

# Declaration and Payment of Dividend



## **Amendment in Section 123(1)-**

Dividend shall be declared or paid by the company out of the profits of the company only after providing for depreciation in accordance with provisions of sub-section 2.

### **New insertion by Companies (Amendment ) Act, 2017**

**Provided** that in computing profits any amount representing unrealised gains , notional gains or revaluation of assets and any change in carrying amount of an asset or of a liability on measurement of the asset or liability at a fair value shall be substituted .

## **2<sup>nd</sup> proviso of Section 123(2)**

I.e. Rule 3, the word reserves has been substituted by free reserves i.e. in case of inadequate or absence of profits company can declare dividends out of accumulated profits earned by it in the previous years and transferred by the company to the free reserves after fulfilling the conditions of Rule 3.

## **Amended Section 123(3)-**

The Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend:

**Provided** that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during immediately preceding three financial years.



# COMPANY

# ACCOUNTS AND AUDIT

## Amendment in Section 130-

Tribunal upon receiving the application for reopening of account was required to give notice to CG, Income Tax Authorities, SEBI or any other statutory regulatory body or authorities concerned. Now after authorities concerned, the words **any other persons concerned** shall also be inserted.

**It has also been newly inserted in Section 130 that** -Reopening order cannot be made in respect to Books of Accounts relating to a period earlier than eight financial years immediately preceding the current financial year unless CG has given the direction under **Section 128(5)** to keep books of accounts for more than 8 years.

## Amendment in Section 132-

- 1. Power of NFRA to impose penalty on CA/CA firm for professional or other misconduct-**  
Individuals-**Min 1 lakh** rupees and **Max 5 times** of fees received  
Firms-**Min 5 lakh** rupees and **Max 10 times** of fees received.(earlier it was 10 lakh).
- 2. Any person aggrieved by the order of NFRA** may prefer an appeal before the Appellate Tribunal in such manner and on payment of such fee as may be prescribed.
- 3. 132(6) to (9) have been omitted.**

## Amendment in Section 136

- the words and figures "Without prejudice to the provisions of **section 101,**" shall be omitted;
- Inserted by Companies(Amendment) Act, 2017**  
"Provided that if the copies of the documents are sent less than twenty- one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by members—  
(a) Holding, if the company has a share capital, majority in number entitled to

vote and who represent not less than ninety- five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or

(b) Having, if the company has no share capital, not less than ninety- five per cent. of the total voting power exercisable at the meeting.

3. for the fourth proviso, the following provisos shall be substituted, namely:—

**Provided** also that every listed company having a subsidiary or subsidiaries shall place separate audited accounts in respect of each of subsidiary on its website, if any.

4. **Inserted by Companies(Amendment) Act, 2017**

(a) **Provided** also that a listed company which has a foreign subsidiary and where such foreign subsidiary is statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, the requirement of this proviso shall be met if consolidated financial statement of such foreign subsidiary is placed on the website of the listed company;

(b) **Provided** also that a listed company which has a foreign subsidiary and where such foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed company may place such unaudited financial statement on its website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website.';

### **Amendment in Section 139**

Earlier, the appointment of auditor was to be ratified every year at the AGM. Now the requirement of ratification has been removed.

### **Amendments in Section 140**

If the auditor does not comply

**Minimum fine-** ₹50,000 or Audit fees whichever is lower.

**Maximum fine-** ₹ 5,00,000.

### **Amendment in Section 141(3)**

In **section 141** of the principal Act, in sub-section (3), for clause (i), the following clause shall be substituted, namely:—

a person who, directly or indirectly, renders any service referred to in **section**



144 to the company or its holding company or its subsidiary company.

## Amendment in Section 143

1. **Sub-section (1)** – The auditor of the holding company shall also have the right of access to the records of all its **subsidiaries and associate companies** in so far as it relates to the consolidation of its financial statements with that of its subsidiaries. {The word associate company has been newly inserted}.
2. **Sub-section (3)** - in clause (i), for the words "internal financial controls system", the words "internal financial controls with reference to financial statements" shall be substituted.
3. In sub-section (14), in clause (a), for the words "cost accountant in practice", the words "cost accountant" shall be substituted.

