Nidhi Company shall **not**:
 - a. Carry a business of Chit Funds, Hire Purchase, Leasing or Financing.
 - b. Acquire another Company or control the position of Board of Directors unless it passes a GM-SR and obtains an approval of Regional Director.
 - c. Carry any other business other than lending or borrowing.
 - d. Accept Deposits from any other person.
 - e. Enter into a partnership for borrowing and lending.
 - f. Issue advertisement for soliciting deposits.
 - g. Accept Body Corporate or Trusts as its members.
- Accept minor as its member unless legal guardian accompanies him.

Chapter 17: NCLT & NCLAT

Sec 434: Transfer of certain pending proceeding

1. The CG may order the following proceedings:

Transfer what?	Pending with	Transfer to....
Matters, proceedings, case before CLB	CLB	Tribunal
Any person aggrieved by order of CLB	-	Appeal to HC within 60 days (+60 days on specific reason)
Proceedings of Compromise, Arrangement & Amalgamation / Winding up	District Court or High Court	Tribunal
Any appeal for BIFR	Appellate authority	Tribunal
Any reference made or inquiry pending	BIFR	Tribunal

2. CG may make rules to ensure timely transfer of all above matters.

Sec 408-413: Transfer of certain pending proceeding

NCLT

NCLAT

Sec 408:

President and Number of Judicial & Technical Members as per CG.

Sec 410:

President and Number of Judicial & Technical Members maximum 11 as per CG.

Sec 409: Qualifications

- i. President - Judge of HC for 5 yrs
- ii. Judicial Members -
 - a. Judge of HC
 - b. District Judge for min 5 yrs
 - c. Advocate for min 10 yrs of any court
- iii. Technical Members -
 - a. Min 15 yrs in Indian Corporate law service or Indian legal service (*min 3 yrs as Joint secretary or above rank to Government*)
 - b. CA in practice - min 15 yrs
 - c. CWA in practice - min 15 yrs
 - d. CS in practice - min 15 yrs
 - e. 15 yrs experience in Law, Industrial Finance / Management / Administration / Reconstruction, Investment, Accountancy, Labour matters, Revival & Rehabilitation & winding up.
 - f. 5 yrs as presiding officer to Tribunal under Industrial Disputes Act, 1947.

Sec 411: Qualifications

- i. Chairman - Judge of SC/ Chief Justice of HC
- ii. Judicial Members -
 - a. Judge of HC
 - b. Judicial member of tribunal for 5 yrs
- iii. Technical Members - 25 yrs of experience Law, Industrial Finance/ Management/ Administration/ Reconstruction, Investment, Accountancy, Labour matters, Revival & Rehabilitation & Winding Up.

Sec 412: Selection of members of NCLT & NCLAT by selection committee

1. **President** of NCLT/ **Chairman & Judicial Member** of NCLAT - Appointed in **consultation with CJI**.
2. **Judicial & Technical member** of NCLT / **Technical Member** of NCLAT - Appointed on recommendation of **selection committee** consisting of:
 - a. **Chairman** = Chief Justice of India or his nominee
 - b. **4 Members** = 1. Senior Judge of SC or Chief justice of HC; 2. Secretary of MCA
3. Secretary of Law & Justice
4. Secretary of department of financial service in ministry of Finance
3. **No appointment** of the Members of the Tribunal or the Appellate Tribunal shall be **invalid** merely by **reason of any vacancy or any defect in the constitution of the Selection Committee**.
4. Where in a meeting of the Selection Committee, there is **equality of votes** on any matter; the **Chairperson shall have a casting vote**.

Sec 413: NCLT Term & composition (Min 50 yrs)

1. 1 President = 5yrs + 5 yrs Max 67 yrs
2. 16 Judicial members = 5yrs + 5 yrs Max 65 yrs

Sec 413: NCLAT (Currently has...)

1. 1 Chairman = 5yrs + 5 yrs Max 70 yrs
2. 0 Judicial members = 5yrs + 5 yrs Max 67 yrs

3. 7 Technical members = 5yrs + 5 yrs Max 65 yrs

3. 1 Technical member = 5yrs + 5 yrs Max 67 yrs

Sec 415: Acting president and chairperson of Tribunal or Appellate Tribunal

Sec 415(1): Vacancy at the office of chairman or president

The senior most member shall temporarily reside in such office in case of vacancy by any reason until the new president or chairman is appointed.

Sec 415(2): Temporary non-functionality by chairman or president

The senior most members shall temporarily reside in such office in case of absence or illness or any other cause until such president or chairman resumes office.

Sec 416: Resignation of Members

The chairman or president or member can vacate office at earliest of:

1. Expiry of 3 months from reply of CG
2. Successor/ Replacing Officer assumes office
3. Completion of tenure

Sec 417: Removal of members

The Central Government may remove from office the President, Chairperson or any Member, who—

- a. declared insolvent; or
- b. convicted of an offence which involves moral turpitude; or
- c. become physically or mentally incapable of acting as President, the Chairperson, or Member; or
- d. acquired such financial or other interest as is likely to affect prejudicially his functions; or
- e. abused his position as to render his continuance in office prejudicial to the public interest.

However, the President, the Chairperson or the Member shall not be removed on any of the grounds specified in clause (b) to (e) without giving him a reasonable opportunity of being heard.

Sec 417(2)-(4): Removal requiring investigation

1. The member can be removed on the ground of proved misbehavior or incapacity after inquiry made with the judge of SC.
2. The same order shall be communicated to the member & opportunity of being heard shall be given.
The CG can make rules regarding the above.

Sec 418: Staff of Tribunal and Appellate Tribunal

Sec 418(1): CG to decide the staff of tribunal - The CG shall appoint such officers and employees as are necessary for the exercise of power and discharge of their functions of Tribunal and Appellant Tribunal

Sec 418(2): Functions of staff and officers - The officers and employees shall discharge their function under the general superintendence & control the President or the Chairperson as the case may be or any other Member who is vested with the powers for exercising such superintendence and control.

Sec 418(3): Salaries and allowance of staff and employees - The salaries and allowances and other conditions of service of the officers and other employees shall be such as may be prescribed.

Sec 419 : Benches of Tribunal

1. CG may constitute such number of benches of tribunal as required.
2. The principal bench is at New Delhi and presided by President.
3. The tribunal will have two types of members such as Judicial and Technical.
4. If any member feels that any case shall be referred to bench then it shall be transferred by president to such bench.
5. The president constitutes bench of 3 or more members with majority of judicial members for hearing following cases:
 - a) Rehabilitation;
 - b) Restructuring;
 - c) Reviving of companies.

If the members of bench differ in opinion then it shall be decided by majority. If votes are equally divided then it shall be referred to the President and one or more members of tribunal and be then decided by majority.

Sec 420: Orders of the Tribunal

1. Pass order against the case after giving the reasonable opportunity of being heard.
 2. Amend its order up to 2 years after passing if the mistake in original order comes to notice by any means. However, cannot make amendment in the order if the appeal is made against same.
- Send the copy of order to every party to the proceedings.

Sec 421: Appeal against the orders of Tribunal

1. Appeals can be made to the Appellate Tribunal.
2. Where tribunal had passed the order with the consent of the parties, appeal cannot be made to Appellate Tribunal.
3. Appeal shall be made in 45 days from the receipt of the copy by party.
4. The time can be further extended by 45 days on sufficient cause.
5. Appellate Tribunal shall pass order after giving opportunity of being heard.
6. Appellate Tribunal shall send copy of order to tribunal and party to litigation.

17.3

Sec 422 : Expeditious disposal by Tribunal and Appellate Tribunal

1. Every application or petition or appeal presented before NCLT or NCLAT shall be disposed within 3 months from the date of presentation of filing of appeal, application or petition. If the application or petition or appeal is not disposed of within 3 months, the NCLT or NCLAT shall record the reasons for not disposing off the same and the President or the Chairperson shall extend the period not exceeding 90 days after taking into account the reasons so recorded.

Sec 423 : Appeal to Supreme Court

Any person aggrieved by any order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of receipt of the order of the Appellate Tribunal to him on any question of law arising out of such order. The Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within 60 days, allow it to be filed within a further period not exceeding 60 days.

Sec 424 : Procedure before Tribunal and Appellate Tribunal

1. The Tribunal and the Appellate Tribunal shall have following powers of Civil Court to dispose any case or appeal:
 - a. summoning and enforcing the attendance of any person and examining him on oath;
 - b. requiring the discovery and production of documents;
 - c. receiving evidence on affidavits;
 - d. subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;
 - e. issuing commissions for examination of witnesses or documents;
 - f. dismissing a representation for default or deciding it ex parte;
 - g. setting aside any order of dismissal of any representation for default or any order passed by it ex parte;
 - h. and any other matter which may be prescribed
2. The tribunal shall execute its order as if it is made by court and tribunal shall send execution of its order to court who:
 - a. have jurisdiction on such company
 - b. have jurisdiction on residence in case of any other person.
3. All the proceedings of the tribunal will be considered as judicial proceedings in Indian law.

Sec 425: Power to punish for contempt

NCLT/ NCLAT have same powers as that of Civil Court or High Court regarding contempt of Court which is basically decided by HC or with respect to Advocate General in Sec 15 of Civil Procedure Code.

Sec 426 : Delegation of powers

The Tribunal or Appellate Tribunal may by general or special order delegate power of enquiry to any of its officer or employee or any other person authorized to inquire into any proceeding or appeal as specified in order.

Sec 427: President , Members, Officers to be public servants

All officers shall be deemed to be public servants as per section 21 of the Indian penal code.

Sec 428: Protection of action taken in good faith

When all officers of NCLT/ NCLAT act in good faith and in accordance with this Law or any other Law for the time being in force or Circulars, Notifications or Rules then they will not be liable for any litigation or consequence.

Sec 429 : Power to seek assistance of chief metropolitan, magistrate

1. Tribunal can search and seize the books or take custody of the same by ordering the same to:
 - a. Chief Metropolitan magistrate
 - b. Chief Judicial magistrate
 - c. District collector
2. They shall take custody of the books and hand over the same to some other person authorized for the same by Tribunal.
3. They can take such action or step to collect all such documents & records as they require.
4. Actions taken by them for this section will not be called in question.

Sec 430: Civil Court not to have jurisdiction

Civil court or any other court under this act or any other law for the time being in force does not have authority to take any action against the powers conferred under this act or any other law for the time being in force without the order of NCLT.

Sec 431: Vacancy in Tribunal not to invalidate acts or proceedings

Acts and proceedings of the Tribunal or Appellate Tribunal shall not be considered invalid merely on the basis of existence of any vacancy or defect in the constitution of the Tribunal or The Appellant Tribunal

Sec 432: Right to legal presentation

A party to proceeding or appeal before the Tribunal or Appellate Tribunal, may either;

- appear in person or
- authorize one or more CA or CS or CWA or legal practitioner or any other person to present his case before the Tribunal or the Appellant Tribunal, as the case may be.

Sec 433: Limitation

The provisions of the Limitation Act, 1963 shall apply to proceedings or appeals before the NCLT or NCLAT.

Chapter 18: Producer Companies

Where chapter IX-A is silent, provisions of Private Company shall apply to a Producer Co. as per Companies Act, 2013.

Sec 581B: Objects of Producer Company

1. The objects of the Producer Company shall relate to all or any of the following matters, namely : -
 - a. **Production, harvesting, procurement, grading, pooling, handling, marketing, selling, export** of primary produce of the Members **or import** of goods or services for their benefit.
 - b. **Processing** - preserving, drying, distilling, brewing, vinting, canning & packaging of produce of its Members
 - c. Manufacture, sale or supply of **machinery, equipment or consumables** mainly to its Members
 - d. Providing **education on the mutual assistance principles** to its Members and others
 - e. **Rendering technical services, consultancy services, training, research and development** for the promotion of the interests of its Members
 - f. **Generation, transmission and distribution of power**, revitalization of land and water resources, their use, conservation and communications relatable to primary produce
 - g. **Insurance of producers or their primary produce**
 - h. Promoting techniques of **mutuality and mutual assistance**
 - i. **Welfare measures** or facilities for the benefit of Members as may be decided by the Board
 - j. Any other activity, related or incidental to any of the activities referred to in clauses (a) to (i)
 - k. **Financing** of procurement, processing, marketing or other activities specified in clauses (a) to (j) which include **extending of credit facilities** or any other financial services to its Members.

