

COMPANY LAW CHARTS INDEX

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Note : Amendments for May 2019 Exam are given in Red



Team SPC Felicitating AIR's of CA FINAL NOV-2018



Directors Master Chart									
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Chapters XI, XII, XIII of The Companies Act, 2013

Chapter XI - Appointment and Qualifications of Directors (Lesson No. 1 of Volume 1)

Chapter XII - Meetings of Board and Its Powers (Lesson No. 3 of Volume 1)

Chapter XIII - Appointment and Remuneration of Managerial Personnel (Lesson No. 2 of Volume 1)

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[illegible]

Appointment & Qualification of Directors (Chart 1.1)

Section 149 - Company to have Board of Directors

Section 149(4) to 149(13), 150 - Independent Director

Second Proviso to Section 149(1) - Women Director

- 1) At least 1 woman director be on Board of-
 - a) every listed company,
 - b) every other public company having-
 - paid-up share capital Rs.100 Crore or more; or
 - turnover of Rs.300 Crore or more
- 2) New Co. comply within 6 mths from incorporation
- 3) Intermittent vacancy be filled-up by Board not later than immediate next Board Meeting or 3 mths from vacancy whichever is later
- 4) Section 149(2) - Transition period- Existing Co. should comply within 1 year from commencement (i.e 1st April, 2014)
- 5) PSC, turnover as on last date of latest audited financial statements to be considered

Section 149(3) - Resident Director

Every company shall have at least 1 director who stays in India for a total period of not less than 182 days during the financial year: Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at end of financial year in which it is incorporated

Section 149(4) - Applicability

- 1) Listed public company- at least 1/3rd of total no. of directors as independent directors (ID)
 - 2) Fraction rounded off as 1
 - 3) At least 2 ID- Unlisted Public Companies having-
 - a) PSC Rs.10 Cr or more or
 - b) Turnover Rs.100 Cr or more
 - c) Outstanding loans, debentures, deposits exceeding Rs.50 Crore in aggregate
- Following classes of unlisted public company shall not be covered, namely:-*
- i) joint venture;
 - ii) wholly owned subsidiary;
 - iii) dormant company u/s 455
- 4) Intermittent vacancy be filled-up by Board not later than immediate next Board meeting or 3 mths from vacancy whichever is later

Section 149(6) - Who can become ID?

- 1) In Opinion of Board person of integrity, possesses expertise, experience
- 2) Not a promoter
- 3) Not related to promoters/ directors
- 4) No pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed with company/ its holding/ subsidiary/ associate or promoters/ directors, during 2 immediately preceding FY or current FY *Not applicable to Govt Co.*
- 5) None of whose relatives -
 - a) is holding any security of or interest in co., its holding, subsidiary or associate co. during 2 immediately preceding FY. or during current FY. Provided that relative may hold security or interest in co. of FV not exceeding 50L Rs. or 2% of paid-up capital
 - b) is indebted to co., its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during 2 immediately preceding FY. or current FY.
 - c) has given a guarantee or provided any security in connection with indebtedness of any 3rd person to co., its holding, subsidiary or associate co. or their promoters, or directors, for Rs. 50L during 2 immediately preceding FY or current FY; or
 - d) has any other pecuniary transaction or relationship with co., or its subsidiary, or its holding or associate co. amounting to 2% or more of its gross turnover or total income singly or in combination with transactions referred to in sub-clause (i), (ii) or (iii)

Section 149(7) - Declaration by ID

- Declaration that he meets criteria of independence-
- 1) At 1st Board Meeting in which he participates
 - 2) Thereafter at 1st Board Meeting in every FY or
 - 3) Whenever change in circumstances affecting his status

Section 149(8) - Code for ID

Company & independent directors shall abide by provisions specified in Schedule IV to Companies Act, 2013

Section 149(9) - Remuneration of ID

- 1) Not entitled to stock option
 - 2) Remuneration by way-
 - a) fee provided u/s 197(5),
 - b) reimbursement of expenses for participation in Board & other meetings
 - c) profit related commission approved by members
- Section 149(10) - Tenure**
- 1) Hold office for term up to 5 consecutive years
 - 2) Eligible for re-appointment on passing special resolution & disclosure in Board's report
 - 3) Shall not hold office for more than 2 consecutive terms
 - 4) Eligible for appointment after expiration of 3 yrs of ceasing to be ID, if not associated in any manner during these 3 yrs

Section 149(12) - Liability

Held liable for acts of omission or commission by Company-

- a) occurred with his knowledge
- b) with his consent or connivance or
- c) where he had not acted diligently

Section 149(13) - Retirement by rotation

Section 152(6), (7) retirement of directors by rotation not applicable to Appointment of ID

Section 150 - Manner of selection & maintenance of databank of ID

- 1) Contains names, addresses & qualifications of persons who are eligible & willing to act as ID
- 2) Maintained by any Body, institute or association, notified by CG
- 3) Put on their website for use by companies appointing such directors
- 4) Responsibility of exercising due diligence before selecting lie with company
- 5) Appointment be approved by company in GM as per Section 152(2)
- 6) Explanatory Statement annexed to notice indicate justification for choosing

Section 149(1) - (a) Number of Directors - Minimum : Public Co - 3, Private Co - 2, OPC - 1

(b) Articles may stipulate higher number

(c) Maximum - 15 directors, However, Co may appoint more than 15 by passing SR

(d) Only Individuals to be directors, no Body Corporate, firm, association shall be appointed as director

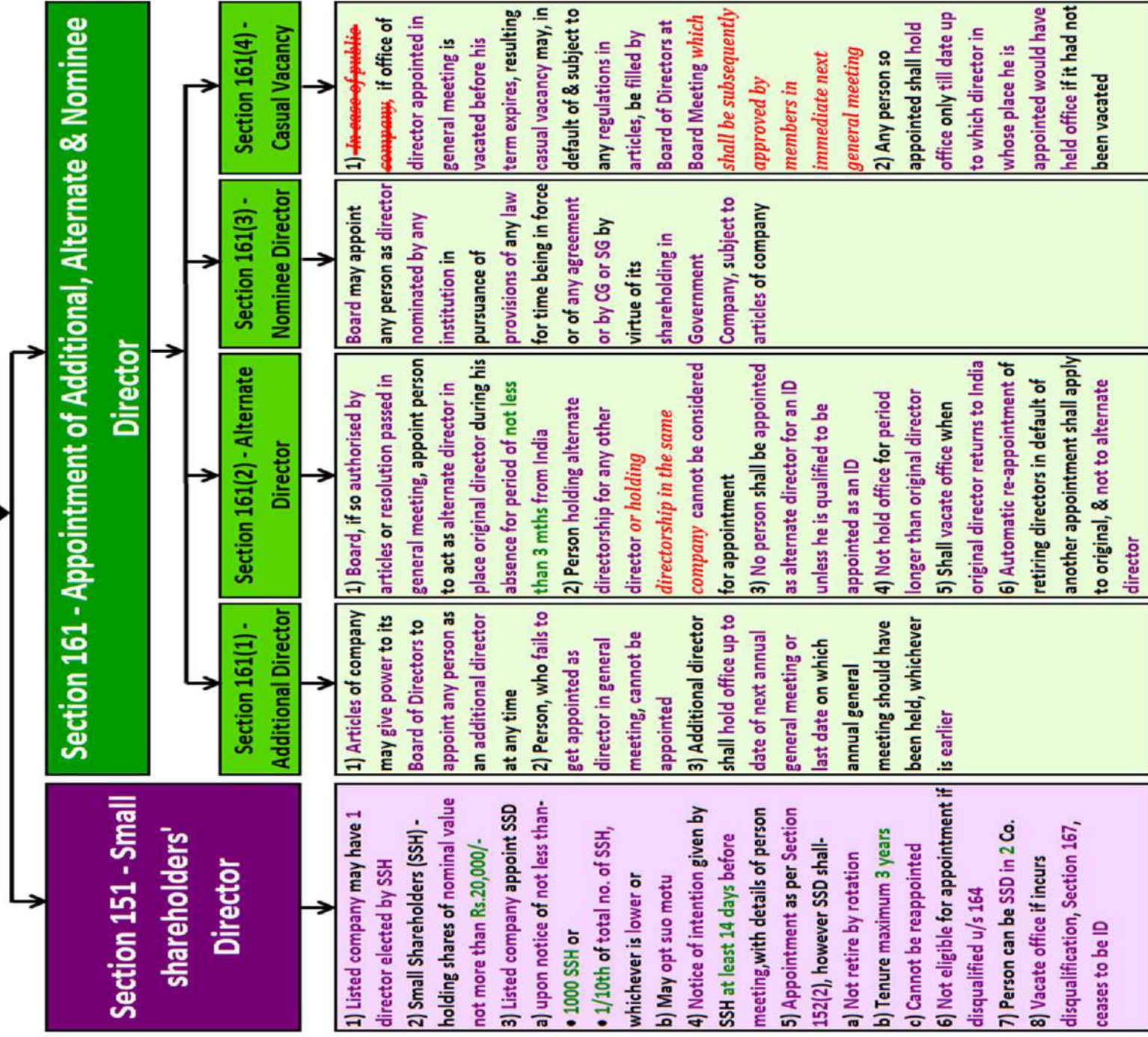
Section 8 companies are exempted from following provisions of sub-section (4), (5), (6), (7), (8), (9), (10), (11), clause (i) of sub-section (12) [related to independent director] & sub-section (13) of section 149 of Companies Act, 2013

Section 150 not applicable to Section 8 Companies

Limit of maximum of 15 directors & their increase in limit by SR shall not apply to Government Co.

Minimum & Maximum limit of number of directors & their increase in limit by SR shall not apply to Section 8 Companies
Now sec 8 company have no maximum limit of director so it can appoint any number of directors just by GM-OR. Even above 15.
But above exemption is only applicable to sec 8 company who is regular in filing annual accounts & annual returns

Appointment & Qualification of Directors (Chart 1.2)



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Appointment & Qualification of Directors (Chart 1.3)

Section 152 - Appointment of Directors

Appointment of directors

152(1) - First Director

- 1) If no provision made in AOA, individual subscribers to MOA, be deemed to be 1st directors until directors are appointed by members
- 2) For OPC, individual being member be deemed to be its first director

Section 152(2)

Save as otherwise expressly provided in this Act, every director shall be appointed by company in general meeting

Section 152(3)

No person shall be appointed as director unless he has been allotted DIN u/s 154 or any other number as may be prescribed under section 153

Section 152(4)

Director shall furnish DIN or such other number as may be prescribed under section 153 & Declaration that he is not Disqualified

Section 152(5)

Director should give his consent, file with ROC in Form DIR-2 within 30 days of appointment

Section 152(5) shall not apply:
(i) where appointment of such director is done by CG or SG
(ii) to a section 8 company

152(6) - Retirement by rotation

- 1) Unless AOA provide retirement of all directors at every AGM, minimum 2/3rd of total no. of directors of public company shall be Rotational Directors & they shall be appointed at GM
- 2) Non-rotational Directors shall be appointed in GM or as per AOA
- 3) In every AGM, 1/3rd of Rotational Directors shall retire
- 4) Persons longest in office shall retire
- 5) 2 persons appointed on same day, then retiring person is as per agreement between them or draw of lots
- 6) No. of Independent Directors shall be excluded from Total no. of directors for purpose of calculation

Section 152(6) & (7), shall not apply to –
a) Government company, which is not listed company, in which not less than 51% of paid up share capital is held by Central Government, or by any State Governments or by Central Government & one or more State Governments;
b) a subsidiary of a Government company, referred to in (a) above
However, above exemption is only applicable to government company who is regular in filing annual accounts & annual returns

152(7) - Vacancy in case of retiring director

- 1) If vacancy of retiring director not filled-up & meeting has not resolved for not filing of vacancy then meeting shall be adjourned till same day in next week
- 2) If vacancy not filled up in adjourned meeting & resolution for not filing vacancy is not passed, retiring director shall be deemed to have been re-appointed at adjourned meeting, unless-
 - resolution for re-appointment has been put to meeting & lost;
 - director has expressed his unwillingness to be re-appointed
 - he is disqualified for appointment
 - OR/SR is required for his appointment or re-appointment
 - Section 162 is applicable to the case

Section 160 - Appointment of New Director

- 1) Person other than retiring director (Section 152), be eligible for appointment as director at any GM
- 2) Notice in writing to be given at least 14 days before meeting at Registered Office along with Deposit of Rs. 1,00,000/-* or higher amt prescribed
Requirements of deposit of amount shall not apply in case of appointment of independent director or director recommended by NRC u/s 178(1) or BOD if not required to constitute NRC
* In case of Nidhi Co Rs. 10,000/-
- 3) Deposit be refunded if person proposed gets elected as director or gets more than 25% of votes of members present & voting
In case of Section 8 Companies, BOD is to decide whether deposit is to be forfeited or refunded
- 4) Company shall, at least 7 days before GM, inform its members of candidature of person as director

Not Applicable to: (i) Govt. Co. in which entire PSC is held by CG or by SG or by CG & 1 or more SG,
(ii) Subsidiary of Govt. Co. referred to in (i) above, in which entire paid up share capital is held by Govt. Co.
(iii) Private Company
(iv) Companies whose articles provide for election of directors by ballot

Section 162 - Appointment of directors to be voted individually

- 1) Each director shall be appointed by separate resolution, unless meeting first agreed that appointment shall be made by a single resolution and no vote has been cast against it
- 2) Resolution moved in contravention shall be void, whether or not objection was raised at time it was so moved
- 3) Nomination of person for appointment, shall be treated as motion for his appointment

Not Applicable to: (i) Govt. Co. in which entire PSC is held by CG or by SG or by CG & 1 or more SG,
(ii) Subsidiary of Govt. Co. referred to in (i) above, in which entire paid up share capital is held by Govt. Co.
(iii) Private Co.

Section 163 - Proportional representation for appointment of directors

- 1) AOA may provide for appointment of minimum 2/3rd of total no. of directors by principle of proportional representation
- 2) Appointments may be made once in every 3 yrs
- 3) Method of Appointment
 - Single transferable vote or
 - Cumulative voting or
 - Otherwise
- 3) Casual vacancies of such directors shall be filled as per Section 161(4)
- 4) This section has overriding effect on entire Act because of words used in section "Notwithstanding anything contained in this Act"

Not Applicable to: (i) Govt. Co. in which entire PSC is held by CG or by SG or by CG & 1 or more SG,
(ii) Subsidiary of Govt. Co. referred to in (i) above, in which entire paid up share

Appointment & Qualification of Directors (Chart 1.4)

Provisions regarding Directors Identification Number (DIN)

Section 152(3) - Person shall not be appointed as a director of a Company unless he has been allotted DIN u/s 154

Section 153 - Application for allotment of DIN & Rules*	Section 154 - Allotment of DIN	Section 155 - Prohibition to obtain more than one DIN	Section 156 - Director to intimate DIN	Section 157 - Company to inform DIN to Registrar	Section 158 - Obligation to indicate DIN	Section 159 - Punishment for contravention	Cancellation or surrender or Deactivation of DIN (As per Rules*)	Intimation of changes in particulars specified in DIN application (As per Rules*)
Individual to be appointed as director shall make application for allotment of DIN to CG in Form DIR 3 (Downloaded from MCA Portal) along with prescribed fees <i>CG may prescribe any identification number which shall be treated as DIN for purposes of this Act & in case any individual holds or acquires such identification number, requirement of this section shall not apply or apply in such manner as may be prescribed</i>	CG shall allot DIN to Director within 1 month from receipt of Application	No individual, who has already been allotted DIN u/s 154, shall apply for, obtain or possess another DIN	Every existing director shall, within 1 month of receipt of DIN from CG, intimate his DIN all companies wherein he is director	1) Company within 15 days of receipt of intimation u/s 156, furnish DIN of all its directors to Registrar or any other officer or authority as may be specified by CG with prescribed fees 2) If company fails to intimate, company & every officer in default punishable with Fine - Rs.25,000/- to Rs.1,00,000/-	Every person or company, while furnishing any return, information or particulars shall mention DIN in case such it relates to director or contain any reference of any director	Any individual or director who contravenes Section 152, 155 and 156 shall be punishable with- 1) Imprisonment upto 6 mths or 2) Fine upto Rs.50,000/- & 3) In case of continuing default, Rs. 500 for every day after first during which contravention continues	CG/RD/officer authorised by RD on verification of particulars or documentary proof attached with application, cancel or deactivate DIN if- a) found to be duplicated b) obtained in wrongful manner or by fraudulent means c) death of concerned individual d) concerned individual declared as unsound mind e) concerned individual adjudicated an insolvent f) on an application made in Form DIR-5 by DIN holder. CG or RD or any officer authorised by CG or RD shall, deactivate DIN, of an individual who does not intimate his particulars in e-form DIR-3-KYC within stipulated time in accordance with Rule 12A. De-activated DIN shall be re-activated only after e-form DIR-3-KYC is filed along with fee as prescribed	1) Every individual who has been allotted DIN shall, in event of any change in his particulars as stated in Form DIR-3, intimate such change to CG in Form DIR-6 within period of 30 days of change 2) CG after verification incorporate changes & inform applicant by letter by post or electronically 3) Concerned individual intimate changes to companies in which he is director within 15 days of such change Every individual who has been allotted a DIN as on 31st March of a FY as per these rules shall, submit e- form DIR-3-KYC to CG on or before 30th April of immediate next FY. Provided that every individual who has already been allotted a DIN as at 31st March, 2018, shall submit e-form DIR-3 KYC on or before 5th October, 2018.

* The Companies (Appointment and Qualification of Directors) Rules, 2014



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Appointment & Qualification of Directors (Chart 1.5)

Section 164 - Disqualifications for Appointment of Director

Section 164(1) Person cannot be Director if -

- a) Unsound mind declared by court
 - b) Undischarged Insolvent
 - c) Applied to be adjudicated as insolvent and application is pending
 - d) Convicted by court, of offence involving moral turpitude or otherwise :
- | Imprisonment | Term of Disqualification |
|------------------------------------|--------------------------|
| 6 mths or more but less than 7 yrs | 5 years |
| More than 7 yrs | Forever i.e Life time |
- e) Order passed by Court or Tribunal
 - f) Not paid any calls in arrears on shares for continuous 6 months from due date
 - g) Enters into Related Party Transactions u/s 188 during last preceding 5 Years
 - h) Not complied with Section 152(3) i.e does not hold DIN

Section 164(2) Company fails -

- a) To file:
 - Financial Statements
 - or
 - Annual Returns for any "continuous period of 3 Financial Years"
- b) To repay:
 - Deposits or pay interest thereon
 - or
 - Redeem any debentures on due date or pay interest
 - or
 - Pay any dividend declared
 - failure "continues for 1 year or more"

Section 164(2) is not applicable to Government company

Provided that where a person is appointed as a director of a co. which is in default of clause (a) or clause (b), he shall not incur disqualification for a period of 6 months from date of his appointment.

All Directors shall be disqualified for period of 5 years from the date on which company fails to do so

Section 167 - Vacation of office of director

- 1) Office of director shall become vacant in case-
 - a) incurs any disqualifications u/s 164 Provided that where he incurs disqualification under 164(2), office of director shall become vacant in all companies, other than Co. which is in default under that sub-section.
 - b) absents himself from all Board Meetings held during period of 12 mths
 - c) Section 184 violation
 - Does not disclose interest
 - Participates in Board Meeting in which he is interested
 - e) disqualified by Court/ Tribunal's Order
 - f) convicted by court of any offence moral turpitude or otherwise, imprisonment for not less than 6 mths
 - g) he is removed in pursuance of provisions of this Act
 - h) Ex-officio director (a person who holds directorship by virtue of holding some other position)
 - 2) Director who contravenes, punishable with imprisonment upto 1 yr or fine- Rs. 1L to Rs. 5L or both
- Provided that the office shall not be vacated by director in case of orders referred to in clauses (e) & (f)—
- i) for 30 days from date of conviction or order of disqualification; ii) where an appeal or petition is preferred within 30 days as aforesaid against conviction resulting in sentence or order, until expiry of 7 days from date on which such appeal or petition is disposed of; or iii) where any further appeal or petition is preferred against order or sentence within 7 days, until such further appeal or petition is disposed of

Where all directors of Co. vacate/resign their offices, promoter or CG shall appoint required no. of directors who shall hold office till directors are appointed in GM

Section 168 - Resignation of Director

- 1) Director may resign by giving notice in writing to Co.
- 2) Board shall on receipt of notice take note of same
- 3) Co. within 30 days from date of receipt of notice, intimate Registrar in Form DIR-12 & post on website
- 4) Co. shall also place fact of resignation in Board Report laid in immediately following GM
- 5) Director may forward copy of his resignation along with reasons to Registrar within 30 days from date of resignation in Form DIR-11 along with prescribed
- 6) Resignation shall be effective from date on which notice is received by Co. or date specified by director in notice, whichever is later
- 7) Director who has resigned be liable for offences occurred during his tenure

Section 169 - Removal of Directors

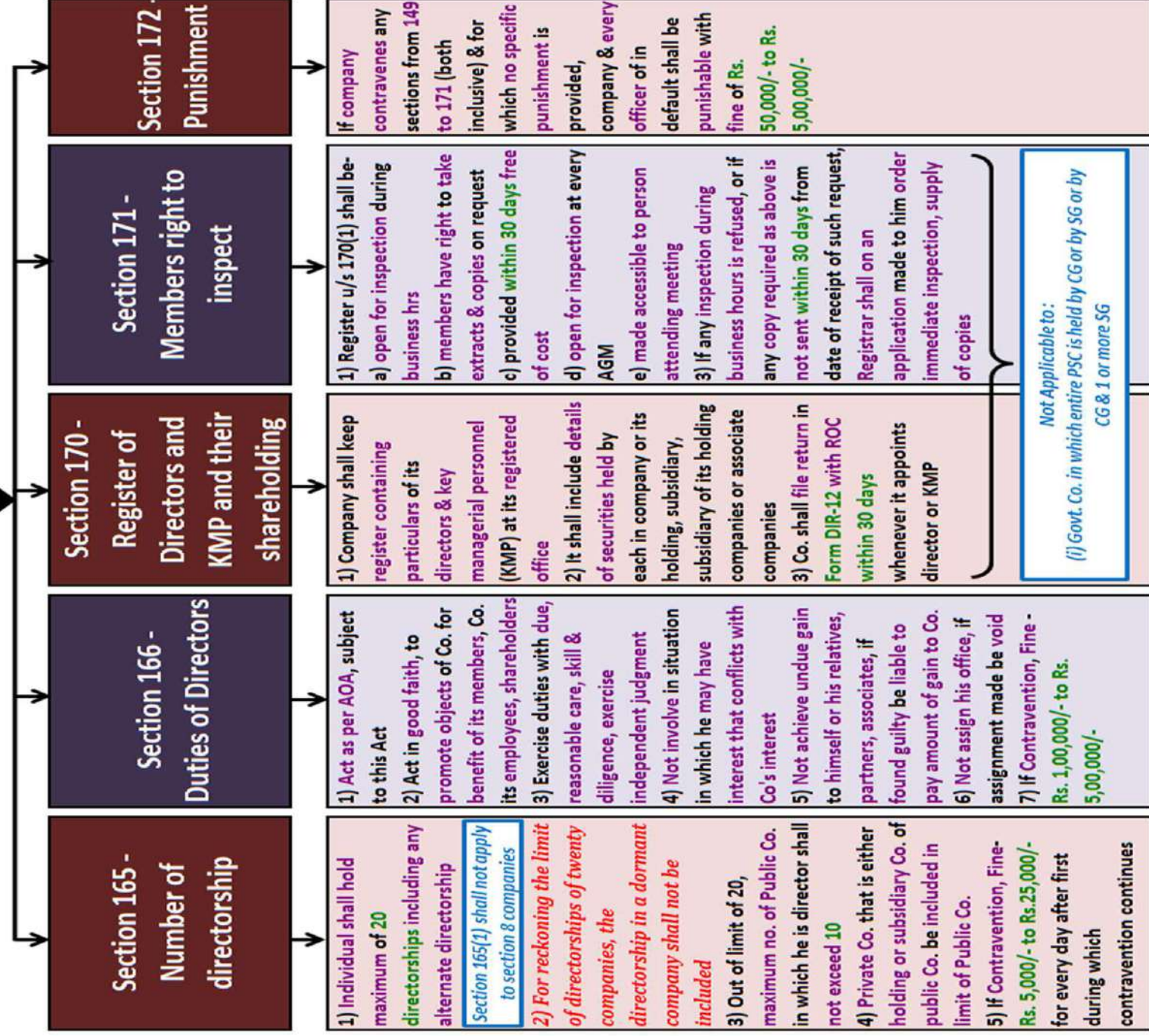
- 1) Co. may by OR remove director other than director appointed by Tribunal u/s 242 before expiry his term after giving reasonable opportunity of being heard
- 2) Directors appointed on Principle of Proportional Representation u/s 163 cannot be removed by OR
- 3) Special Notice be required of any resolution, to remove director or appoint other in place
- 4) On receipt of notice of this resolution, Co. shall send copy to removed director
- 5) Resulting vacancy filled by another director provided Special Notice of proposed appointment is given
- 6) A director so appointed shall hold office for remaining period for which removed director would have held
- 7) If vacancy not filled, it may be filled as casual vacancy provided that removed director shall not be reappointed
- 8) Section shall not take away rights to compensation/damages payable in respect of premature termination, or terms of his appointment or any other position
- 9) Independent director re-appointed for second term u/s 149(10) shall be removed by company only by passing a SR & after giving him a reasonable opportunity of being heard

Section 169(4) - ON SERVING OF NOTICE OF A RESOLUTION TO REMOVE DIRECTOR

Notice has been given of a resolution to remove a director under this sec & director concerned makes with respect thereto representation in writing to co.-

- 1) state fact of representation having been made; &
- 2) send a copy of representation to every member of co. to whom notice of meeting is sent & if a copy of representation is not sent as aforesaid due to insufficient time or for co. default, director may without prejudice to his right to be heard orally require that representation shall be read out at meeting "Provided that copy of representation need not be sent out & representation need not be read out at meeting if, on application either of co. or of any other person who claims to be aggrieved, Tribunal is satisfied that rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; & Tribunal may order company's costs on application to be paid in whole or in part by director notwithstanding that he is not a party to it

Appointment & Qualification of Directors (Chart 1.6)



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Designed By: **Swapnil Patni**

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- Presence all over India at the age of 29
- Also known as the "Motivational Guru"

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Appointment And Remuneration of Managerial Personnel (Chart 2.1)