## Amendments in Section 147

For Contravention of Section 139 to 146	Punishment for Auditor for Contravention of Section 139,143,144 or 145	Measures to ensure prompt payment of damages
<p><b>Punishment for the company</b></p> <ul style="list-style-type: none"> <li>❑ <b>Minimum</b> Fine:Rs.25000</li> <li>❑ <b>Maximum</b> Fine:Rs.5,00,000</li> </ul> <p><b>Punishment for Officer in default</b></p> <ul style="list-style-type: none"> <li>❑ <b>Minimum</b> Fine:Rs.10,000</li> <li>❑ <b>Maximum</b> Fine:Rs.1,00,000 or</li> <li>❑ <b>Maximum</b> Imprisonment:1 year</li> </ul>	<ul style="list-style-type: none"> <li>❑ Minimum Fine:Rs.25000</li> <li>❑ Maximum Fine: Rs.5, 00,000 <b>or four times the remuneration of auditor whichever is less.</b></li> <li>❑ If a contravention is committed knowingly or wilfully with the <b>intention to deceive</b> the company or its shareholders or creditors or tax authorities, then punishment shall be                         <ul style="list-style-type: none"> <li>a) <b>Maximum imprisonment:1 year and</b></li> <li>b) <b>Minimum Fine:Rs.50,000</b></li> <li>c) <b>Maximum Fine: Rs.25,00,000 or eight times the remuneration of the auditor whichever is less.</b></li> </ul> </li> <li>❑ <b>New insertion</b>-in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.</li> </ul>	<ol style="list-style-type: none"> <li>1. The Central Government shall, by notification, specify any statutory body or authority or an officer for ensuring prompt payment of damages to the company.</li> <li>2. Such body, authority or officer shall pay damages to such company or persons.</li> <li>3. File a report with the Central Government in respect of making such damages in such manner as may be specified in the said notification.</li> </ol>

## Amendments in Section 148-

In various places across Section 148 the words “Cost Accountant” in practice has been substituted by Cost Accountant.

## Penalty for Fraud under companies Act

<p><u>Section 447</u></p>	<p>Amount involving at least ten lakh rupees or one percent of the turnover of the company, whichever is less</p> <ul style="list-style-type: none"><li>● Minimum imprisonment=6 months(3 years if public interest is involved)</li><li>● Maximum imprisonment=10 years &amp;</li></ul> <p><u>Fine</u></p> <ul style="list-style-type: none"><li>● Minimum=Amount involved in Fraud (100%)</li><li>● Maximum=3 times of Amount involved (300%)</li></ul> <p>Amount involving less than ten lakh rupees or one percent of the turnover of the company, whichever is less , and does not involve public interest</p> <ul style="list-style-type: none"><li>● Imprisonment for a term which may extend to five years or</li><li>● With fine which may extend to twenty lakh rupees or</li><li>● Both.</li></ul>
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# APPOINTMENT AND QUALIFICATION OF DIRECTORS

## 1. Amendment in Section 149

The independent directors who have been appointed for the second time can be removed only after passing SR after giving a reasonable opportunity of being heard.

## 2. Earlier it was provided in Section 152(3) that

“No person shall be appointed as a director of a company unless he has been allotted the Director Identification Number. **Now the words “or such number as may be prescribed under Section 153 has been added.** Similarly in Section 152(4) it was provided that “Every person proposed to be appointed as a director by the company in General Meeting or otherwise, shall furnish his Director Identification Number. **Now the words “or such number as may be prescribed under Section 153 has been added.**”

## 3. New proviso has been inserted in Section 153

“**Provided** that the CG may prescribe any identification number which shall be treated as DIN for the purposes of this Act and in case any individual holds or acquires such identification number, the requirement of this section shall not apply or apply in such manner as may be prescribed.”

## 4. New proviso has been inserted in Section 160

The requirement of deposit of amount shall not apply in case of appointment of independent director or a director recommended by Nomination and Remuneration Committee, if any, constituted under Section 178 or a director

recommended by the Board of Directors of the company, in case of a company not required constituting Nomination and Remuneration Committee.

### **5. Amendment in Section 161(2)**

Earlier it was provided in Section 161(2) that “The BOD of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person not being a person holding any alternate directorship for any other director of the company. Now the words **“or holding directorship in the same company has been added.”** It implies that a person who is already a director in the company cannot become an alternate director for any other director.

### **6. Amendment in Section 161(4)**

Director in Casual Vacancy shall be filled by BOD which shall be subsequently approved by members in the **immediately next general meeting.**

### **7. Amendment in Section 165**

Now while counting the limit of directorship of twenty companies, the directorship in dormant company shall not be included.