18.1

Every Producer Company shall deal primarily with the produce of its **active Members** for carrying out any of its objects specified in this section.

Formation of New Producer Companies

1. **10 producers or 2 or more Producer Institutions** shall file **MOA and AOA** with ROC.
2. The **objects** shall be belonging from Sec 581B.
3. **Not allowed** to enter in any further business **other than primary production**.
4. The members also need to file following documents:
 - i. **INC-7: Application for Incorporation**
 - ii. **INC-8: Declaration by CA/CS/CMA**
 - iii. **INC-9: Affidavit** regarding:
 - a. Subscribers **not guilty of fraud**.
 - b. **Not debarred from incorporating a Co.**
 - c. All information given is **true & fair** to the best of his knowledge.
 - iv. **INC-10: Details regarding directors & promoters**.
5. ROC will issue **Certificate of incorporation & CIN** in **INC-11** within 30 days.
6. Status of Producer Co. will be **Private Co.** for situations where Chapter IX-A is silent.

Conversion in Producer Co. (Sec 581K – 581N)

1. Only a **Multi-State Co-operative Society** can become a Producer Co. Not allowed to Single State.
2. Such MSCS shall apply to co-operative Society's Registrar to get **dissolved and converted**.
3. The **Registrar** will dissolve the MSCS and give a certificate of dissolution.
4. Then such an MSCS shall apply to ROC with **MOA, AOA, INC-7, INC-8, INC-9, INC-10 & Certificate of Dissolution**.
5. For above process the MSCS shall pass **approval of its 2/3rd members** regarding conversion.
6. ROC will issue a **COI to such an MSCS in INC-11**.
7. All the Assets, Liabilities, Government Grants, Employment Contracts, Pending Litigations, etc. will be **transferred** from MSCS to PCL.
8. If PCL wants to get **re-converted** to MSCS then they shall **apply to NCLT** (Previously HC) with approval of **GM-SR**.
9. **NCLT will pass an order** of dissolution & conversion of such PCL to MSCS.
10. **Newly incorporated PCL cannot be converted** to Co-operative Society.

Sec 581F: Contents of MOA

1. **Name** of the company with "**Producer Company Limited**" as the last words of the name of such Company;
2. **State** in which the registered office of the Producer Company is to **situate**;
3. **Main objects** of the Producer Company shall be one or more of the objects specified in **section 581B**;
4. **Names and addresses** of the persons who have **subscribed** to the memorandum;
5. Amount of **share capital** with which the Producer Company is to be registered and **division thereof into shares**

of a fixed amount;

6. the names, addresses and occupations of the subscribers being producers, who shall act as the **first directors** in accordance with sub-section (2) of section 581J;
7. That the **liability** of its members is limited;
8. opposite to the subscriber's name the **number of shares each subscriber** takes. No subscriber shall take less than one share;
9. in case the objects of the Producer Company are not confined to one State, the **States to whose territories the objects extend**.

Sec 581H: Amendment of MOA

1. Amendment can be done by passing **Special Resolution**.
2. It shall **not be inconsistent with sec 581B**.
3. Copy of amended MOA along with copy of SR duly **certified by 2 directors** shall be **filed with Registrar within 30 days** from the date of adoption.

Sec 581I: Amendment of AOA (Imp)

1. Amendment of AOA shall be **proposed by not less than 2/3rd of the elected directors or by not less than 1/3rd of the members** of the Producer Co.
2. Shall be **accepted by Member by SR**.
3. Copy of amended AOA along with copy of SR duly certified by 2 directors shall be **filed with Registrar within 30 days** from the date of adoption.

Sec 581O to Sec 581X: Management of Producer Company

Sec 581O: Minimum 5 Directors; Maximum 15 Directors. If PC is formed by **conversion** then all directors of the earlier society shall **continue as directors for 1 year**.

Sec 581P: Appointment of Directors

- i. **Election:** a. **Newly** incorporated PC –**within 90 days** from date of incorporation
b. PC formed by **conversion** - **within 365 days** from date of conversion
- ii. **Tenure:** as specified in AOA which can last from minimum **1 year to 5 years** maximum.
- iii. **Retirement:** in accordance with **AOA**.
- iv. **Additional Directors:** BOD may appoint 1 or more **experts** as Additional Directors. Shall **not exceed 1/5th** of total directors (**Max 3**). Therefore, total no. of directors shall be 15+3 i.e. max 18.

Sec 581Q: Vacation of office of Directors:

1. On account of following reasons:
 - a. conviction by a Court of any **offence involving moral turpitude & sentenced** in respect thereof to imprisonment for **not less than six months**;
 - b. Producer Company has made a **default in repayment of any advances or loans** taken from any company or institution or any other person and such default **continues for ninety days**;
 - c. he has made a **default in repayment of any advances or loans taken from the Producer Company** in which he is a director;
 - d. the Producer Company, in which he is a director –
 - i. has **not filed the annual accounts and annual return for any continuous three financial years**; or
 - ii. has **failed to repay its deposit or withheld price or patronage bonus or interest** thereon on **due date**, or pay **dividend** and such failure continues for one year or more;
 - e. **Election of office of Directors is not done** in accordance with the provisions of this Act and articles ;
 - f. **AGM or EGM** of the Producer Company **is not called in accordance** with the provisions of this Act **except due to natural calamity or such other reason**.
 2. The above may apply to the **director of a Producer institution which is a member** of such Producer Co.
- Note: Sec 164 is applicable to Producer Co. where the clauses are silent about the same.

Sec 581V: Board Meetings and Quorum

Meetings:	Minimum 4 in each calendar year. Minimum 1 in each quarter.
Notice:	Each director in India at his address
Length of Notice:	Minimum 7 days
Quorum:	1/3 rd of total strength; or 3 directors; whichever is more.
Sitting Fees:	As decided by members in BM. Shall be paid to Additional or Expert Directors.

Secretary: Appointed by every PCL having average annual turnover exceeding Rs. 5 Crores in each of 3 consecutive 3 FYs. Shall be a member of ICSI. Failure: Fine of Rs. 500 for every day of default.
Appointment is not necessary if the PCL has made all reasonable efforts to appoint OR looking the Financial position of the PCL it is not affordable to appoint a Secretary.

Sec 581Y: Quorum

1/4th of the total membership shall constitute the quorum at a general meeting. AOA can provide a higher number.

18.3

Sec 581Z: Voting Rights

Every Member shall have one vote irrespective of number of shares held. In case of equality of votes, the Chairman or the person presiding shall have a casting vote except in the case of election of the Chairman.

Sec 581ZA: Annual General Meetings

1. PCL shall hold an AGM with a gap of not more than 15 months between 2 AGMs.
Registrar may, for any special reason, permit extension of the time for holding any annual general meeting (not being the first annual general meeting) by a period not exceeding three months.
2. First AGM shall be held within a period of ninety days from the date of its incorporation.
3. Members shall adopt the articles of the Producer Company and appoint directors of its Board in the AGM.
4. Notice (minimum 14 days) calling the AGM shall be accompanied by the following documents:
 - i. Agenda
 - ii. MOM of the previous AGM or the EGM;
 - iii. Names of candidates for election as director
 - iv. Audited balance-sheet and profit and loss accounts of PCL and its Subsidiaries with BOD Report including:
 - a. State of affairs;
 - b. amount proposed to be carried to reserve;
 - c. amount to be paid as limited return on share capital;
 - d. amount proposed to be disbursed as patronage;
 - e. material changes and commitments affecting the financial position;
 - f. relating to energy conservation, environmental protection, expenditure or earnings in foreign exchanges
 - v. Draft resolution for appointment of auditors;
 - vi. Draft resolution proposing amendment to the memorandum or articles along with the recommendations of the Board;
5. Notice shall be sent to every Member and auditor of the Producer Company
6. Every AGM shall be called during business hours on any day except public holiday and be held at the registered office of the Producer Company or at some other place within the city, town or village in which the registered office of the Company is situate.
7. **Quorum:** 1/4th of the total number of members of the Producer Company.
8. **Proceedings** of the meeting shall be filed with the ROC within sixty days along with the fees as applicable.

Sec 581ZB to 581ZD: SHARE CAPITAL AND MEMBERS RIGHTS

Sec 581ZB: Share Capital

1. The share capital of a Producer Company shall consist of equity shares only.
2. The shares held by a Member in a Producer Company & be in proportion to the patronage of that company.

Sec 581ZC: Special User Rights

1. If the AOA provides, active Members may have special rights. The Producer Company may issue appropriate instruments to them in respect of such special rights.
2. These instruments after obtaining approval of the Board in that behalf are transferable to any other active Member of that Producer Company.

Sec 581ZD: Transferability Of Shares And Attendant Rights

1. After obtaining approval of the Board, members may transfer the whole or part of his shares along with special rights, to an active Member at par value.
2. Every Member shall within 3 months of his becoming a Member, name a nominee to whom his shares in the Producer Company shall vest in the event of his death.
3. The nominee shall, on the death of the Member, become entitled to all the rights in the shares of the

Producer Company and the Board of that Company shall transfer the shares of the deceased Member to his nominee. If the **nominee is not a producer**, the Board shall **direct to surrender the shares** together with special rights, if any, to the Producer Company at par value or such other value determined by the Board.

4. Other than above, the shares of a Member of a Producer Company shall not be transferable.
5. Where the Board of a Producer Company is satisfied that any Member has:
 - i. **ceased to be a primary producer**; or
 - ii. **failed to retain his qualifications to be a Member** as specified in articles;
 the Board shall **direct the surrender of shares** together with special rights by serving a **written notice** at par value or such other value as may be determined by the Board. Such member shall be given an **opportunity of being heard**.

Sec 581ZE to 581ZJ: FINANCE, ACCOUNTS AND AUDIT

Sec 581ZE: Books Of Accounts - Every Producer Company shall keep at its registered office proper books of account with respect to –

- a. **Money received and expended** and along with the narrations
- b. all **sales and purchase of goods**
- c. **Instruments of liability** executed by or on behalf of the Producer Company
- d. the **assets and liabilities** of the Producer Company
- e. Where a PCL is engaged in production, processing and manufacturing, the particulars relating to utilization of materials or labour or other items of **costs**.

Sec 581ZF: Internal Audit - IA of its Accounts shall be carried out at such **interval** and in manner specified in AOA, by a **chartered accountant** as defined in ICAI Act.

Sec 581ZG: Duties Of Auditor - The auditor shall **report** on the following additional matters relating to the Producer Company, viz. :-

- a. the amount of **debts due & bad debts** if any;
- b. the verification of **cash balance and securities**;
- c. the details of **assets and liabilities**;
- d. all **transactions** which appear to be **contrary** to the provisions of this Part;
- e. the **loans given** by the Producer Company to the directors;
- f. the **donations or subscriptions** given by the Producer Company;
- g. any **other matter** as may be considered necessary by the auditor.

Sec 581ZH: Donations Or Subscription By Producer Company -

1. A Producer Company by passing a **special resolution** may make donation or subscription to any institution or individual for the purposes of promoting the social and economic welfare of Producer Members or producers or general public; or the mutual assistance principles.
2. The aggregate amount of all such donation and subscription in any FY shall **not exceed three per cent of the net profit** of the Producer Company in the immediately preceding FY.
3. Contribution to any **political party** or for any political purpose in any manner is **not permitted**.

Sec 581ZI: General And Other Reserves

1. Every PCL shall **maintain a general reserve** in every FY, in addition to any reserve maintained by it as may be specified in AOA.
2. Where the PCL **does not have sufficient funds** in any FY for transfer to maintain the reserves as specified in AOA, the members shall refund in the proportion of the patronage.