Section 196 - Appointment of MD, WTD, Manager

Section 203 - Appointment of Key Managerial Person

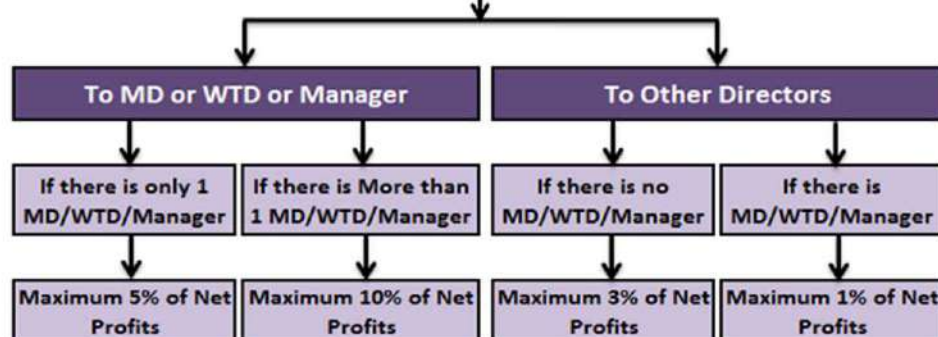
Section 196(1)	Section 196(3) - Disqualification	Schedule V - Part I	Section 196(4) - Procedure of appointment	Section 203(1) - Who is KMP?	Conditions for appointment	Section 203(4) - Casual Vacancy
Co. shall not appoint MD & manager at same time	Co. shall not appoint/continue employment of person as MD, WTD or Manager who-	Person shall not be eligible for appointment as MD or WTD or Manager unless he satisfies following conditions -	a) Terms & conditions of appointment & remuneration payable be approved by BOD at BM b) Same shall be subject to approval of shareholders by resolution at next GM c) In case appointment is at variance to conditions of Schedule V appointment shall be approved by CG d) Notice convening BM or GM shall include terms & conditions of appointment, remuneration payable & other matters including interest of director e) Return Form No. MR.1 along with fee shall be filed with Registrar within 60 days of appointment	1) Every Listed Co. 2) Public Co. having PSC Rs. 10 Crore or more shall have whole time key managerial personnel:- a) MD/CEO/Manager & in their absence, WTD b) CS & c) CFO 2) Also, Co. other than covered above, which has PSC of Rs. 5 crore or more shall have a whole-time CS 3) Individual shall not be appointed/reappointed as chairperson, in pursuance of articles, as well as MD or CEO at the same time unless - a) articles provide otherwise or b) Co. does not carry multiple businesses 4) Above prohibition shall not apply to Co. engaged in multiple businesses & which has appointed 1 or more CEO for each such business as may be notified by CG Definition of Key Managerial Person [Section 2(51)] "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 directors who is in whole-time employment, designated as key managerial personnel by Board; & vi) such other officer as may be prescribed	1) Whole-time KMP shall be appointed by resolution at BM containing terms & conditions of appointment including remuneration 2) Whole-time KMP shall not hold office in more than 1 Co. at same time except in its Subsidiary Co. 3) No restriction on KMP from being director in Co. with permission of Board 4) Whole-time KMP holding office in more than 1 Co. at same time on commencement of this Act, shall, within period of 6 mths choose 1 Co. in which he wishes to continue 5) Co. may appoint person as its MD, if he is MD/Manager of 1 and of not more than 1 other Co. by UBR 6) Specific Notice of such meeting, & of resolution to be moved thereat has to be given to directors in India	Filled-up by Board in BM within 6 months from date of such vacancy Section 203(5) - Penalty for Contravention Company - Fine - Rs. 1 to 5 Lakhs Director & KMP in default - Fine - Upto Rs. 50,000/- Further fine for continuing contravention - upto Rs.1,000/- for every day after 1st during which contravention continues
Section 196(2) - Tenure 1) Co. shall not appoint or re-appoint any person as its Managing Director (MD), Whole Time Director (WTD) or Manager for a term exceeding 5 yrs 2) No re-appointment shall be made earlier than 1 year before expiry of his term	a) is below age of 21 yrs or has attained age of 70 yrs. Person attained age of 70 yrs be appointed by SR & explanatory statement to be annexed to notice & indicate justification. Provided further that where no such SR is passed but votes cast in favour of motion exceed votes, if any, cast against motion & CG is satisfied, on an application made by Board, that such appointment is most beneficial to co., appointment of person who has attained age of 75 may be made b) is undischarged insolvent or has been adjudged as insolvent c) has suspended payment to creditors or makes, or has made, composition with them d) has been convicted by court of offence & sentenced for more than 6 months	a) Not been Imprisoned & not been fined exceeding Rs.1,000/ under 16 acts as specified b) Not been detained for any period under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 In case CG has given its approval to appointment of person convicted/detained under (a) or (b) no further approval required for subsequent appointment c) Has completed age of 21 yrs & not attained age of 70 yrs Where he has attained age of 70 yrs & where his appointment is approved by SR in GM, no further approval of CG required d) where he is managerial person in more than 1 Co. he draws remuneration from 1 or more companies subject to ceiling provided in Section V of Part II e) he is resident of India				
Section 196(5) - Validity of acts If appointment not approved in GM, acts done before approval shall be deemed to be valid						
Section 196(2), (4), (5) shall not be applicable to Government Company		Section 196 (4), (5) shall not be applicable to Private Company		Sub-section (1), (2), (3) and (4) of this section shall not apply to MD or CEO or & in their absence, whole-time director of Government Company		

Appointment And Remuneration of Managerial Personnel (Chart 2.2a)

Managerial Remuneration - Section 197 + Schedule V

Maximum Remuneration in case of PROFITS
Limits based on "Percentage of Net Profits" given in Section 197 itself

Total Managerial Remuneration payable by a Public Company in a Financial Year
Not exceed 11% of Net Profit of the Company



With Approval of Co. in GM by a SR these limits can be exceeded
However, In case if Company wants to exceed 11% of Net Profits then approval of Central Government required

Provided also that, where co. has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, prior approval of bank or public financial institution concerned or non-convertible debenture holders or other secured creditor, shall be obtained by co. before obtaining approval in GM

*Effective Capital =	
Add: 1) Paid up Equity Share Capital 2) Paid up Preference Share Capital 3) Securities Premium 4) All Reserves (Excluding Revaluation Reserve) 5) Long term Loans and Deposits repayable after 1 year	Less: 1) Investments 2) P&L Debit Balance 3) Preliminary Expenses
Effective Capital shall be calculated as on last date of financial year preceding financial year in which appointment of managerial person is made	

Maximum Remuneration in case of LOSSES or INADEQUATE PROFITS
Limits based on "Effective Capital*" given in Schedule V Part II

Maximum Remuneration Limit in case of Loss / Inadequate profit

Without the Permission of CG

- Not having interest in Holding or subsidiaries directly or indirectly.
- Possesse Graduate level Qualification.
- Expertise knowledge in which co. operates.
- Directly or indirectly relatd to director/ promoter at anytime during the 2 years prior to his appointment as managerial person. Provided holding not exceeing 0.5% of paid up share capital under any scheme to such employee including ESOP is allowed.

With Permission of CG

Follow the Slab in (A)	
Where Effective Capital is	Limit of yearly remuneration payable shall not exceed Rs.
Negative or Less than 5 Crores	60 lakhs
5 crores and above but less than 100 crores	84 Lakhs
100 crores and above but less than 250 Crores	120 lakhs
250 crores and above	120 lakhs plus 0.01% of effective capital in excess of Rs. 250 crores

If the resolution passed by the shareholders is a special resolution, this limit shall be doubled, with permission of CG

If Co is not able to comply with Schedule V, then previous approval of CG shall be taken

Managerial person who has been appointed in accordance with provisions of Schedule XIII of Companies Act, 1956, may continue to receive remuneration for his remaining term in accordance with terms and conditions approved by company as per relevant provisions of Schedule XIII of 1956 Act even if part of his/her tenure falls after 1st April, 2014

Appointment And Remuneration of Managerial Personnel (Chart 2.2b)

Section 197 - Not applicable to Government Company

Remaining Provisions of Section 197

Remaining provisions of Schedule V to Companies Act, 2013

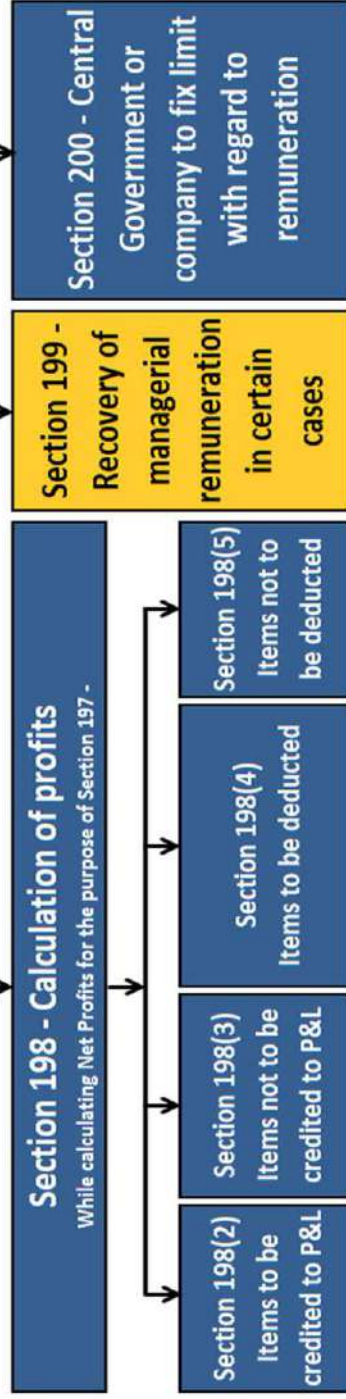
Section 197(4) - Remuneration rendered in any other capacity	Section 197(5) - Sitting Fees to directors	Section 197(7) - Remuneration of ID	Section 197(10)	Section 197(12) - Disclosure by Listed Co	Section 197(13) - Insurance for Indemnification	Section 197(16)	Section III of Part II	Section IV of Part II	Section V of Part II
<p>1) Remuneration payable to directors, including any MD/WT/Manager, shall be determined, in accordance with & subject to this section, either by</p> <p>a) AOA or</p> <p>b) resolution or,</p> <p>c) if AOA so require, by SR in GM &</p> <p>2) Remuneration determined shall be inclusive of remuneration payable to him for services rendered by him in any other capacity</p> <p>3) Remuneration for services rendered by such director in other capacity shall not be included if -</p> <p>a) services rendered are of professional nature &</p> <p>b) in opinion of NRC (if any) or BOD, director possesses requisite qualification for practice of profession</p>	<p>1) Director may receive fee for attending meetings of Board or Committee thereof or for any other purpose whatsoever as may be decided by Board</p> <p>2) Sitting fees not exceed Rs. 1,00,000 per meeting, as per Rules*</p> <p>3) For Independent Directors & Women Directors, sitting fee shall not be less than other directors</p> <p>4) Percentages u/s 197(1) shall be exclusive of any sitting fees payable to directors for attending meetings or for any other purpose whatsoever as may be decided by Board</p> <p>Sec 197(6) - Mode of Remuneration</p> <p>Remuneration be paid either monthly or at specified % of Net Profits of Co or partly by one way & partly by other</p>	<p>Independent director (ID) shall not be entitled to stock option & may receive remuneration as-</p> <p>1) sitting fees u/s 197(5)</p> <p>2) reimbursement of expenses for participation in Board & other meetings &</p> <p>3) profit related commission as may be approved by members</p> <p>Sec 197(9) -</p> <p>If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of limit prescribed by this sec. or without approval required under this sec., he shall refund such sums to co., within 2 yrs or such lesser period as may be allowed by co., & until such sum is refunded, hold it in trust for company</p>	<p>Co. shall not waive recovery of any sum refundable to it under sub-sec (9) unless approved by SR within 2 years from date sum becomes refundable. Provided that where Co. has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, prior approval of bank or public financial institution concerned or non-convertible debenture holders or other secured creditor, as case may be, shall be obtained by the company before obtaining approval of such waiver.</p>	<p>1) Listed Co shall disclose in Board's Report, ratio of remuneration of each director to median employee</p> <p>2) As per Rules*, Board's Report shall include statement showing name of every employee who-</p> <p>a) if employed throughout FY, was in receipt of remuneration, in aggregate, was not less than Rs. 1,02,00,000/-</p> <p>b) if employed for part of FY, was in receipt of remuneration, in aggregate, was not less than Rs. 8,50,000/-pm</p> <p>c) if employed throughout FY or part, was in receipt of remuneration, in aggregate, is in excess of that drawn by MD/WT/Manager & holds by himself or along with his spouse & dependent children, not less than 2% of equity shares of Co</p> <p>d) Statement shall also indicate designation, remuneration received, nature of employment, qualification & experience, date of commencement of employment, age, last employment held by employee before joining Co, % of equity shares held, & whether any employee is relative of any director or manager & if so, name of such director or manager</p>	<p>1) Where insurance is taken by Co on behalf of MD/WT/Manager/ CEO/ CFO/ CS for indemnifying any of them against liability in respect of any negligence, misfeasance, breach of duty/ trust for which they may be guilty in relation to Co, premium paid on such insurance shall not be treated as part of remuneration</p> <p>2) If such person is proved to be guilty, premium paid on such insurance shall be treated as part of remuneration</p> <p>Section 197(14) - Receiving Commission</p> <p>Director in receipt of any commission from Co & who is MD/ WTD shall not be disqualified from receiving remuneration or commission from any holding/ subsidiary of such Co subject to disclosure in Board's Report</p> <p>Section 197(15) - Contravention</p> <p>Person contravening this Section shall be punishable with Fine -Rs. 1,00,000/- to Rs. 5,00,000/-</p>	<p>Auditor of co. shall, in his report under sec 143, make a statement as to whether remuneration paid by co. to its directors is in accordance with provisions of this sec, whether remuneration paid to any director is in excess of limit laid down under this section & give such other details as may be prescribed.</p> <p>Section 197(17)</p> <p>On & from commencement of the Companies (Amendment) Act, 2017, any application made to the CG under the provisions of this section, which is pending with that Govt. shall abate, & company shall, within 1 yr of such commencement, obtain approval in accordance with provisions of this section, as so amended</p>	<p>Co. may, without CG approval, pay remuneration in excess of amounts provided in Section II in cases-</p> <p>1) Where remuneration is paid by any other Co. & that other Co. is either Foreign Company or has got approval of shareholders in GM, & treats amount as managerial remuneration u/s 197 & total managerial remuneration payable is within permissible limits u/s 197</p> <p>2) Where Co. is-</p> <p>a) newly incorporated, for 7 yrs from date of incorporation or</p> <p>b) sick co, for whom scheme of revival or rehabilitation has been ordered by BIFR or NCLT, for 5 years from date of sanction</p> <p>it may pay remuneration upto 2 times permissible u/s II</p> <p>3) Where remuneration of managerial person exceeds limits in Section II but has been fixed by BIFR or NCLT</p> <p>4) Conditions for Payment of Remuneration-</p> <p>a) Managerial person is not receiving remuneration from any other Co. except Point(1)</p> <p>b) Auditor/CS/Secretary Certifies that - all secured creditors & term lenders have stated in writing that they have no objection - there is no default on payments to any creditors, & all dues to deposit holders are being settled on time</p> <p>5) Co. in SEZ which has not raised money by public issue of shares/ debentures in India & has not made any default in India in repayment of debts for continuous 30 days in any FY, may pay remuneration upto Rs. 2,40,00,000 p.a.</p>	<p>1) Managerial person shall be eligible for following perquisites (not be included in computation of ceiling) -</p> <p>a) Contribution to PF, superannuation fund or annuity fund to extent these not taxable under Income-tax Act, 1961</p> <p>b) Gratuity payable @ not exceeding half month's salary for each completed year of service and</p> <p>c) Encashment of leave at end of tenure</p> <p>2) Expatriate Managerial Person(including NR Indian) shall be eligible to following perquisites in addition to above-</p> <p>a) Children's education allowance - limited to maximum Rs. 12,000pm per child or actual expenses incurred, whichever is less</p> <p>b) Holiday passage for children studying outside India or family staying abroad - once in year by economy class or once in 2 yrs by 1st class to children & members of family from place of study or stay abroad to India if they are not residing in India, with managerial person</p> <p>c) Leave travel concession</p>	<p>Managerial Person shall draw remuneration from 1 or both Co. provided that total remuneration drawn from Co. does not exceed higher maximum limit admissible from any 1 of companies of which he is Managerial Person</p> <p>PART III-Provisions applicable to Part I, II</p> <p>1) Appointment & remuneration shall be approved by resolution of shareholders in GM</p> <p>2) Auditor/ CS/ Secretary certify that requirement of this Schedule have been complied with & such certificate shall be incorporated in return filed with Registrar u/s 196(4)</p> <p>PART IV - Exemption by CG</p> <p>CG may by notification, exempt any class of Co. from requirements of this Schedule</p>

* Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

Appointment And Remuneration of Managerial Personnel (Chart 2.3)

Section 198 - Calculation of profits

While calculating Net Profits for the purpose of Section 197 -



Bounties & subsidies received from any Government, or any public authority constituted or authorised in this behalf, by any Government, unless and except in so far as the Central Government otherwise directs (In short, Government Grants)

a) Securities Premium
b) profits on sales by company of forfeited shares
c) Capital Reserve due to sale of Undertaking
d) profits from sale of immovable property/fixed assets of capital nature comprised in undertaking, unless business consists, whether wholly or partly, of buying & selling property/assets except difference between Original Cost and WDV
e) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in P&L on measurement of asset or liability at fair value (In short, Revaluation profits based on Fair Value)
f) Any amount representing unrealised gains, notional gains or revaluation of assets

a) all usual working charges
b) directors' remuneration payable to any member of company's staff whether on whole-time or part-time basis
d) tax notified by CG in nature of tax on excess/ abnormal profits
e) tax on business profits imposed for special reasons/ circumstances & notified by CG
f) interest on debentures
g) interest on mortgages/ loans/ advances
h) interest on unsecured loans/ advances
i) expenses on repairs (not of Capital Nature) to immovable/movable property
j) outgoing inclusive of contributions u/s 181
k) depreciation to extent specified in section 123
l) excess of expenditure over income
m) any compensation/ damages on virtue of legal liability including breach of contract
n) any sum paid by way of insurance against risk of meeting any liability such as is referred to in clause (m) above
o) debts considered bad & written off

a) Income Tax payable under Income Tax Act, 196
b) any compensation, damages or payments made like VRS
c) loss on Sale of Undertaking except Loss on Sale of Fixed Asset in Ordinary Course
d) change in carrying amount of an asset or liability recognised in equity reserves including surplus in P&L on measurement of asset or liability at fair value (In short, Revaluation Loss based on Fair Value)

If Co. is required to re-state its financial statements due to fraud or non-compliance with requirement under this Act & rules made thereunder, Co. shall recover from past or present MD or WTD or manager or CEO (by whatever name called) who, during period for which financial statements are required to be re-stated, received remuneration (including stock option) in excess of what would have been payable to him as per restatement of financial statements

Company may, while according its approval for appointment u/s 196 or for remuneration u/s 197, fix remuneration at such amount or percentage as it may deem fit

Factors to be Considered - As per Section 200 -

- 1) Financial position of company
- 2) Remuneration or commission drawn by individual concerned in any other capacity
- 3) Remuneration or commission drawn by him from any other company
- 4) Professional qualifications & experience of individual concerned
- 5) Any other matters as may be prescribed

As per Rules*

- 1) Financial & operating performance of company during 3 preceding F.Y.
- 2) Relationship between remuneration & performance
- 3) Principle of proportionality of remuneration within company
- 4) Whether remuneration policy for directors differs from that for employees if so, an explanation for difference
- 5) Securities held by director, including options & details of shares pledged as at end of preceding F.Y.

*Companies/Appointment & Remuneration of Managerial Personnel) Rules, 2014



Designed By: Swapnil Patni
- CA, CS, LLB, B.Com., CISA
- Expertise knowledge in ES-SM, FM, Law
- Presence all over India at the age of 29
- Also known as the "Motivational Guru"

Charts can also be downloaded from :
www.swapnilpatni.com
Contact No:

Appointment And Remuneration of Managerial Personnel (Chart 2.4)

**Section 201 -
Forms of, &
procedure in
relation to,
certain
applications**

**Section 202 - Compensation for loss
of office of managing or whole-time
director or manager**

**Section 204 -
Secretarial
audit for
bigger
companies**

**Section 205 - Functions of
Company Secretary**

1) **Parameters for consideration of remuneration shall be made in Form MR - 2** accompanied by fee

2) Before making application, Co. shall issue General Notice to members, indicating nature of application proposed

3) Notice shall be published in newspaper in principal language of district where Registered Office of Co. is situated & English newspaper

4) Copies of notice shall be attached to application

5) As per Rules, Application shall be made to CG within 90 days from appointment

1) Co. may make payment to MD/WTD/ Manager but not to any other director, by way of compensation for loss of office/ consideration for retirement

2) Payment shall not be made:

a) where director resigns due to reconstruction of Co or amalgamation with other body corporate & appointed as MD/WTD/Manager/other officer of Reconstructed/Amalgamated Co.

b) where he resigns otherwise than on reconstruction/ amalgamation

c) where office is vacated u/s 167(1)

d) where Co. is being wound up, by an order of Tribunal or voluntarily, if winding up was due to his default

e) where he is guilty of fraud/breach of trust or gross negligence in conduct of affairs of Co. or Subsidiary or Holding Co.

f) where he has instigated, or is directly or indirectly responsible for termination of his directorship

3) Compensation not exceed remuneration he would have earned for remainder of his term or 3 yrs, whichever is shorter

4) No payment if winding up of Co. is commenced before or within 12 months after, date on which he ceased to hold office

5) No prohibition on payment to MD/WTD/Manager, of any remuneration for services rendered by him to Co. in any other capacity

1) Every Listed Co.

2) Public Co. having PSC Rs. 50 crore or more or

3) Public Co. having turnover Rs. 250 crore or more shall annex with its Board's Report, a Secretarial Audit Report in Form MR - 3

4) It shall be duty of Co. to give all assistance & facilities to CS

5) BOD, in their Report shall explain any qualification or observation or other remarks made by CS in his report

6) **Penalty -**

Company, or officer or CS in default, shall be punishable with

Fine - Rs. 1 to 5 Lakhs

1) Functions of CS -

a) report to Board about compliance of various provisions applicable to Co.

b) ensure that Co. complies with applicable secretarial standards

c) provide to directors such guidance as they may require, with regard to their duties, responsibilities & powers

d) facilitate convening of meetings, attend Board, Committee & GM, maintain their minutes

e) obtain approvals from Board, GM, government & other authorities

f) represent before various regulators, & other authorities under Act in connection with discharge of various duties under Act

g) assist Board in conduct of affairs of company;

h) assist & advise Board in ensuring good corporate governance & in complying with corporate governance requirements & best practices

i) discharge such other duties as have been specified under Act or rules

j) other duties assigned by Board

2) Acts done by CS will not affect functions of BOD, Chairman, MD, WTD

Meetings of Board and its Powers (Chart 3.1)

Section 173 - Meetings of Board

173(1) - Frequency of BM

First Board meeting
Every company shall hold 1st BM of Directors within 30 days of date of its Incorporation

Subsequent Board meetings
Every company shall hold minimum of 4 meetings every year provided that gap between two consecutive board meetings shall not be more than 120 days

Minutes of Board Meeting (Section 118)

Minutes of BM must be "Prepared" within 30 Days of BM

Matters not to be dealt with in a meeting through video conferencing or other audio

- approval of annual FS
- approval of Board's report
- approval of prospectus;
- Audit Committee Meetings for consideration of FS
- approval of matter relating to M&A, takeover, etc

Section 173(1) shall apply to company formed under section 8 only to extent that BOD, of such companies shall hold at least one meeting within every six calendar months

173(2) - Participation in BM

Directors can attend BM-

- 1) In person or
- 2) Through Video Conferencing or
- 3) Other Audio Visual means (capable of recording & recognising participation of directors and of recording & storing proceedings of such meetings along with date & time) **Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under 1st proviso**

Rules for meeting through video conferencing and other audio visual means

- 1) Co shall make arrangements to avoid failure
 - 2) Chairperson & CS take due & reasonable care-
 - to safeguard integrity of meeting
 - to ensure availability of proper equipment or facilities for providing transmission of communications
 - to record proceedings & prepare minutes
 - to store for safekeeping & marking tape recording/electronic recording mechanism at least before time of completion of audit of that year
 - to ensure no person other than concerned director are attending or have access to proceedings of meeting through video conferencing mode or other audio visual means
 - to ensure participants attending meeting are able to hear & see other participants clearly during meeting
 - 3) Director participating through such mode shall be counted in Quorum
 - 4) Draft minutes shall be circulated among directors within 15 days of meeting either in writing or in electronic mode
- Any director who intends to participate in meeting through electronic mode may intimate about such participation at beginning of calendar year & such declaration shall be valid for 1 year**
- Provided that such declaration shall not debar him from participation in meeting in person in which case he shall intimate company sufficiently in advance of his intention to participate in person**

173(3) - Notice of BM

- 1) Every BM shall be called by giving at least 7 days notice in writing to all directors at their registered address (whether in India or outside India)
- 2) Notice may be sent by hand delivery or by post or by electronic means
- 3) BM may be called on shorter notice (than 7 days) in order to transact on urgent business, subject to condition that at least 1 independent director, if any, shall be present at meeting
- 4) If no independent director then decisions shall be circulated to all directors and be final only on ratification by at least 1 independent director
- 5) Notice shall inform about option to participate through video conferencing & other audio visual means
- 6) Director intending to participate shall communicate to Chairperson or CS, else it shall be assumed that he will attend in person

Penalty and Exceptions

- Section 173(4) - Penalty**
Rs. 25,000 on every officer who has failed to give notice
- Section 173(5) - Exceptions**
A One Person Company, small company, dormant company & a private company (if such private company is a start-up) shall be deemed to have complied with provisions of this section if at least one meeting of BOD has been conducted in each half of a calendar year & gap between 2 meetings is not less than 90 days
- Provided that nothing contained in this subsection & in section 174 shall apply to One Person Company in which there is only one director on its Board of Directors**
- But above exemption is only applicable to private company who is regular in filing annual accounts & annual returns**

Section 174 - Quorum

Quorum of Board Meeting

- 1) Quorum = $\frac{1}{3}^{\text{rd}}$ of its total strength or 2 directors whichever is higher
 - 2) Directors participating by video conferencing/other audio visual means shall be counted
 - 3) If No. of Interested Directors $\geq \frac{2}{3}^{\text{rd}}$ of BOD, Quorum = Remaining non-interested directors or 2 Directors whichever is higher
- This shall apply with exception that interested director may also be counted towards quorum in such meeting after disclosure of his interest pursuant to section 184**
- However, above exemption is only applicable to private company who is regular in filing annual accounts & annual returns**

Section 8 Companies shall constitute quorum for Board meeting, either 8 members or 25% of its total strength whichever is less. Provided that quorum shall not be less than two members

- Notes:**
- 1) Section not applicable to OPC in which there is only 1 Director
 - 2) Fraction rounded off as 1
 - 3) Total Strength not to include directors whose places are vacant

Meeting could not be held for want of quorum

Where meeting of Board could not be held for want of quorum, then, unless AOA otherwise provide, meeting shall automatically stand adjourned to same day at same time & place in next week or if that day is national holiday, till next succeeding day, which is not national holiday, at same time & place

Section 175 - Passing of Resolution by Circulation

- 1) Can be passed by BOD if circulated in draft, along with necessary papers, to all directors/members
 - a) at their addresses
 - b) by hand delivery or
 - c) by post or by courier or
 - d) through electronic means (e-mail/fax)
- 2) Has been approved by majority of directors/members entitled to vote on resolution
- 3) If atleast $\frac{1}{3}^{\text{rd}}$ of total no. of directors require any resolution under circulation to be decided at BM, chairperson shall put resolution to be decided at BM
- 4) Resolution by circulation shall be necessarily noted in next BM & made part of minutes of such meeting

Section 176 - Defects in appointment of Directors not to invalidate actions taken

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

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Meetings of Board and its Powers (Chart 3.2)

Comparison between various Committees of the Board (Section 177, 178)

Point of Comparison	Audit Committee	Vigil Mechanism	Nomination and Remuneration Committee	Stakeholders Relationship Committee
Section No.	Section 177(1) to 177(8)	Section 177(9) and 177(10)	Section 178 (1) to (4)	Section 178(5) and (6)
Objective	To provide independent reassurance to Board relating to effectiveness of Internal Control & transparency & accuracy of Financial Reporting	1) Formed for Directors & Employees to report genuine concerns 2) Provide adequate safeguards against victimisation of Persons	To ensure that remuneration arrangements support strategic aims of Business & enable recruitment, motivation & retention of Senior Executives	1) To consider and resolve grievances of security holders of company 2) To protect interests of all security holders, not merely equity investors
Applicability	1) Every Listed Public Company 2) Public Companies having- a) PSC Rs.10 Cr or more or b) Turnover Rs.100 Cr or more c) Outstanding loans, debentures, deposits exceeding Rs.50 Crore in aggregate	1) Every Listed Public Company 2) Companies which accept Deposits from public 3) Companies which borrowed money from banks & public financial institutions in excess of Rs. 50 Cr	1) Every Listed Company 2) Public Companies having- a) PSC Rs.10 Cr or more or b) Turnover Rs.100 Cr or more c) Outstanding loans, debentures, deposits exceeding Rs.50 Crore in aggregate	Company which consists of more than 1000 shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year
Composition	<ul style="list-style-type: none">• Minimum - 3 Directors• Independent Directors - Majority• Majority and chairperson shall have ability to read and understand Financial Statements	<ul style="list-style-type: none">• Audit Committee itself• In case of other companies, BOD shall nominate a director to play role of Audit Committee	<ul style="list-style-type: none">• Minimum - 3 Directors Non-executive Directors• Independent Directors ≥ one half• Chairman of Company shall not be chairperson of such Committee	<ul style="list-style-type: none">• Members shall be decided by Board• Chairperson shall be Non-executive Director
<div>Independent Directors forming a majority is omitted in constitution of audit committee for Section 8 Companies</div>	1) Recommend for appointment, remuneration & terms of appointment of auditors of Co. 2) Review & monitor auditor's independence & performance, & effectiveness of audit process 3) Examination of financial statement & auditors' report thereon; 4) Approval or any subsequent modification of transactions of company with related parties 5) Scrutiny of inter-corporate loans & investments; 6) Valuation of undertakings or assets of company, wherever it is necessary; 7) Evaluation of internal financial controls and risk management systems; 8) Monitoring end use of funds raised through public offers and related matters	1) Deal with matter of employees & directors who avail vigil mechanism If any of the members of committee have conflict of interest in given case, they should recuse themselves and others on committee would deal with matter 2) Take suitable action against concerned director or employee including reprimand in case of repeated frivolous complaints being filed by director or an employee	1) Formulate criteria for determining qualifications; positive attributes & independence of director recommend to Board policy, relating to remuneration for directors, KMP & other employees 2) While formulating policy ensure that - a) level & composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of quality required to run company successfully b) relationship of remuneration to performance is clear & meets appropriate performance benchmarks & c) remuneration to directors, KMP & senior management involves balance between fixed & incentive pay reflecting short & long-term performance objectives appropriate to working of company & its goals	1) Consider and resolve grievances of security holders Non-consideration of any grievance in Good faith, does not amount to Contravention
Disclosure	In Board's Report	On website and in Board's Report	In Board's Report	Not specified
Other Points	1) Investigation by Audit Committee: Audit Committee shall have authority to investigate into any matter in relation to items mentioned above for which Audit Committee is responsible or items referred to it by Board and for this purpose shall have power to obtain professional advice from external sources & have full access to information contained in records 2) Audit Committee is empowered to: a) call for comments of auditors about: <ul style="list-style-type: none">• internal control systems,• scope of audit, including observations of auditors,• review of financial statement before their submission to Board,b) discuss any related issues with internal & statutory auditors & management 3) Auditors of company & KMP shall have right to be heard in meetings of Audit Committee when it considers auditor's report but shall not have right to vote	1) Employees & directors who avail of vigil mechanism may have direct access to Chairperson of Audit Committee or director nominated to play role of Audit Committee, as case may be, in exceptional cases 2) In case of repeated frivolous complaints being filed by director or an employee, audit committee or director nominated to play role of audit committee may take suitable action against concerned director or employee including reprimand	1) Nominations and Remuneration Committee shall- a) identify persons who are qualified to become directors and who may be appointed in senior management in accordance with criteria laid down b) recommend to Board their appointment and removal of directors and senior management carry out evaluation of every director's performance	Chairperson of Stakeholders Relationship Committee or, in his absence, any other member of committee authorised by him in this behalf shall attend general meetings of company
			Section 178(2) shall not apply to Government company except with regard to appointment of -Senior management- and other employees	
			Section 178 not applicable to Section 8 Companies	