## Meeting of Board and its Powers

### **1. Amendment in Section 180**

In Section 180(1) (c), for the words “paid up capital and free reserves”, the words “paid up capital, free reserves and securities premium” shall be substituted.

### **2. Amendment in Section 184**

Penalty in case of contravention of **Section 184(1) or (2)**-Imprisonment up to 1 year or Fine which may extend up to one lakh rupees, or both.(Minimum penalty of Rs 50,000 has been removed)



Substitution of clause b of [Section 185\(5\)](#)

[“Section 185](#) shall not apply to any contract or arrangement entered into or to be entered into between two companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two percent of the **paid up share capital** in the other company or the body corporate.

### 3. [Amendment in Section 188](#)

As per the earlier law, no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party.

Now as per Amendment, the related parties can vote in which 90 % or more members, in number, are relatives of promoters or are related parties.

### 4. [Section 194 and 195 shall be omitted.](#)

[Amended definition of KMP-Section 2\(51\)](#)

# Appointment and Remuneration of Managerial Personnel

“Key managerial personnel “in relation to a company means

- (i) Chief Executive Officer or Managing Director or Manager;
- (ii) Company Secretary;
- (iii) Whole Time Director;
- (iv) Chief Financial Officer ;



- (v) Such other officer, not more than one level below the directors who is in whole-time employment, designated as KMP by the Board; and
- (vi) Such other officer as may be prescribed

# Compromise, Arrangement and Amalgamation

In [Section 236\(4\), \(5\), and \(6\)](#), the words transferor company shall be substituted by “company whose shares are being transferred”.

## Offences and Penalties

### Insertion of [Section 446 A](#)

The court or the Special Court, while deciding the amount of fine or imprisonment under this Act, shall have due regard to the following factors, namely:

- (a) Size of the company;
- (b) Nature of business carried on by the company;
- (c) Injury to public interest;
- (d) Nature of the default; and
- (e) Repetition of the default.

# Registered Valuer



## Section 247-Valuation by Registered Valuers

- Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by 2[a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed] and appointed by the audit committee or in its absence by the Board of Directors of that company.
- The valuer appointed under sub-section (1) shall,—
  - make an impartial, true and fair valuation of any assets which may be required to be valued;
  - exercise due diligence while performing the functions as valuer;
  - make the valuation in accordance with such rules as may be prescribed; and
  - not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time 3[during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him.]
- If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees. However if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to **five lakh rupees**.
- Where a valuer has been convicted under sub-section (3), he shall be liable to—
  - refund the remuneration received by him to the company; and
  - pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

## Eligibility under Registered Valuer

A person shall be eligible to be a registered valuer if he-

- ☀ Is a valuer member of a registered valuers organisation; {i.e. who possess the requisite qualification and experience}
- ☀ Is recommended by the registered valuers organisation of which he is a valuer member for registration as a valuer;
- ☀ Has passed the valuation examination under rule 5 within three years preceding the date of making an application for registration under rule 6;
- ☀ Possesses the qualifications and experience as specified in rule 4;
- ☀ Is not a minor;
- ☀ Has not been declared to be of unsound mind;
- ☀ Is not an undischarged bankrupt, or has not applied to be adjudicated as a bankrupt;
- ☀ Is a person resident in India;
- ☀ Has not been convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence:

**Provided** that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be registered;

- ☀ Has not been levied a penalty under [section 271J](#) of Income-tax Act, 1961 (43 of 1961) and time limit for filing appeal before Commissioner of Income- tax (Appeals) or Income-tax Appellate Tribunal, as the case may be has expired, or such penalty has been confirmed by Income-tax Appellate Tribunal, and five years have not elapsed after levy of such penalty; and
- ☀ Is a fit and proper person

### Application for certificate of registration

- 🌐 An individual eligible for registration as a registered valuer under rule 3 may make an application to the authority in Form-A of Annexure-II along with a non-refundable application fee of five thousand rupees in favour of the authority.
- 🌐 A partnership entity or company eligible for registration as a registered valuer under rule 3 may make an application to the authority in Form-B of Annexure-II along with a non-refundable application fee of ten thousand rupees in favour of the authority.
- 🌐 The authority shall examine the application, and may grant twenty one days to the applicant to remove the deficiencies, if any, in the application.
- 🌐 The authority may require the applicant to submit additional documents or clarification within twenty- one days.
- 🌐 The authority may require the applicant to appear, within twenty one days,



before the authority in person, or through its authorised representative for explanation or clarifications required for processing the application.