Sec 581ZJ: Issue Of Bonus Shares

On **recommendation of the Board and passing of resolution in the general meeting** any Producer Company may issue bonus shares by **capitalization of amounts from general reserves** referred to in section 581ZI in **proportion** to the shares held by the Members on the date of the issue of such shares.

Sec 581ZK: Loan etc. to members

1. The Board may provide financial assistance to the Members of the Producer Company by way of;
 - a. **credit facility** in connection with the business of the Producer Company for a period **not exceeding 6 months**;
 - b. **Loans and advances**, against security specified in articles to any Member, **repayable within a period more than 3 months but not more than 7 years** from the date of disbursement of such loan or advances.

2. Provided that any loan or advance to any director or his relative shall be granted **only after the approval by the Members in GM.**

Sec 581ZL: Investment In Other Companies

Sec 581ZL: Investment In Other Companies, Formation Of Subsidiaries, Etc.

1. Any PCL for **promotion of its objectives** may acquire the shares of another PCL.
2. Any PCL buy shares for formation of its subsidiary company, joint venture or with any Body Corporate, for promoting the objects of the PCL by special resolution.
3. Any PCL may invest in any other Company for an amount **not exceeding thirty per cent of the aggregate of its paid-up capital and free reserves. Excess amount permitted after passing GM-SR & approval of CG.**
4. All investments by a PCL may be made if such investments are consistent with its objects.
5. Every PCL shall **maintain a register** containing particulars of all the investments viz. Names of Company in which invested, number and value of shares, the date of acquisition and the manner and price at which any of the shares have been subsequently disposed of.
6. The register shall be kept at the registered office of the Producer Company and the same shall be open to inspection by any Member who may take extracts therefrom.

Chapter 19: Special Court

Sec 435: Establishment of Special Courts

1. The CG will designate any number of Special Courts to try offences of jail of 2 years or more under this Act.
2. All the offence shall be tried by Metropolitan Magistrate or Judicial Magistrate having jurisdiction.
3. Special court will have only 1 Judge appointed by CG with the experience similar to Chief Justice of HC of the same jurisdiction
4. The Sessions Judge or an Additional Sessions Judge can only become the judge of special court.

19.1

Sec 436: Offences Triable by special Courts

1. All the offence of jail of 2 yrs or above shall be tried by special court.
2. The offence for any company shall be tried by special court having jurisdiction over its registered office.
3. Where any person is detained by:
 - a. Judicial magistrate for 15 day; or
 - b. Executive magistrate for 7 days
 they shall forward such person to special court having jurisdiction over such person
4. Special court will use same power on such forwarded person as used by magistrate.
5. Special court may take cognizance of the offence without any commitment of trial in past.

Sec 437: Appeal and revision

All the powers of High Court shall be given to the Special Court having jurisdiction.

Sec 438: Application of code to proceedings before special court

The provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court. The Special Court shall be deemed to be a Session Court (Fast Track) & the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

Sec 441: Compounding of certain offences

Max. fine imposed	Penalty ≤ Rs. 5 Lacs	Penalty > Rs. 5 Lacs
Compounding Authority	RD	NCLT
Offences that can be compounded	1. Penalty with Jail	
	2. Jail	
	3. Offence repeated after a gap of 3 years	

1. Every application for the compounding of an offence shall be made to the Registrar who shall forward the same to the Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be.
2. On compounding of offence intimation thereof shall be given by the company to the Registrar within seven days from the date on which the offence is so compounded.
3. Once a compounding is done, no prosecution, no fees, no penalties can be imposed.
4. During processing of compounding if Tribunal demands any document information or fees, then the person shall give the same to the Authority.
5. If compounding is done during prosecution then prosecution will stop.
6. Any officer or other employee of the company who fails to comply shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one lakh rupees, or with both.
7. a. any offence which is punishable under this Act, with imprisonment or fine, or with imprisonment or fine or with both, shall be compoundable with the permission of the Special Court.
b. any kind of criminal offence of this Act is not compoundable here. A reference for the same shall be made to Code of Criminal Procedure.
8. Compounding of offence under this Act is provided only under this section.

Sec 442: Mediation and Conciliation Panel (Very imp)

1. The Central Government shall maintain a panel of experts called as the Mediation and Conciliation Panel.
2. This Panel consists of such number of experts having such qualifications as may be prescribed for mediation between the parties whose proceedings are pending before the CG or the NCLT or the NCLAT.
3. Any of the parties to the proceedings may apply to the CG or the NCLT or the NCLAT as the case may be, in such form along with such fees prescribed, for referring the matter to the Mediation and Conciliation Panel.
4. The said Authority shall appoint one or more experts from the panel.
5. The said Authority may *suo motu* refer any matter pertaining to such proceeding to such number of experts from the Mediation and Conciliation Panel as it deems fit.
6. The fee and other terms & conditions of experts of the Panel shall be as prescribed.
7. The Panel shall follow such procedure prescribed and dispose the matter within a period of 3 months from the date of such reference and forward its recommendations to the said Authority.
8. Any party aggrieved by recommendations of the Panel may file objections to the said Authority as the case may be.

Sec 443: Power of Central Government to appoint company prosecutors

When a person executing fraud against company, company cannot appoint a Lawyer on its own so for recovery of damages the CG will appoint a lawyer on behalf of company who will be called as a Public Prosecutor or Company Prosecutor.

Sec 444: Appeal against acquittal

In similar case as above the CG will also appoint a person who will appeal against the fraudulent person during prosecution.

Sec 445: Compensation for accusation without reasonable cause

If a person is accused without any reasonable cause before the Special Court or the Court of Session, compensation shall be paid. Same as provisions of section 250 of the Code of Criminal Procedure.

Sec 446: Application of fines

The court imposing any fine under this Act may direct that the whole or any part thereof shall be applied towards payment of the costs of the proceedings, or in or towards the payment of a reward to the person on whose information the proceedings were instituted.

Ch. 20: MISCELLANEOUS PROVISIONS

Sec 447: Punishment for fraud & Sec 448: Punishment for false statements

If any person executes a fraud in case of the Company irrespective of whether he derives a wrongful gain or wrongful loss, he will be liable for **jail from 6 months to 10 years and fine from amount of fraud to 3 times of amount of fraud.**

Sec 449: False Evidence

Any person giving evidence **intentionally** in the form of **oath or affirmations or affidavit knowing it to be false** will be liable to **jail of 3 years to 7 years and fine upto 10 Lacs.**

20.1

Sec 450: Punishment where no specific penalty or punishment is provided

If there is **no penalty provided for contravention of this Act or its Provisions, Rules, Conditions, Limitations or Restrictions** then penalty applicable will be **Rs. 10,000 plus 1000 per day under this section.**

Sec 451: Punishment in case of repeated default

Any person who **repeats the same offence within a period of 3 years** will be punishable with a **penalty up to 2 times of the penalty** mentioned for such offence & **imprisonment equal to original imprisonment of such offence.**

Sec 452: Punishment for wrongful withholding of property

If any **officer or employee** wrongfully possesses the property of the Company **including cash** then he will be liable to fine of **Rs.1 Lac to 5 Lacs** and **jail up to 2 years plus compensation for the property or delivering property in original state.**

Sec 453: Punishment for improper use of Limited or Private Limited

If any person improperly uses the word Limited or Private Limited **without any authorization** then they will be liable for a **fine of Rs. 500 to Rs. 2,000 per day during such a use.**

Sec 455: Dormant company

1. Dormant Company means a company which is **inactive** i.e. not carrying on business operations for last 2 years and also **not have filed Financial Statements for last 2 years.**
2. Also such a Company **does not have any significant accounting transactions.**
3. A Company can make an **application for dormancy in Form MSC-1** with an **approval of 3/4th of the shareholders in value.**
4. Company will be **eligible to apply** in this section if
 - a. **no inspection, inquiry or investigation is ordered and pending** against it
 - b. **no prosecution is initiated or pending** against it
 - c. **company is not having Public Deposits or Outstanding Loans**
 - d. **no dispute between management and ownership**
 - e. **does not have outstanding Government dues**
 - f. **not defaulted in payment of workmen dues**
 - g. **securities not listed on Stock Exchange**
5. Considering all above, ROC will issue a **certificate of dormancy in Form MSC-2** and ROC will also maintain a **register of all dormant companies on MCA's site.**
6. A dormant company shall file an **Annual Return in Form MSC-3** within 30 days of end of FY.
7. Dormant Company shall **comply with minimum requirement of BOD** but it need not comply with rotation of auditors.
8. Dormant Company **can seek the status of Active Company** by making application in **Form MSC-4** and obtaining a **certificate of Active Company in Form MSC-5.**
9. However, if Company **stays dormant for 5 years**, ROC will **strike of the name of the Company.**
10. If Dormant Company **does not comply with conditions of Form MSC-1**, its Directors shall apply to seek the

status of Active Company within 7 days.

Sec 456: Protection of action taken in good faith

No person shall file a prosecution on any Government officer who is acting in good faith according to Law, Rules, Orders made there under.

Sec 457: Non-disclosure of information in certain cases

No Court or Tribunal or Authority can disclose the source of information so as to protect the steady flow of information required for the purpose of investigations or prosecutions.

Sec 458: Delegation by Central Government of its powers and functions

CG by notification in OZ can delegate its powers to:

- | | | |
|---------|----------------------|---------------|
| a. ROC | b. Regional Director | c. Liquidator |
| d. NCLT | e. SEBI | f. Any Court |

Sec 459 & Sec 462: Power to give exemption

CG or NCLT can give an exemption or approval or consent from applicability of provisions of this Act to a specific Company u/s 459 or a class of companies u/s 462 by prescribing conditions and fees to avail such an exemption.

Sec 460: Condonation of delay

CG or NCLT or ROC can condone any delay in filing application or petition or reporting by prescribing conditions and fees.

Sec 463: Power of court to grant relief

Every Court or Tribunal after hearing the case believes that the officer is honest, reasonable and fair during his working and has applied all his diligence to avoid contravention or fraud or breach of trust, and no sufficient appropriate evidence is against him; can grant relief to such a person from further prosecution.

Sec 467 & Sec 469: Power to amend schedules and rules

CG, MCA have power to amend schedules, and rules of Companies Act, 2013 by passing such amendment in Parliament at both Houses with max difference of 30 days.

Sec 468: Powers of Central Government to make rules relating to winding up

CG has power to make Winding Up rules as stated in above sections regarding:

- | | |
|-------------------------------------|---|
| a. Proceedings regarding Winding Up | b. Meetings of Creditors and Committees |
| c. Reduction of Capital | d. Application to Tribunal |
| e. Settlement of Contributories | f. Liquidating Properties |
| g. Making calls | h. Payment of Liabilities |

Sec 470: Power to remove difficulties

CG, MCA have power to remove all practical difficulties faced while implementation of this Act by making an order up to 5 years from commencement of this Act. Every such order shall be laid before each House of Parliament.

b. by giving 3 months' salary and allowances in lieu thereof,

Sec 6: Removal of member from office

CG shall after giving reasonable OOBH remove a member from office if he –

(a) is, or at any time has been, adjudicated as insolvent;	(b) is of unsound mind and stands so declared by a competent court;
(c) has been convicted of an offence which, in the opinion of the CG involves a moral turpitude;	d) has, in the opinion of the Central Government, so abused his position as to render his continuation in office detrimental to the public interest

Sec 7: Meetings

Time, Places, and Rules of Procedure (including Quorum) are provided by regulations. 'Chairman' or in his absence 'any other member chosen by the members present' from amongst themselves at the meeting shall preside at the meeting. All questions shall be decided by a majority vote of the members present and voting, and, in the event of equality of votes, the Chairman, or in his absence, the person presiding shall have a second or casting vote.