Meetings of Board and its Powers (Chart 3.3)

Section 179 - Powers of Board

- 1) Powers of Board to be exercised by Board by means of resolution passed at a duly convened BM:
"MT- CBSE F Bill DAT"
- a) to make calls on shareholders in respect of money unpaid on their shares
 - b) to authorise buy-back of securities under section 68
 - c) to issue securities, including debentures, whether in or outside India
 - d) to borrow monies
 - e) to invest funds of company;
 - f) to grant loans or give guarantee or provide security in respect of loans
 - g) to approve financial statement & Board's report
 - h) to diversify business of company
 - i) to approve amalgamation, merger or reconstruction
 - j) to take over company or acquire controlling or substantial stake in another company
 - k) any other matter which may be prescribed

Matters referred to in clauses (d),(e), and (f) of Section 179(3) may be decided by board by circulation instead of at meeting in respect to Section 8 Companies

- 2) Board may by resolution passed at BM, delegate powers specified in points (d) to (f) above, on such conditions as it may specify to:

- a) any committee of directors
- b) MD
- c) manager or any other principal officer of company
- d) principal officer of branch office (in case of a branch office of company)

Companies (Meetings of Board and its Powers) Rules, 2014 has prescribed certain more powers that shall also be exercised by Board only by means of resolutions passed at meetings of Board:

- a) to make political contributions
- b) to appoint or remove KMP
- c) to appoint internal auditors & Secretarial Auditor

Exemption is given to Banking Companies

Section 180 - Restrictions on powers of Board

BOD shall exercise following powers only with consent of company by SR-

- a) Sell, lease or otherwise dispose of whole, or substantially whole, of 1 or more undertakings of company
- Undertaking/ substantially whole undertaking means-
 - In which investment exceeds 20% of its net worth as per audited balance sheet of preceding FY or
 - which generates 20% of total income during previous FY or
 - 20% or more of value of undertakings of last FY
- b) Invest compensation received by company as result of any merger or amalgamation
- c) Borrow money, where money to be borrowed, together with money already borrowed exceed aggregate of its *paid-up share capital, free reserves and securities premium*, apart from temporary loans obtained from bankers in ordinary course of business
- d) Remit, or give time for repayment of any debt due from a director

Section 180, not applicable to Private Companies

Harmonised Construction of following provisions :-

- 1) Section 179 & 180
- 2) Section 179 & 186

Section	Approval needed if limit is "not" exceeded	Approval needed if limit is exceeded
Section 180 - Borrow Funds	BR in BM	SR
Section 186 - Invest in Securities of Body Corporate	UBR in BM	SR
Section 186 - Give loan/guarantee/security to person or Body Corporate	UBR in BM	SR

Meetings of Board and its Powers (Chart 3.4)

Comparison between Contribution to Charitable Funds, Political Parties and National Defence Fund

Point of Comparison	Section 181 - Company to Contribute to Bona fide and Charitable Funds	Section 182 - Prohibitions and Restrictions regarding Political Contributions	Section 183 - Power of Board and other persons to make contributions to National Defence Fund
Section No	Section 181	Section 182	Section 183
Contribution	To Bona fide Charitable & Other Funds	Directly or Indirectly to Political Party	To National Defence Fund or any other fund approved by Central Government
Applicability	All Companies	All Companies	All Companies
Companies not allowed to Contribute	NA	1) Government Companies 2) Company in existence < 3 FYs	NA
Maximum Contribution	Upto 5% of average net profit of last 3 years	No Limit	No Limit
Approvals	Aggregate Contribution upto 5% = BR in BM Aggregate Contribution above 5% = GM-OR	BR in BM	BR in BM or GM-OR or approval of authorised person
Disclosure in P & L A/c	Amount of Contribution and Fund	Total Amount Contributed and Name of the Political Party	Total amount contributed to the Fund
Contravention	No penalty is expressed but as general rule, contribution will be void and BOD will be personally liable In addition penalty of Section 450 will be applied i.e Rs. 10,000/- + Rs.1,000/- per day	Fine to Company upto 5 times of Contribution Every director in default liable to- 1) Imprisonment upto 6 months &/or 2) Fine upto 5 times of contribution	No penalty is expressed but as general rule, contribution will be void and BOD will be personally liable In addition penalty of Section 450 will be applied i.e Rs. 10,000/- + Rs.1,000/- per day

Meetings of Board and its Powers (Chart 3.5)

Section 184 - Disclosure of Interest by Director

Section 184(1) - Duty of Director to Disclose his Interest	Section 184(2) - Circumstances in which disclosure is necessary	Section 184(3) & (4) - Consequences of Non-disclosure	Section 184(5) - Exception
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When to disclose? First Board Meeting- • In which director participates • Every FY • After every change	Section 184(2) 1) Every director who is directly or indirectly concerned or interested in any contract/arrangement or proposed contract/arrangement entered into with- a) body corporate in which • such director or such director in association with any other director, holds more than 2% shareholding of that body corporate, or • is promoter, manager, Chief Executive Officer of that body corporate; or b) with firm or other entity in which, such director is partner, owner or member shall disclose nature of his concern or interest at BM in which contract/arrangement is discussed & shall not participate in such meeting	Section 184(3) Contract/arrangement entered into by company without disclosure or with participation by director who is concerned or interested, in contract/arrangement, shall be voidable at option of company Section 184(4) Director punishable with • Imprisonment upto 1 year • Fine - Extend to Rs. 1,00,000/- • Both Section 184(2) shall apply to Section 8 companies only if the transaction with reference to section 188 on the basis of terms and conditions of contract or arrangement exceeds one lakh rupees	Nothing in this section a) shall be taken to prejudice operation of any rule of law restricting director from having any concern or interest in any contract/arrangement with Co; b) shall apply to any contract or arrangement entered into or to be entered into between two companies or one or more bodies corporate where any of the directors of one company or body corporate or two or more of them together holds or hold not more than 2% of paid-up share capital in other company or body corporate
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Section 188 - Related Party Transactions

Section 188(1) - Contracts with related parties	Section 2(76) - Definition of Related Party	Other Provisions of the Section
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Section 188(1) Except with consent of BOD by resolution at BM & subject to conditions no company shall enter into any contract/arrangement with related party with respect to a) sale, purchase or supply of any goods or materials b) selling or otherwise disposing of, or buying, property of any kind c) leasing of property of any kind d) availing or rendering of any services e) appointment of any agent for purchase or sale of goods, materials, services or property f) such related party's appointment to any office or place of profit in company, its subsidiary or associate g) underwriting subscription of any securities or derivatives thereof, of company	Section 2(76) Related Party wrt company, means- i) director or his relative; ii) KMP or his relative; iii) firm, in which director, manager or his relative is partner; iv) private company in which director or manager is member or his relative is a member or Director; v) public company in which director or manager is director and holds along with his relatives, more than 2% of its PSC; vi) any body corporate whose BOD, MD or manager is accustomed to act in accordance with advice, directions or instructions of director or manager; vii) any person on whose advice, directions or instructions director or manager is accustomed to act; Provided that nothing in sub-clauses (vi) & (vii) shall apply to advice, directions or instructions given in professional capacity; viii) any body corporate which is- A) holding, subsidiary or an associate of such company or B) subsidiary of holding to which it is also subsidiary C) an investing company or the venturer of the company Explanation.—For the purpose of this clause, "the investing company or the venturer of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate ix) such other person as may be prescribed	Other Provisions of the Section 1st & 2nd proviso to section 188(1) shall not apply to - (a) Government Co in respect of contracts or arrangements entered into by it with any other Govt Co. (b) Government Co, other than listed company, in respect of contracts or arrangements other than those referred to in clause(a), in case such Co obtains approval of Ministry/Dept of CG which is administratively in charge of Co, or SG before entering into such contract Section 188(2) Every contract/arrangement u/s 188(1) entered shall be referred to in Board's report along with justification for entering into such contract/arrangement Section 188(3) Where any contract or arrangement is entered into by director or any other employee, without obtaining consent of the Board or approval by a resolution in general meeting & if it is not ratified by the Board or, as the case may be, by shareholders at meeting within 3 months from date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at option of Board or, as case may be, of the shareholders & if contract or arrangement is with related party to any director, or is authorised by any other director, directors concerned shall indemnify company against any loss incurred by it Section 188(4) It shall be open to Co. to proceed against director or any employee who had entered into such contract/arrangement in contravention to this section for recovery of any loss sustained by it as result of such contract or arrangement Section 188(5) Director/employee, who entered into contract/ arrangement in violation to this section shall- a) in case of listed company punishable with imprisonment upto 1 year or fine- Rs.25,000 to Rs.5,00,000/- or both b) in case of other company punishable with fine - Rs.25,000 to Rs.5,00,000/-
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Cases	BR in BM	BR in BM + OR
(a) + (e)	Lower of : i) 10% Turnover ii) 100 Crores	> Same
(b) + (e)	Lower of : i) 10% of Net Worth ii) 100 Crores	> Same
(c)	Lower of : i) 10% Turnover ii) 10% of Net Worth iii) 100 Crores	> Same
(d) + (e)	Lower of : i) 10% of Turnover ii) 50 Crores	> Same
(f)	Rs. 2,50,000/- pm	> Same
(g)	1% of Net Worth	> Same

Meetings of Board and its Powers (Chart 3.6)

Section 185 - Loan to Directors

185(1)
No co. shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,—
a) any director of co., or of a co. which is its holding co. or any partner or relative of any such director; or
b) any firm in which any such director or relative is a partner.

185(2)
A company may advance any loan, subject to condition that—
A) a SR is passed by co. in GM.
B) loans are utilised by borrowing company for its principal business activities.

185(3)
Nothing contained in sub-sec. (1) & (2) shall apply to—
a) giving of any loan to a managing or whole-time director—
(i) as a part of conditions of service extended by co. to all its employees; or
(ii) pursuant to any scheme approved by members by a SR; or
b) a co. which in ordinary course of its business provides loans or gives guarantees or securities for due repayment of any loan & in respect of such loans an interest is charged at a rate not less than rate of prevailing yield of 1 year, 3 years, 5 years or 10 years Govt. security closest to tenor of loan; or
c) any loan made by a holding co. to its wholly owned subsidiary co. or any guarantee given or security provided by a holding co. in respect of any loan made to its wholly owned subsidiary co.; or
d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:
Provided that loans made under clauses (c) & (d) are utilized by subsidiary co. for its principal business activities.

185(4)
Contravention - Co. shall be punishable with fine which shall not be less than 5L Rs. but which may extend to 25L Rs.
(ii) every officer of co. who is in default shall be punishable with imprisonment for a term which may extend to 6 months or with fine which shall not be less than 5L Rs. but which may extend to 25L Rs.; &
(iii) Director or other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to 6 months or with fine which shall not be less than 5L Rs. but which may extend to 25L Rs., or with both.

Section 187 - Investments of company to be held in its own name

Section 187(1)
1) All investments made/held by a Co. in any property, security or other asset shall be in its own name. However, Co. may hold any shares in its Subsidiary Co. in name of any nominee or nominees of Co. if it is necessary to do so, to ensure that no. of members of Subsidiary Co. is not reduced below statutory limit

Section 187(2)
Exceptions :
a) deposit with bank, being bankers of company, any shares or securities for collection of any dividend or interest payable thereon
b) deposit with, or transfer to, or hold in name of, SBI or scheduled bank, being bankers, shares/securities, in order to facilitate transfer
Maximum time limit within which such Bank should transfer securities = 6 Mths
c) deposit with, or transfer to, any person any shares or securities, by way of security for repayment of any loan advanced to company or performance of any obligation undertaken by it
d) hold investments in name of a depository when such investments are in form of securities held by company as beneficial owner

Section 187(3) - Register
1) Any shares/securities not held by Co. in its own name, shall be maintained in register which shall be open to inspection by any member or debenture-holder without any charge during business hours subject to reasonable restrictions imposed by articles or in GM
As per Rules, Register shall:
1) Contain chronologically particulars of investments in shares/other securities beneficially held by Co. but which are not held in its own name
2) Record reasons for not holding investments in its own name & relationship or contract under which investment is held in name of other person
3) Co. shall also record whether such investments are held in 3rd party's name for time being or otherwise
4) Maintained at Registered office of Co.
5) Preserved permanently & kept in custody of CS or director or other officer authorised by Board (in case no CS)
6) Entries be authenticated by CS or other person authorised by Board

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

1) Mandatory to keep register giving particulars of contracts/arrangements as required under:
a) Section 184(2) [Interested Director] or
b) Section 188 [Related Party]
2) Duly filled & updated register shall be placed before next BM & signed by all directors present at meeting
3) As per Rules, it is to be maintained in Form MBP - 4
4) Director/KMP, within 30 days of appointment/relinquishment disclose particulars specified u/s 184(1) relating to his interest in other associations/other info relating to himself
5) To be kept at Registered Office & be open for inspection during business hrs
6) Extracts may be taken & copies may be required by member be furnished by Co.
7) It shall be produced at commencement of AGM & remain open & accessible during continuance of meeting to any member, even proxy has rights to inspect

Section 189(5) - Exceptions

Section 189(1) not apply to contract/arrangement—
a) for sale, purchase or supply of any goods, materials or services if value of such goods/materials or cost of such services does not exceed Rs.5,00,000/- in aggregate
b) by Banking Co. for collection of bills in ordinary course of its business

Section 189(6) - Penalty

Director who fails to comply - Penalty Rs. 25,000/-

In case of Sec. 8 Companies, Sec. 189 shall apply only if transaction with reference to Sec. 188 on basis of terms & conditions of contract or arrangement exceeds 1 L rupees



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Meetings of Board and its Powers (Chart 3.7)

Section 190 - Contract of employment with managing or whole-time directors

- 1) Co. shall keep at its registered office -
 - a) copy of contract of service with a MD, WTD in writing
 - b) where contract is not in writing, written memorandum setting out terms
- 2) Copies be open to inspection by member without payment of fee
- 3) Penalty for default:
 - a) Company - penalty of Rs. 25,000/-
 - b) Officer in default RS. 5,000/- for each default
- 4) Section shall not apply to Private Co.

Section 191 - Payment to director for loss of office, etc. in connection with transfer of undertaking, property or shares (Applicable to All companies)

- 1) Director will receive compensation in following cases if, amount of compensation is disclosed in GM & approved by Co. by OR in GM-
 - a) Loss of office by transfer of undertaking or property of Co.
 - b) Transfer of shares to any person against offer made as follows:
 - i) To all shareholders
 - ii) By Body Corporate to create Co. as its Subsidiary or sister concern
 - iii) By individual for minimum 1/3rd voting powers of Co.
 - iv) Any other Conditional Offer
- 2) If amount of Compensation is not disclosed in GM or resolution is not obtained then Co. is not liable to pay
- 3) If there is default of director himself which can lead to vacation of office then he will not be eligible for compensation
- 4) Section not applicable to MD, WTD, Manager
- 5) No compensation will be paid if not approved for want of quorum either in meeting or an adjourned meeting
- 6) If director receives payment in contravention or proposed payment is made before it is approved in meeting, amount so received be deemed to have been received by him in trust for Co.
- 7) Penalty - Fine - Rs. 25,000/- to Rs.1,00,000/-

Section 192 - Restriction on non-cash transactions involving directors

- 1) Co. shall not enter into an arrangement by which -
 - a) director of Co. or its holding, subsidiary or associate or person connected with him acquires or is to acquire assets for consideration other than cash or
 - b) company acquires or is to acquire assets for consideration other than cash, from such director or person so connected, unless prior approval is accorded by resolution in GM
- 2) If Director or connected person is of Holding Co. approval be obtained by resolution in GM of Holding Co.
- 3) Notice by Co. or Holding Co. shall include particulars of arrangement along with value of assets involved duly calculated by registered valuer
- 4) Contract voidable at option of company in case section not complied
- 5) If person indemnifies for loss caused to Co. from this contract then it is enforceable against Co. by Director
- 6) If right is acquired by person from such contract after payment of consideration & has acted in good faith without knowing contravention, contract is not voidable but Co. can sue director for damages

Section 193 - Contracts by One Person Company

- 1) Where OPC limited by shares or guarantee enters into contract with sole member of Co. who is also director, Co. shall, unless contract is in writing, ensure that terms of contract or offer are contained in memorandum or are recorded in minutes of 1st BM held next after entering into contract
- 2) If contracts are entered in ordinary course of business then such insurance shall not be necessary
- 3) Co. shall inform Registrar about every such contract entered & recorded in minutes of BM within 15 days of date of approval by BOD

Section 194 - Prohibition on forward dealings in securities of company by director or key managerial personnel and
Section 195 - Prohibition on insider trading of Securities omitted by Companies (Amendment) Act, 2017



Designed By: **Swapnil Patni**
 - CA, CS, LLB, B.Com., CISA
 - Expertise knowledge in EIS-SM, FM, Law
 - Presence all over India at the age of 29
 - Also known as the "Motivational Guru"

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Meetings of Board and its Powers (Chart 3.8)

Section 186 - Loan and Investment by Company

(Section applicable to both Public as well as Private Company)

Section 186(1)	Section 186(2)	Section 186(4)	Section 186(6)	Section 186(9)	Section 186(11)	Rules*	Restriction on number of layers for certain classes of holding companies
Co. shall unless otherwise prescribed, make investment through maximum 2 layers of Investment Companies	Co. shall not (directly or indirectly) a) give any loan to any person or body corporate b) give any guarantee or provide security to any body corporate or person c) acquire by way of subscription, purchase or otherwise, securities of any body corporate, exceeding 60% of its (PSC + FR + SP) or 100% of its (FR + SP) whichever is higher	Particulars of loans given, investment made or guarantee given or security provided & purpose for which proposed to be utilised by recipient of loan or guarantee or security to be disclosed to members in Financial Statements	Co. registered u/s 12 of SEBI Act shall not take inter-corporate loan/deposits exceeding limit by SEBI/CG, and shall furnish in FS details of loan/ deposits Section 186(7) No loan shall be given at Interest Rate lower than prevailing yield of 1 year, 3 year, 5 year or 10 year Government Security closest to tenor of loan <i>Nothing contained in this sub-section shall apply to company in which 26% or more of paid-up share capital is held by CG or one or more SGs or both, in respect of loans provided by such company for funding Industrial Research & Development projects in furtherance objects as stated in its MOA</i> <i>Now sec 8 company having holding of CG or 1 or more SGs > 26% can give loan for industrial research & development project below rate of interest</i> <i>However, above exemption is only applicable to sec 8 company who is regular in filing annual accounts & annual returns</i>	Register to be maintained by Co. giving loan or giving a guarantee or providing security or making acquisition Section 186(10) 1) Register shall be kept at Registered Office 2) Open for Inspection 3) Extracts may be taken by any member & copies may be furnished to any member on payment of fees Section 186(13) Penalty: Company - Fine - Rs. 25,000/- to Rs. 5,00,000/- Officer in default - Imprisonment - Upto 2 yrs Fine - Rs. 25,000/- to Rs. 1,00,000/-	Section [except sub-section (1)], not applicable to a) loan/ guarantee/ security provided by Banking Co, Insurance Co, Housing Finance Co in ordinary course of Business or Co engaged in business of financing of Co. or providing infrastructural facilities b) acquisition - i) made by NBFC registered under RBI Act, 1934 & principal business is acquisition of securities Exemption to NBFC shall be for investment & lending activities ii) made by Co. whose principal business is acquisition of securities iii) of shares allotted in pursuance of Section 62(1)(a) (iv) made by the banking company or an insurance company or a housing finance company, making acquisition of securities in ordinary course of its business	1) Where loan/guarantee given or security provided by Co. to its wholly owned subsidiary or joint venture, or acquisition is made by Holding Co, by way of subscription, purchase of securities of its wholly owned subsidiary, requirement of sub-section (3) of section 186 shall not apply Provided Co. shall disclose details of such loans/ guarantee/security/ acquisition in financial statement 2) a) Co. shall maintain register in Form MBP-2 & enter particulars of loans/guarantees given, securities provided & acquisitions made chronologically within 7 days of transaction b) It shall be preserved permanently, kept in custody of CS or other person authorised by Board and authenticated by him c) Can be maintained either manually or in electronic mode d) Fees for copies not exceed Rs.10 for each page	<i>Companies (Restriction on number of layers) Rules, 2017</i> 1) No company, other than company belonging to class specified in sub-rule (2), shall have more than two layers of subsidiaries <i>Provided that provisions of this sub-rule shall not affect company from acquiring company incorporated outside India with subsidiaries beyond 2 layers as per laws of such country</i> <i>Provided further that for computing number of layers under this rule, one layer which consists of one or more wholly owned subsidiary or subsidiaries shall not be taken into account</i> 2) These provisions shall not apply to following classes of companies: a) banking company as defined in Banking Regulation Act, 1949 b) non-banking financial company as defined in RBI Act, 1934 which is registered with RBI & considered as systematically important NBFC by RBI; c) insurance company being company which carries on business of insurance in accordance with provisions of Insurance Act, 1938 & IRDA Act, 1999 d) Government company u/s 2(45) 3) Provisions of this rule shall not be in derogation of proviso to section 186 (1) 4) Every company, other than company referred to in sub-rule (2), existing on or before commencement of these rules, which has number of layers of subsidiaries in excess of layers specified in sub-rule (1) shall- i) file, with Registrar a return disclosing details specified therein, within period of 150 days from date of publication of these rules in Official Gazette; ii) not, after date of commencement of these rules, have any additional layer of subsidiaries over & above layers existing on such date; & iii) not, in case one or more layers are reduced by it subsequent to commencement of these rules, have number of layers beyond number of layers it has after such reduction or maximum layers allowed in sub rule (1), whichever is more 5) If any company contravenes any provision of these rules company and every officer in default shall be punishable with fine which may extend to Rs 10,000 & where contravention is a continuing one, with further fine which may extend to Rs 1000 for every day after first during which such contravention continues
Exceptions Section 186(1) shall not affect- a) Co. from acquiring other Co. incorporated outside India if such Co. has Investment Subsidiaries beyond 2 layers b) Subsidiary Co. from having investment subsidiary for meeting requirements under any law or rule or regulation	Section 186(3) Prior approval by SR in GM necessary if existing & proposed Loans/ guarantee/ security/ acquisition, exceeds above limits	Section 186(5) Sanctioning by UBR required for all investments to be made, loans or guarantee or security to be given Also, prior approval of public financial institution concerned where any term loan is subsisting, is to be obtained if existing & proposed Loans, Investments, Guarantee, Security in aggregate exceeds limits specified u/s 186(2) & any default made in repayment	Section 186(8) Co. which made default in repayment of deposits accepted before/after commencement of this Act or in payment of interest thereon, shall not give any loan or guarantee or provide any security or make an acquisition till such default is subsisting				

Section 186 not applicable to - (a) Govt Co. engaged in Defence Production (b) Govt Co., other than a listed co. in case such co. obtains approval of Ministry or Dept. of CG which is administratively in charge of Co. or SG before giving any guarantee or providing any security or making any investment under the section

Meetings of Board and its Powers (Chart 3.9)

Comparison between Section 184, 185, 188

Point of Difference	Section 184 - Disclosure of Interest by Director	Section 185 - Loan to Directors	Section 188 - Related Party Transactions
Public Company	2% of PSC	25% of Voting Power	2% of PSC
By whom?	Director + Relative + Any Director	Director + Any Director	Director + Relative
Private Company	2% of PSC	Director + Member	Member/ Director
By whom?	Director + Relative	Director	Director + Relative
Firm	Director/ Relative is Partner	Director/ Relative is Partner	Director/Manager/ Relative is Partner
Person on whose advice, directions or instructions director or manager is accustomed to act	NA	NA	✓
Any body corporate whose BOD, MD or manager is accustomed to act in accordance with advice, directions or instructions of director or manager	NA	✓	✓

Applicability of Various Sections (Chart 3A)

Section 135 - Corporate Social Responsibility

Every Company* having -

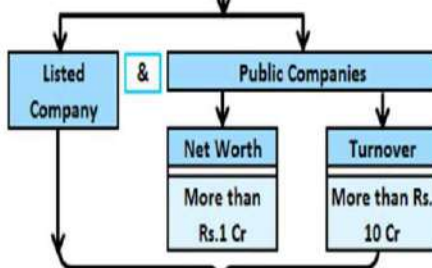
Net Worth	Or	Turnover	Or	Net Profit
Rs.500 Cr or more		Rs.1,000 Cr or more		Rs.5 Cr or more

During any financial year shall constitute a CSR Committee

*Includes its holding or subsidiary and Foreign Co having Branch/Project Office in India

Section 136 - Right of member to copies of Audited FS

Manner of circulation

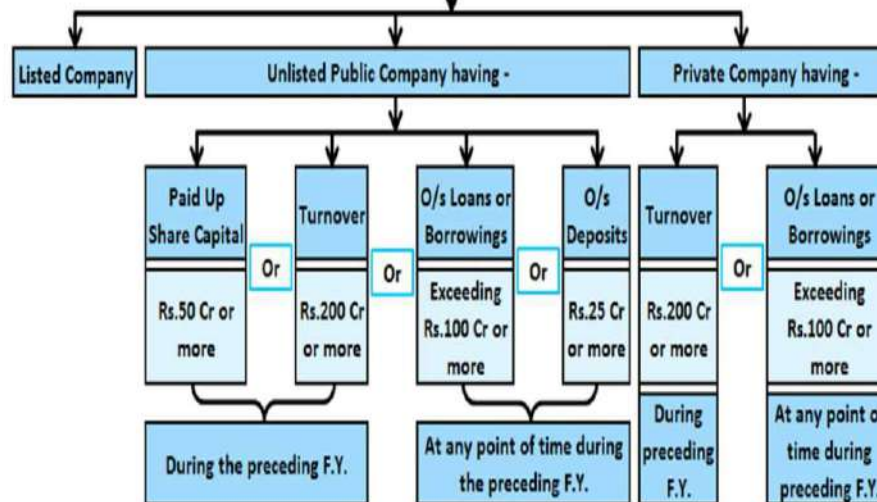


Financial statements may be sent -

- By electronic mode to members whose shareholding is in dematerialized format & have registered emails with depository
- where Shareholding is held otherwise than by dematerialized format, to members who have positively consented in writing for receiving by electronic mode
- by dispatch of physical copies through recognized mode of delivery in all other cases

Section 138 - Internal Audit

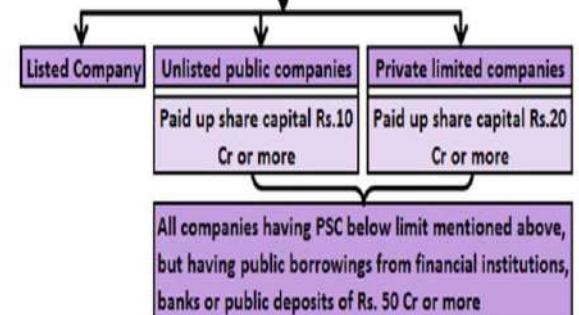
Following class of companies shall be required to appoint an internal auditor or a firm of internal auditors