- If the authority is satisfied, after such scrutiny, inspection or inquiry as it deems necessary, that the applicant is eligible under these rules, it may grant a certificate.

### Conditions of Registration

- ↗ at all times possess the eligibility and qualification and experience criteria as specified under rule 3 and rule 4;
- ↗ at all times comply with the provisions of the Act, these rules and the Bye-laws or internal regulations;
- ↗ in his capacity as a registered valuer, not conduct valuation of the assets or class(es) of assets other than for which he/it has been registered by the authority;
- ↗ take prior permission of the authority for shifting his/ its membership from one registered valuers organisation to another;
- ↗ take adequate steps for redressal of grievances;
- ↗ maintain records of each assignment undertaken by him for at least three years from the completion of such assignment;
- ↗ comply with the Code of Conduct of the registered valuer organisation of which he is a member;

### Temporary surrender of registration certificate

- ⊕ A registered valuer may temporarily surrender his registration certificate in accordance with the bye-laws or regulations, as the case may be, of the registered valuers organisation and on such surrender, the valuer shall inform the authority for taking such information on record.
- ⊕ A registered valuers organisation shall inform the authority if any valuer member has temporarily surrendered his/its membership or revived his/ its membership after temporary surrender, not later than seven days from approval of the application for temporary surrender or revival, as the case may be.
- ⊕ Every registered valuers organisation shall place, on its website, in a searchable format, the names and other details of its valuers members who have surrendered or revived their memberships.

# Removal of names of Companies from the Registrar of Companies (Sec 248-252)

## Section 248-Power of Registrar to remove name of company from register of companies

- (1) Circumstances where ROC can remove the name of companies-
  - (a) A company has failed to commence its business within a year of its incorporation
  - (b) Omitted
  - (c) A company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under Section 455, he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of notice.
- (2) A company may after extinguishing all its liabilities, by a Special Resolution or the consent of seventy -five percent members in terms of paid up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register on all or any of the grounds specified in sub-section 1. However, sub-section (2) shall not apply to a company registered under Section 8.

## Section 249-Restrictions on making application under Section 248 in certain situations

- (1) An application under Sec 248(2) on behalf of a company shall not be made if, at any time in the previous three months, the company-
  - (a) Has changed its name or shifted its registered office from one state to another;
  - (b) Has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;
  - (c) Has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;



- (d) Has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or
- (e) Is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.

### Section 251-Fraudulent application for removal of name

- (1) Where it is found that an application by a company under sub-section (2) of Section 248 has been made with the object of evading the liabilities of the company or with the intention to deceive the creditors or to defraud any other persons, the persons in charge of the management of the company shall, notwithstanding that the company has been notified as dissolved-
  - (a) be jointly and severally liable to any person or persons who had incurred loss or damage as a result of the company being notified as dissolved; and
  - (b) be punishable for fraud in the manner as provided in Section 447.

### Section 252-Appeal to Tribunal

#### **Situation 1-Person aggrieved by an order of the Registrar**

Any person aggrieved by an order of the Registrar, notifying a company as dissolved under [Section 248](#), may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified, it may order restoration of the name of the company in the register of companies.

#### **Situation 2-Company, or any member or creditor or workman is aggrieved by the company having its name struck off from the register of companies**

If a Company, or any member or creditor or workman is aggrieved by the company having its name struck off from the register of companies, the Tribunal on application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may order restoration of the name of the company in the register of companies

# NATIONAL COMPANY LAW TRIBUNAL

## Qualification of Technical Member of NCLT

- Has, for at least fifteen years been a member of Indian Corporate Law Service or Indian Legal Service **and has been holding the rank of Secretary or Additional Secretary to the Government of India; or**
- is, or has been, in practice as a Chartered Accountant or Cost Accountant or Company Secretary for at least fifteen years; or
- is a person of proven ability, integrity and standing having special knowledge and professional experience of at least fifteen years in industrial finance, industrial management, industrial reconstruction, investment and accountancy; or
- Is, or has been for at least five years, a presiding officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947.