Sec 7A : Member not to participate in meetings in certain cases (Conflict of Interest)

a. Any MEMBER of the Board,

10. Levying fees or other charges for carrying out purposes of this section;
11. Conducting research for above purposes;
12. Calling of information or furnishing to such agencies specified by Board, necessary in efficient discharge of functions;

Sec 11A : Board to regulate or prohibit issue of prospectus, offer document or advertisement soliciting money for issue of securities

Board may, for the protection of investors, -

- a. specify, by REGULATIONS – the matters and manner of disclosure, relating to issue of capital, transfer of securities and other matters incidental thereto; and
- b. specify, by GENERAL OR SPECIAL ORDERS –conditions for issue or prohibition on any company from issuing prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities;
- c. specify the requirements for listing and transfer of securities and other matters incidental thereto.

Sec 11B : Power to issue Directions

Except as otherwise provided in section 11 (i.e. Functions of SEBI), if after enquiry, the Board is satisfied that it is necessary,-

imprisonment upto 1 year or fine upto Rs. 1 crore.
ii. Plus Rs. 5 Lacs for every day till default continues.

Sec 11D: Cease Desist Proceeding

Board finds, after inquiry, that any person has violated, or is likely to violate, any provisions, it may pass an order requiring such person to cease and desist from committing or causing such violation.

Common points for Sec 11C & 11D

In respect of any listed public company or a public company (other than the intermediaries specified under section 12) which intends to get its securities listed on any recognised stock exchange unless the Magistrate/Board has reasonable grounds to believe that such company has indulged in insider trading or market manipulation.

Sec 12: Registration of stock brokers, sub-brokers, share transfer agents, etc.

Provision related to	It states
----------------------	-----------

c. the expenses on objects and for purposes authorised by this Act.

Sec 15: Accounts and Audit

1. Board maintains proper accounts and records and prepares an annual statement of accounts as notified by CG with C&AG's consultation, and pays the C&AG for expenses relating to its audit thereof.
2. Audit by C&AG shall be at such intervals as may be specified by him.
3. C&AG or its appointee for audit shall have the same rights and privileges and authority as in audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board.
4. The accounts together with the audit report thereon shall be forwarded annually to the CG who then lays it before each House of Parliament.

Penalties of SEBI

Sec	Nature of Contravention	Quantum
15A	a. Failure to furnish document return to SEBI b. Failure to file return or furnish any information, books or other documents to SEBI c. Failure to maintain books and records	Lower of: 1. Rs. 1 lac per day or 2. Rs. 1 crore
15B	Failure by intermediary to enter into an agreement with his client.	

	c. engage in any act, practice, course of business operating fraudulently upon any person related to issue, dealing in securities which are listed or proposed to be listed in contravention of the provisions.	
15G	If any insider who on the basis of unpublished price-sensitive information: i. either on his own or on behalf of any other person, deals in securities; ii. counsels, or procures for any other person on the basis of unpublished price-sensitive information. iii. communicates any unpublished price-sensitive information to any person, with or without his request except as required in the ordinary course of business or under any law; or	Rs. 10 Lacs to Rs. 25 Cr. or 3 times of profit derived whichever is higher.
15H	If any person: i. discloses the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or ii. makes a public announcement to acquire shares at a minimum price; or iii. make a public offer by sending letter of offer to the shareholders of the concerned company; or iv. make payment of consideration to the shareholders who sold their shares pursuant to letter of offer	
15HA	If any person indulges in fraudulent & unfair trade practices relating to securities	Rs. 5 Lacs to Rs. 25 Cr. or 3 times of profit derived whichever is higher.
15HB	Any other non-compliance for which no separate penalty has been provided	Rs. 1 Lac per day Maximum upto Rs. 1 crore.
24	If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his	Imprisonment: 1 month to 10 yrs or

- vii. **Crediting sums realised by way of penalties to Consolidated Fund of India:** Penalties recovered shall be credited to the Consolidated Fund of India.
- viii. **Settlement of administrative and civil proceedings:** For proceedings initiated/to be initiated under sec 11, 11B, 11D, 12(3) & 15-I, option of SETTLEMENT is available. Procedure:
- a. Person may file a written application to Board proposing for settlement of the proceedings initiated/to be initiated for the alleged defaults.
 - b. Board after considering the nature, gravity and impact of defaults, may agree to the proposal for settlement
 - c. Board may require payment of such sum by the defaulter or fulfilment of such other terms.
 - d. NO APPEAL u/s 15T to SAT is possible against any order passed under this section.

Sec 15K, 15L, 15M, 15N & 15T: Appellate Tribunal

Sec 15K-Establishment of Securities Appellate Tribunal: CG by notification, establishes one or more Securities Appellate Tribunal (SAT).

Sec 15L: Composition of SAT by CG	Sec 15N : Tenure of Presiding Officer and other Members of SAT	
SAT shall consist of:	Tenure of Office	Age Limit
i. a Presiding Officer	5 years.	68 years

Order by	Appeal to	Reason	Time limit of appeal to SAT	Extension of time
SAT	SC	Question of Law	60 days from date on which SAT order communicated to appellant	60 days granted based on sufficient cause

Sec 15R: Orders constituting Appellate Tribunal to be final and not to invalidate its proceedings

No order of the Central Government appointing any person as the Presiding Officer or a Member of a SAT shall be called in question in any manner, and no act or proceeding before a Securities Appellate Tribunal shall be called in question in any manner on the ground merely of any defect in the constitution of a SAT.

Sec 26A-E: Establishment of Special Courts

CG may for speedy trial of offences establish or designate multiple Special Courts.

Special Court constitutes 1 Judge appointed by CG with the concurrence of the Chief Justice of the HIGH COURT within whose jurisdiction the judge to be appointed is working.

Qualification for appointment: Appointee must hold the office of a Sessions Judge or an Additional Sessions Judge immediately before such appointment.

Offences Triable by: All offences under this SEBI Act, 1992 shall be taken cognizance of and tried by the Special Court for area under its jurisdiction or where there are more than one Special Courts for such area, by such one of them as may be specified in this behalf by the High Court concerned.



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2. An issuer not satisfying the condition **above** may make an IPO if the issue is made through the book-building process and the issuer undertakes to allot, at least 75% of the net offer to public, to qualified institutional buyers (QIBs) and to refund full subscription money if it fails to make the said minimum allotment to QIBs.

3. An issuer may make an IPO of convertible debt instruments without making a prior public issue of its equity shares and listing thereof.

4. An issuer shall not make an allotment pursuant to a public issue if the number of prospective allottees is less than one thousand.

Steps involved to opt for IPO

1. **Appointment of Merchant Banker from following:**

- a. SEBI Registered Merchant Banker
- b. Registrar to the issue who shall provide administrative help.
- c. Bankers who provide collection of money and application.
- d. Brokers who advertise the issue and
- e. Underwriters who help obtain finance in case of shortage.

2. **Marketing the issue**

Issue is to be advertised to prospective investors. And timing of issue should not be such that overall sentiment is negative.

Reg. 28: Pricing

An issuer may determine the price of specified securities, the coupon rate and conversion price of convertible debt instrument by way of:

- consultation with the lead merchant banker OR
- through the book building process specified in Sch. XI.

Reg. 29: Differential Pricing

An issuer may offer specified securities at different prices, subject to the following:

Type of Issue	All issues	Book Built Issue	Composite Issue (Public + Rights)	Alternate Book building method
Investor group that can be priced differently:	Retail Individual Investors OR Retail Individual Shareholders OR Employees entitled for 'reservation' in Reg. 42 applying for Securities upto 2 lakhs.	Anchor Investor	Both Public Issue Subscribers & Rights Issue Subscribers	Employees
Price can be:	Upto 10% lower than other categories	Not lower than other applicants	Both Issues can be priced differently if justification given	Upto 10 % lower than floor price

Reg. 30: Price and Price band

- a. a subsidiary or holding company of such body corporate;
- b. any body corporate in which the promoter holds $\geq 10\%$ of the equity share capital or which holds $\geq 10\%$ of the equity share capital of the promoter;
- c. any body corporate in which a group of individuals or companies or combinations thereof which holds $\geq 20\%$ of the equity share capital in that body corporate also holds \geq of the equity share capital of the issuer; and
- iv. in case the promoter is an individual:
 - a. any body corporate in which $\geq 10\%$ of the equity share capital is held by the promoter or an immediate relative of the promoter or a firm or HUF in which the promoter or any one or more of his immediate relative is a member;
 - b. any body corporate in which a body corporate as provided in (a) above holds $\geq 10\%$ of the equity share capital;
 - c. any HUF or firm in which the aggregate shareholding of the promoter and his immediate relatives is $\geq 10\%$ of the total; and

Provided that a financial institution, scheduled bank, foreign institutional investor other than Category III foreign portfolio investor and mutual fund shall not be deemed to be promoter group merely by virtue of the fact that $\geq 10\%$ of the equity share capital of the issuer is held by such person.

'Promoter's Contribution'

Type of Issue	IPO	FPO	Composite (Public + Rights)
Promoter's	20% or more of the post	To the extent of 20% of : 'proposed issue	To the extent of 20% of 'proposed issue size' or 'post issue capital'.

For Listed Issuers:

i. Conditions for making rights issue:

Value of securities(incl. premium)	> 50 Lakhs	Upto 50 lakhs
Steps to make Rights Issue	a. Draft Letter of Offer to Board 30 days before b. File Letter of Offer with SEBI	File Letter of Offer with SEBI

ii. To determine eligibility of shareholders for rights issue a RECORD DATE is set.

iii. If issuer withdraws rights issue after announcement of the record date, then for 12 months after that record date no application for listing of equity share can be made to any RSE except for equity shares arising out of convertible instruments issued prior to announcement of record date.

Reg. 92-95 : Bonus Shares

Listed Issuer shall fulfil following conditions :

- a. AOA must authorize for issue of bonus shares, capitalisation of reserves, etc, if not, then issuer shall pass a resolution at its general body meeting making provisions in the AOA
- b. Issuer has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;

Conditions: Under the SEBI (ICDR) Regulations 2009, following conditions must be followed for the preferential issue by Listed Company:

- i. Approval from shareholders shall be taken
- ii. Existing proposed allottees shall have shares in dematerialised form.
- iii. Shall not make preferential issue unless it:
 - a. Is in compliance with the conditions of continuous listing;
 - b. Has obtained PAN of all the proposed allottees
- iv. Issuer Company cannot make issue to a person who has sold any equity shares during the six months preceding relevant date.

(volume weighted average prices: VWAP)

Security	Minimum Price	Relevant Date
Frequently traded shares listed for 26 weeks or more	Higher of the average of weekly high/ low of VWAP during: 26 weeks or 2 weeks prior to Relevant Date.	30 days prior to EGM date where resolution u/s 81(A) is passed.
Shares listed for less than 26 weeks	Higher of the: <ol style="list-style-type: none">i. Average of weekly high/ low of VWAP during the period prior to Relevant Date.ii. IPO Price or value arrived at under Scheme of Arrangementiii. Average of weekly high/low of VWAP during the 2 weeks prior to the Relevant Date.	

3. The price will be averaged out market price of last 2 weeks high lows. 4. The issuer shall appoint Merchant Banker to manage the issue.

Reg. 83: Appointment of Merchant Banker

A QIP shall be managed by a Merchant Banker(s) to by exercising due diligence. While seeking in-principle approval for listing of the eligible securities he shall furnish to each Stock Exchange a Due Diligence Certificate and that the issuer complies with requirements of this Chapter.

Reg. 84: Placement Document

1. QIP shall be made on the basis of a Placement Document containing all material information, including those specified in Schedule XVIII.
2. It shall be serially numbered and copies shall be circulated only to select investor.
3. Issuer while seeking in-principle approval from the RSE shall furnish a copy of the Placement Document, Compliance Certificate & any other document.
4. It shall also be placed on the website of the concerned Stock Exchange and of the Issuer with a disclaimer that it is w.r.t the QIP and that no offer is being made to the Public or to any other category of investors.