Section 139(2) - Term of Auditor

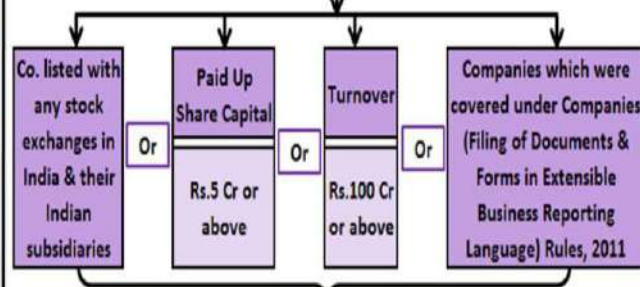
Following companies shall not appoint or re-appoint -

- an individual as auditor for more than one term of 5 consecutive years &
- an audit firm as auditor for more than two terms of 5 consecutive years



Section 137(1) - Filing of Financial Statements

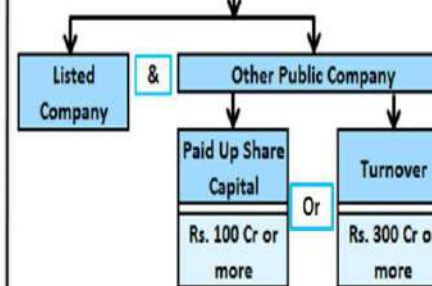
As per Rule 3 of Companies (Filing of Documents & forms in Extensible Business Reporting Language) Rules, 2015, following class of companies shall file their FS & other documents u/s 137(1) with registrar in e-form "AOC-4 XBRL" for F.Y. commencing on or after 1st April, 2014 using XBRL taxonomy



Provided that companies in Banking, Insurance, Power Sector & Non-Banking Financial Companies are exempted from XBRL filing

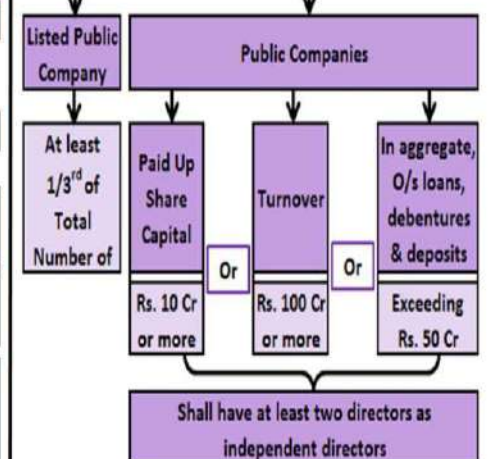
Section 149(1) - Women Director

At least one woman director shall be on the Board



Any intermittent vacancy of woman director shall be filled-up by Board at earliest but not later than immediate next Board meeting or 3 months from date of such vacancy whichever is later

Section 149(1) - Independent Director



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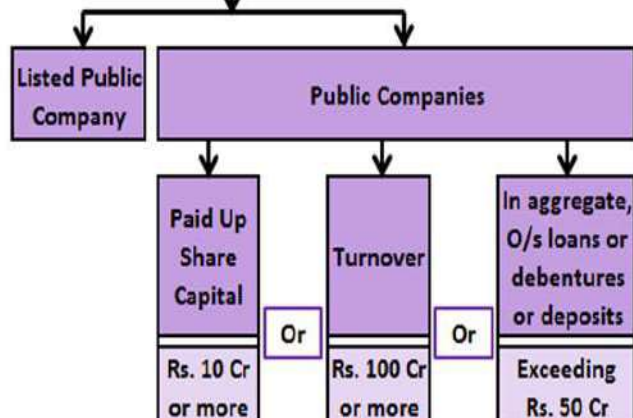


**CA Final All India Rankers of Nov 2018.
Studied LAW & ISCA From CA Swapnil Patni**

Applicability of Various Sections (Chart 3B)

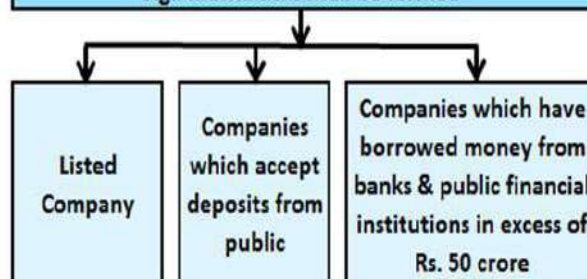
Section 177 - Audit Committee

An audit committee shall be constituted by Board of directors of:

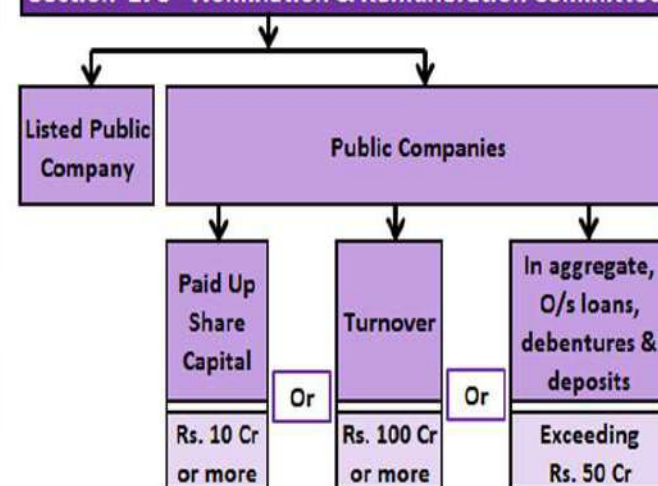


Section 177(9) - Formation of Vigil Mechanism

Vigil mechanism shall be formed -



Section 178 - Nomination & Remuneration Committee

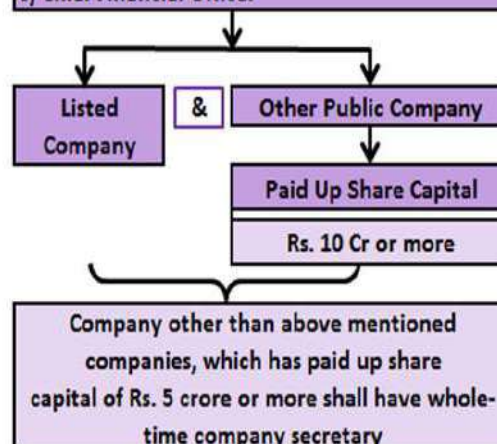


(Similar to Audit Committee)

Section 203 - Appointment of Key Managerial Personnel

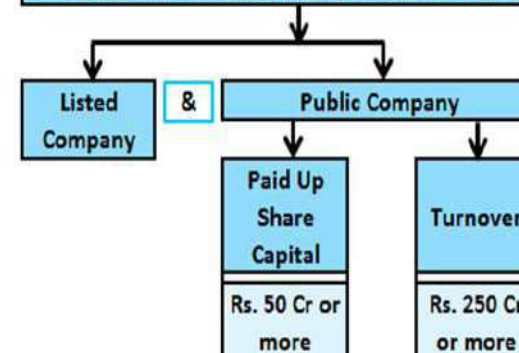
Below mentioned companies should have following whole time key managerial personnel:

- Managing Director, or Chief Executive Officer or Manager & in their absence, Whole-time Director
- Company Secretary and
- Chief Financial Officer



Section 204 - Secretarial Audit

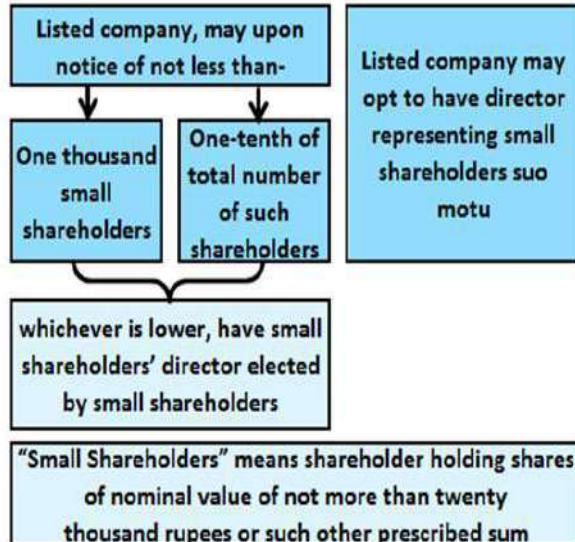
Following companies shall annex with its Board's report, a Secretarial Audit Report, given by Company Secretary in practice, in Form No. MR 3



Section 178(5) - Formation of Stakeholders Relationship Committee

Board of Directors of Co which consists of more than 1000 shareholders, debenture-holders, deposit-holders & any other security holders at any time during F.Y. shall constitute this Committee

Section 151 - Small Shareholders Director



Forms covered in Chapter 1, 2, 3 of our notes

Forms - Appointment and Qualification of Directors

Sr. No.	Form No.	Description
1	DIR - 1	Application for inclusion of name in the databank of Independent Directors
2	DIR - 2 (Filed by Director with ROC)	Consent to Act as a Director of a Company
3	DIR - 3 (e-form)	Application for allotment of Director Identification Number
4	DIR - 4	Verification of applicant for application for DIN
5	DIR - 5	Application for surrender of Director Identification Number
6	DIR - 6 (e-form)	Intimation of change in particulars of Director to be given to the Central Government
7	DIR - 7	Verification of applicant for change in DIN particulars
8	DIR - 8	Intimation by Director
9	DIR - 9	Report by the company to Registrar (in case of Disqualification)
10	DIR - 10	Form Of Application For Removal Of Disqualification Of Directors
11	DIR - 11 (e-form)	Notice of resignation of a director to the Registrar
12	DIR - 12 (e-form - filed by Company with RoC)	Particulars of appointment of Directors and the key managerial personnel and the changes among them

Forms - Meetings of Board and its Powers

Sr. No.	Form No.	Description
1	MBP - 1 (Interested Director gives to Board)	Notice of interest by director
2	MBP - 2	Register of Loans, Guarantee, Security & acquisition made by Company
3	MBP - 3	Register of investments not held in its own name by the company
4	MBP - 4	Register of contracts with related party and contracts and Bodies etc. in which directors are interested

Forms - Appointment & Remuneration of Managerial Personnel

Sr. No.	Form No.	Description
1	MR - 1 (e-form)	Return of Appointment of Key Managerial Personnel
2	MR - 2 (e-form)	Form of Application to CG for approval of appointment or reappointment and remuneration or increase in remuneration or waiver for excess or over payment to MD or WTD or manager & Commission or remuneration to director
3	MR - 3	Secretarial Audit Report

Inspection, Inquiry & Investigation (Chart 4.1)

Section 206 - Power to call for information, inspect books and conduct inquiries

Section 206(1) - Power of Registrar to call for information, explanation or documents

Where on scrutiny of any document filed by Co or on information received by him, Registrar is of opinion that any further information or explanation or any further documents relating to Co is necessary, he may by written notice require Co-

- 1) to furnish information or explanation in writing or
- 2) to produce such documents, within such reasonable time, as may be specified in notice

Section 206 (2) - Duty of Co. and its officers

On receipt of notice u/s 206(1), it shall be duty of Co & of its officers concerned to-

- 1) furnish such information or explanation to best of their knowledge & power &
- 2) produce documents to Registrar within time specified or extended by Registrar

Proviso to Section 206 (2) - Duty of past officers of Co.

Where such information or explanation relates to any past period, officers who had been in employment for such period, if so called upon by Registrar through notice served on them in writing, shall also furnish such information/ explanation to best of their knowledge

Section 206(3) - Additional written notice by Registrar

Registrar may by another written notice call on Co. to produce for his inspection such further books of account, books, paper:

- 1) If no information or explanation is furnished
- 2) documents furnished or explanation furnished is inadequate

Section 206 (4) - Inquiry by Registrar

1) Registrar may call on Co to furnish in writing any information or explanation-

- a) on basis of information available with him or
- b) on representation made to him by any person that business of Co. is being carried on for a fraudulent or unlawful purpose or
- c) grievances of investors are not being addressed,

2) Where business has been or is being carried on for fraudulent or unlawful purpose, every officer in default shall be punishable for fraud in manner as provided in Section 447

Section 207 - Conduct of inspection and inquiry

Section 207(1) - Duty of director, officer or employee

Where Registrar/ Inspector calls for books of account & other books and papers u/s 206, it shall be duty of every director, officer or other employee of Co:

- a) to produce all documents &
- b) to render assistance to Registrar/ Inspector in connection with such inspection

Section 207(2) - Powers of Registrar/ Inspector

Registrar/ Inspector making an inspection or inquiry

- a) Make or cause to be made copies of books of account and other books
- b) Place any marks of identification

Section 207(4) - Penalty for Contravention

- a) Imprisonment upto 1 year &
- b) Fine - Rs. 25,000/- to Rs.1,00,000/-
- c) If director/ officer has been convicted of offence under this section, he shall, on & from date he is so convicted, be deemed to have vacated his office

Section 207 (3) - Registrar/ Inspector to exercise certain powers of Civil Court

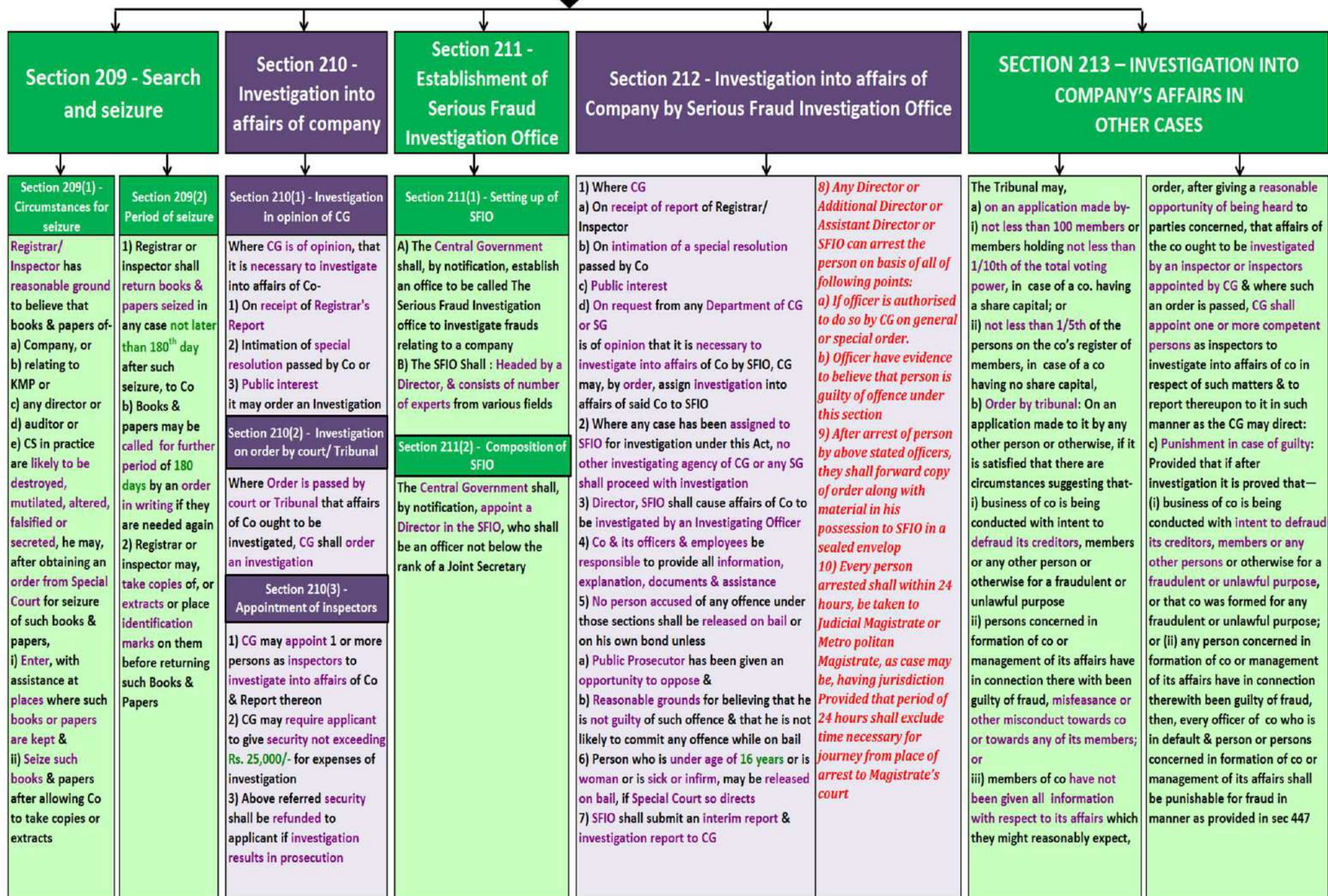
Registrar or inspector making an inspection or inquiry shall have all powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely-

- 1) Discovery & production of books of account and other documents
- 2) Summoning & enforcing attendance of persons & examining them on oath, &
- 3) Inspection of any books, registers & other documents of Co at any place

Section 208 - Report on Inspection

Registrar or inspector shall, submit report in writing to CG along with documents, if any & report may, if necessary, include recommendation on that further investigation into affairs of Co is necessary giving his reasons in support

Inspection, Inquiry & Investigation (Chart 4.2)



Inspection, Inquiry & Investigation (Chart 4.3)

Section 214 - Security for payment of costs and expenses of investigation

Where an investigation is ordered by CG in pursuance of section 210(1)(b), or in pursuance of an order made by Tribunal u/s 213, CG may before appointing an inspector u/s 210(3) or clause (b) of section 213, require applicant to give such security not exceeding Rs. 25,000 as may be prescribed, as it may think fit, for payment of the costs & expenses of investigation & such security shall be refunded to applicant if investigation results in prosecution

Section 215 - Firm, Body Corporate or Association not to be Appointed as Inspector

No Firm, body corporate or other association shall be appointed as an inspector

Section 216 - Investigation of ownership of Co

1) CG may appoint 1 or more inspectors to investigate & report on matters relating to Co, & its membership for purpose of determining true persons—
a) Who are financially interested in success or failure of Co
b) Who are able to control or materially influence policy of Co
2) CG define scope of investigation & may limit investigation to matters connected with particular shares or debentures
3) Sec 216(2):- CG shall appoint one or more inspectors under that sub-section, if Tribunal, in course of any proceeding before it, directs by an order that affairs of the co ought to be investigated as regards membership of co & other matters relating to co, for purposes specified in sub-section (1)

Section 217 - Procedure, Powers, Etc. of Inspectors

a) It shall be duty of all officers and other employees to preserve and to produce to an inspector or any person authorised by him in this behalf all books and papers - otherwise to give to the inspector all assistance.
b) The inspector may require any body corporate, other than a body corporate referred in point (1) to furnish such information to, or produce such books and papers.
c) The inspector shall not keep in his custody any books and papers produced under point (1) or point (2) for more than 180 days
(1) inspector may examine on oath — (a) any of the persons referred to in point (1); and any other person with the prior approval of the Central Government. - inspector
d) shall have all the powers as are vested in a civil court.
e) Officers of CG, SG, police or

Section 219 -Power of inspector to conduct investigation into affairs of related Co

If an inspector appointed u/s 201/212/213 considers it necessary, he can also investigate affairs of
a) Any body corporate which is, or has at any relevant time been Co's Subsidiary/ Holding Co, or Subsidiary of its Holding Co
b) Any Body Corporate which is, or has at any relevant time been managed by any person as MD or as manager
c) Any other body corporate whose BOD comprises nominees of Co
d) Any person who is or has at any relevant time been Co's MD or manager or employee

SECTION 218 – PROTECTION OF EMPLOYEES DURING INVESTIGATION

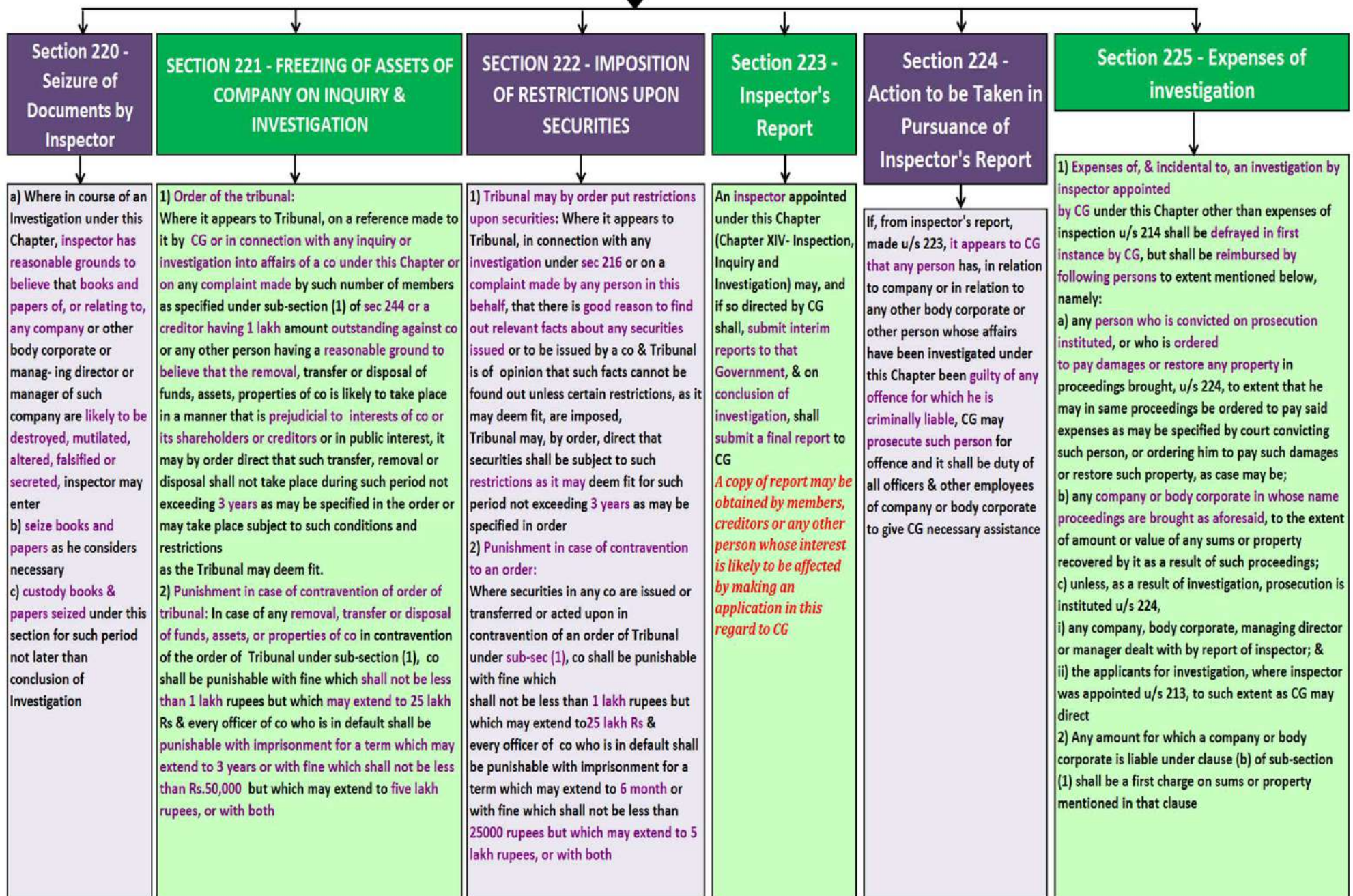
1) Approval of tribunal to take action against the employee:
a) during course of any investigation of affairs & other matters of or relating to a company, other body corporate or person under sec 210, sec 212, sec 213 or sec 219
b) during pendency of any proceeding against any person concerned in conduct & management of affairs of a co under Chapter XVI, such co, other body corporate or person proposes—
i) to discharge or suspend any employee; or
ii) to punish him, whether by dismissal, removal, reduction in rank or otherwise; or
iii) to change terms of employment to his disadvantage,
2) Action against employee: If co, other body corporate or person concerned does not receive within 30 days of making of application under sub-sec (1), approval of Tribunal, then & only then, other body corporate or person concerned may proceed to take against the employee, the action proposed.
3) Appeal: If co, other body corporate or person concerned is dissatisfied with objection raised by Tribunal, it may, within a period of 30 days of receipt of notice of objection, prefer an appeal to Appellate Tribunal in such manner & on payment of such fees as may be prescribed.
4) Final and Binding order: decision of Appellate Tribunal on such appeal shall be final & binding on Tribunal & on co, other body corporate or person concerned.
5) Over-riding effect: For removal of doubts, it is hereby declared that provisions of this sec shall have effect without prejudice to provisions of any other law for time being in force

Let's Make EIS-SM & FM Very Interesting

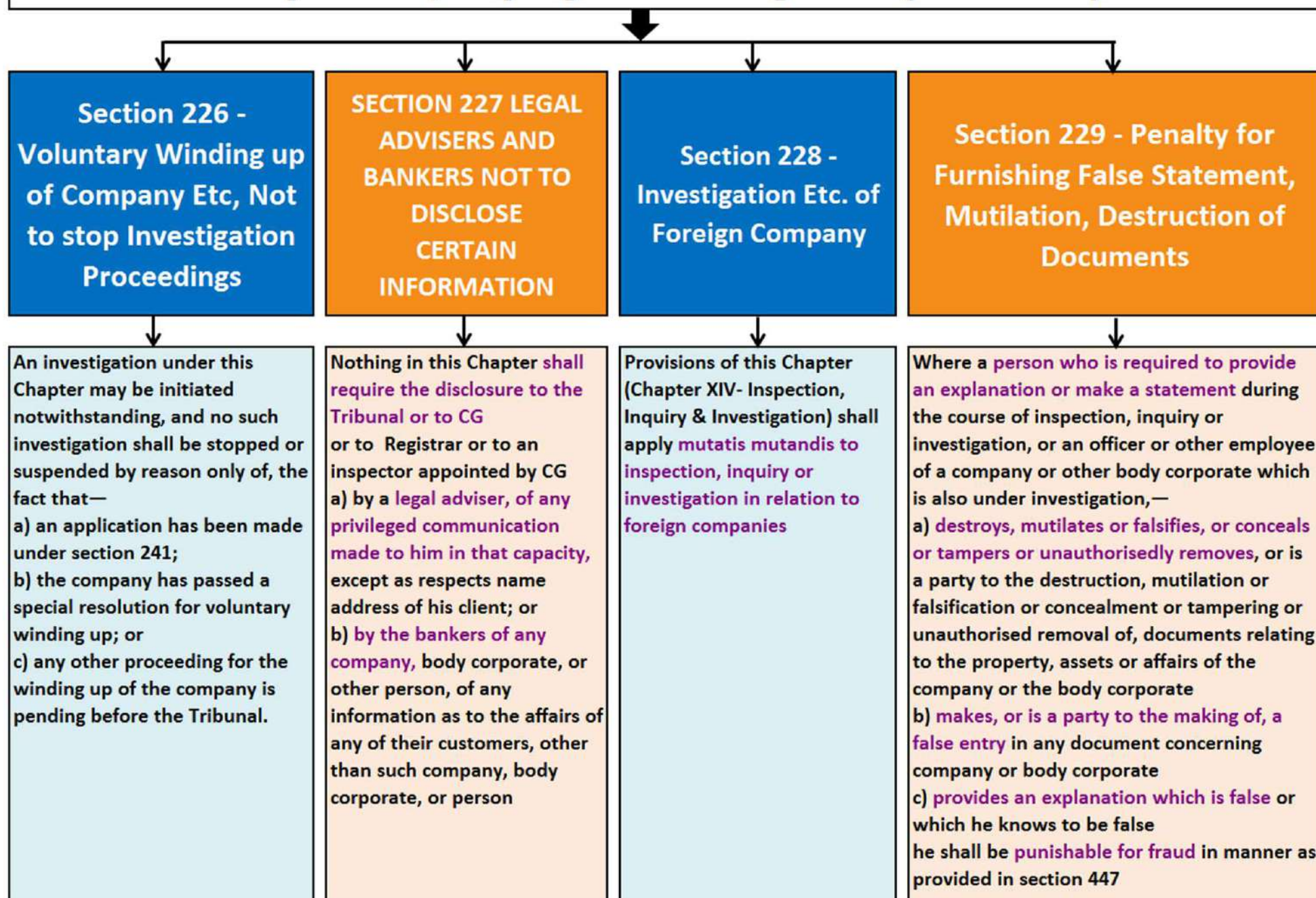


CA INTERMEDIATE
All India Rankers of Nov 2018.
Studied EIS-SM & FM From CA Swapnil Patni

Inspection, Inquiry & Investigation (Chart 4.4)



Inspection, Inquiry & Investigation (Chart 4.5)



Compromises, Arrangements & Amalgamations (Chart 5.1)

Section 230 - Power to compromise or make arrangements with creditors and members