## Qualification of Technical Member of Appellate Tribunal

- A technical member shall be a person of proven ability, integrity and standing having special knowledge and professional experience of at least twenty five years in industrial finance, industrial management, industrial reconstruction, investment and accountancy.

## Amendment in Section 412

- The Members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed on the recommendation of a Selection Committee consisting of **Chief Justice of India or his nominee-Chairperson; a senior judge of the Supreme**



**Court or Chief Justice of High Court-Member; Secretary in the Ministry of Corporate Affairs-Member; and Secretary in the Ministry of Law and Justice-Member.**

- Where in the meeting of the Selection Committee, there is equality of votes on any matter, The Chairperson shall have a casting vote.”

## SPECIAL COURT

### Insertion of Section 446 A

The court or the Special Court, while deciding the amount of fine or imprisonment under this Act, shall have due regard to the following factors, namely:

- (a) Size of the company;
- (b) Nature of business carried on by the company;
- (c) Injury to public interest;
- (d) Nature of the default; and  
Repetition of the default.

## PREVENTION OF MONEY LAUNDERING ACT

- Section 5 states that property can be provisionally attached for 180 days. 180 days shall exclude the period stayed by High Court and a further 30 days (maximum) from the date of order of vacation of such stay order shall be counted.**
- Definition of Proceeds of Crime**  
Proceeds of crime” means 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 **or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.**
- Section 45**  
Person accused of an offence shall punishable shall not be released on bail or on his own bond unless-



(a) Public Prosecutor has been given an opportunity to oppose application for such release AND

(b) The court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is likely to commit any offence while on bail, Provided that a person, who is under the age of 16 years, or is a woman or is a sick or infirm or **is accused either on his own or along with other co-accused of money laundering a sum of < Rs 1 crore** may be released on bail.

## FOREIGN EXCHANGE MANAGEMENT ACT, 1999

### Key words:

NRI-Non Resident Indian

OCI-Overseas Citizen of India

PROI-Person Resident outside India

### Foreign Exchange Management(Acquisition of Transfer of Immovable Property) Regulations, 2018

- 1 A PROI who has established any branch /agency/office/place of business in India may acquire any immovable property in India which is necessary /incidental to carrying on such activity. However, all the rules and regulations of RBI must be complied and declaration in prescribed form must be filed to RBI within 90 days of acquisition.  
He may further mortgage such property to an authorised dealer as a security for any borrowings needed to carry out such business in India.
- 2 No person of Pakistan/Bangladesh/Srilanka/Afghanistan/China/IRAQ /Hongkong/Macau/Nepal/Bhutan/Korea shall acquire/sell any immovable property other than lease not exceeding 5 years without prior approval of RBI.
- 3 Foreign Embassies/Diplomats/Consulate can purchase /sell immovable property in India **other than Agriculture Land/Farmhouse/Plantations. However, they have to obtain clearance from the Government of India{Ministry of External Affairs} and consideration must be paid out of funds remitted from abroad through banking channels.**



- 4** A person resident outside India not being NRI/OCI who is spouse of NRI/OCI may acquire immovable property in India (**other than Agriculture Land/Farmhouse/Plantations**) jointly with spouse. However, the following conditions may be satisfied:
- a) Consideration must be paid out of funds remitted from abroad through banking channels.**
  - b) Marriage should be registered and subsisted for 2 continuous period of minimum 2 years immediately preceding acquisition of such property.**
- 5** A person being citizen of Afghanistan/Bangladesh/Pakistan belonging to minority communities namely Hindus, Sikhs, Buddhists, Jain, Parsis and Christians residing in India & granted **Long Term Visa by CG may purchase only 1 residential property for residential purpose and 1 immovable property for carrying self-employment.** However, the following conditions may be satisfied:
- (a)** property should not be located in protected/cantonment areas
  - (b)** persons should give a declaration of the Revenue Authority of district where property is located, source of funds and that he is residing on Long Term Visa.
  - (c)** Registration documents of property should clearly mention the nationality of Long Term Visa Holder.
  - (d)** Property shall be confiscated/attached if found involved in anti India activities.
  - (e)** The property can be sold only after acquiring Indian Citizenship. Prior approval of Deputy Commissioner of Police and Foreign Registration Office.
- 7** Repatriation outside India By PROI-RBI approval is needed.
- 9.** As a general rule, PROI cannot transfer any immovable property in India. However, the transfer can be done after fulfilling the following conditions:
- (a)** Approval of RBI must be obtained.
  - (b)** Transfer of amount must be through Banking Channel.