Reg. 85: Pricing

QIP shall be made at a price not less than the average of the weekly high and low of the closing prices of the equity shares of the same class quoted on the stock exchange during the 2 weeks preceding the relevant date. However, the issuer may offer a discount of not more than 5% on the price so calculated for the QIP, subject to approval of shareholders.

Reg. 86: Restrictions on allotment

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- a. specified securities listed on main board or SME Exchange or institutional trading platform;
- b. non-convertible debt securities, non-convertible redeemable preference shares, perpetual debt instrument, perpetual non-cumulative preference shares;
- c. Indian depository receipts;
- d. units issued by mutual funds;
- e. securitised debt instruments;
- f. any other securities as may be specified by the Board.

Common Obligations of Listed Entities

Regulation 6: Compliance Officer and his Obligations

Qualified Company Secretary shall be appointed as the compliance officer. Responsibility of Compliance officer is as follows:

- a. ensuring conformity with the applicable regulatory provisions
 - b. monitoring email address of designated grievance redressal division
 - c. ensuring the procedural correctness in filings done by the listed entity
 - d. co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories
- under these regulations.

Regulation 7: Share Transfer Agent

Listed entity can either appoint or have a Share Transfer facility in-house.

	Entity			i. Holding of Securities and ii. Shareholding Patterns for each class of security. Such statement shall also be filed: i. 1 day before listing of Securities in stock exchanges. ii. Within 10 days of capital restructuring which results in total PUC increase by 2%.
32(1)	Listed Entity	RSE		Statement showing : i. deviations in the use of proceeds from the objects stated in the pre-issue document; ii. category wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilization as per pre issue documents and the actual utilisation of funds.
33(3)	Listed Entity	RSE	45 days (except 4th Qtr)	Statement of Quarterly and YTD (year to date) standalone financial results.

Prior Intimation of Board Meetings

Regulation No.	Who should file?	With whom?	Purpose for which intimation is to be given:	Intimation given (days)	Exclusions
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46(3)	Listed Entity	NA	Update change in the content of website, if any.	2 working days	Date
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Annual/ Yearly Compliances

Regulation No:	Who should file?	Recipient	Time Limit	Contents of filing
33(3)	Listed Entity	RSE	60 days (from end of FY)	i. Audited Standalone financial results for FY ii. Audit report in Form A or Form B
34	Listed Entity	RSE	21 working days after AGM at which it was approved and adopted	Annual Report
36(2)	Listed Entity	Holder of Securities	21 days before AGM for approval	Annual Report

Corporate Governance

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Nomination and Remuneration Committee

- i. Members of N&R committee shall consist of at least 3 directors
- ii. All directors in this committee shall be non-executive
- iii. Min 50 % OF directors shall be independent
- iv. Chairperson shall be independent
- v. Chairperson of the listed entity can be a member of N&R committee but can't be chairperson of N&R committee.

Stakeholder's Relationship Committee

- i. Looks into mechanism of redressal of grievance of shareholders
- ii. BOD appoints members.
- iii. Chairperson shall be Non Executive Director

Risk Management Committee

- i. Applicable only to top 100 select listed entities.
- ii. BOD appoints MEMBERS.
- iii. Majority of members are from BOD.



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- a. the voting rights of the shareholders who are also stock brokers of the RSE;
 - b. the right of shareholders or a stock broker of the RSE to appoint the representatives on the governing board of the stock exchange;
 - c. the maximum number of representatives of the stock brokers of the RSE to be appointed on the governing board of the RSE, which shall not exceed $1/4^{\text{th}}$ of the total strength of the governing board.
4. **Conditions for approval:** Every RSE for which scheme has been approved shall by fresh issue of equity shares to the Public or in any other manner as specified by SEBI ensure that at least 51% of its equity share capital is held, within 12 months from the date of publication of order by the Public other than shareholders having trading rights. However, the SEBI may extend period by 12 months on sufficient cause in Public Interest.
5. **Publication of Scheme:** On approval of the scheme, it shall be published immediately by: (a) SEBI in the OZ; (b) RSE in 2 daily newspapers circulating in India, as may be specified by SEBI.
6. **Scheme becomes effective:** Upon publication, the scheme shall have effect and be binding on all persons and authorities.
7. **Rejection of scheme:** Where SEBI is satisfied that it would not be in the interest of the trade or the public interest to approve the scheme, it may reject the scheme and such order of rejection shall be published by it in the OZ. SEBI shall give a reasonable OOBH to all the persons concerned and to the RSE before passing an order rejecting the scheme.

<ol style="list-style-type: none"> 1. Stock Exchange (SE) shall apply to CG along with copies of Bye Laws, Rules, & Application in Form A and with fees of Rs. 500. 2. CG may demand further information regarding the following: <ol style="list-style-type: none"> a. Rules and Bye Laws are in conformity regarding conditions prescribed. b. SE is willing to comply with conditions imposed by CG. c. Recognition would be in interest of trade & also in public interest. 3. CG may approve subject to following: 	<ol style="list-style-type: none"> 1. Recognised Stock Exchange (RSE) should furnish periodical returns to SEBI. 2. These Returns contain information on current affairs (volume & value of transactions, short deliveries, important decisions taken by Board etc.) 3. Every SE has to maintain BOA for a period of 5 years which may be inspected by SEBI at any time. 4. SEBI may order in writing to call for information or explanation relating to affairs of an Exchange or its 	<ol style="list-style-type: none"> 1. The CG after consultation with SE may by order in writing direct SE/s to make or amend rules within 2 months from the date of such order. 2. Amendment w.r.t. the governing body of SE, its constitution and powers of management and the manner of transacting a business. 3. If an Exchange fails to comply with order, CG on its own may make or amend the rules. 4. The amended rules should be published in the Gazette of India and also in the Official Gazette of the 	<ol style="list-style-type: none"> 1. SEBI may either on a request in writing received by it from the governing body of a RSE or Suo-motu amend any bye-laws made by such SE. 2. SEBI will have to be satisfied, after consultation with the governing body of the SE that it is necessary or expedient to amend the bye-laws and record its reasons also. 3. Amended bye-laws should be published in the Gazette of India and also in the Official Gazette of the State in which the principal
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3. Examples: 1993 Bomb Blast-SE closed for 10 days; Normally SE are closed on elections, etc.

the governing Board.

3. CG may by **notification in OZ** declare governing board of an Exchange as superseded and **may appoint person/s to perform and exercise all powers of Board.**

e. Today all SEs provide for **one member one vote** and only members are allowed to be proxies.

2. Prohibition is a precaution, void is a consequence and illegal is precaution as well as consequence. To make a correction in already executed fraud contracts CG has power to give a license and ratify those contracts by Licensed Traders.

Sec 8A: Clearing Corporation

1. A RSE may, with the prior approval of the SEBI, transfer the duties and functions of a clearing house to a clearing corporation, being a company incorporated under the Companies Act, 1956, for the purpose of:
 - a. **Periodical settlement of contracts** and differences thereunder;
 - b. **Delivery of, and payment for, securities;**

Sec 21 Application for listing of securities: Every Company shall comply with Listing agreement.

Sec 22 Refusal of SE to List Securities: The reason for refusal shall be given for refusing the listing of securities.

Sec 22A Companies right to Appeal:

1. Appeal shall be filed with Securities Appellate Tribunal (SAT).
2. Appeal shall be filed within 15 days of receipt of:
 - a. Order of refusal, or
 - b. Expiry of 10 weeks from closing of subscription list if refusal is not communicated.
3. The delay can be condoned up to one month if appeal is not filed due to reasonable cause.

Sec 22B Procedure adopted by SAT:

1. SAT shall give opportunity of being heard to the SE.
2. SAT shall try to dispose the appeal within 6 months.
3. SAT may set aside or vary or confirm the order of SE.
4. Copies of order of SAT shall be sent to the parties of appeal.

Reasons for delisting:

SEBI may delist the securities on any grounds prescribed under this Act.

Conditions for delisting:

1. Record the reason in writing.
2. Reasonable opportunity of being heard shall be given to the company.

Appeal by Company against the order of delisting:

1. Appeal to SAT
2. Within 15 days of order of RSE to delist the securities.
3. SAT may condone the delay in filing appeal not above 1 month on reasonable ground or cause is shown.

Proceedings by SAT:

1. Opportunity of being heard to SE.

23D	Failure to segregate securities or moneys of clients or using securities or moneys of clients for self or for any other client	Up to Rs. 1 crore
23E	Failure to comply with the provisions of the listing conditions or delisting conditions or grounds.	Up to Rs. 25 crores
23F	Excess dematerialisation or delivery of the securities	
23G	Failure to furnish periodical returns	
23H	Any contravention for which no separate penalty is given.	Up to Rs. 1 crore

Sec 23I – 23J: Adjudication

Reason for appeal: Delisting or Non-listing of shares.

Appeal by: Company

Appeal within: 15 days from date of order of rejection or Expiry of 10 weeks from date of application

Appeal to Supreme Court: within 60 days from the date of order of SAT

Common points for every Authority or Appeal:

Appeal to: Securities Appellate Tribunal (SAT)

Order within: 6 months from appeal

Supreme Court: Gives Suo-motu decision



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1. **“Foreign currency”** means any currency other than Indian currency;
2. **“Foreign exchange”** means foreign currency and includes,— (i) deposits, credits and balances payable in any foreign currency, (ii) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency, (iii) drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency;
3. **“Foreign security”** means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency;
4. **“Person”** includes: i. an individual, ii. a HUF. iii. a company, iv. a firm, v. an AOP or BOI ; vi. AJP; vii. any agency, office or branch owned or controlled by such person;
5. **“Person resident in India (PROI)”** means a PRI for more than 182 days during the course of the preceding FY but does not include:
 - a. a person who has gone out of India or who stays outside India, in either case:
 - i. for employment outside India, or
 - ii. for carrying on a business or vocation outside India,
 - iii. for any other purpose, where his intention is to stay outside India for an uncertain period;
 - b. a person who has come to or stays in India, otherwise than for:
 - i. employment in India, or
 - ii. carrying on a business or vocation in India, or

b. Permission of RBI – Not engage in any transaction without the previous approval of RBI which is involving any foreign security not in conformity with the terms of his authorization under this section.

c. While undertaking any transaction:

i. Take such declaration	ii. Satisfy himself that the transaction will not involve any contravention
iii. In case of contravention report the matter to the RBI.	iv. Person refuses to comply the authorised person shall refuse in writing to undertake the transaction.

5. Contravention & Consequences:

a. Revocation of authorization – RBI may revoke the authorization granted if it is in:

i. Public interest

ii. Authorised person has failed to comply with the conditions of authorization. The AP shall be given a reasonable opportunity of making representation.

b. Penalty of Rs. 10,000 and Rs. 200 per day when such contravention continues

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7. Payment related to "Call Back Services" of telephones.

8. Remittance of interest income on funds held in Non-resident Special Rupee Scheme a/c.

Bomber

Prohibited current account transactions are not illegal but are only prohibited to be executed in foreign currency. So if a person wants to execute them in Rupees or in any other kind he can do the same but AP will not give him foreign exchange for them.

CUT permissible with approval of CG		CUT permissible with approval of RBI	
Rule 4 read with Schedule II		Rule 5 read with Schedule III	
Approving Authority	Transaction	Exceeding	Transaction
Ministry of Human Resource Development		USD 5,000 per FY	1. Gift per remitter p.a.; 2. Donation per donor p.a.
Department of Education & Culture	Approval for Cultural Tours for any amount.	USD 10,000 per FY	One or more private visits to any country
		USD 1 Lac or amt. prescribed by country of	For emigration

Director General of Shipping	i. For multi-modal transport operators making remittance to their agents abroad ii. Of container detention charges exceeding the rate prescribed by DG of Shipping	Estimate from: a. A Doctor in India b. Hospital or Doctor abroad	Medical treatment abroad
Ministry of Information & Broadcasting, Communication & IT	Remittance of hiring charges of transponders by (a) TV Channels (b) Internet Service providers	Higher of: a. 5% inward remittance b. USD 25000	Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India.
		Higher of: a. USD 100,000 per academic year b. Estimates from Institutions abroad	Studies Abroad
		USD 100,000 p.a. per	a. Maintenance expenses of close relatives abroad in any other case.