Sub-section (1)	Sub-section (2)	Sub-section (3)	Sub-section (4)	Sub-section (5)	Sub-section (6)	Sub-section (7)	Sub-section (8)
1) Where compromise or arrangement is proposed between- a) Co & its creditors/ b) Co & its members, Tribunal may, on application in Form NCLT-1, order meeting of creditors, or of members, to be called, held & conducted in manner as Tribunal directs 2) Application sent by Co. or of creditor or member, or in case of Co. being wound up - liquidator 3) Explanation: Arrangement includes reorganisation of company's share capital by consolidation of shares or by division of shares, or by both methods	1) Co. or other person, by whom application is made, shall disclose to Tribunal by affidavit in Form NCLT-6: a) all material facts, such as latest financial position of Co, Auditor's report & pendency of any investigation or proceedings against Co. b) reduction of share capital of Co. if any, c) any scheme of corporate debt restructuring consented to by not less than 75% of secured creditors in value, including: i) Creditor's responsibility statement in Form CAA-1; ii) safeguards for protection of other secured & unsecured creditors; iii) report by auditor that fund requirements after corporate debt restructuring shall conform to liquidity test based upon estimates provided to them by Board; iv) where Co. proposes to adopt corporate debt restructuring guidelines specified by RBI, statement to that effect; & v) valuation report in respect of shares & property & all assets by registered valuer	1) Notice of meeting pursuant to order of Tribunal in Form CAA-2 be sent to all creditors & all members & debenture-holders, individually by registered post/ speed post/ courier/ email/ hand delivery at registered address 2) Notice accompanied by scheme of compromise or arrangement, valuation report & statement disclosing following details (Rule 6*) a) details of order of Tribunal (b) details of company c) relationship subsisting between companies who are parties to scheme (holding/ subsidiary/ associate) d) date of board meeting at which scheme was approved by BOD e) explanatory statement disclosing details of scheme f) disclosure about effect of compromise or arrangement on KMP, Directors, promoters, non-promoters, creditors, employees, deposit trustee, debenture trustee, etc. g) Disclosure about effect of compromise or arrangement on material interests of directors, KMP & debenture trustee h) investigation or proceedings, if any, pending against Co. i) details of availability of documents for obtaining extract/copies for inspection j) details of approvals, sanctions or no-objection from regulatory or other governmental authorities k) statement that persons to whom notice is sent may vote in meeting 3) Notice & other documents shall also be placed on website of Co. & in case of Listed Co, sent to SEBI & stock exchange where securities of are listed, for placing on their website & also be published in newspapers at least 1 English newspaper & in at least 1 vernacular newspaper (Rule 7*) 4) Notice by Advertisement shall indicate time within which copies of compromise or arrangement shall be made available free of charge from registered office 5) Chairperson or other person directed to issue advertisement & notice shall file affidavit before Tribunal not less than 7 days before date fixed for meeting or date of first meeting, stating that directions regarding issue of notice & advertisement duly complied (Rule 12*)	1) Notice shall provide that persons to whom it is sent may vote in meeting either themselves or through proxies or by postal ballot or through electronic means to adoption of compromise or arrangement within 1 month from date of receipt of such notice (Rule 9*) 2) Objection to compromise or arrangement be made only by persons holding not less than 10% of shareholding or having outstanding debt amounting to not less than 5% of total outstanding debt as per latest audited FS 3) Report of result of meeting shall be in Form CAA-4 & shall state no. of creditors or no. of members present & who voted either in person or by proxy, or through electronic means (Rule 13*) 4) Report shall be submitted to Tribunal by Chairperson, within time fixed by Tribunal, or where no time has been fixed, within 3 days after conclusion of meeting (Rule 14*)	1) Notice in Form CAA-3, along with all documents shall also be sent to CG, Income-tax authorities, RBI, SEBI, Registrar, respective stock exchanges, Official Liquidator, CCI & other sectoral regulators or authorities likely to be affected 2) Representations, if any, to be made by them shall be made within period of 30 days from date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on proposals (Rule 8*)	1) Where, at meeting, majority of persons representing three-fourths in value of creditors or members, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement & sanctioned by Tribunal by order, same shall be binding on Co, all creditors, or members, or in case of Co. being wound up, on liquidator & contributories 2) Rule 15*: Co (or its liquidator), shall, within 7 days of filing of report by Chairperson, present petition to Tribunal in Form CAA-5 for sanction of scheme 3) Rule 16*: (a) Tribunal - fix date for hearing of petition, & notice of hearing shall be advertised in same newspaper in which notice of meeting was advertised, or other newspaper as Tribunal may direct, not less than ten days before date fixed for hearing (b) Notice of hearing also be served by Tribunal to objectors & to CG & other authorities who made representation under Rule 8	1) Order in Form CAA-6 made by Tribunal shall provide following matters: a) where compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given option to either obtain arrears of dividend in cash or accept equity shares equal to value of dividend payable; b) protection of any class of creditors; c) if compromise or arrangement results in variation of shareholders' rights, it shall be given effect to under provisions of section 48; d) if compromise or arrangement is agreed to by creditors, proceedings pending before BIFR shall abate; e) other matters necessary to effectively implement terms of compromise or arrangement 2) No compromise or arrangement be sanctioned by Tribunal unless certificate by auditor filed with Tribunal that accounting treatment, proposed in scheme is in conformity with AS prescribed u/s 133	Order of Tribunal shall be filed with Registrar by the company within period of 30 days of receipt of order Sub-section (9) Tribunal may dispense with calling of meeting of creditor where creditors, having at least 90% value, agree & confirm, by way of affidavit, to scheme of compromise or arrangement Sub-section (10) No compromise or arrangement in respect of any buy-back of securities shall be sanctioned by Tribunal unless such buy-back is in accordance with section 68

* Companies [Compromises, Arrangements and Amalgamations] Rules, 2017

The word "Tribunal" wherever it occurs in sections 230 to 232, the words "Central Government" shall be substituted. Hence, now process of compromise & arrangement will be executed by central government which was earlier executed by NCLT

Compromises, Arrangements & Amalgamations (Chart 5.2)

Section 231 - Power of Tribunal to enforce compromise/ arrangement	Section 232 - Merger & Amalgamation of Companies			
<p>1) Where Tribunal makes order u/s 230 sanctioning compromise/ arrangement, it:</p> <p>a) shall have power to supervise implementation of compromise/ arrangement;</p> <p>b) give directions in regard to any matter or make modifications in compromise or arrangement</p> <p>2) If Tribunal is satisfied that compromise or arrangement cannot be implemented satisfactorily with or without modifications, & Co. is unable to pay its debts as per scheme, it may make order for winding up of Co. u/s 273</p> <p>3) Section also applies to Co. of which, order has been made before commencement of this Act</p>	Sub-section (1)	Sub-section (2)	Sub-section (3)	Sub-section (4)
	<p>• Where application is made to Tribunal for sanctioning of compromise/ arrangement proposed between Co. & any persons & it is shown to Tribunal:</p> <p>a) compromise/ arrangement has been proposed for purposes of, or in connection with, scheme for reconstruction of Co. or companies involving merger or amalgamation of 2 or more companies; &</p> <p>b) whole or any part of undertaking, property or liabilities of transferor Co. required to be transferred to transferee Co. or is proposed to be divided among & transferred to 2 or more companies,</p> <p>• Tribunal may, order meeting of creditors or members, as case may be, to be called, held & conducted in manner as Tribunal may direct & Section 230(3) to (6) shall apply mutatis mutandis</p>	<p>• Where order has been made by Tribunal, merging Co. or Co. in respect of which division is proposed, also be required to circulate following for meeting so ordered by Tribunal:</p> <p>a) draft of proposed terms of scheme drawn up & adopted by directors of merging Co.;</p> <p>b) confirmation that copy of draft scheme has been filed with Registrar;</p> <p>c) report adopted by directors of merging companies explaining effect of compromise on shareholders, KMP, promoters & non-promoter shareholders</p> <p>d) report of expert with regard to valuation,</p> <p>e) supplementary accounting statement if last annual accounts of any of merging Co. relate to F.Y ending more than 6 months before first meeting of Co. summoned for approving scheme</p>	<p>• Tribunal, after satisfying that procedure has been complied with, by order, sanction compromise/ arrangement & make provision for following matters:</p> <p>a) transfer to transferee Co. of whole or any part of undertaking, property or liabilities of transferor Co. from date determined by parties unless Tribunal decides otherwise;</p> <p>b) allotment or appropriation by transferee Co. of any shares, debentures, policies or other like instruments in Co. which, are to be allotted or appropriated by that Co. to or for any person</p> <p>Provided that transferee Co. shall not, hold shares in its own name or in name of any trust on its behalf or on behalf of any of its subsidiary or associate companies & such shares shall be cancelled or extinguished;</p> <p>c) continuation by or against transferee Co. of legal proceedings pending by or against transferor Co. on date of transfer;</p> <p>d) dissolution, without winding-up, of transferor Co</p> <p>e) provision to be made for persons who dissent from compromise or arrangement;</p> <p>f) where share capital is held by non-resident shareholder under FDI norms or guidelines specified by CG, allotment of shares of transferee Co. as specified in order;</p> <p>g) transfer of employees of transferor to transferee,</p> <p>h) where transferor is listed Co. & transferee is unlisted Co.-</p> <p>A) transferee Co. shall remain unlisted until it becomes listed Co.</p> <p>B) if shareholders of transferor decide to opt out of transferee, provision be made for payment of value of shares held by them & other benefits as per pre-determined price formula or after valuation is made</p> <p>• Amount of payment or valuation not be less than that specified by SEBI under regulations framed by it;</p> <p>i) where transferor Co. is dissolved, fee, paid by transferor Co. on its authorised capital shall be set-off against fees payable by transferee Co. on its authorised capital subsequent to amalgamation;</p> <p>j) such incidental, consequential & supplemental matters necessary to secure that M & A is fully & effectively carried out</p> <p>• No compromise/ arrangement be sanctioned by Tribunal unless certificate by Co.'s auditor filed with Tribunal that accounting treatment, proposed in scheme is in conformity with AS prescribed u/s 133</p>	<p>Where order provides for transfer of any property or liabilities, then property be transferred to transferee Co. & liabilities shall be transferred to transferee Co. & any property, if order so directs, be freed from charge which by virtue of compromise/ arrangement, cease to have effect</p>
	Sub-section (5)			
	Co. shall file certified copy of order with Registrar for registration within 30 days of receipt of certified copy of order			
	Sub-section (6)			
	Scheme indicate appointed date from which it shall be effective & scheme be deemed to be effective from such date			
	Sub-section (7)			
	Every Co. until completion of scheme, file statement in Form CAA-8 & within 210 days from end of each F.Y. (as per Rule 21*) with Registrar every year duly certified by CA/ cost accountant/ CS in practice indicating that scheme is being complied with orders of Tribunal or not			

• Rule 20* - Order made under section 232 read with section 230 shall be in Form No.CAA.7 with such variation as circumstances may require

The word "Tribunal" wherever it occurs in sections 230 to 232, the words "Central Government" shall be substituted. Hence, now process of compromise & arrangement will be executed by central government which was earlier executed by NCLT

Compromises, Arrangements & Amalgamations (Chart 5.3)

Section 233 - Merger or Amalgamation of Certain Companies

Section 234 - Merger or amalgamation of Co. with Foreign Co.

Sub-section (1)

1) Scheme of merger/ amalgamation may be entered into between 2 or more small companies or between holding Co. & its wholly-owned subsidiary Co. or other classes of companies, subject to following:

a) notice of proposed scheme inviting objections or suggestions, from Registrar & Official Liquidators or persons affected by scheme within 30 days is issued by transferor & transferee in Form CAA-9 (Rule 25*)

b) objections & suggestions received are considered by companies in GM & scheme is approved by members at GM holding at least 90% of total number of shares;

c) Companies involved in merger files declaration of solvency, with Registrar in Form CAA-10 (Rule 25*)

d) scheme is approved by majority representing nine-tenths in value of creditors of respective companies indicated in meeting convened by Co. by giving a notice of 21 days along with scheme

Sub-section (2)

Transferee Co. file copy of approved scheme, with CG, Registrar & Official Liquidator

- Rule 25(4)* Transferee shall, within 7 days after conclusion of meeting of members or creditors, file copy of scheme along with report of result in Form No. CAA.11 with CG, along with fees

Sub-section (3)

On receipt of scheme, if Registrar or Official Liquidator has no objections or suggestions to scheme, CG shall register same & issue confirmation to companies in Form CAA-12 (Rule 25)

Sub-section (4)

If Registrar or Official Liquidator has objections or suggestions, he may communicate same in writing to CG within period of 30 days

- If no communication is made, it shall be presumed that he has no objection

Sub-section (5)

If CG after receiving objections or suggestions is of opinion that scheme is not in public interest or in interest of creditors, it may file application before Tribunal within period of 60 days of receipt of scheme stating objections in Form CAA-13 (Rule 25)

Sub-section (6)

On receipt of application from CG or any person, if Tribunal, for reasons to be recorded in writing, is of opinion that scheme should be considered as per procedure laid down u/s 232, Tribunal may direct accordingly or confirm scheme by order as it deems fit

- If CG does not have objection or does not file application before Tribunal, it shall be deemed it has no objection to scheme

Sub-section (7)

Confirmation Order be communicated in Form INC 28 to Registrar having jurisdiction over transferee & persons concerned & Registrar shall register scheme & issue confirmation to companies & confirmation be communicated to Registrars where transferor Co. situated

Sub-section (8)

Registration of scheme shall be deemed to have effect of dissolution of transferor Co. without process of winding-up

Sub-section (9)

Registration of scheme shall have following effects:

- a) Transfer of property or liabilities of transferor to transferee
- b) charges, on property of transferor Co. shall be enforceable as if charges were on property of transferee Co.
- c) legal proceedings by or against transferor Co. pending before court of law be continued by or against transferee Co.
- d) Where scheme provides for purchase of shares held by dissenting shareholders or settlement of debt due to dissenting creditors, amount to extent unpaid, become liability of transferee Co.

Sub-section (10)

Transferee Co. shall not on merger/ amalgamation, hold shares in its own name or in name of any trust either on its behalf or on behalf of its subsidiary, associate Co. & all shares shall be cancelled or extinguished on merger/ amalgamation

Sub-section (11)

Transferee Co. shall file application with Registrar along with scheme registered, indicating revised authorised capital & pay fees due on revised capital:

- Fee, paid by transferor Co. on authorised capital prior to merger/ amalgamation with transferee Co. shall be set-off against fees payable by transferee Co. on authorised capital enhanced by merger/ amalgamation

Sub-section (12)

Section shall mutatis mutandis apply to Co. or specified in sub-section (1) in respect of scheme of compromise/ arrangement referred to u/s 230 or division/ transfer of Co. referred to u/s 232(1)(b)

Sub-section (13)

CG may provide for merger or amalgamation of companies

Sub-section (14)

Co. covered under this section may use provisions of section 232 for approval of scheme

1) This Chapter unless otherwise provided under any other law, shall apply mutatis mutandis to schemes of mergers, amalgamations between companies registered under this Act & companies incorporated in countries notified by CG

- CG may make rules, in consultation with RBI

2) Foreign Co. may with prior approval of RBI, merge into Co. registered under this Act or vice versa & terms & conditions of scheme of merger may provide for payment of consideration to shareholders of merging Co. in cash, or in Depository Receipts, or partly in cash & partly in Depository Receipts, as per scheme to be drawn up for purpose

3) Rule 25A: • Compliance with Sections 230 to 232 of Act & rules required for such mergers

- Transferee ensure that valuation conducted by valuers in accordance with internationally accepted principles on accounting & valuation
- Declaration to this effect be attached with application made to RBI

Compromises, Arrangements & Amalgamations (Chart 5.4)

Section 235 - Power to acquire shares of shareholders dissenting from scheme or contract approved by majority

Sub-section (1)	Sub-section (2)	Sub-section (3)	Sub-section (4)	Sub-section (5)
Where scheme/ contract involving transfer of shares Transferor Co. to Transferee Co. has, within 4 months after making of offer in that behalf by transferee Co., been approved by holders of not less than nine-tenths in value of shares whose transfer is involved, other than shares already held at date of offer by, or by nominee of transferee Co. or its subsidiary companies, transferee Co. may, at any time within two months after expiry of said 4 months , give notice to dissenting shareholder in Form No. CAA 14 (as per Rule 26*) at last intimated address that it desires to acquire his shares	Transferee Co. shall, unless on application made by dissenting shareholder to Tribunal, within 1 month from date on which notice was given & Tribunal thinks fit to order otherwise, be entitled to & bound to acquire those shares on terms on which, under scheme or contract, shares of shareholders are to be transferred to transferee Co.	Where notice has been given by transferee Co. & Tribunal has not, on application made by dissenting shareholder, made an order to contrary, Transferee Co. shall, on expiry of 1 month from date on which notice has been given, or, if application to Tribunal by dissenting shareholder is pending, after application has been disposed of, send copy of notice to transferor Co. together with an instrument of transfer, to be executed on behalf of shareholder by person appointed by transferor Co. & on its own behalf by transferee Co., & pay or transfer to transferor Co. amount/ consideration representing price payable by transferee Co. for shares which, by virtue of this section, that Co. is entitled to acquire, & Transferee Co. shall: a) thereupon register transferee Co. as holder of those shares; & b) within 1 month of date of such registration, inform dissenting shareholders of fact of registration & receipt of amount/ consideration	Sum received by transferor Co. shall be paid into separate bank account, & any such sum & consideration so received shall be held by that Co. in trust for several persons entitled to shares in respect of which said sum/ consideration were received & be disbursed to entitled shareholders within 60 days	In relation to offer made by transferee Co. to shareholders of transferor Co. before commencement of this Act, this section shall have effect with following modifications: a) in sub-section (1), for words "shares whose transfer is involved other than shares already held at date of offer by, or by nominee of, transferee Co. or its subsidiaries," words "shares affected" shall be substituted; b) in sub-section (3), words "together with instrument of transfer, to be executed on behalf of shareholder by any person appointed by transferee Co. & on its own behalf by transferor Co." shall be omitted • Dissenting shareholder includes shareholder who has not assented to scheme/ contract & any shareholder who has failed or refused to transfer his shares to transferee Co. as per scheme

Section 236 - Purchase of minority shareholding

Sub-section (1)	Sub-section (2)	Sub-section (3)	Sub-section (6)	Sub-section (8)
1) In event of acquirer, or person acting in concert with acquirer, becoming registered holder of 90% or more of issued equity share capital of Co. or in event of person/ group of persons becoming 90% majority or holding 90% of issued equity share capital of Co., by virtue of amalgamation, share exchange, conversion of securities or for any other reason, such acquirer, person or group of persons, shall notify Co. of their intention to buy remaining equity shares	1) Acquirer, person or group of persons shall offer to minority shareholders of Co. for buying equity shares held by such shareholders at price determined on basis of valuation by registered valuer 2) Rule 27* : a) For Listed Company: i) Offer price be determined in manner specified by SEBI under regulations b) For Unlisted Co. & Private Co, consider: i) Highest price paid by acquirer, person/ group of persons for acquisition during last 12 months ii) Fair price of shares be determined by registered valuer • Registered valuer also provide valuation report on basis of valuation addressed to BOD	Minority shareholders of Co. offer to majority shareholders to purchase minority equity shareholding of Co. at price determined as per Rule 27 Sub-section (4) Majority shareholders shall deposit amount of value of shares acquired by them in separate bank account operated by company whose shares are being transferred for at least 1 year for payment to minority shareholders & shall be disbursed to entitled shareholders within 60 days • Disbursement shall continue for 1 year , who had not been made disbursement within 60 days or if disbursement have been made, fail to receive/ claim payment arising out of such disbursement Sub-section (5) In event of purchase, company whose shares are being transferred shall act as transfer agent for receiving & paying price to minority shareholders & for taking delivery of shares & delivering shares to majority	In absence of physical delivery of shares by shareholders within time specified by Co, share certificates shall be deemed to be cancelled, & company whose shares are being transferred be authorised to issue shares in lieu of cancelled shares & complete transfer & make payment of price out of deposit made by majority in advance to minority by dispatch of such payment Sub-section (7) In event of majority shareholder requiring full purchase & making payment of price by deposit with Co. for shareholders who have died or ceased to exist, or whose heirs, successors, administrators or assignees have not been brought on record by transmission, right of such shareholders to make offer for sale of minority equity shareholding shall continue & be available for period of 3 years from date of majority acquisition or majority shareholding	Where shares of minority shareholders have been acquired & as on or prior to date of transfer following such acquisition, shareholders holding 75% or more minority equity shareholding negotiate or reach understanding on higher price for shares held by them, majority shareholders shall share additional compensation so received by them with such minority shareholders on pro rata basis Sub-section (9) When shareholder or majority equity shareholder fails to acquire full purchase of shares of minority equity shareholders, then, provisions of this section shall continue to apply to residual minority equity shareholders, even though,- a) shares of Co. of residual minority equity shareholder had been delisted; & b) period of 1 year or period specified in regulations by SEBI, had elapsed



**CA INTERMEDIATE All India Rankers of Nov 2018.
Studied Audit From CA Harshad Jaju**

Compromises, Arrangements & Amalgamations (Chart 5.5)

Section 237 - Power of Central Government to provide for amalgamation of companies in public interest

- 1) If CG is satisfied, it is essential in public interest that 2 or more companies should amalgamate, CG may, by order notified in Official Gazette, provide for amalgamation of those companies into single Co. with such constitution, property, powers, rights, interests, authorities & privileges, liabilities, duties & obligations, specified in order
- 2) Order also provide for continuation by or against transferee Co. of any legal proceedings pending by or against any transferor Co. & consequential, incidental provisions in opinion of CG, necessary to give effect to amalgamation
- 3) Every member/ creditor, including debenture holder, of transferor companies before amalgamation shall have same interest in or rights against transferee Co. & in case interest or rights are less, he shall be entitled to compensation to that extent
- 4) Person aggrieved by assessment of compensation, within period of 30 days from date of publication of such assessment in Official Gazette, prefer appeal to Tribunal & assessment of compensation be made by Tribunal
- 5) No order shall be made under this section unless-
 - a) proposed order sent in draft to each of companies concerned;
 - b) time for preferring appeal expired, or where appeal has been preferred, appeal has been finally disposed off;
 - c) CG has considered, & made modifications, in draft order in light of suggestions & objections received by it from any Co, within period not being less than 2 months from date on which copy is received by that Co., or from shareholders, or creditors
- 6) Copies of every order, after it has been made, be laid before each House of Parliament

Section 238 - Registration of offer of schemes involving transfer of shares

- 1) In relation to every offer of scheme or contract involving transfer of shares in Transferor Co. to transferee Co. u/s 235,
 - a) circular containing offer of scheme or contract involving transfer of shares & recommendation to members of Transferor Co. by its directors to accept such offer, shall be accompanied by such information as set out in Form CAA-15 (Rule 28*)
 - b) every offer shall contain statement by or on behalf of transferee Co., disclosing steps it has taken to ensure that necessary cash will be available
 - c) every circular shall be presented to Registrar for registration & no such circular shall be issued until it is so registered
 - Registrar may refuse, for reasons to be recorded in writing, to register circular which does not contain required information or which sets out such information in manner likely to give false impression, & communicate such refusal to parties within 30 days of application
- 2) Appeal shall lie to Tribunal against order of Registrar refusing to register any circular
 - Rule 29*: Aggrieved party may file appeal in Form No. NCLT.9 supported with affidavit in Form No. NCLT 6, against order of ROC refusing to register circular
- 3) Director who issues circular which has not been presented for registration & registered, shall be punishable with fine which shall not be less than Rs. 25,000/- extend to Rs.5,00,000/-

Section 239 - Preservation of books & papers of amalgamated companies

Books & papers of Co. which has been amalgamated with, or whose shares have been acquired by, another Co. under this Chapter shall not be disposed of without prior permission of CG & before granting such permission, Government may appoint person to examine books & papers for purpose of ascertaining whether they contain any evidence of commission of an offence in connection with promotion/ formation/ management of affairs, of transferor Co. or its amalgamation or acquisition of its shares

Section 240 - Liability of officers in respect of offences committed prior to merger, amalgamation, etc.

Notwithstanding anything in any other law for time being in force, liability in respect of offences committed under this Act by officers in default, of transferor Co. prior to its merger, amalgamation or acquisition shall continue after such merger, amalgamation or acquisition

Prevention of Oppression & Mismanagement (Chart 6.1)

Prevention of Oppression & Mismanagement (Chart 6.1)						
Majority Rule		Section 241 - Application to Tribunal for Relief in Cases of Oppression Etc.	SECTION 242 – POWERS OF TRIBUNAL			
What is Majority Rule?	Exceptions to the Rule (Majority does not prevail)		Powers		Order passed by tribunal	Interim order:
1) Affairs of Co are conducted by majority of members, they are in advantageous position to manage & administer Co	Under Common Law	1) Right to apply by member Any member of a co who complains that- a) the affairs of co have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to interests of co; or b) material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of co, has taken place in management or control of co, whether by an alteration in the BOD or manager, or in ownership of co's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of co will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to Tribunal, provided such member has a right to apply under sec 244, for an order under this Chapter 2) Central Government suo moto to apply the Tribunal CG, if it is of the opinion that affairs of co are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order	a) Regulation of conduct of affairs of co in future b) purchase of shares or interests of any members of co by other members thereof or by co c) in case of a purchase of its shares by co as aforesaid, consequent reduction of its share capital d) restrictions on transfer or allotment of shares of co e) termination, setting aside or modification, of any agreement, howsoever arrived at, between Co & managing director, any other director or manager, upon such terms & conditions as may, in opinion of Tribunal, be just & equitable in circumstances of case f) removal of MD, manager or any of directors of co g) imposition of costs as may be deemed fit by Tribunal h) termination, setting aside or modification of any agreement between co & any person other than those referred to in clause (f) referred to in clause (e) i) Provided that no such agreement shall be terminated, set aside or modified except after due notice & after obtaining consent of party concerned;	j) setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the co within 3 months before date of application, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference k) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and manner of utilisation of recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims; l) manner in which managing director or manager of the co may be appointed subsequent to an order removing existing managing director or manager of co made under clause (f) m) appointment of such number of persons as directors, who may be required by Tribunal to report to Tribunal on such matters as Tribunal may direct; n) any other matter for which, in opinion of Tribunal	any application made under section 241, the Tribunal is of the opinion— a) that co's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to interests of co; & b) that to wind up co would unfairly prejudice such member or members, but that otherwise facts would justify making of a winding-up order on ground that it was just & equitable that co should be wound up, Tribunal may, with a view to bringing to an end matters complained of, make such order as it thinks fit	Tribunal may, on application of any party to proceeding, make any interim order which it thinks fit for regulating conduct of co's affairs upon such terms & conditions as appear to it to be just & equitable.
2) Resolution passed by majority of members is binding on Co & consequently on minority	Under Companies Act					
3) In case of differences among members, issue is resolved by vote of majority	a) Ultra vires & Illegal acts b) Fraud on Minority c) Wrongdoers in control d) Breach of Fiduciary Duties e) Requirement of Special Resolution f) Infringement of rights of a member					
4) Courts do not usually intervene in matters of internal management of Co	a) Variation of class rights b) Reconstruction & Amalgamation c) Investigation into affairs of company d) Prevention of Oppression & Mismanagement e) Other Statutory Rights					
Case Law - Foss v/s Harbottle	In all these cases, minority shareholder is entitled to bring an action for declaration that resolution complained of is void or for an injunction to restrain Co from passing it					
					Filing of copy of order of tribunal A certified copy of order of Tribunal under sub-sec (1) shall be filed by the co with Registrar within 30 days of order of Tribunal	Altered provision shall apply: alterations made by order in memorandum or articles of a co shall, in all respects, have same effect as if they had been duly made by co in accordance with provisions of this Act and the said provisions shall apply accordingly to memorandum or articles so altered. Certified copy of altered order shall be filed with Registrar: A certified copy of every order altering within 30 days be filed by the company with Registrar Punishment in case of contravention: If a co contravenes provisions, co shall be punishable with fine which shall not be less than 1 lakh but which may extend to 25 lakhs & every officer of co who is in default shall be punishable with imprisonment for a term which may extend to 6 months or with fine which shall not be less than Rs.25000 but which may extend to Rs. 1 lakh, or with both

Prevention of Oppression & Mismanagement (Chart 6.2)