## 10 Acquisition of Property in India by NRI/OCI

- (a) An NRI/OCI can acquire immovable property in India other than agricultural land/farm house/plantation. However, consideration shall be by way of funds received in India by way of inward remittance or funds held in Non-Resident Account.
- (b) Acquisition cannot be done by way of Travellers cheque or foreign currency notes.
- (c) **NRI/OCI** can acquire from PRI/NRI/OCI by way of gift from a relative as defined u/s 2 (77) of the Companies Act, 2013.
- (d) **NRI/OCI** can acquire by way of inheritance from PROI who acquired property as per Foreign Exchange Management Rules at that time or from PRI.
- (e) **NRI/OCI** can transfer any immovable property in India to PRI.
- (f) **NRI/OCI** can transfer any immovable property other than Agriculture/ Farm house/ Plantation in India to an NRI/OCI.

## Insolvency and Bankruptcy Board of India

### Persons not eligible to be a Resolution Applicant-Section 29 A

- Is an undischarged insolvent
  - is a wilful defaulter in accordance with guidelines of RBI issued under Banking Regulation Act , 1949
  - has an account classified as NPA & atleast one year has elapsed from the date of commencement. However, if such person can apply if he pays all the overdue amounts plus interest plus other charges before submission of the plan.
  - he has been convicted for any offence punishable with imprisonment for 2 years or more.
  - Is disqualified to be director under Companies Act, 2013.
  - Is prohibited by SEBI from trading or accessing the securities market.
  - Has been a promoter or in management or control of a corporate debtor in which preferential/undervalued/extortionate credit/fraudulent transaction has taken place & an order has been made by Adjudicating Authority in this respect.
  - Has executed a enforceable guarantee in favour of a creditor in respect of a corporate debtor.
- Has a connected person which has defaulted as per the above provisions.



# Amendments for Corporate Laws for May 2018 Exams.

1. In the earlier law, the provisions of **Sec 152(6) and (7)** was not applicable to a 100% Govt. Co. Now the provisions are not applicable to Unlisted Gov. Co (whether 100% or not). However, the exemption is not available if the company has made default in the filing of financial statements and Annual Returns.
2. Earlier **Section 8** companies was granted exemption from the provisions of minimum and maximum number of directors. However, the exemption is not available if the company has made default in the filing of financial statements and Annual Returns.
3. The word Tribunal is replaced by Central Government in **Sec 230, 231 & 232** in case of Government Companies.
4. As per **143(3) (i)**, The Auditor has to report whether Internal Financial Controls are adequate. Now the above reporting is not required for the following
  - ☀ OPC & Small Co.'s
  - ☀ Pvt Co having turnover **less than 50 Cr** as per latest audited financial documents and Aggregate borrowings from Banks, FI or ANY Body Corporate **less than 25 Cr.**
5. As per **173(5)**, in the earlier law, OPC/Small Cos and Dormant Companies only were granted exemption with respect to conduct of BM, they were required to hold only one board meeting in each half of the calendar year with minimum gap of **90 days between 2** board meeting. Now the exemption has also been given to Private companies provided they are Start Ups. However, the exemption is not available if the company has made default in the filing of financial statements and Annual Returns.
6. As per earlier law, Under **Sec 174(3)**, if  $2/3^{\text{rd}}$  or more, of total strength of directors are interested, then for the purposes of quorum the remaining directors shall be construed as quorum provided they are more than 2 and are non-interested. **Now, in case of private companies, If an interested director discloses his interest to the board u/s 184, then for the purposes of quorum under 174(3), he would be counted in the quorum.** However, the exemption is not available if the company has made default in the filing of financial statements and Annual Returns.

- 186(7)** is not applicable to a company in which **26%** or more of paid up share capital is held CG/ SG or both in respect of loans provided for funding industrial development projects.

**PTR:**

As per **Section 186(3)**, no loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government security closest to the tenor of the loan.