Further, for persons who are resident but not permanently resident in India and:

a. is a citizen of a Foreign State other than Pakistan; or

1. is a citizen of India who is on deputation to the office or branch of the Foreign Company or subsidiary or JV in India of such Foreign Company may make remittance up to his NET SALARY.

Sec 2(e) & Sec 6: Capital Account Transactions (CAT)

Alteration of Assets or Liabilities of PRI situated outside India

Alteration of Assets or Liabilities of PROI situated in India

Transactions in Section 6(3)

5 Transactions prohibited in PROI

Transactions Specified u/s 6(3)	Schedule I: Permissible to PRI	Schedule II: Permissible to PROI	Prohibited CAT for PROI
1. Transfer or issue of any Foreign Security by a PRI;	1. Investment by a PRI in foreign securities;	1. Acquisition & transfer of immovable property in India by PROI;	1. Business of chit fund
2. Transfer or issue of any security by a PROI;	2. Foreign currency loans raised in India and abroad by a PRI;	2. Guarantee by a PROI in favour of, or on behalf of, a PRI;	2. As Nidhi Company

abroad and commodity
derivatives abroad by a PRI.

CAT on which restriction cannot be imposed:

- i. Amortisation of Loan
- ii. Depreciation of direct investments in ordinary course of business
- iii. Drawing for the purpose of repayment of loan instalments

Real Estate Investment Trust (REIT)

1. The law providing for REITs was enacted by the US Congress in 1960.
2. The law was intended to provide a real estate investment structure similar to the structure mutual funds provide for investment in stocks.
3. REITs are strong income vehicles must pay out an amount equal to 90% of their taxable income in the form of dividends to shareholders.
4. As of August 2014, India approved creation of REITs in the Country.
5. Indian REITs will help individual investors enjoy the benefits of owning an interest in the securitized real estate market. The greatest benefit will be that of fast and easy liquidation of investments in the real estate market unlike the traditional way of disposing of real estate.

Acquisition and Transfer of Immovable Property in India

- a. Held by a PRI who is a national of Foreign State; b. Acquired by a PRI on or before 8th July '47 & continued to be held with permission of RBI

Permitted

1. A PRI may acquire immovable property outside India:
 - a. By way of gift or inheritance and continued to be held by him with the permission of RBI.
 - b. By way of purchase out of foreign exchange held in Resident Foreign Currency (RFC) account maintained.
 - c. Jointly with a relative who is a PROI (with no outflow of funds from India).
2. A Company incorporated in India having an overseas office may acquire Immovable Property outside India for its business and for residential purposes of its staff with permission of RBI.

Prohibited

Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau or Hong Kong without permission of RBI cannot acquire or transfer immovable property in India, other than lease not exceeding 5 years.

Sec 7: Export of goods and services

Approval of RBI & Procedure

i. Goods imported free of cost on re-export basis	j. Goods sent out for testing subject to re-import
k. Exports permitted by RBI	l. Defective goods sent outside India for repairs and re-import

Authority to whom declaration is to be furnished and manner of dealing with the same

Declaration in EDF (Goods)	Declaration in SOFTEX (Software and Audio/ Video/ Television)
<p>i. Shall be submitted in Duplicate to the Commissioner of Customs.</p> <p>ii. Post verification and authentication, the Commissioner of Customs shall forward the original declaration form/data to the nearest office of the RBI and handover to the exporter for being submitted to the authorised dealer.</p>	<p>i. Shall be submitted in triplicate to the designated official of Ministry of IT, GOI at the Software Technology Parks of India (STPIs) or the Free Trade Zones (FTZs) or Special Economic Zones (SEZs) in India.</p> <p>ii. After certification, the designated officer shall forward the original copy to the nearest office of RBI and return the duplicate to the exporter. The Triplicate shall be retained by the designated official for record.</p>
<p>iii. On realisation of the export proceeds, duplicate copies of the Declaration Form and Exchange Control Copies of the shipping bills shall be retained by the Authorised Dealers.</p>	

In respect of export for which a declaration is required to be furnished, no person shall except with the permission of the RBI or subject to the directions of the RBI, with permission of an authorised dealer, do or refrain from doing anything or take any action which has the effect of securing:

- i. that the payment for the goods or software is made otherwise than in the specified manner; or
- ii. that the payment is delayed beyond the period specified under these Regulations; or
- iii. that the proceeds of sale of the goods or software exported do not represent the full export value subject to such deductions, if any, as may be allowed by the RBI or, subject to the directions of the RBI, by an authorised dealer.

Certain exports requiring prior approval

Export under trade agreement/ rupee credit, etc.

- i. Export of goods under special arrangement between the CG and Government of Foreign State or under Rupee Credits extended by the CG to Government of a Foreign State by the terms and conditions set out in the Relative Public Notice issued by the Trade Control Authority in India and the instructions issued from time to time by RBI.
- ii. An export under the line of credit extended to a Bank or a Financial Institution operating in Foreign State by the EXIM Bank governed by the terms and conditions of RBI to the Authorised Dealer from time to time.

where it is earned and expended.

Time period for surrender of Foreign Exchange

Within 7 days:

i. Remuneration for services rendered	ii. Settlement of any lawful obligation	iii. Income on assets held outside India
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Within 60 days: unused portion of foreign exchange from the date of its acquisition or purchase

Within 90 days: Any unspent balance on FE acquired for the purpose of foreign travel, from the date of return of the travel to India if the unspent amount is in the form of foreign currency notes and coins; OR in other cases of receipts, from such date of receipts.

Within 180 days: Any unspent balance on FE acquired for the purpose of foreign travel, from the date of return to India if the unspent amount is in the form of traveller's cheque.

Sec 9: Exemption from realization and repatriation in certain cases

The provisions of section 4 and 8 shall not apply to the following, viz.:

Upto the limit specified by RBI	As per General or Special permission granted by RBI
a. Possession of foreign currency or foreign coins by any person,	e. Foreign exchange acquired or received before the 8.07.1947 or any

13	Of any provision of the Act, or any rule, regulation, notification, direction or order or of any condition subject to which an authorization is issued.	<ul style="list-style-type: none"> i. Upto 3 times the sum involved, if it is quantifiable ii. If not quantifiable, upto Rs. 2 Lacs iii. If continuing, further penalty upto Rs. 5000 per day after 1st day
13(1A) & (1C)	If any person is found to have acquired any foreign exchange, foreign security or immovable property, situated outside India, of the aggregate value exceeding the threshold prescribed under the proviso to sub-section (1) of Sec 37A	<p>Penalty:</p> <ul style="list-style-type: none"> i. 3 times sum involved & ii. Confiscation of value equivalent situated in India, the Foreign exchange, Foreign Security or immovable property & iii. Jail upto 5 years.
14	<p>Failure to pay penalty as above within 90 days:</p> <ul style="list-style-type: none"> i. Where demand is of an amount exceeding Rs. 1 crore. ii. in any other case 	<p>Civil Imprisonment:</p> <ul style="list-style-type: none"> i. Upto 3 years ii. Upto 6 months

Sec 14: Orders of adjudicating authority

i. Penalty imposed is required to be paid within 90 days of receipt of notice.

- ii. The AA can hold inquiry only on receiving a complaint from an authorised officer.
- iii. They have to follow principles of natural justice by giving opportunity of making representation.
- iv. The AA should endeavour to dispose off the complaint within one year.
- v. The AA can impose penalty:
 - a. if the amount is quantifiable - upto thrice the sum involved in such contravention
 - b. if the amount is not quantifiable - penalty upto Rs. 2 lakhs can be imposed.
 - c. If contravention is of continuing nature, further penalty upto Rs 5,000 per day during which the default continues can be imposed.
- vi. The AA adjudicating the contravention can also order confiscation of any currency/ security/ other money/ property w.r.t. which the contravention has taken place.
- vii. He can also direct that foreign exchange holdings of any person committing the contravention shall be brought back to India or retained outside as per directions.

Sec 17 & 19: Appeals

1. **Appointment of SD:** The CG shall by notification appoint one or more Special Directors (Appeals) and specify the Jurisdiction to hear appeals against the orders of the AA.
2. **Appeals to SD:** Appeals against the order of AA shall be made only if the AA is Assistant Director or Deputy Director of Enforcement. Appeal shall be made within 45 days and there shall be no time limit for disposal.

Sec 36: Directorate of Enforcement

1. CG shall establish a Directorate of Enforcement with a Director and such other officers or class of officers as it thinks fit to be called the Officers of Enforcement.
2. The CG may authorise the Director or Additional or Special Director of Enforcement to appoint Officers of Enforcement below the rank of an Assistant Director of Enforcement.
3. An Officer of Enforcement may exercise the powers and discharge such duties conferred or imposed on him under this Act.

Sec 37: Power of search, seizure, etc.

1. Officers of Enforcement not below the rank of Assistant Director shall investigate in case of contraventions u/s 13.
2. CG may also authorise any officer or class of officers in the CG, SG, or RBI, not below the rank of an Under Secretary to the GOI to investigate in case of contraventions u/s 13.
3. The officers shall exercise powers similar to those conferred on Income Tax Authorities under Income Tax Act, 1961 subject to such limitations.

Sec 38: Empowering other officers

1. The CG may impose, authorise any officer of customs or any central excise officer or any police officer or other officer of the CG or SG to exercise such powers and discharge such duties.
2. Powers shall be similar to those conferred on Income Tax Authorities under Income Tax Act, 1961 subject to such conditions and

3. The legal representative, however, shall be liable only to the extent of the inheritance or estate of the deceased.

Sec 44: Bar Legal proceedings

No suit, prosecution or other legal proceeding shall lie against the CG or the RBI or any officer of CG or of the RBI or any other person exercising any power or discharging any functions or performing any duties under this Act, in good faith.

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Why is IBC required?

1. To enable the Corporate or other business entities to enjoy availability of credit & at the same time ensuring that the creditors do not have to bear the loss on account of default.
2. Purpose of Act:
 - a. Consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, Partnership Firms & Individuals.
 - b. Fix time period for execution of law in a time bound manner
 - c. Maximize the value of assets of interested persons.
 - d. Promote Entrepreneurship
 - e. Increase availability of credit
 - f. Balance interests of all stakeholders including alteration in order of priority of payment of Government dues.
 - g. Establish an IBC Board of India as a regulatory body for insolvency and bankruptcy law.
3. Curb multiple Laws dilemma: Since there are many laws in India dealing with insolvency & bankruptcy.
4. There were multiple overlapping laws and adjudicating forums dealing with financial failure and insolvency of companies and individuals in India.
5. Existing Laws also were not aligned with the market realities and was inadequate.

will reduce the risk of credit in the economy.

Applicability of IBC, 2016

Company as per Companies Act, 2013

Company governed by Special Law

Any LLP

Any other Body Corporate

Partnership & Individuals

Meanings of important terms

Corporate Person:

- i. Company as defined in 2(20) of Companies Act, 2013
- ii. LLP as defined in 2(1)(n) of the LLP Act, 2008
- iii. Person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider.

Creditor: any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree holder

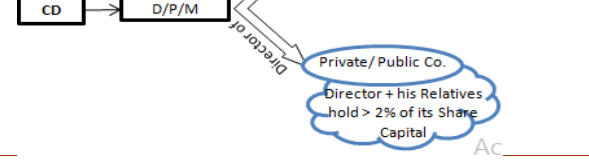
Corporate Debtor: corporate person (Company, LLP, Person with Limited Liability) who owes a debt to any person

Debt: a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt

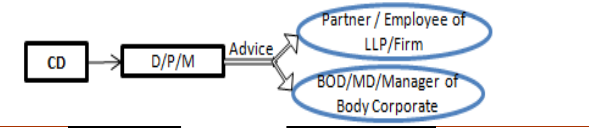
Claim means: a right to payment or right to remedy for breach of contract if such breach gives rise to a right to payment, fixed, disputed, undisputed, legal, equitable, secured or unsecured.