SECTION 243 – Consequence of Termination or Modification of Certain Agreements	SECTION 244 – Right to Apply Under Section 241	SECTION 245 – CLASS ACTION				SECTION 246 Application of certain Provisions
<p>1) Where an order made under sec 242 terminates, sets aside or modifies an agreement-</p> <p>a) such order shall not give rise to any claims whatever against the co by any person for damages or for compensation for loss of office or in any other respect either in pursuance of agreement or otherwise;</p> <p>b) No MD or other director or manager whose agreement is so terminated or set aside shall, for a period of 5 yrs from date of order terminating or setting aside agreement, without leave of Tribunal, be appointed, or act, as MD or other director or manager of company.</p> <p>Provided that Tribunal shall not grant leave under this clause unless notice of intention to apply for leave has been served on CG & that govt has been given a reasonable opportunity of being heard in matter.</p> <p>2) Any person who knowingly acts as a MD or other director or manager of a co & every other director of co who is knowingly a party to such contravention, shall be punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to 5 lakh rs, or with both.</p>	<p>1) Right to members to apply following members of a co shall have right to apply</p> <p>a) In case of a co having a share capital – Not less than 100 members of co or not less than 1/10 th of total no. of its members, whichever is less, or any member or members holding not less than 1/10th of issued share capital of co, subject to condition that applicant or applicants has or have paid all calls & other sums due on his or their shares;</p> <p>b) In case of a co not having a share capital- Not less than 1/5th of the total No of its members:</p> <p>(2) Entitlement to members to make an application:</p> <p>Where any members of a co are entitled to make an application any one or more of them having obtained consent in writing of the rest, may make application n behalf & for benefit of all of them.</p>	<p>1) Filing of application before Tribunal on behalf of members or depositors:</p> <p>Such no. of member or members, depositor or depositors or any class of them, as case may be, as are indicated in sub-sec (2) may, if they are of opinion that management or conduct of affairs of co are being conducted in a manner prejudicial to interests of co or its members or depositors, file an application before Tribunal on behalf of members or depositors for seeking all or any of following orders, namely:—</p> <p>a) to restrain co from committing an act which is ultra vires the articles or memorandum of co;</p> <p>b) to restrain co from committing breach of any provision of co's memorandum or articles;</p> <p>c) to declare a resolution altering memorandum or articles of co as void if resolution was passed by suppression of material facts or obtained by mis-statement to members or depositors;</p> <p>d) to restrain co & its directors from acting on such resolution co from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;</p> <p>e) to restrain the co from taking action contrary to any resolution passed by the members;</p> <p>f) to claim damages or compensation or demand any other suitable action from or against-</p> <p>i) co or its directors for any fraudulent, unlawful or wrongful act or omission or conduct</p> <p>ii) auditor including audit firm of co for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct;</p> <p>iii) any expert or advisor or consultant or any other person for any incorrect or misleading statement made to co or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;</p> <p>g) to seek any other remedy as the Tribunal may deem fit.</p>	<p>2) Remedy:</p> <p>Where members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, liability shall be of firm as well as of each partner who was involved in making any improper or misleading statement of particulars in audit report or who acted in a fraudulent, unlawful or wrongful manner.</p> <p>3) Required number of members to apply:</p> <p>a) requisite number of members shall be as under:—</p> <p>i) in case of a co having a share capital, not less than 100 members of co or not less than such percentage of the total number of its members as may be prescribed, whichever is less, or any member or members holding not less than such percentage of issued share capital of co as may be prescribed, subject to condition that applicant or applicants has or have paid all calls & other sums due on his or their shares;</p> <p>ii) in case of a co not having a share capital, not less than 1/5th of total number of its members.</p> <p>b) requisite number of depositors shall not be less than 100 depositors or not less than such percentage of the total number of depositors as may be prescribed, whichever less is, or any depositor or depositors to whom co owes such percentage of total deposits of co as may be prescribed.</p>	<p>4) Requirement for consideration of application:</p> <p>Tribunal shall take into account, in particular—</p> <p>a) whether member or depositor is acting in good faith in making application for seeking an order;</p> <p>b) any evidence before it as to involvement of any person other than directors or officers of co</p> <p>c) whether cause of action is one which the member or depositor could pursue in his own right rather than through an order</p> <p>d) any evidence before it as to views of members or depositors of co who have no personal interest, direct or indirect, in matter being proceeded under this sec</p> <p>e) where the cause of action is an act or omission that is yet to occur, whether act or omission could be, and in circumstances would be likely to be-</p> <p>i) authorised by co before it occurs; or</p> <p>ii) ratified by co after it occurs;</p> <p>f) where cause of action is an act or omission that has already occurred, whether the act or omission could be, and in circumstances</p> <p>(5) In case of admission of application:</p> <p>a) public notice shall be served on admission of application to all members or depositors of class in such manner as may be prescribed;</p> <p>b) all similar applications prevalent in any jurisdiction should be consolidated into a single application</p> <p>c) 2 class action applications for same cause of action shall not be allowed;</p> <p>d) cost/expenses connected with application for class action shall be defrayed by co or any other person responsible for any oppressive act.</p>	<p>6) Order shall be binding:</p> <p>Any order passed by Tribunal shall be binding on co & all its members, depositors & auditor including audit firm or expert or consultant or advisor or any other person associated with co.</p> <p>7) Punishment for non-compliance</p> <p>Any co which fails to comply with an order passed by Tribunal shall be punishable with fine which shall not be less than 5L Rs but which may extend to 25L Rs & every officer of co who is in default shall be punishable with imprisonment for a term which may extend to 3 years & with fine which shall not be less than 25000 Rs but which may extend to 1L Rs.</p> <p>8) Application filed is frivolous/ vexatious:</p> <p>Where any application filed before Tribunal is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, reject application & make an order that applicant shall pay to opposite party such cost, not exceeding 1L Rs, as may be specified in order</p> <p>9) Exemption from application of section:</p> <p>Nothing contained in this sec shall apply to a banking co.</p> <p>10) Application may be filed on behalf of affected persons:</p> <p>Application may be filed or any other action may be taken under this sec by any person, group of persons or any association of persons</p>	<p>The provisions of sections 337, 338, 339, 340 and 341 (both inclusive) related to winding up, shall apply mutatis mutandis, in relation to an application made to the Tribunal under section 241 or sec 245.</p>

Winding Up (Chart 7.1)

Part I - Winding Up by Tribunal



Winding Up (Chart 7.2)

Part I - Winding Up by Tribunal

Section 275 - Co. Liquidators & their appointments

- 1) For winding up of Co. by Tribunal, Tribunal at time of passing of order of winding up, shall appoint OL or liquidator from panel as Co. Liquidator
- 2) Provisional liquidator or Co. Liquidator, as case may be, shall be appointed by the Tribunal from amongst the Insolvency Professionals registered under the IBC, 2016.
- 3) Tribunal may limit & restrict powers of provisional liquidator, by order appointing him or by subsequent order, but otherwise he shall have same powers as liquidator.
- 4) Terms & conditions of appointment & fee payable be specified by Tribunal on basis of task required to be performed, experience, qualification of such liquidator & size of Co.
- 5) On appointment as provisional liquidator or Co. Liquidator, liquidator shall file declaration within 7 days from date of appointment disclosing conflict of interest or lack of independence in respect of his appointment, with Tribunal
- 6) While passing winding up order, Tribunal may appoint provisional liquidator, appointed u/s 273(1) (c), as Co. Liquidator for conduct of proceedings for winding up of Co.

Section 276 - Removal & replacement of liquidator

- 1) Tribunal may, on reasonable cause & for reasons to be recorded in writing, remove provisional liquidator or Co. Liquidator, on any of following grounds:
 - a) misconduct;
 - b) fraud or misfeasance;
 - c) professional incompetence or failure to exercise due care & diligence in performance of powers & functions;
 - d) inability to act as provisional liquidator or as case may be, Co. Liquidator;
 - e) conflict of interest or lack of independence during term of appointment that justify removal
- 2) In event of death, resignation or removal of provisional liquidator or Co. Liquidator, Tribunal may transfer work assigned to him to another Co. Liquidator for reasons recorded in writing
- 3) Where Tribunal is of opinion that liquidator is responsible for causing any loss or damage to Co. due to fraud or misfeasance or failure to exercise due care & diligence in performance of his or its powers & functions, Tribunal may recover such loss or damage from liquidator & pass orders as it may think fit
- 4) Tribunal shall, before passing any order, provide reasonable opportunity of being heard to provisional liquidator or Co. Liquidator

Section 277 - Intimation to Co. Liquidator, provisional liquidator & Registrar

- 1) Where Tribunal makes order for appointment of provisional liquidator or for winding up of Co., it shall, within period not exceeding 7 days from date of passing of order, cause intimation to be sent to Co. Liquidator or provisional liquidator & Registrar
- 2) On receipt of copy of order, Registrar shall make endorsement to that effect in his records relating to Co. & notify in Official Gazette that order has been made & in case of listed Co., Registrar shall intimate about appointment or order, to stock exchanges where securities of Co. are listed
- 3) Winding up order shall be deemed to be notice of discharge to officers, employees & workmen of Co., except when business of Co. is continued
- 4) Within 3 weeks from date of passing of winding up order, Co. Liquidator shall application to Tribunal for constitution of winding up committee to assist & monitor progress of liquidation proceedings by Co. Liquidator in carrying out function & such winding up committee shall comprise:
 - (i) OL attached to Tribunal;
 - (ii) nominee of secured creditors;
 - & (iii) professional nominated by Tribunal
- 5) Co. Liquidator be convener of meetings of winding up committee which shall assist & monitor liquidation proceedings
- 6) Co. Liquidator shall place before Tribunal report along with minutes of meetings of committee on monthly basis duly signed by members present in meeting till final report for dissolution of Co. is submitted before Tribunal

Section 278- Effect of winding up order

Order for winding up of Co. shall operate in favour of all creditors & all contributories of Co. as if it had been made out on joint petition of creditors & contributories

Section 279 - Stay of suits, etc., on winding up order

- 1) When winding up order has been passed or provisional liquidator has been appointed, no suit or other legal proceeding be commenced, or if pending at date of winding up order, shall be proceeded with, by or against Co., except with leave of Tribunal & subject to such terms as Tribunal may impose
 - Application to Tribunal seeking leave under this section be disposed of by Tribunal within 60 days
- 2) Nothing in sub-section (1) shall apply to proceeding pending in appeal before Supreme Court or High Court

Section 280- Jurisdiction of Tribunal

Tribunal shall, notwithstanding anything contained in any other law for time being in force, have jurisdiction to entertain, or dispose of:

- a) any suit or proceeding by or against Co,
- b) any claim made by or against Co, including claims by or against any of its branches in India;
- c) application made u/s 233;
- d) any question of priorities or any question whatsoever, whether of law or facts.

• whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made or such scheme has been submitted, or is submitted, before or after order for winding up of Co. is made



**CA INTERMEDIATE All India Rankers of Nov 2018.
Studied LAW From CA Ankita Patni**

Winding Up (Chart 7.3)

Part I - Winding Up by Tribunal

Section 281 - Submission of report by Co. Liquidator

1) Where Tribunal has made winding up order or appointed Co. Liquidator, such liquidator shall, **within 60 days** from order, submit to Tribunal, report containing:

- a) nature & details of assets of Co. including location & value, stating separately cash in hand & in bank, & negotiable securities held
- Valuation of assets shall be obtained from registered valuers
- b) amount of capital issued, subscribed & paid up;
- c) existing & contingent liabilities of Co. stating separately amount of secured & unsecured debts, & in case of secured debts, particulars of securities given
- d) debts due to Co. & names, addresses, occupations of persons from whom they are due & amount likely to be realised,
- e) guarantees, extended by Co;
- f) list of contributories & dues, payable by them & details of any unpaid call;
- g) details of trade marks & intellectual properties, owned
- h) details of subsisting contracts, joint ventures & collaborations,
- i) details of holding & subsidiary companies,
- j) details of legal cases filed by or against Co; &
- k) other information which Tribunal may direct or Co. Liquidator may consider necessary

Section 282 - Directions of Tribunal on report of Co. Liquidator

1) Tribunal, on consideration of report of Co. Liquidator, fix time limit within which entire proceedings be completed & Co. be dissolved

- Tribunal, at any stage of proceedings, or on examination of reports submitted by Co. Liquidator & after hearing Co. Liquidator, creditors or contributories or other interested person, is of opinion that it will not be advantageous or economical to continue proceedings, revise time limit

2) Tribunal may, also order sale of Co. as going concern or its assets or part thereof

- Where it considers fit, appoint sale committee comprising such creditors, promoters & officers of Co. as Tribunal may decide to assist Co. Liquidator in sale

Section 283 - Custody of Co.'s properties

1) Where winding up order has been made or where provisional liquidator has been appointed, Co. Liquidator or provisional liquidator, shall, on order of Tribunal, take into his or its custody or control all property, effects & actionable claims to which Co. is or appears to be entitled to & take steps & measures, as may be necessary, to protect & preserve properties of Co.

2) Notwithstanding anything contained in sub-section (1), all property & effects of Co. shall be deemed to be in custody of Tribunal from date of order for winding up

3) On application by Co. Liquidator or otherwise, Tribunal may, at any time after making of winding up order, require any contributory on list of contributories, & any trustee, receiver, banker, agent, officer or other employee of Co., to pay, deliver, surrender or transfer, or within such time as Tribunal directs, to Co. Liquidator, any money, property or books & papers in his custody or under his control to which Co. is or appears to be entitled

Section 284 - Promoters, directors, etc., to cooperate with Co. Liquidator

1) Promoters, directors, officers & employees, in employment of Co. or acting or associated with Co. shall extend full co-operation to Co. Liquidator in discharge of his functions & duties

2) Where person, without reasonable cause, fails to discharge his obligations under sub-section(1), he shall be punishable with imprisonment which may extend to **6 months** or with fine which may extend to **Rs.50,000/-**, or with both

Section 285 - Settlement of list of contributories & application of assets

1) After passing of winding up order by Tribunal, Tribunal shall settle list of contributories, cause rectification of register of members where required in this Act & shall cause assets of Co. to be applied for discharge of its liability

- Where it appears to Tribunal that it would not be necessary to make calls on or adjust rights of contributories, Tribunal may dispense with settlement of list of contributories

2) In settling list of contributories, Tribunal shall distinguish between those who are contributories in their own right & those who are contributories as being representatives of, or liable for debts of, others

3) While settling, Tribunal shall include every person, who is or has been member, who shall be liable to contribute to assets of Co. amount sufficient for payment of debts & liabilities & costs, charges & expenses of winding up, & for adjustment of rights of contributories among themselves, subject to following conditions:

- a) person who has been member **not be liable** to contribute if he has ceased to be member for **preceding 1 year or more** before commencement of winding up;
- b) person who has been member **not be liable** to contribute in respect of any debt or liability of Co. contracted after he ceased to be member;
- c) no person who has been member be liable to contribute unless it appears to Tribunal that present members are unable to satisfy contributions required to be made by them in pursuance of this Act;
- d) in case of Co. limited by shares, no contribution be required exceeding amount, unpaid on shares in respect of which he is liable as such member;
- e) in case of Co. limited by guarantee, no contribution be required exceeding amount undertaken to be contributed to assets of Co. in event of its being wound up but if Co. has share capital, member shall be liable to contribute to extent of sum unpaid on shares held by him as if Co. were Co. limited by shares

Winding Up (Chart 7.4)

Part I - Winding Up by Tribunal

Section 286 - Obligations of directors & managers

- 1) In case of limited Co, director or manager, whose liability is unlimited, shall, in addition to his liability, to contribute as ordinary member, be liable to make further contribution as if he was member of unlimited Co;
- 2) Provided that-
 - a) he shall not be liable to make such further contribution, if he has ceased to hold office for year or upwards before commencement of winding up;
 - b) he shall not be liable to make such further contribution in respect of any debt or liability of Co. contracted after he ceased to hold office;
 - c) subject to articles of Co., director or manager shall not be liable to make such further contribution unless Tribunal deems it necessary to require contribution to satisfy debts & liabilities of Co., & costs, charges & expenses of winding up

Section 292 - Exercise & control of Co. Liquidator's powers

- 1) Subject to provisions of this Act, Co. Liquidator shall, have regard to directions given by resolution of creditors or contributories at GM or by advisory committee
- 2) Directions given by creditors or contributories at GM shall, in case of conflict, be deemed to override directions given by advisory committee
- 3) Co. Liquidator:
 - a) may summon meetings of creditors or contributories, whenever he thinks fit, for ascertaining their wishes;
 - b) shall summon meetings at such times, as creditors or contributories, may, by resolution, direct, or whenever requested in writing to do so by not less than 1/10th in value of creditors or contributories
- 4) Person aggrieved by act or decision of Co. Liquidator may apply to Tribunal, & Tribunal may confirm, reverse or modify act or decision complained of & make further order as it thinks just & proper

Section 287 - Advisory committee

- 1) Tribunal may, while passing order of winding up, direct that there shall be, Advisory committee to advise Co. Liquidator & to report to Tribunal
- 2) It shall consist of not more than 12 members, being creditors & contributories or other persons
- 3) Co. Liquidator shall convene meeting of creditors & contributories, within 30 days from date of order of winding up for enabling Tribunal to determine members of advisory committee

Section 288 - Submission of periodical reports to Tribunal

- 1) Co. Liquidator shall make periodical reports to Tribunal & in any case make report at end of each quarter with respect to progress of winding up
- 2) Tribunal may, on application by Co. Liquidator, review orders made by it & make such modifications as it thinks fit

Section 293 - Books to be kept by Co. Liquidator

- 1) Co. Liquidator shall keep proper books, in which he shall cause entries or minutes to be made of proceedings at meetings
- 2) Any creditor or contributory may, subject to control of Tribunal, inspect books, personally or through his agent

Section 290 - Powers & duties of Co. Liquidator

- 1) Subject to directions by Tribunal, Co. Liquidator, in winding up of Co. by Tribunal, shall have power:
 - a) to carry on business of Co. necessary for beneficial winding up;
 - b) to do all acts & to execute, in name & on behalf of Co., all deeds, receipts & other documents, to use, when necessary, Co.'s seal;
 - c) to sell immovable & movable property & actionable claims of Co. by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell same in parcels;
 - d) to sell whole of undertaking of Co. as going concern;
 - e) to raise any money required on security of assets
 - f) to institute or defend any suit, prosecution or other legal proceeding, civil or criminal, in name & on behalf of Co;
 - g) to invite & settle claim of creditors, employees or other claimant & distribute sale proceeds in accordance with priorities established under this Act;
 - h) to inspect records & returns of Co. on files of Registrar or other authority;

Section 291 - Provision for professional assistance to Co. Liquidator

- 1) Co. Liquidator may, with sanction of Tribunal, appoint one or more CAs/ CS / Cost Accountants or legal practitioners or other professionals on terms & conditions, necessary, to assist him in performance of his duties & functions
- 2) Person appointed under this section shall disclose to Tribunal any conflict of interest or lack of independence in respect of his appointment

Section 294 - Audit of Co. Liquidator's accounts

- 1) Co. Liquidator shall maintain proper & regular books of account including accounts of receipts & payments made by him
- 2) He shall, at times as may be prescribed but not less than twice in each year during his tenure of office, present to Tribunal account of receipts & payments as such liquidator in duplicate, which be verified by declaration
- 3) Tribunal shall cause accounts to be audited in manner as it thinks fit, Co. Liquidator shall furnish vouchers & information as Tribunal may require, & Tribunal may, require production of, & inspect, any books of account kept by Co. Liquidator
- 4) When accounts of Co. have been audited, one copy be filed by Co. Liquidator with Tribunal, & other copy be delivered to Registrar which shall be open to inspection by any creditor, contributory or person interested

Winding Up (Chart 7.5)

Part I - Winding Up by Tribunal

<p>Section 295 - Payment of debts by contributory & extent of set-off</p> <p>1) Tribunal may, after passing of winding up order, pass order requiring contributory for time being on list of contributories to pay, in manner directed by order, money due to Co., from him or from estate of person whom he represents, exclusive of money payable by him or estate by virtue of call</p> <p>2) Tribunal, in making order, may:</p> <p>a) in case of unlimited Co, allow to contributory, by way of set-off, money due to him or to estate, but not money due to him as member of Co. in respect of any dividend or profit; &</p> <p>b) in case of limited Co, allow director or manager whose liability is unlimited, or his estate, set-off</p> <p>3) In case of Co., whether limited or unlimited, when all creditors have been paid in full, money due to contributory from Co. may be allowed to him by way of set-off against subsequent call</p>	<p>Section 296 - Power of Tribunal to make calls</p> <p>Tribunal may, after passing of winding up order, & either before or after it has ascertained sufficiency of assets:</p> <p>a) make calls on all or any of contributories on list of contributories, to extent of their liability, for payment of money Tribunal considers necessary to satisfy debts & liabilities of Co., & costs, charges & expenses of winding up, & for adjustment of rights of contributories; &</p> <p>b) make order for payment of any calls so made</p>	<p>Section 297 - Adjustment of rights of contributories</p> <p>Tribunal shall adjust rights of contributories among themselves & distribute any surplus among entitled persons</p>	<p>Section 298 - Power to order costs</p> <p>Tribunal may, in event of assets of Co. being insufficient to satisfy its liabilities, make order for payment out of assets, of costs, charges & expenses incurred in winding up, in such order of priority inter se as Tribunal thinks just & proper</p>	<p>Section 299 - Power to summon persons suspected of having property of Co., etc.</p>
<p>Section 301 - Arrest of person trying to leave India or abscond</p> <p>At any time either before or after passing winding up order, if Tribunal is satisfied that contributory or person having property, accounts or papers of Co. in his possession is about to leave India or otherwise to abscond, or is about to remove or conceal any of his property, for purpose of evading payment of calls or of avoiding examination respecting affairs of Co., Tribunal may cause:</p> <p>a) contributory to be detained until such time as Tribunal may order; &</p> <p>b) his books & papers & movable property to be seized & safely kept until such time as Tribunal may order</p>	<p>Section 302 - Dissolution of Co. by Tribunal</p> <p>1) When affairs of Co. have been completely wound up, Co. Liquidator shall make application to Tribunal for dissolution</p> <p>2) Tribunal shall on application filed by Co. Liquidator or when Tribunal is of opinion that it is just & reasonable that order for dissolution of Co. should be made, make order for dissolved of Co. from date of order, Co. be dissolved accordingly</p> <p>3) Within 30 days from date thereof, copy of order, be forwarded by Co. Liquidator to Registrar who shall record in register relating to minute of dissolution</p> <p>4) If Co. Liquidator makes default in forwarding copy of order within period, he shall be punishable with fine of Rs. 5,000/- for every day during which default continues</p>	<p>Section 300 - Power to order examination of promoters, directors, etc</p> <p>1) Where order made for winding up of Co. by Tribunal, & Co. Liquidator has made report to Tribunal, stating in his opinion fraud has been committed by any person in promotion, formation, business or conduct of affairs of Co. since its formation, Tribunal may, after considering report, direct person or officer shall attend before Tribunal on day appointed by it for that purpose, & be examined</p> <p>2) Co. Liquidator shall take part in examination, & if specially authorised by Tribunal, employ legal assistance</p> <p>3) Person shall be examined on oath & shall answer all such questions as Tribunal may put, or allow to be put, to him</p>	<p>Section 303 - Appeals from orders made before commencement of Act</p> <p>Nothing in this Chapter shall affect operation or enforcement of order made by Court in any proceedings for winding up of Co. immediately before commencement of this Act & appeal against such order shall be filed before authority competent to hear such appeals before such commencement</p>	<p>1) Tribunal may, after appointment of provisional liquidator or passing of winding up order, summon officer of Co. or person known or suspected to have in his possession any property or books or papers, or be indebted to Co, or person whom Tribunal thinks to be capable of giving information concerning promotion, formation, trade, dealings, property, books or papers, or affairs of Co.</p> <p>2) Tribunal may examine officer or person so summoned on oath, either by word of mouth or on written interrogatories or affidavit & may, in first case, reduce his answers to writing & require him to sign them</p> <p>3) Tribunal may require officer or person so summoned to produce any books & papers relating to Co. in his custody or power, but, where he claims lien on books or papers produced by him, production be without prejudice to such lien</p> <p>4) Tribunal may direct liquidator to file report in respect of debt or property of Co. in possession of other persons</p>

Winding Up (Chart 7.6)

Part III - Provisions applicable to every mode of Winding Up

Section 324 - Debts of all descriptions to be admitted to proof

In every winding up, all debts payable on contingency, & all claims against Co., present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against Co., just estimate being made, so far as possible, of value of such debts or claims as may be subject to any contingency, or may sound only in damages, or for some other reason may not bear certain value

Section 326 - Overriding preferential payments

This section shall be substituted with following section, namely:—
"326. (1) In winding up of a company under this Act, following debts shall be paid in priority to all other debts:—
(a) workmen's dues; and
(b) where a secured creditor has realised a secured asset, so much of debts due to such secured creditor as could not be realised by him or amt of workmen's portion in his security (if payable under the law), whichever is less, pari passu with workmen's dues:
Provided that in case of the winding up of a company, sums referred to in sub-clauses (i) & (ii) of clause (b) of Explanation, which are payable for a period of 2 yrs preceding winding up order or such other period as may be prescribed, shall be paid in priority to all other debts (including debts due to secured creditors), within a period of 30 days of sale of assets & shall be subject to such charge over security of secured creditors as may be prescribed.
(2) The debts payable under the proviso to sub-section (1) shall be paid in full before any payment is made to secured creditors and thereafter debts payable under that sub-section shall be paid in full, unless assets are insufficient to meet them, in which case they shall abate in equal proportions.

Section 327 - Preferential payments

1) Subject to provisions of section 326, there shall be paid in priority to all other debts:
a) all revenues, taxes, cesses & rates due to CG or SG or to local authority at relevant date, & due & payable within 12 months immediately before that date;
b) all wages or salary including wages for time/ piece work & commission of employee in respect of services rendered to Co. & due for period not exceeding 4 months within 12 months immediately before relevant date;
c) all accrued holiday remuneration to employee, in case of his death, person claiming under him
d) unless Co. is being wound up voluntarily for reconstruction/ amalgamation with another Co., all contributions payable during 12 months immediately before relevant date as employer under ESI
e) unless Co. has, at commencement of winding up, under contract with insurer, rights capable of being transferred to & vested in workmen, all amount due in respect of any compensation or liability for compensation in respect of death or disablement of employee
f) all sums due to any employee from provident fund, pension fund, gratuity fund or other fund for welfare of employees
g) expenses of investigation u/s 213 & 216

2) Where payment made to employee out of money advanced by person for that purpose, he shall have right of priority for money so advanced
3) Debts enumerated in this section shall-
a) rank equally among themselves & be paid in full, unless assets are insufficient to meet them, in which case they shall abate in equal proportions;
b) so far as assets of Co. available for payment to general creditors are insufficient to meet them, have priority over claims of holders of debentures under floating charge created by Co., & be paid accordingly out of property comprised in or subject to that charge
4) Subject to retention of sums as may be necessary for costs & expenses of winding up, debts be discharged so far as assets are sufficient to meet them

Section 328 - Fraudulent preference

1) Where Co. has given preference to one of creditors or surety or guarantor for any of debts or other liabilities of Co., which has effect of putting that person into position which, in event of Co. going into liquidation, will be better than position he would have been in if that thing had not been done prior to 6 months of making winding up application, Tribunal, if satisfied that, such transaction is fraudulent preference may order for restoring position if Co. had not given preference
2) If Tribunal is satisfied that there is preference transfer of property, or delivery of goods, payment, execution made, taken or done by or against Co. within 6 months before making winding up application, Tribunal may order & declare such transaction invalid & restore position

Section 329 - Transfers not in good faith to be void

Any transfer of property, movable or immovable, or any delivery of goods, made by Co., not being transfer or delivery made in ordinary course of its business or in favour of purchaser or encumbrance in good faith & for valuable consideration, if made within period of 1 year before presentation of petition for winding up by Tribunal or passing of resolution for voluntary winding up of Co., shall be void against Co. Liquidator

Section 330 - Certain transfers to be void

Any transfer or assignment by Co. of all its properties or assets to trustees for benefit of all its creditors shall be void

Winding Up (Chart 7.7)

Part III - Provisions applicable to every mode of Winding Up

Section 331 - Liabilities & rights of certain persons fraudulently preferred

1) Where Co. is being wound up & anything made, taken or done after commencement of this Act is invalid under section 328 as fraudulent preference of person interested in property mortgaged or charged to secure Co.'s debt, then, person preferred be subject to same liabilities, & shall have same rights, as if he had undertaken to be personally liable as surety for debt, to extent of mortgage or charge on property or value of his interest, whichever is less

2) Value of interest of person preferred be determined as at date of transaction constituting fraudulent preference, as if interest were free of all encumbrances

3) On application made to Tribunal that payment was fraudulent preference of surety or guarantor, Tribunal shall have jurisdiction to determine questions arising between person to whom payment was made & surety or guarantor & to grant relief

4) Provisions of sub-section (3) shall apply mutatis mutandis in relation to transactions other than payment of money

Section 332 - Effect of floating charge

Where Co. is being wound up, floating charge on undertaking or property of Co. created within 12 months immediately preceding commencement of winding up, shall, unless it is proved that Co. immediately after creation of charge was solvent, be invalid, except for amount of cash paid to Co. at time of, or subsequent to creation of, & in consideration for, charge, together with interest on that amount at rate of 5% per annum or such other rate as may be notified by CG in this behalf

Section 333 - Disclaimer of onerous property

1) Where part of property of Co. which is being wound up consists of:

- a) land of any tenure, burdened with onerous covenants;
- b) shares or stocks in companies;
- c) any other property which is not saleable
- d) unprofitable contracts,

• Co. Liquidator may, with leave of Tribunal, by writing signed by him, at any time within 12 months after commencement of winding up or extended period, disclaim property

• Where Co. Liquidator had not become aware of existence of any property within 1 month from commencement of winding up, power of disclaiming property may be exercised at any time within 12 months after becoming aware thereof or extended period

2) Disclaimer shall operate to determine, from date of disclaimer, rights, interest & liabilities of Co. in or in respect of property disclaimed

3) Tribunal, before or on granting leave to disclaim, may require notices to be given to persons interested, & impose terms as condition of granting leave, & make order it considers just & proper

4) Co. Liquidator not be entitled to disclaim property, where application made to him by person interested in property requiring him to decide whether he will or will not disclaim & Co. Liquidator, within 28 days after receipt of application or extended period, not given notice to applicant that he intends to apply to Tribunal for leave to disclaim

5) Tribunal may, on application of person against Co. Liquidator, make order rescinding contract on terms as to payment by or to either party of damages for non-performance of contract, or otherwise as Tribunal considers just & proper

6) Tribunal may, on application by person who either claims interest in disclaimed property or is under liability not discharged, make order for vesting of property in, or delivery of property to, person entitled or to whom it may seem just, or trustee for him, & on terms as Tribunal considers just & proper, & on vesting order being made, property comprised shall vest in person named in that behalf

Section 334 - Transfers, etc, after commencement of winding up to be void

In case of a winding up by Tribunal, any disposition of property including actionable claims, of company & any transfer of shares in company or alteration in status of its members, made after commencement of winding up shall, unless Tribunal otherwise orders, be void."