- In the earlier law, rotation of Auditor was applicable to a Pvt co having paid up share capital greater than equal to **20 cr**. Now, the limit of **20 cr** has been increased to **50 cr**.
- As per **Sec 149(4)**, every listed co shall have at least  $1/3^{\text{rd}}$  of total no of directors as independent directors and other prescribed companies were required to have at least **2** independent directors. Now the exemption from having **2** independent directors have been granted to following class of unlisted companies that is Joint Venture, wholly owned subsidiary and Dormant Company.
- A director who desires to attend the meeting through electronic mode can participate electronically if he submits his declaration to the company. This Declaration shall be valid for a period of one year. Now with prior intimation, This Director can also attend the meeting physically.
- Provisions of 212(8), (9) and (10) have been notified. The director, additional director or assistant director of SFIO has also been given the power to arrest the person who has been proven guilty. Such Arrested person shall be presented before judicial magistrate within 24 Hrs.
- In the earlier law, as per Sec 186, no company can invest through more than 2 layers of Subsidiaries. Now the exemption has been granted to Banking Company/ NBFC/ Insurance Co and Govt. Co.

## COMPETITION ACT, 2002

- Exemption has been granted to Regional Rural Banks from application of **Sections 5 and 6** of the Competition Act, 2002 for a period of 5 years from date of publication of this notification in the Official Gazette.



2. Exemption has been granted to the Vessels Sharing Agreements of the Liner Shipping Industry from the provisions of Section 3 of the Competition Act, 2002.
3. Exemption has been granted to all cases of reconstitution, transfer of the whole or any part thereof and amalgamation of nationalized banks from the application of provisions of Section 5 and 6 of the Competition Act, 2002.

## BANKING REGULATION ACT, 1949

**Section 35 AA** Power of Central Government to authorise Reserve Bank for issuing directions to banking companies to initiate insolvency resolution process. The Central Government may, by order, authorise the Reserve Bank to issue directions to any banking company or banking companies to initiate insolvency resolution process in respect of a default, under the provisions of the Insolvency and Bankruptcy Code, 2016.

**Section 35 AB** Power of Reserve Bank to issue directions in respect of stressed assets

- Without prejudice to the provisions of section 35 A , the Reserve Bank may, from time to time, issue directions to any banking company or banking companies for resolution of stressed assets.
- The Reserve Bank may specify one or more authorities or committees with such members as the Reserve Bank may appoint or approve for appointment to advise any banking company or banking companies on resolution of stressed assets.

## INSOLVENCY AND BANKRUPTCY

### Voluntary Winding Up

Section 59 of the Code empowers a corporate person intending to liquidate itself voluntarily if it has not committed any default to initiate voluntary liquidation proceedings under the provisions of this Code.

Any corporate person registered as a company shall meet the following conditions to initiate a voluntary liquidation process:-

- (a) A declaration from majority of the directors of the company verified by an affidavit stating
  - i. That they have made a full inquiry into the affairs of the company and have formed an opinion that either the company has no debts or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and
  - ii. That the company is not being liquidated to defraud any person.
- (b) The declaration shall be accompanied with the following documents, namely:
  - i. Audited financial statements and a record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;
  - ii. A report of the valuation of the assets of the company, if any, prepared by a registered valuer.
- (c) After making the declaration the corporate debtor shall within four weeks -
  - i. Pass a special resolution at a general meeting stating that the company should be liquidated voluntarily and insolvency professional to act as the liquidator may be appointed.
  - ii. Pass a resolution at a general meeting stating that the company be liquidated voluntarily as a result of expiry of the period of its duration (fixed by its articles or



on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, if any) and appointing an insolvency professional to act as the liquidator.

### **ISSUE OF CLARIFICATION REGARDING APPROVAL OF RESOLUTION PLANS UNDER SECTION 30 AND SECTION 31 OF INSOLVENCY AND BANKRUPTCY CODE**

Clarification was sought whether approval of shareholders/members of the corporate debtor /company is required for a resolution plan at any stage during the process for its consideration and approval as laid down under **section 30 and 31** of the Insolvency and Bankruptcy and after approval during its implementation, for any actions contained in the resolution plan?

Through the issue of this circular, it has been clarified that approval of shareholders /members of the corporate debtor /company for a particular action required in the resolution plan for its implementation, which would have been required under the Companies Act, 2013 or any other law if the resolution plan of the company was not being considered under the Code is deemed to have been given on its approval by the Adjudicating Authority.



**COMPILED**

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**For**

Youtube channel link

<https://www.youtube.com/channel/UC2YwL8WyAWYFboyYt58g>  
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**Pen drive classes**  
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**CA Final**  
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**(old /New Syllabus)**



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