Default: non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be

and private company, in which a director, partner or manager of the CD is a director and holds along with his relatives, more than 2% of its share capital
 e. a public company in which a director, partner or manager of the CD is a director and holds along with relatives, more than 2% of its paid-up share capital



f. any Body Corporate whose BOD, MD or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the CD.
 g. any LLP or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the CD.



h. any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act



Financial Creditor assesses if Debtor's business is viable to continue or if other options for revival & rescue of debtors are available. Based on this assessment the IRP initiates. If IRP fails or Debtor's business cannot be made profitable & needs to be wound up then debtor will go for Liquidation & assets of debtors are realized and distributed by Liquidator.

Application for IRP		
By Financial Creditors (FC)	By Operational Creditors (OC)	By Corporate Debtors
<p>1. <u>Filing of application before AA</u> a. FC may singly or together with file an application when a default has occurred. b. A default includes a default in respect of a financial debt owed to applicant or other FC.</p>	<p>1. Serving of demand Notice: On the occurrence of default, an operational creditor shall first send a <u>demand notice</u> and a <u>copy of invoice</u> to the corporate debtor.</p>	<p>1. <u>Commission of default:</u> Corporate applicant may file an application for initiating corporate IRP with the AA.</p>
<p>2. <u>Furnishing of information by applicant</u> a. record of the default recorded with the IU or such other record or evidence of default;</p>	<p>2. Action by CD on receipt of demand notice: within a period of 10 days of the receipt of the demand notice or copy of the invoice bring to the notice of the operational creditor about:</p>	<p>2. <u>Furnishing of information:</u> The corporate applicant shall furnish the information w.r.t.:</p>

7A. Admit the application if:

- a. The application made is complete
- b. No repayment of unpaid operational debt
- c. Invoice or notice for payment to the CD has been delivered by OC.
- d. No notice of dispute has been received by OC or there is no record of dispute in the IU; &
- e. There is no disciplinary proceeding pending against any resolution professional proposed.

7B. Reject the application if:

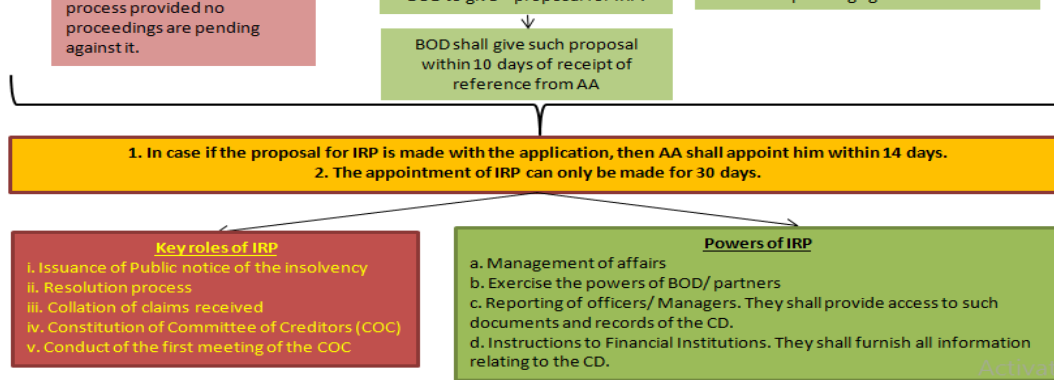
- a. The application made is incomplete. Before rejecting this application gives a notice to the applicant to rectify the defect within 7 days of the date of receipt of such notice.
- b. Unpaid operational debt has been repaid
- c. Invoice or notice for payment to the CD has not been

- a. Declare a moratorium (Sec 14);
- b. Appoint an interim resolution professional (Sec 15)
- c. Immediately after appointment, cause a public announcement of the initiation of corporate IRP and call for the submission of claims (Sec 16)

Sec 14: Moratorium

After the commencement of corporate insolvency resolution, a calm period for 180 days is declared, during which all suits and legal proceedings etc. against the CD are kept in abeyance to give time to the entity to resolve its status. It is called the Moratorium Period.

- a) **Declaration of moratorium period:** On the insolvency commencement date, the AA shall by order, declare moratorium prohibiting all of the following:
 - i. Institution of suits or continuation of pending suits or proceedings against the CD;
 - ii. Transferring, encumbering, alienating or disposing any of its assets;
 - iii. Any action to foreclose, recover or enforce any security interest created by the CD in respect of its property including any action under the SARFAESI Act, 2002;
 - iv. Recovery of any property by an owner where such property from the corporate debtor.
- b) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.



resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

Sec 23: Functions of Resolution professional

1. RP shall conduct the entire corporate insolvency resolution process.
2. RP shall conduct the powers & duties of IRP.
3. IRP shall provide all information, documents & records to RP.
4. RP shall take over the management of the debtor.

Sec 27: Replacement of resolution professional by committee of creditors

Process of replacement of resolution professional is as follows:

- i. COC is of the opinion that RP as appointed is required to be replaced and be replaced by another RP.
- ii. The COC may by majority vote of 75 % of voting shares, propose to replace the RP appointed with another RP.
- iii. The COC shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.
- iv. The AA shall forward the name of the proposed resolution professional to the Board for its confirmation and a RP shall be appointed in the specified manner.
- v. Where any disciplinary proceedings are pending against the proposed RP, the RP appointed shall continue till the appointment of another resolution

1. Resolution professional shall prepare an Information Memorandum which shall contain information for preparing resolution plan.
2. A resolution applicant may submit a resolution plan to the RP.
3. The RP shall examine each resolution plan received by him to confirm that each resolution plan:
 - a. Provides for the payment of IRP costs in a manner specified by the Board in priority to the repayment of other debts of the CD;
 - b. Provides for the repayment of the debts of OC in such manner as may be specified by the Board which shall not be less than the amount to be paid in the event of a liquidation of the corporate debtor;
 - c. Provides for the management of the affairs of the CD after approval of the resolution plan;
 - d. Implementation and supervision of the resolution plan;
 - e. Does not contravene any of the provisions of the law for time being in force;
 - f. Conforms to such other requirements as may be specified by the Board.
4. The committee of creditors may approve a resolution plan by a vote of not less than 75 % of voting share of the financial creditors after confirming that the conditions mentioned above are satisfied.
5. The resolution applicant may attend the meeting of the COC in which the resolution plan of the applicant is considered. The resolution applicant shall not have a right to vote at the meeting of the COC. However, he may vote if he is also a financial creditor.
6. The RP shall submit the approved resolution plan as approved to the Adjudicating Authority.
7. If the AA is satisfied that the approved resolution plan meets the requirements it shall pass an order which shall be binding on the CD and its employees,

Sec 35: Powers and Duties of Liquidator

- a. to verify claims **of all the creditors**;
- b. to take into his custody or control **all the assets, property, effects and actionable claims of the corporate debtor**;
- c. to evaluate the assets and property **of the corporate debtor in the manner as may be specified by the Board and prepare a report**;
- d. to **take such** measures to protect and preserve the assets and properties **of the corporate debtor as he considers necessary**;
- e. to carry on the business **of the corporate debtor for its beneficial liquidation as he considers necessary**;
- f. to sell the immovable and movable property and actionable claims **of the corporate debtor in liquidation by public auction or private contract**;
- g. to draw, accept, make and endorse any negotiable instruments **including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor**;
- h. to take out, in his official name, letter of administration to any deceased contributory **and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate**;
- i. to obtain any professional assistance **from any person or appoint any professional, in discharge of his duties, obligations and responsibilities**;

information

Liquidator has power to access Information Systems for admission of proof & Creditor may demand information from Liquidator.

1. Collect the claims within 30 days from the date of commencement of Liquidation Process.
2. FC / OC shall submit claims to the Liquidator by providing a record with an IU.
3. FC/ OC can withdraw or alter any claim within 14 days of its submission.
1. Verify the claims & demand information for such verification.
2. Accept or Reject the claim within 7 days and record reasons in writing in case of rejection.
3. Creditor can appeal to AA in 14 days against the decision of Liquidator rejecting claims.

Sec 52: Secured Creditor in Liquidation proceedings

1. Relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator
2. Realize its security interest in the manner specified in this section.
3. To inform the liquidator about realization of security interest.
4. Before any security interest is realized by the secured creditor, the liquidator shall verify such security interest and permit accordingly.

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2. It should have not incurred loss in any business in last 3 FYs.
3. ARC should have made arrangements for realization of assets and Director should have adequate professional experience.
4. A sponsor can have maximum 50% investment in ARC and he will have maximum 50% representatives at BOD.
5. ARC has complied with all Prudential Norms of RBI and its directions.
6. RBI can reject the application of ARC by giving opportunity of being heard.
7. RBI approval is also required in case of substantial change in management of ARC.

- ii. fails to:
 - a. comply conditions of RBI
 - b. maintain books & accounts
 - c. offer any inspection or investigation.
2. RBI will give OOBH before cancellation of certificate.
3. The ARC can prefer an appeal within 30 days to CG (Ministry of Finance) against the cancellation of certificate by RBI.
4. For all existing loans and investments ARC will be assumed to be functioning as it is without cancellation.

- Department Clarification);*
- b. Any other consideration as per agreement
 2. The ARC will replace the Bank for the purpose of such financial asset and exercise all its rights.
 3. All the contracts, deeds, bonds, agreements, Power of Attorney, Grants or other legal documents shall be transferred by Bank to the ARC and it will be assumed to be issued in the name of ARC itself.
 4. All pending litigations will also be transferred to ARC by Bank.
 5. While transfer of such NPAs or Financial Assets, Banks need not pay any stamp duty or registration cost.

- dues within next 60 days.
3. If Borrower fails to do so without reason then ARC will acquire his asset.
 4. ARC will sell such asset if all 3/4th creditors having charge over such assets agrees to sell
 5. ARC can also proceed against Surety/Guarantor & sell the pledged asset.
 6. Any amount recovered from sale of assets will be used as follows:
 - 1st Towards cost and expenses of recovery.
 - 2nd Against loan and interest.
 - 3rd To persons eligible:
 - a. Second charge holder;
 - b. Bank if agreed;
 - c. Surety;
 - d. Borrower

3. ARC in such situation can appoint its own management and recover the dues from Borrower's business.
4. ARC will give a Public Notice of the same and Management of borrower will vacate its office.
5. Here, ARC will put its own Management, take the custody of all properties and business and will run the business to take-over the loan.
6. Once ARC recovers its dues it will give back the management to the Borrower & leave the business.
7. For such a case, Borrower can also have his own nominee on the Management and approval of other secured creditors is also required.

days).
Disposal of Appeal: Within 60 days (can be extended to 4 months).

Next appeal to: Appellate Tribunal (within 30 days).

Disposal of Appeal by next authority: in accordance with provisions of the Act as early as possible.

2. If any person contravenes or tries to contravene or initiates the contravention of any provision of this Act will be liable to jail upto 1 year and/ or penalty as per CG.
 3. Civil Court has no power to entertain any litigation of this Act.
 4. If in case a complaint is filed to Civil Court then atleast Metropolitan or Judicial Magistrate shall consider the same.
- business, moneys recoverable otherwise than by way of such compensation.

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Chapter 5: Prevention of Money Laundering

Definitions

Money-Laundering: Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved, in any process or activity connected with the proceeds of crime & projecting it as untainted property shall be guilty of offence of money laundering.

Proceeds of crime: Any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property.

Payment System: A system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them. It includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations.

Scheduled Offence: means: (a) the offences specified under Part A of the Schedule; or (b) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more; or (c) The offences specified under Part C of the Schedule. The Schedule to the Act gives a list of all the above offences.