Section 335- Certain attachments, executions, etc, in winding up by Tribunal to be void

1) Where any Co. is being wound up by Tribunal,-

- a) any attachment, distress or execution put in force, without leave of Tribunal against estate or effects of Co., after commencement of winding up; or
- b) any sale held, without leave of Tribunal of any of properties or effects of Co., after such commencement,

• shall be void

2) Nothing in this section shall apply to any proceedings for recovery of tax or impost or any dues payable to Government

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Winding Up (Chart 7.8)

Part III - Provisions applicable to every mode of Winding Up

Section 336 - Offences by officers of companies in liquidation	Section 337 - Penalty for frauds by officers	Section 338 - Liability where proper accounts not kept	Section 339 - Liability for fraudulent conduct of business	Section 340 - Power of Tribunal to assess damages against delinquent directors, etc.	Section 341 - Liability u/s 339 & 340 to extend to partners or directors in firms or companies	Section 342 - Prosecution of delinquent officers & members of Co.
<p>1) If person, who is or has been officer of Co:</p> <p>a) does not, to best of his knowledge & belief, fully & truly disclose to Co. Liquidator all property, movable & immovable, of Co., & how & to whom & for what consideration & when Co. disposed of part, except disposed of in ordinary course of business of Co.;</p> <p>b) does not deliver to Co. Liquidator, all part of movable & immovable property of Co. in his custody or his control;</p> <p>c) does not deliver to Co. Liquidator, all books & papers of Co. in his custody or under his control & required by law to deliver up;</p> <p>d) within 12 months immediately before commencement of winding up or at any time thereafter,-</p> <p>i) conceals any part of property of Co. to value of Rs. 1,00,000/- or more, or conceals any debt due to or from Co.;</p> <p>ii) fraudulently removes any part of property of Co. to value of Rs.1,00,000/- or more;</p> <p>iii) conceals, destroys, mutilates or falsifies, or is privy to concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to, property or affairs of Co.;</p> <p>iv) makes, or is privy to making of, any false entry in book or paper affecting or relating to, property or affairs of Co.;</p> <p>v) fraudulently parts with, alters or makes any omission in, or is privy to fraudulent parting with, altering or making of any omission in, any book or paper affecting or relating to property or affairs of Co.;</p> <p>vi) by any false representation or other fraud, obtains on credit, property which Co. does not subsequently pay for;</p> <p>vii) under false pretence that Co. is carrying on its business, obtains on credit, for or on behalf of Co., property which Co. does not subsequently pay for; or</p> <p>viii) pawns, pledges or disposes of any property of Co. which has been obtained on credit & has not been paid for, unless in ordinary course of business of Co.;</p> <p>e) makes material omission in any statement relating to affairs of Co.;</p> <p>f) knowing or believing that false debt has been proved by person under winding up, fails for period of 1 month to inform Co. Liquidator thereof;</p> <p>g) after commencement of winding up, prevents production of any book or paper affecting or relating to property or affairs of Co.;</p> <p>h) after commencement of winding up or at any meeting of creditors of Co. within 12 months next before commencement of winding up, attempts to account for any part of property of Co. by fictitious losses or expenses; or</p> <p>i) is guilty of any false representation or fraud for purpose of obtaining consent of creditors of Co. or any of them, to an agreement with reference to affairs of Co. or to winding up,</p> <p>• he shall be punishable with imprisonment - 3 to 5 years & fine - Rs. 1,00,000/- to 3,00,000/-</p> <p>• It shall be good defence if accused proves that he had no intent to defraud or to conceal true state of affairs of Co. or to defeat law</p> <p>2) Every person who takes in pawn or pledge or otherwise receives property, knowing it to be pawned, pledged, or disposed of in circumstances, shall be punishable with imprisonment- 3 to 5 years & fine - Rs. 3,00,000/- to 5,00,000/-</p>	<p>If any person, being at time of commission of alleged offence officer of Co. which is subsequently ordered to be wound up by Tribunal or which subsequently passes resolution for voluntary winding up,-</p> <p>a) has, by false pretences or by means of any other fraud, induced any person to give credit to Co.;</p> <p>b) with intent to defraud creditors of Co. or any other person, has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at levying of any execution against, property of Co.; or</p> <p>c) with intent to defraud creditors of Co., has concealed or removed part of property of Co. since date of unsatisfied judgment or order for payment of money obtained against Co. or within 2 months before that date,</p> <p>• he shall be punishable with imprisonment - 1 to 3 years & fine - Rs. 1,00,000/- to Rs. 3,00,000/-</p>	<p>1) Where Co. is being wound up, if it is shown that proper books of account were not kept by Co. throughout period of 2 years immediately preceding commencement of winding up, or period between incorporation of Co. & commencement of winding up, whichever is shorter, every officer of Co. in default, unless he shows that he acted honestly & that in circumstances in which business of Co. was carried on, default was excusable, be punishable with imprisonment - 1 to 3 years & with fine - Rs. 1,00,000/- to Rs. 3,00,000/-</p> <p>2) It shall be deemed that proper books of account have not been kept in case of Co:</p> <p>a) if books of account necessary to exhibit & explain transactions & financial position of business of Co, sufficient detail of cash received & cash paid, not been kept; &</p> <p>b) where business of Co. has involved dealings in goods, statements of annual stock takings &, except ordinary retail trade, of all goods sold & purchased, showing goods & buyers & sellers, sufficient detail to enable goods & buyers & sellers to be identified, not been kept</p>	<p>1) If in course of winding up of Co., it appears business of Co. has been carried on with intent to defraud creditors of Co. or other persons or for fraudulent purpose, Tribunal, on application of OL, or Co. Liquidator or creditor or contributory, may, declare director, manager, or officer of Co. or persons knowingly parties to carrying on of business in manner aforesaid be personally responsible, without limitation of liability, for all or any of debts or other liabilities of Co. as Tribunal may direct</p> <p>• On hearing of application, OL or Co. Liquidator, may give evidence/ call witnesses</p> <p>2) Where Tribunal makes declaration, it may give further directions for giving effect to declaration:</p> <p>a) make provision for making liability of such person under declaration charge on debt or obligation due from Co. to him/ on mortgage/ charge/ interest in mortgage/ charge on assets of Co. held by/ vested in him, or person on his behalf, or person claiming as assignee;</p> <p>b) make further order as may be necessary for enforcing any charge imposed</p> <p>3) Every person knowingly party to carrying on of business in manner aforesaid, be liable for action u/s 447</p> <p>4) Section apply, notwithstanding that person concerned may be punishable under any other law in respect of matters on ground of which declaration is to be made</p>	<p>1) If in course of winding up of Co., it appears person who has taken part in promotion or formation of Co., or, who is or has been director, manager, Co. Liquidator or officer of Co:</p> <p>a) has misapplied, or retained, or become liable or accountable for, money or property of Co.; or</p> <p>b) has been guilty of any misfeasance or breach of trust in relation to Co.,</p> <p>• Tribunal may, on application of OL, or Co. Liquidator, or of any creditor or contributory, inquire into conduct of person, director, manager, Co. Liquidator or officer, & order him to repay or restore money or property, with interest @ Tribunal considers just & proper, or to contribute sum to assets of Co. by way of compensation</p> <p>2) Application be made within 5 years from date of winding up order, or of first appointment of Co. Liquidator in winding up, or of misapplication, retainer, misfeasance or breach of trust, whichever is longer</p> <p>3) Section apply, notwithstanding that matter is one for which person concerned be criminally liable</p>	<p>Where declaration u/s 339 or order u/s 340 is made in respect of firm or body corporate, Tribunal shall also have power to make declaration u/s 339, or pass order u/s 340, as case may be, in respect of any person who was at relevant time partner in that firm or director of that body corporate</p>	<p>1) If it appears to Tribunal in course of winding up by Tribunal, that officer, or any member, of Co. has been guilty of offence in relation to Co, either on application of person interested in winding up or suo motu, direct liquidator to prosecute offender or refer matter to Registrar</p> <p>2) If it appears to Co. Liquidator in course of voluntary winding up that officer, or any member, of Co. has been guilty of offence in relation to Co, he shall report matter to Registrar & furnish information & give access to & facilities for inspecting & taking copies of books & papers, as Registrar may require</p> <p>3) Where report is made to Registrar:</p> <p>a) if he thinks fit, may apply to CG for order to make further inquiry into affairs of Co.</p> <p>b) if he considers that case is one in which prosecution ought to be instituted, he shall report matter to CG, & CG may, after taking legal advice, direct Registrar to institute prosecution</p> <p>• No report be made by Registrar under this clause without first giving accused person reasonable opportunity of making statement in writing to Registrar & of being heard</p> <p>4) If it appears to Tribunal in course of voluntary winding up that officer, or any member, of Co. has been guilty as aforesaid, & no report made by Co. Liquidator to Registrar, Tribunal may, on application of person interested in winding up or suo motu, direct Co. Liquidator to make report</p> <p>5) When prosecution is instituted under this section, it shall be duty of liquidator & of every officer & agent of Co. to give all assistance in connection with prosecution which he is reasonably able to give</p> <p>6) If person fails/ neglects to give assistance, fine - Rs.25,000/- to Rs.1,00,000/-</p>

Winding Up (Chart 7.9)

Part III - Provisions applicable to every mode of Winding Up



Winding Up (Chart 7.10)

Part III - Provisions applicable to every mode of Winding Up

Section 349 - OL to make payments into public account of India	Section 350 - Co. Liquidator to deposit monies into scheduled bank	Section 351 - Liquidator not to deposit monies into private banking account	Section 352 - Co. Liquidation Dividend & Undistributed Assets Account	Section 353 - Liquidator to make returns, etc.
<p>Every OL shall, pay monies received by him as OL of any Co., into public account of India in RBI</p>	<p>1) Every Co. Liquidator of Co. shall, deposit monies received by him in his capacity in scheduled bank to credit of special bank account opened by him in that behalf:</p> <ul style="list-style-type: none"> • If Tribunal considers advantageous for creditors or contributories or Co., it may permit account to be opened in other bank specified by it 	<p>Neither OL nor Co. Liquidator of Co. shall deposit any monies received by him in his capacity as such into private banking account</p>	<p>1) Where Co. is being wound up & liquidator has in his hands or under his control money representing:</p> <ol style="list-style-type: none"> a) dividends payable to any creditor but which had remained unpaid for 6 months after they were declared; b) assets refundable to any contributory which have remained undistributed for 6 months after date on which they become refundable, 	<p>1) If Co. Liquidator made default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good default within 14 days after service on him of a notice requiring him to do so, Tribunal may, on an application made to it by contributory or creditor of Co. or by Registrar, make order directing Co. Liquidator to make good default within time specified in order</p>
Section 354 - Meetings to ascertain wishes of creditors or contributories	<p>2) If any Co. Liquidator retains for more than 10 days sum exceeding Rs.5,000/- or other amount as Tribunal may authorise him to retain, then, unless he explains retention to satisfaction of Tribunal, he shall:</p> <ol style="list-style-type: none"> a) pay interest on amount so retained in excess, @ 12% per annum & also pay such penalty as may be determined by Tribunal; b) be liable to pay expenses by reason of his default; & c) also be liable to have all or such part of his remuneration, as Tribunal consider just & proper, disallowed, or may also be removed from his office 	Section 356 - Powers of Tribunal to declare dissolution of Co. void	<p>• liquidator shall deposit said money into separate special account to be known as Co. Liquidation Dividend & Undistributed Assets A/c in scheduled bank</p>	<p>2) Order may provide all costs of, & incidental to, application be borne by Co. Liquidator</p>
<p>1) In all matters relating to winding up of Co., Tribunal may:</p> <ol style="list-style-type: none"> a) have regard to wishes of creditors or contributories of Co., as proved to it by any sufficient evidence; b) if it thinks fit for purpose of ascertaining those wishes, direct meetings of creditors or contributories to be called, held & conducted in manner as Tribunal may direct; & c) appoint person to act as chairman of any such meeting & to report result thereof to Tribunal <p>2) While ascertaining wishes of creditors, regard shall be had to value of each debt of creditor</p> <p>3) While ascertaining wishes of contributories, regard shall be had to number of votes which may be cast by each contributory</p>	<p>Section 355 - Court, tribunal or person, etc., before whom affidavit may be sworn</p> <p>1) Affidavit required to be sworn under provisions/ this Chapter may be sworn:</p> <ol style="list-style-type: none"> a) in India before any court, tribunal, judge or person lawfully authorised to take & receive affidavits; & b) in any other country before any court, judge or person lawfully authorised to take & receive affidavits or before Indian diplomatic or consular officer <p>2) All tribunals, judges, Justices, commissioners & persons acting judicially in India shall take judicial notice of seal, stamp or signature, of any such court, tribunal, judge, person, diplomatic or consular officer, attached, appended or subscribed to affidavit or to other document for purposes of this Chapter</p>	<p>1) Where Co. has been dissolved, Tribunal may at any time within 2 years of date of dissolution, on application by Co. Liquidator of Co. or by other person who appears to Tribunal to be interested, make order, upon such terms, declaring dissolution to be void, & such proceedings may be taken as if Co. had not been dissolved</p> <p>2) Duty of Co. Liquidator or person on whose application order was made, within 30 days after making of order or further time as Tribunal may allow, to file certified copy of order with Registrar who shall register same, & if Co. Liquidator or person fails, he shall be punishable with fine upto Rs.10,000/- for every day during which default continues</p>	<p>2) Liquidator shall, on dissolution of Co., pay into Co. Liquidation Dividend & Undistributed Assets A/c any money representing unpaid dividends or undistributed assets at date of dissolution</p> <p>3) Any money in Co. Liquidation Dividend & Undistributed Assets A/c, which remains unclaimed for period of 15 years, be transferred to general revenue a/c of CG</p>	<p>3) Nothing in this section shall prejudice operation of any enactment imposing penalties on Co. Liquidator</p>
			Section 357 - Commencement of winding up by Tribunal <p>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.</p>	<p>Section 358 - Exclusion of certain time in computing period of limitation</p> <p>Notwithstanding anything in Limitation Act, 1963, or in any other law for time being in force, in computing period of limitation specified for any suit or application in name & on behalf of Co. which is being wound up by Tribunal, period from date of commencement of winding up of Co. to period of 1 year immediately following date of winding up order shall be excluded</p>

Winding Up (Chart 7.11)

Part IV - Official Liquidators

Section 359 - Appointment of Official Liquidator

1) For purposes of this Act, as it relates to winding up of companies by Tribunal, CG may appoint as many Official Liquidators (OL), Joint, Deputy or Assistant Official Liquidators as it may consider necessary to discharge functions of Official Liquidator
2) Liquidators so appointed be whole-time officers of CG
3) Salary & other allowances be paid by CG

Section 360- Powers & functions of Official Liquidator

1) OL shall exercise such powers & perform such duties as CG may prescribe
2) Official Liquidator may:
a) exercise all or any of powers of Company Liquidator under provisions of this Act; &
b) conduct inquiries or investigations, if directed by Tribunal or CG, in respect of matters arising out of winding up proceedings

Section 361 - Summary procedure for liquidation

1) Where Co. to be wound up under this Chapter-
i) has assets of BV not exceeding Rs.1 Crore; &
ii) belongs to such class of companies as may be prescribed,
• CG may order it to be wound up by summary procedure provided under this Part
2) Where order is made, CG shall appoint Official Liquidator as liquidator of Co.
3) OL shall take into his custody or control all assets, effects & actionable claims to which Co. is or appears to be entitled
4) OL, within thirty days of his appointment, submit report to CG, including report whether in his opinion, any fraud has been committed in promotion/ formation/ management of affairs of Co. or not
5) On receipt of report, if CG is satisfied that any fraud has been committed by promoters, directors or any officer of Co., it may direct further investigation into affairs of Co. & that report shall be submitted
6) After considering investigation report, CG may order winding up may be proceeded under Part I of this Chapter or under provision of this Part

Section 362 - Sale of assets & recovery of debts due to Co.

1) OL shall dispose of all assets whether movable or immovable within 60 days of his appointment
2) OL shall serve notice within 30 days of his appointment calling upon debtors of Co. or contributories, as case may be, to deposit within 30 days with him amount payable to Co.
3) Where any debtor does not deposit amount, CG may, on application made to it by OL, pass orders as it thinks fit
4) Amount recovered by OL shall be deposited in accordance with provisions of section 349

Section 363 - Settlement of claims of creditors by OL

1) OL within 30 days of his appointment shall call upon creditors of Co. to prove their claims, within 30 days of receipt of such call
2) OL shall prepare list of claims of creditors & each creditor shall be communicated of claims accepted or rejected along with reasons to be recorded in writing

Section 364 - Appeal by creditor

1) Creditor aggrieved by decision of OL u/s 363 may file appeal before CG within 30 days of such decision
2) CG may after calling report from OL either dismiss appeal or modify decision of OL
3) OL shall make payment to creditors whose claims have been accepted
4) CG may, at any stage during settlement of claims, if considers necessary, refer matter to Tribunal for necessary orders

Section 365 - Order of dissolution of Co.

1) OL shall, if he is satisfied that Co. is finally wound up, submit final report to:
i) CG, in case no reference was made to Tribunal u/s 364(4)
ii) in any other case, CG & Tribunal
2) CG, or as case may be, Tribunal on receipt of such report shall order that Co. be dissolved
3) Where order is made under sub-section (2), Registrar shall strike off name of Co. from register of companies & publish notification to this effect

CHAPTER XXI of Companies Act, 2013 (Chart 7.12)

Part I - Companies authorised to Register under this Act

Part II - Winding Up of Unregistered Companies

Proviso to Section 370 - Continuation of pending legal proceedings

Provided that execution shall not issue against property or persons of any individual member of Co. on any decree or order obtained in any such suit or proceeding; but, in event of property of Co. being insufficient to satisfy decree or order, order may be obtained for winding up Co.

Section 372 - Power of Court to stay or restrain proceedings

Provisions of this Act with respect to staying & restraining suits & other legal proceedings against Co. at any time after presentation of petition for winding up & before making of winding up order, shall, in case of Co. registered in pursuance of this Part, where application to stay or restrain is by creditor, extend to suits & legal proceedings against contributory of Co.

Section 373 - Suits stayed on winding up order

Where order has been made for winding up, or provisional liquidator has been appointed for, Co. registered in pursuance of this Part, no suit or other legal proceeding shall be proceeded with or commenced against Co. or contributory of Co. in respect of any debt of Co., except by leave of Tribunal & except on such terms as Tribunal may impose

Section 375 - Winding up of Unregistered companies

- 1) Subject to provisions of this Part, unregistered Co. may be wound up under this Act, & all provisions of this Act, with respect to winding up shall apply to unregistered Co., with exceptions & additions
- 2) No unregistered Co. shall be wound up under this Act voluntarily
- 3) Unregistered Co. may be wound up under following circumstances:
 - a) if Co. is dissolved, or has ceased to carry on business, or is carrying on business only for purpose of winding up its affairs;
 - b) if Co. is unable to pay its debts;
 - c) if Tribunal is of opinion it is just & equitable that Co. should be wound up
 - 4) Unregistered Co. deemed to be unable to pay its debts-
 - a) if creditor, to whom Co. is indebted in sum exceeding 1 lakh rupees due, has served on Co., in manner as Tribunal may approve/ direct, demand under his hand requiring Co. to pay sum so due, & Co. has, for 3 weeks after service of demand, neglected to pay sum or to secure or compound, to the satisfaction of creditor;
 - b) if any suit or legal proceeding has been instituted against member for debt/ demand due, or claimed to be due, from Co., or from him as member, & notice in writing been served on Co, but, Co. has not, within ten days after service of notice,-
 - i) paid, secured or compounded for debt or demand;
 - ii) procured suit or other legal proceeding to be stayed;
 - iii) indemnified defendant to his satisfaction against suit or legal proceeding, & against all costs, damages & expenses to be incurred by him by reason of same;
 - c) execution or other process issued on decree or order of any Court or Tribunal in favour of creditor against Co., or any member as such, or any person authorised to be sued as nominal defendant on behalf of Co., is returned unsatisfied in whole or in part;
 - d) otherwise proved to satisfaction of Tribunal that Co. is unable to pay its debts

Section 376 - Power to wind up foreign companies, although dissolved

Where body corporate incorporated outside India which has been carrying on business in India, ceases to carry on business in India, it may be wound up as unregistered Co. under this Part, notwithstanding that body corporate has been dissolved or otherwise ceased to exist as such under or by virtue of laws of country under which it was incorporated

Section 377 - Provisions of Chapter cumulative

- 1) Provisions of this Part, with respect to unregistered companies shall be in addition to and not in derogation of, provisions hereinbefore in this Act contained with respect to winding up of companies by Tribunal
 - 2) Tribunal or Official Liquidator exercise powers or do act in case of unregistered companies which might be exercised or done by Tribunal or Official Liquidator in winding up of companies formed & registered under this Act
- Provided that unregistered Co. shall not, except in event of its being wound up, be deemed to be Co. under this Act, & then only to extent provided by this Part

Section 378 - Saving & construction of enactments conferring power to wind up partnership firm, association or Co., etc., in certain cases

- 1) Nothing in this Part, shall affect operation of any enactment which provides for any partnership firm, LLP or society or co-operative society, association or Co. being wound up, or being wound up as Co. or as unregistered Co., under Companies Act, 1956, or Act repealed by that Act
- 2) Provided that references in any such enactment to any provision contained in Companies Act, 1956 or in any Act repealed by that Act be read as references to corresponding provision, if any, contained in this Act

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Producer Company (Chart 8.1)

Meaning	Section 581B - Objects	Incorporation of Producer Company			
<p>1) "Producer Company" means Body Corporate having objects or activities specified in Section 581B & registered as Producer Company under Companies Act, 1956</p> <p>2) Producer Co is hybrid combination of Private Limited Co & Co-operative Society, it deals basically with produce of its active member for carrying out any of its objects</p>	<p>a) Insurance of producers or their primary produce</p> <p>b) Promoting techniques of mutuality & mutual assistance</p> <p>c) Rendering technical services, consultancy services for promotion of interests of its members</p> <p>d) Welfare measures or facilities for benefit of members</p> <p>e) Manufacture, sale or supply of machinery, equipment or consumables mainly to its members</p> <p>f) Providing education on mutual assistance principles to its members & others</p> <p>g) Production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of members or import of goods or services for their benefit</p> <p>h) Other activity, ancillary or incidental to any activities referred to in clauses (a) to (g) for mutual assistance of members</p>	<p>Section 581C - Formation of Producer Co</p> <p>1) Similar formalities as applicable to Private Co only to be complied</p> <p>2) Formed by any 10 or more individuals, each of them being producer, or any 2 or more producer institutions, or combination of 10 or more individuals & producer institutions</p> <p>3) ROC is satisfied that all requirements of this Act are complied, within 30 days of receipt of docs, register MOA, AOA & issue COI</p> <p>4) Liability of members limited by MOA to amount unpaid on shares</p> <p>5) Submit to the Registrar (MOA & AOA duly signed by subscriber)</p> <p>Section 581K - Procedure & Effect</p> <p>Every shareholder of ISCS be deemed to be shareholder of Producer Co to extent of face value of shares held by him</p>	<p>Section 581D - Membership & Voting Rights of Members</p> <p>1) Members consist solely of individual members - Single Vote irrespective of his shareholding or patronage</p> <p>2) Member consists of producer institutions only - Participation in business of Producer Co in previous year, as may be specified by articles</p> <p>3) Members consist of individuals & producer institutions - Single Vote</p> <p>4) Person, who has any business interest which is not in conflict with business shall become member</p> <p>5) AOA may provide for conditions, manner in which voting rights be exercised by members</p>	<p>Section 581F - Memorandum</p> <p>1) Name of company with "Producer Company Limited" as last words of name of such Co</p> <p>2) State in which Registered Office is to situate</p> <p>3) Main objects be 1 or more of objects specified in Section 581B</p> <p>4) Names & addresses of persons who have subscribed to memorandum</p> <p>5) Amount of share capital with which Producer Co is to be registered</p> <p>6) That liability of its member is limited</p> <p>7) Opposite to Subscriber's name, no. of shares each subscriber takes</p>	<p>Section 581I - Articles Amendment</p> <p>1) Amendment of AOA should be proposed by-</p> <p>a) Not less than 2/3rd of elected directors or</p> <p>b) By not less than 1/3rd of members of Producer Co &</p> <p>c) Adopted by members by Special Resolution</p> <p>2) Copy of amended articles together with copy of SR, duly certified by 2 directors, should be filed with Registrar within 30 days from date of its adoption</p>
<p>Section 581V - Meeting of Board & Quorum</p> <p>1) Board Meeting (BM) shall be held not less than once in every 3 months & at least 4 meetings shall be held every year</p> <p>2) Notice of BM shall be given in writing to every director</p> <p>3) Chief Executive shall give notice as aforesaid not less than 7 days prior to date of meeting</p> <p>4) Quorum for meeting of Board shall be 1/3rd of total strength of directors, subject to minimum of 3</p> <p>5) BM may be called at shorter notice & reasons thereof be recorded</p>	<p>Section 581J - Conversion of Interstate Co-operative Societies (ISCS) to Producer Co</p> <p>1) Any ISCS having objects for multiplicity for states may make application to Registrar for registration as Producer Co, Application to include</p> <p>a) Copy of SR, of not less than 2/3rd of total members of ISCS</p> <p>b) Statement of names & addresses or occupation of directors & Chief Executive & list of members of such ISCS</p> <p>c) Statement indicating engagement in any one or more of objects specified in Section 581B</p> <p>d) Declaration by 2 or more directors certifying correctness of above particulars</p> <p>2) "Producer Company Limited" should form part of its name to show its identity</p> <p>3) On compliance, Registrar shall, within 30 days of receipt of application, certify that ISCS is registered & thereby incorporated as Producer Co</p> <p>4) Upon registration, ROC is required to intimate Registrar of ISCS for deletion from its register</p>	<p>Section 581R - Powers & Functions of Board</p> <p>1) Determination of dividend payable</p> <p>2) Determination of quantum of withheld price & recommend patronage</p> <p>3) Admission of new member</p> <p>4) Pursue & formulate Organisational Policy, objectives, establish specific long-term & annual objectives</p> <p>5) Appointment of Chief Executive & other officers</p> <p>6) Exercise superintendence, direction & control over Chief Executive</p> <p>7) Acquisition or disposal of property</p> <p>8) Investment of funds</p> <p>9) Sanction loan or advance, in connection with business activities to any member, not being director or his relative</p> <p>10) Cause proper books of account to be maintained & placed before AGM with auditor's report & replies on qualifications</p>	<p>Section 581W - Chief Executive and his Function</p> <p>1) It shall have full time Chief Executive to be appointed by Board</p> <p>2) He shall be ex officio director of Board & not retire by rotation</p> <p>3) Qualifications, experience & terms and conditions of service of be determined by Board</p> <p>4) He shall be entrusted with substantial powers of management</p> <p>5) Chief Executive shall manage affairs of Producer Co under general superintendence, direction & control of Board & be accountable for performance</p>	<p>Section 581X - Secretary</p> <p>1) Producer Co having average annual turnover exceeding Rs. 5 crore in each of 3 consecutive FY shall have Whole Time Secretary</p> <p>2) In case of failure to comply with this, Co & every officer in default, shall be punishable with Fine which upto Rs. 500 for every day during which default continues</p> <p>3) In any proceedings against person in respect of offence, under this section, it shall be defence to prove that all reasonable efforts to comply with provisions were taken or financial position of Co was such that it was beyond its capacity to engage whole-time secretary</p>	<p>Section 581ZA - Annual General Meeting</p> <p>1) AGM in each year & time gap between one AGM to another, should not be more than 15 months</p> <p>2) First AGM within 90 days from date of its incorporation</p> <p>3) Notice calling AGM shall be accompanied with -</p> <p>a) Agenda</p> <p>b) Minutes of previous AGM</p> <p>c) Names of candidates for election as Director</p> <p>d) Audited B/S & P&L A/c</p> <p>4) GM shall be called by giving not less than 14 days prior notice in writing</p> <p>5) 1/4th of total no. of members shall be quorum</p>