Part A, B, C

PART A: Offences under -

Para 1 Indian Penal Code (Few -Listed)	Para 15 Transplantation of Human Organs Act
Para 2 Narcotic Drugs and Psychotropic Substances Act, 1985	Para 16 Juvenile Justice (Care and Protection of Children) Act
Para 3 Explosive Substances Act, 1908.	Para 17 Emigration Act
Para 4 Unlawful Activities (Prevention) Act, 1967	Para 18 Passports Act
Para 5 Arms Act, 1959	Para 19 Foreigners Act
Para 6 Wild Life (Protection) Act, 1972	Para 20 Copyright Act
Para 7 Immoral Traffic (Prevention) Act, 1956	Para 21 Trade Marks Act
Para 8 Prevention Of Corruption Act, 1988	Para 22 Information Technology Act
Para 9 Explosives Act	Para 23 Biological Diversity Act
Para 10 Antiquities and Arts Treasures Act	Para 24 Protection of Plant Varieties & Farmers' Rights Act
Para 11 SEBI Act	Para 25 Environment Protection Act
Para 12 Customs Act	Para 26 Water(Prevention & Control of Pollution) Act
Para 13 Bonded Labour System (Abolition) Act	Para 27 Air (Prevention & Control of Pollution) Act
Para 14 Child Labour (Prohibition & Regulation) Act, 1986	Para 28 Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act

PART B: NIL

PART C: An offence which is the offence of cross border implications and is specified in, - (i) Part A; or (ii) the offences against property (Theft) under chapter XVII of the Indian Penal Code.

Punishment for the Offence of Money Laundering:

Section 3: Offence of money laundering.

Section 4: Punishment for Money-Laundering: rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine.

If the offence is specified under paragraph 2 of Part A of the Schedule (Narcotics), the maximum punishment may extend to 10 years instead of 7 years.

Sec 12: Obligation of Banking Companies, Financial Institutions and Intermediaries or a person carrying on a designated business or profession

- Maintain a record of all transactions. This shall be maintained for a period of 5 years from the date of transaction between a client and the reporting entity.
- Furnish to the Director within time prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;
- Verify the identity of its clients in manner and subject to conditions as may be prescribed;
- Identify the beneficial owner, if any, of its clients as prescribed;

- e. Maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients. This shall be maintained for a period of 5 years after the business relationship between a client & the reporting entity has ended or the account has been closed, whichever is later.

Maintenance

Every information maintained, furnished or verified shall be kept confidential.

Section 13: Powers of the Director

1. The Director may make such inquiry, as he thinks fit to be necessary, with regard to the obligations of the reporting entity.
2. The Director may direct reporting entity to get its records audited by CA, from amongst a panel of accountants, maintained by CG. Expenses of any audit specified above shall be borne by the CG.
3. If the Director finds that a reporting entity or its designated director or any of its employees has failed to comply with the obligations, then he may:
 - a. issue a warning in writing; or
 - b. direct such reporting entity or its designated director to comply with specific instructions; or
 - c. direct such reporting entity or its designated director or any of its employees, to send reports at such interval as may be prescribed on the measures it is taking; or
 - d. impose a monetary penalty on such reporting entity or its designated director or any of its employees, which shall not be less than Rs. 10,000 but may extend to Rs. 1,00,000 for each failure.
4. The Director shall forward a copy of the order passed to every banking company, financial institution or intermediary or person who is a party to the proceedings.

Sec 26: Appeal to the Appellate Tribunal

1. Director or person aggrieved by an order of AA or reporting entity aggrieved by order of the Director, may prefer an appeal to the Appellate Tribunal within a period of 45 days from the date order is received.
2. It shall be in such form and be accompanied by such fee as prescribed.
3. The Appellate Tribunal may allow an appeal after the expiry of the said period of 45 days if it is satisfied that there was sufficient cause for not filing it within that period.
4. Appellate Tribunal may give the parties an opportunity of being heard. It shall then pass such orders as it thinks fit, confirming, modifying or setting aside the order appealed against.
5. The Appellate Tribunal shall send copy of order to the parties to the appeal & to concerned AA or the Director. The appeal filed shall be dealt with by it as expeditiously as possible and dispose off the appeal finally within 6 months from the date of filing of the appeal.

Sec 35: Power of the Appellate Tribunal

1. The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure but shall be guided by the principles of natural justice. Subject to other provisions of the Act, the Appellate Tribunal shall have powers to regulate its own procedure.
2. The Appellate Tribunal shall have the same powers as are vested in a Civil Court while trying a suit in respect of the following:
 - a. summoning and enforcing the attendance of any person and examining him on oath
 - b. setting aside any order of dismissal of any representation for default or any ex-parte order
 - c. requiring the discovery and production of documents;
 - d. dismissing a representation for default or deciding it ex parte;
 - e. receiving evidence on affidavits
 - f. reviewing its decisions;
 - g. requisitioning any public record or document or copy of same from any office;
 - h. any other matter prescribed by the CG
 - i. issuing commissions for the examination of witnesses or documents;

Sec 38: Decision to be by majority

If the Members of a Bench consisting of 2 Members differ in opinion on any point they shall make a reference to the Chairperson.

The Chairperson shall either hear the points himself or refer the case for hearing by the 3rd Member of the

Appellate Tribunal and shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it.

Section 42: Appeal to High Court

Any person aggrieved by order of the Appellate Tribunal may file an appeal to the High Court within 60 days from the date of communication of order on any question of law or fact arising out of such order. The High Court if it is satisfied that the appellant had reasonable cause for not filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.

Sec 43: Special Courts

Central Government is empowered to notify one or more Courts of Sessions as Special Court/s in consultation with the Chief Justice of the High Court for trial of offence of money laundering.

5.3

Sec 44: Offences Triable by Special Courts

1. This section overrides the provisions of the Code of Criminal Procedure, 1973.
2. An offence punishable u/s 4 and any scheduled offence connected to the offence shall be triable only by the Special Court constituted for the area in which the offence has been committed;
3. A Special Court may take cognizance of the offence for which the accused is committed to it for trial.
4. Requirement of police report of the facts which constitute an offence under this Act is no more applicable.

Sec 45: Offences under the Act shall be cognizable and non-bailable

1. Overrides the provisions of the Code of Criminal Procedure, 1973.
2. Person accused of an offence punishable for a term of imprisonment of more than 3 years under Part A of the Schedule shall not be released on bail or on his own bond unless:
 - i. The Public Prosecutor has been given an opportunity to oppose the application for such release and;
 - ii. Court is satisfied that he is not guilty of such offence & is not likely to commit any offence when on bail.
3. In case of any person who is under the age of 16 years or in case of a woman or in case of a sick, the Special Court can direct the release of such person on bail.
4. The Special Court can take cognizance of an offence only on receiving complaint in writing from:
 - a. The Director or;
 - b. Any officer of CG or a SG authorised in writing in this behalf.
5. No police officer shall investigate into an offence under this Act unless specifically authorised, by the CG.

Sec 5: Attachment of property involved in money-laundering

1. Where the Director, or any officer of the rank or above of Deputy Director believes that:
 - a. any person is in possession of any proceeds of crime;
 - b. such proceeds of crime are likely to be concealed, transferred or dealt with in any such manner
2. he may order in writing to provisionally attach such property for a period not exceeding 180 days from the date of the order.
3. No such order shall be made unless a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 or a complaint has been filed by a person investigating the offence, before a Magistrate or court for taking cognizance of the scheduled offence.
4. Any property of any person may be attached under this section if the Director or any other officer believes that if such property involved in money-laundering is not attached immediately then the non-attachment of the property is likely to frustrate any proceeding under this Act.
5. Immediately after attachment copy of the order shall be forwarded, along with the material in his possession to the AA, in a sealed envelope and such AA shall keep such order & material for such period as prescribed.
6. Every order of attachment shall cease to have effect after the expiry of the period specified.
7. No interested person (entitled to claim interest) shall be prevented from availing benefits of the immovable property attached.
8. 7. The Director or any other officer who provisionally attaches any property within a period of 30 days file a complaint stating the facts of such attachment before the AA.

Sec 6: Adjudicating Authorities, composition, powers, etc

1. The CG shall appoint an AA to exercise jurisdiction, powers and authority conferred.

- An AA shall consist of a Chairperson and 2 other members. One member having experience in the field of law, administration, finance or accountancy.

Sec 9: Vesting of property in Central Government

- Where an order of confiscation has been made in respect of any property of a person, all the rights and title in such property shall vest absolutely in the CG free from all encumbrances.
- If AA is of the opinion that any encumbrance on the property or lease-hold interest has been created with a view to defeat the provisions of this Chapter, it may declare such encumbrances or lease-hold interest to be void and the said property shall vest in the CG free from such encumbrances or lease-hold interest.
- No person shall be discharged from any liability in respect of such encumbrances which may be enforced against such person by a suit for damages.

Reciprocal Arrangements

Offence of Cross border implications: Offence committed outside India and remitted to India or; Offence committed in India and remitted outside India or; Other permutations possible

Contracting State: any country or place outside India for which arrangements have been made by the CG of other Country through a treaty or otherwise.

Sec 56: Agreements with Foreign countries

CG enters into an agreement with other country for:

- Enforcing the provisions of this Act and;
- Exchange of information

for prevention of any offence under this Act, or under corresponding law in force in that country & investigation of cases relating to any offence under this Act.

Sec 57: Letter of request to a contracting State (V. imp)

Sec 58: Assistance to a contracting State (V. imp)

When:	an application is received by Special Court that any evidence is required in respect of investigation	Received by:	CG
From whom:	the Investigating Officer or any officer superior in rank to the Investigating Office	From:	Contracting State
Opinion of matter:	such evidence may be available with Contracting State	For:	Request of investigation into an offence or proceedings under this Act.
Satisfaction	of Special Court is necessary	Forward to:	CG shall forward the request to:
Letter to whom:	To a court or an authority in the Contracting State competent to deal with such State.		- Special Court - To any Authority as it thinks fit for execution of such request.

Sec 66: Disclosure of information

The Director can demand any information from any person regarding compliance of this Law and other Laws as per Schedule by giving notification in Official Gazette.

Recovery of Fine or Penalty

Sec 62: Vexatious (vague/no reason) search

Any authority or officer exercising powers who without reasons recorded in writing:

- searches or causes to be searched any place; or
- detains or arrests any person, shall for every offence be liable on conviction for imprisonment extending to 2 years or fine which may extend to Rs.

Sec 63: False info. or failure to give info.

- Any person intentionally giving false information and causing an arrest or a search shall be liable for imprisonment for a term which may extend to 2 years or with fine which may extend to Rs. 50,000 or both.
- If any person:

50,000 or both.

- a. being legally bound to state the truth refuses to answer any question put to him; or
 - b. refuses to sign any statement made by him in which an authority may legally require to sign; or
 - c. to whom a summon is issued under section 50 either to attend to give evidence shall be liable to penalty of not be less than Rs. 5,000 but which may extend to Rs. 10,000 for each such default or failure.
3. An opportunity of being heard shall be given to such authority.

Sec 70: Offences by Companies (Same as seen in FEMA/FCRA)

1. In case of Company committing a contravention, person responsible to such Company shall be liable to be proceeded against and punished accordingly.
2. The said person shall not be held liable if he proves that the contravention took place without his knowledge or that he exercised due diligence to prevent the contravention.
3. Further, if it is proved that the contravention has taken place with the consent or connivance of any director, manager, secretary or other officer of the Company, they shall be deemed to be guilty of the contravention and be punished accordingly.

Sec 71: Act to have overriding effect

Any inconsistent provision of other Acts will be overridden by this Act.

Sec 72: Continuation of proceedings in the event of death or insolvency

If a person has filed the appeal or being adjudicated at the High Court or Appellate Tribunal then such an appeal will still continue against such an insolvent or deceased person and recovery will be made from his asset through his legal heir.

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