Producer Company (Chart 8.2)

Finance, Accounts & Audit

Section 581ZS - Re-Conversion of Producer Company into Inter-State Society

Section 581ZE - Books of Accounts	Section 581ZF - Internal Audit	Section 581ZH - Donation and Subscription	Section 581ZI - General & Other Reserves	Section 581ZL - Investment in Companies and Subsidiaries	Section 581ZS - Re-Conversion of Producer Company into Inter-State Society
<p>1) Every Producer Co shall at Registered Office maintain Books of accounts with respect to -</p> <p>a) All sums of money received & expended</p> <p>b) All sales & purchase of goods</p> <p>c) Instruments of liability executed by or on behalf of Producer Co</p> <p>d) All assets & liabilities</p> <p>e) Producer company engaged in production, processing & manufacturing, particulars relating to utilisation of materials or labour or other items of costs</p> <p>2) B/S & P & L A/c of Producer Co shall be prepared, in accordance with provisions contained in Section 211 of Companies Act, 1956</p>	<p>Every Producer Co shall have internal audit at such interval in such manner as may be specified in articles, by Chartered Accountant</p>	<p>1) Producer Co may, by special resolution, make donation or subscription to any institution or individual for purposes of</p> <p>a) Promoting social & economic welfare of producer member or producers or general public</p> <p>b) Promoting mutual assistance principles</p> <p>2) Aggregate amount of all such donation & subscription in any FY shall not exceed 3 % of net profit of Producer Co in FY immediately preceding FY in which donation or subscription was made</p> <p>3) No Producer Co shall make directly or indirectly to any political party or for any political purpose to any person any contribution or subscription or make available any facilities including personnel or material</p>	<p>Every Producer Co shall maintain general reserve (GR) in every FY, in addition to any reserve maintained by it as may be specified in articles</p>	<p>1) GR of any Producer Co shall be invested to secure highest returns available</p> <p>2) Any Producer Co may, for promotion of its objectives acquire shares of another Producer Co</p> <p>3) Any Producer Co may subscribe to share capital of, or enter into any agreement or other arrangement, whether by way of formation of its Subsidiary Co, joint venture or in any other manner with any Body Corporate</p> <p>4) All investments by Producer Co may be made if such investment are consistent with objects of Producer Co</p> <p>5) Maintain register containing particulars of all investments, showing names of companies in which shares have been acquired, number & value of shares</p> <p>6) Invest either by itself or together with its subsidiaries, purchase shares in any other Co, other than Producer Co for amount not exceeding 30 % of aggregate of its paid-up capital & free reserves</p>	<p>1) Producer Co, being erstwhile ISCS, may make application after -</p> <p>a) Passing resolution in GM by not less than 2/3rd of its members present & voting, or</p> <p>b) On request by its creditors representing 3/4th value of its total creditors, to High Court for its re-conversion to ISCS</p> <p>2) High Court shall direct holding meeting of its members or creditors</p> <p>3) Majority in number representing 3/4th in value of creditors, or members, present & voting in person at meeting agree for re-conversion</p> <p>4) Order made by Court shall have no effect until its Certified Copy has been filed with Registrar</p> <p>5) Copy of order shall be annexed to every copy of MOA of Co issued after Certified Copy of order has been filed</p> <p>6) Court may stay commencement or continuation of any suit or proceeding against Co on such terms as Court thinks fit, until application is finally disposed off</p> <p>7) Producer Co which has been sanctioned re-conversion by High Court, shall make application, under Multi-State Co-operative Societies Act, 2002 for its registration as multi-State co-operative society, within six months of sanction by High Court & file report to-</p> <p>a) High Court</p> <p>b) Registrar of companies</p> <p>c) Registrar of co-operative societies under which it has been registered as multi-State Co-operative society</p>
	<p>Section 581ZG - Auditor Duties</p> <p>Auditor shall report on following matters</p> <p>1) Amount of debts due along with particulars of bad debts</p> <p>2) Verification of cash balance & securities</p> <p>3) Details of assets & liabilities</p> <p>4) All transactions which appear to be contrary to provisions of this Part</p> <p>5) Loans given by Producer Co to directors</p> <p>6) Donations or subscriptions given by Producer Co</p>		<p>Section 581ZJ - Bonus Shares</p> <p>Any Producer Co may, upon recommendation of Board & passing of resolution in GM, issue bonus shares by capitalisation of amounts from GR in proportion to shares held by member on date of issue of shares</p>		
			<p>Section 581ZK - Loan to Member</p> <p>1) Board may, provide financial assistance to members of Producer Co by way of -</p> <p>a) Credit facility, to any member, in connection with business of Producer Co, for period not exceeding six months</p> <p>b) Loans & advances, against security specified in articles to any member, repayable within period exceeding 3 months but not exceeding 7 years from date of disbursement</p> <p>2) Loan or advance to Director or his relative shall be granted only after approval by members in GM</p>		

Swapnil Sir & Ankita Ma'am with AIR Of MAY 2018



Producer Company (Chart 8.3)

Section 581G - Articles of Association	Section 581H - Amendment of Memorandum	Section 581Q - Vacation of office by directors	Section 581L Vesting of undertaking in producer company Section 581ZI - General & Other Reserves	Section 581T Liability of directors	Section 581ZD Transferability of shares and attendant rights
<ul style="list-style-type: none"> a) qualifications for member, conditions for continuance or cancellation b) manner of ascertaining patronage & voting right based on patronage c) manner of constitution of Board, its powers & duties, minimum & maximum number of directors d) election of Chairman, term of office of directors & Chairman, manner of voting e) circumstances under which, & manner in which, withheld price is to be determined f) manner of disbursement of patronage bonus g) matters relating to issue of bonus shares out of general reserves h) basis & manner of allotment of equity shares i) amount of reserves, sources from which funds may be raised j) credit, loans or advances which may be granted to a member k) the right of any member to obtain information l) the basis and manner of distribution and disposal of funds j) authorisation for division, amalgamation, merger, creation of subsidiaries k) laying of memorandum & articles of producer company before a special general meeting 	<ul style="list-style-type: none"> a) A producer company shall not alter conditions contained in its memorandum except in the cases, by mode and to extent for which express provision is made in this Act. However, a producer company may, by special resolution, not inconsistent with Section 581B, alter its objects specified in its memorandum b) A copy of amended memorandum, together with a copy of special resolution duly certified by two directors, shall be filed with Registrar within 30 days from date of adoption of resolution 	<ul style="list-style-type: none"> a) office of director of a producer company shall become vacant if - b) he is convicted by a court of any offence involving moral turpitude & sentenced in respect thereof to imprisonment for not less than 6 months c) producer company, in which he is a director, has made a default in repayment of any advances or loans d) he has made a default in repayment of any advances or loans taken from producer company in which he is a director e) default is made in holding election for office of director f) annual general meeting or extraordinary general meeting of the producer company, in which he is a director 	<ul style="list-style-type: none"> a) All properties & assets, of, or belonging to, inter-State co-operative society as on transformation date, shall vest in producer company b) All rights, debts, liabilities, interests, privileges & obligations of the inter-State co-operative society as on transformation date shall stand transferred to, & be rights, debts, liabilities, interests, privileges and obligations of, the producer company c) All sums of money due to inter-State co-operative society immediately before transformation date, shall be deemed to be due to producer company d) amount representing the capital of erstwhile inter-State co-operative society shall form part of capital of producer company e) If, on transformation date, there is pending any suit, arbitration, appeal or other legal proceeding of whatever nature by or against the inter-State co-operative society, the same shall not abate 	<ul style="list-style-type: none"> a) producer company is having right to recover from its director where such director has made any profit b) where producer company incurred a loss or damage as a result of contravention of law 	<ul style="list-style-type: none"> a) shares of member of producer company shall not be transferable b) A member of a producer company may, after obtaining previous approval of Board, transfer whole or part of his shares along with any special rights, to an active member at par value c) Every member shall within 3 months of his becoming a member of Producer Company, nominate, as specified in articles, a person to whom his shares in producer company shall vest in event of his death d) Nominee shall, on death of member, become entitled to all rights in shares of producer company & Board of that Company shall transfer shares of deceased member to his nominee: <ul style="list-style-type: none"> - Provided that in case where such nominee is not producer, Board shall direct surrender of shares together with special rights, if any, to producer company at par value or such other value as may be determined by Board - Where Board of a producer company is satisfied that— <ul style="list-style-type: none"> i) any member has ceased to be a primary producer; or ii) any member has failed to retain his qualifications to be member as specified in articles, Board shall direct surrender of shares together with special rights, if any, to producer company at par value or such other value as may be determined by Board
				Section 581ZB - Share capital Share capital of producer company consist of equity shares only	
				Section 581ZC - Special user rights Producers, who are active members may, if so provided in the articles, have special rights & producer company may issue appropriate instruments to them in respect of such special rights	

Producer Company (Chart 8.4)

Section 581ZN Amalgamation, merger or division, etc., to form new producer companies

- a) A Producer Company may, by a resolution passed at its general meeting, decide to transfer its assets and liabilities, in whole or in part divide itself into two or more new producer companies.
- b) Any two or more producer companies may, by a resolution passed at any general or special meetings of its members, decide to—
 - i) amalgamate & form a new producer company
 - ii) merge one producer company (hereafter referred to as 'merging company') with another producer company (hereafter referred to as 'merged company' - Every resolution of a producer company under this section shall be passed at its general meeting by a majority of total Members with right of vote not less than two-thirds of its Members present & voting - Before passing a resolution under this section, producer company shall give notice thereof in writing together with a copy of proposed resolution to all the Members & creditors who may give their consent
- c) Any Member or creditor, who does not exercise his option within period specified in sub-sec (5), shall be deemed to have consented to resolution.
- d) producer company shall make arrangements for meeting in full or otherwise satisfying all claims of members & creditors who exercise option
- e) Where whole of assets and liabilities of a producer company are transferred to another producer company
- f) registration of first mentioned Company or merging company, as case may be, shall stand cancelled
- g) amalgamation, merger or division of companies under the foregoing sub-sections shall not in any manner whatsoever affect pre-existing rights or obligations
- h) Registrar shall strike off the names of every producer company deemed to have been dissolved

Section 581ZO - Disputes

- Where any dispute relating to the formation, management or business of a producer company arises
- a) amongst members, former members or persons claiming to be members or nominees of deceased members; or
 - b) between a member, former member or a person claiming to be a member, or nominee of deceased member & producer company, its Board of directors, office-bearers, or liquidator, past or present; or
 - c) between producer company or its Board, & any director, office-bearer or any former director, or nominee, heir or legal representative of any deceased director of
 - d) producer company,
 - e) such dispute shall be settled by conciliation or by arbitration as provided under Arbitration and Conciliation Act, 1996

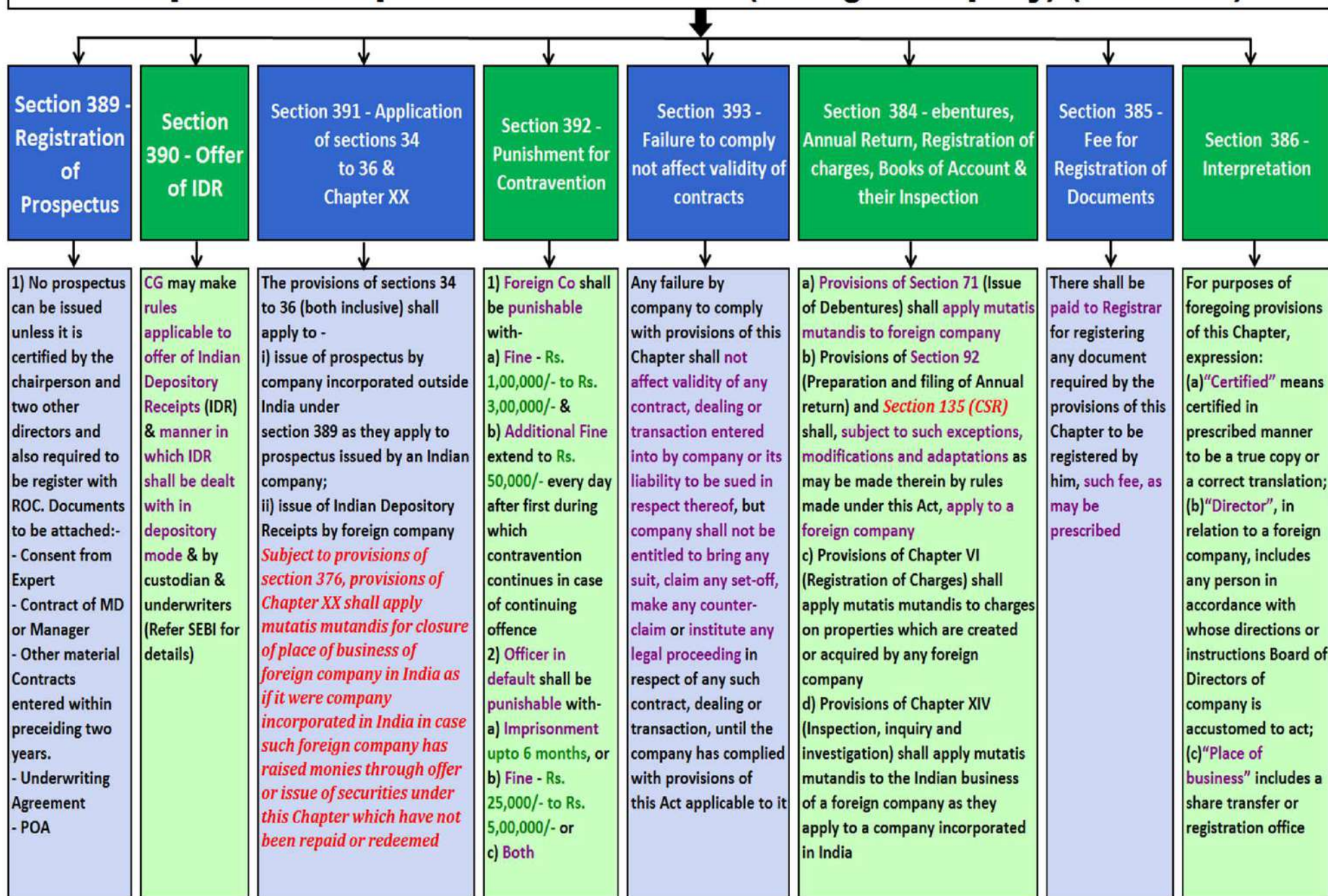
Section 581ZP Striking off name of producer company

- a) If a producer company fails to commence business within 1 year of its registration or ceases to transact business with members or if Registrar is satisfied, after making such inquiry as he thinks fit, that producer company is not carrying any of its objects specified in Section 581B, he shall make an order striking off name of producer company, which shall thereupon cease to exist forthwith
- b) Where Registrar has reasonable cause to believe that a producer company is not maintaining any of mutual assistance principles

Companies Incorporated Outside India (Foreign Company) (Chart 9.1)

Definition of Foreign Co and Application of Act to Foreign Co	Section 380 - Documents to be delivered to Registrar by Foreign Co	Section 381 - Accounts of Foreign Co	Section 382 - Display of name of Foreign Co	Section 383 - Service on Foreign Co	Section 387 - Dating of Prospectus and Particulars	Section 388 - Provision to Expert's Consent & Allotment
<p>Section 2(42) - Definition of Foreign Co</p> <p>Any Co or body corporate incorporated outside India which-</p> <p>a) Place of business in India whether by itself or through an agent, physically or through electronic mode &</p> <p>b) Conducts any business activity in India in any other manner</p> <p>Section 379 - Application of Act to Foreign Co</p> <p><i>Sections 380 to 386 (both inclusive) and sections 392 and 393 shall apply to all foreign companies</i></p> <p><i>Provided that the Central Government may, by Order published in the Official Gazette, exempt any class of foreign companies, specified in the Order, from any of the provisions of sections 380 to 386 and sections 392 and 393 and a copy of every such order shall, as soon as may be after it is made, be laid before both Houses of Parliament</i></p> <p>1) Where not less than 50% PSC, equity or preference or partly equity & partly preference, of Foreign Co is held by -</p> <p>a) 1 or more citizens of India, or</p> <p>b) 1 or more Co/ Bodies Corporate incorporated in India, or</p> <p>c) 1 or more citizens of India & 1 or more Co/ bodies corporate incorporated in India, *whether singly or in aggregate</p> <p>2) Such Co shall comply with provisions of Chapter XXII & other provisions as if it were Co incorporated in India</p>	<p>1) Every Foreign Co is required to deliver to Registrar for registration</p> <p>a) Certified Copy of Charter, Statutes or Memorandum & Articles or Other Instrument defining constitution of Co, if instrument is not in English language, Certified Translation thereof in English Language</p> <p>b) Full address of registered or principal office of Co</p> <p>c) List of Directors & Secretary of Co</p> <p>d) Name & Address of 1 or more persons resident in India authorised to accept on behalf of Co service of process & any notices</p> <p>e) Full address of office of Co deemed to be its principal place of business in India</p> <p>f) Particulars of opening & closing of place of business in India on earlier occasions</p> <p>g) Declaration that none of directors have ever been convicted or debarred from formation of companies & management in India or abroad</p> <p>2) Above informations be filed with Registrar within 30 days of establishment of its place of business in India, in Form FC-1 along with prescribed fees</p>	<p>1) Every Foreign Co shall, in every calendar year -</p> <p>a) Make out Balance sheet & P & L A/c in such form, containing particulars as prescribed, &</p> <p>b) Deliver copy to Registrar</p> <p>2) Foreign Co shall send to Registrar along with documents required to be delivered to him, copy of list of all places of business established by Co in India in prescribed form</p> <p>3) As per Rules*,</p> <p>a) Foreign Co shall prepare FS as per Sch III & along with FS to be filed with Registrar, attach following-</p> <p>i) Statement of RPT</p> <p>ii) Statement of repatriation of profits</p> <p>iii) Statement of transfer of funds (including dividends)</p> <p>b) All documents shall be delivered to Registrar within 6 months of close of FY of Foreign Co to which they relate</p> <p>c) Accounts of Foreign Co pertaining to Indian business operations prepared as per Section 381(1) & Rules thereunder, shall be audited by practicing CA in India or firm or LLP of practicing CAs</p>	<p>Every Foreign Co shall-</p> <p>1) Exhibit on outside of every office or place where it carries on business in India, name of Co & country in which it is incorporated</p> <p>2) Name of Co & country in which Co is incorporated, to be stated in legible English characters in all business letters, bill-heads & letter paper</p> <p>3) State the fact that liability of members is limited</p>	<p>Any process, notice, or other document required to be served on Foreign Co shall be deemed to be sufficiently served, if addressed to any person whose name & address have been delivered to Registrar u/s 380 & left at, or sent by post to, address which has been so delivered to Registrar or by electronic mode</p>	<p>1) Prospectus to be dated & signed [Section 387(1)]:</p> <p>Contains particulars with respect to following matters-</p> <p>a) Instrument constituting or defining constitution of Co</p> <p>b) Enactments or provisions by or under which incorporation of Co was effected</p> <p>c) Address in India where said instrument, enactments or provisions, or copies thereof, & if same are not in English language, certified translation thereof in English language can be inspected</p> <p>d) Date on which & country in which Co would be or was incorporated &</p> <p>e) Whether Co has established place of business in India &, if so, address of its principal office in India</p> <p>2) Points (a), (b) & (c) above shall not apply in case of prospectus issued more than 2 years after date at which Co is entitled to commence business</p>	<p>1) No prospectus offering for subscription in securities of Co incorporated or to be incorporated outside India or when formed will or will not establish, place of business in India</p> <p>a) Where prospectus includes statement purporting to be made by an expert, he has not given, or has before delivery of prospectus for registration withdrawn, his written consent</p> <p>b) If prospectus does not have effect</p> <p>2) Statement shall be deemed to be included in prospectus, if it is contained in any report or memorandum appearing on face thereof or by reference incorporated therein or issued therewith</p>

Companies Incorporated Outside India (Foreign Company) (Chart 9.2)



Miscellaneous Provisions (Chart 10.1)

Section 248 - Power of Registrar to remove name of Co. from register of companies

Sub-section (1)	Rule 3*	Sub-section (2)	Rule 4*	Rule 5*	Rule 8*	Sub-section (3)	Sub-section (6)
<p>1) Where Registrar has reasonable cause to believe:</p> <p>a) Co. failed to commence business within 1 year of its incorporation;</p> <p>b) subscribers to memorandum have not paid subscription which they had undertaken to pay within 180 days from date of incorporation of Co. & declaration u/s 11(1) to this effect not been filed within 180 days of its incorporation;</p> <p>c) Co. not carrying on business or operation for period of 2 immediately preceding financial years & has not made application within such period for obtaining status of dormant Co. u/s 455,</p> <p>• he shall send notice in Form STK-1 to Co. & all directors of Co., of his intention to remove name of Co. from register of companies & requesting them to send representations, within 30 days from date of notice</p>	<p>• Following categories of companies shall not be removed from register of companies:</p> <p>i) listed companies; (ii) vanishing companies; (iii) delisted companies due to non-compliance of listing regulations or listing agreement or other statutory laws;</p> <p>iv) companies where inspection or investigation is ordered & being carried out or actions on order are yet to be taken up or were completed but prosecutions arising out of such inspection or investigation are pending in Court;</p> <p>v) companies where notices u/s 234 of Companies Act, 1956 or section 206 or section 207 of Act have been issued by Registrar or Inspector & reply is pending</p> <p>vi) companies against which prosecution for offence is pending in any court;</p> <p>vii) companies whose application for compounding offences is pending before competent authority</p> <p>viii) Co. which have accepted public deposits either outstanding or Co. is in default in repayment;</p> <p>ix) Co. having charges which are pending for satisfaction;</p> <p>x) Co. registered u/s 25 of Co. Act, 1956 or sec 8</p> <p>• Vanishing Co.: Co registered under Act or previous company law & listed with Stock Exchange which has failed to file its returns with ROC & Stock Exchange for consecutive period of 2 years, & is not maintaining its registered office at address notified with ROC or Stock Exchange & none of its directors are traceable</p>	<p>1) Co. may, after extinguishing all its liabilities, by SR or consent of 75% members in terms of PSC, file application in Form STK-2 along with fee of Rs.5,000/- (as per Rule 4*) to Registrar for removing name of Co. from register of companies & Registrar shall, on receipt of such application, cause public notice</p> <p>2) In case of Co. regulated under special Act, approval of regulatory body constituted or established under that Act shall also be obtained & enclosed with application</p>	<p>• Every application shall accompany no objection certificate from appropriate Regulatory Authority concerned in respect of following companies:</p> <p>i) companies which have conducted or conducting non-banking financial & investment activities,</p> <p>ii) housing finance companies,</p> <p>iii) insurance companies,</p> <p>iv) companies in business of capital market intermediaries,</p> <p>v) companies engaged in collective investment schemes,</p> <p>vi) asset management companies,</p> <p>vii) other Co regulated by other law</p> <p>• Application in Form STK 2 shall be accompanied by-</p> <p>i) indemnity bond notarised by every director in Form STK 3;</p> <p>ii) statement of accounts containing assets & liabilities of company made up to day, not more than 30 days before date of application & certified by CA,</p> <p>iii) Affidavit in Form STK-4 by every director,</p> <p>iv) copy of SR duly certified by each director or consent of 75% of members in terms of PSC as on date of application;</p> <p>v) statement regarding pending litigations</p>	<p>1) Application in Form STK 2 shall be signed by director authorised by Board in their behalf</p> <p>2) Where director concerned does not have registered DSC, physical copy be signed manually & be attached with Form STK 2 while uploading</p> <p>Rule 6*</p> <p>Form STK 2 shall be certified by CA/CS/Cost Accountant in whole time practice</p> <p>Rule 7 *</p> <p>1) Notice u/s 248(1) or (2) be in Form STK 5 or STK 6, as case may be:</p> <p>i) placed on official website of MCA,</p> <p>ii) published in Official Gazette;</p> <p>iii) published in leading English newspaper & at least once in leading vernacular language newspaper, both having wide circulation</p> <p>• Co. shall also place application on its website, if any, till disposal</p>	<p>If person is foreign national or NRI, indemnity bond & declaration shall be notarised or apostilled or consularised</p> <p>Rule 9*</p> <p>Registrar shall cause notice u/s 248(5) of striking off name of Co. from register of companies & its dissolution to be published in Official Gazette in Form STK 7 & same shall also be placed on official website of MCA</p> <p>Rule 10*</p> <p>Application or pending proceeding for striking off or Form-FTE filed with ROC prior to commencement of these rules but not disposed of for want of information or document shall, on its submission, to satisfaction of authority, be disposed of as per rules under Co. Act, 1956</p>	<p>Sub-section (2) shall not apply to Co. registered u/s 8</p> <p>Sub-section (4)</p> <p>Notice issued u/s 248(1)/(2) be published as per Rule 7 & also in Official Gazette for information of general public</p> <p>Sub-section (5)</p> <p>At expiry of time mentioned in notice, Registrar may, unless cause to contrary is shown by Co., strike off its name from register of companies, & publish notice in Official Gazette, & on publication in Official Gazette, Co. shall stand dissolved</p>	<p>1) Registrar, before passing an order u/s 248(5), shall satisfy himself that sufficient provision has been made for realisation of all amount due to Co. & for payment or discharge of its liabilities & obligations by Co. within reasonable time &, if necessary, obtain undertakings from MD, director or other persons in charge of management</p> <p>2) Assets of Co. be available for payment or discharge of all its liabilities & obligations even after date of order removing name of Co. from register</p> <p>Sub-section (7)</p> <p>Liability, of every director/ manager/ other officer & every member of Co. dissolved u/s 248(5), continue & may be enforced as if Co. had not been dissolved</p> <p>Sub-section (8)</p> <p>Nothing in this section shall affect power of Tribunal to wind up Co. name of which has been struck off</p>

* Companies (Removal of Names of Companies from Register of Companies) Rules, 2016

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AIR

AIR



SAKSHI AIRAN

NAHATA, JODHPUR
(BIR)

All India Rankers have Studied From
SWAPNIL PATNI'S CLASSES

Result is just a **Representation**
of your **Hard Work** and our **Direction**

AIR



DEEPA JAIN

DELHI
(AADET)

AIR

3



PARTH GUPTA

DELHI
(AIR 600, AIR 1, 2, 3, 4)

AIR

4



SHIKHA AGARWAL

GUWAHATI
(JOM)

AIR

8



NAITYA BHANUSHALI

VARANASI
(LAW 100)

AIR

11



RAGHAV NAGPAL

DELHI
(LAW)

AIR

14



ARISHA ZAKIR

ALLAHABAD
(TOM)

AIR

24



AAKRITI AGARWAL

DELHI
(LAW)

AIR

27



PARAM SEHGAL

DELHI
(CT)

AIR

29



VRUTANT GAGRANI

LAFIA, NAGPUR
(BIR, AIR 100)

AIR

32



SHARAD MALPANI

DELHI
(AIR 100)

AIR

33



CHARU GOYAL

MUMBAI
(AIR 100, AIR 101)

AIR

40



ANKUR GARG

DELHI
(AIR 100)

AIR

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RAHES MONDRA

KOLKATA
(AIR 100)



Miscellaneous Provisions (Chart 10.2)

Section 249 - Restrictions on making application under section 248 in certain Situations

- 1) Application u/s 248(2) on behalf of Co. shall **not** be made if, at any time **in previous 3 months**, Co.-
 - a) has **changed its name** or **shifted its registered office** from one State to another;
 - b) has made **disposal for value of property or rights held by it**, immediately **before cesser of trade** or otherwise carrying on business, for purpose of disposal for gain in normal course of trading or otherwise carrying on of business;
 - c) has **engaged in any other activity** except one which is necessary for making application, or concluding affairs of Co., or complying with statutory requirement;
 - d) has made application to Tribunal for **sanctioning of compromise/ arrangement & matter** has not been finally concluded; or
 - e) is being **wound up under Chapter XX**
- 2) If Co. **files application u/s 248(2)** in violation of 249(1), it shall be **punishable with fine** which may **extend to Rs.1,00,000/-**
- 3) Application filed u/s 248(2) **be withdrawn** by Co. or **rejected by Registrar** as soon as conditions u/s 249(1) are brought to his notice

Section 250 - Effect of Co. notified as Dissolved

Where a Co. stands dissolved under section 248, it shall **on & from date mentioned in the notice u/s 248(5)** **cease to operate as a Co. & Certificate of Incorporation** issued to it shall be **deemed to have been cancelled from such date except for purpose of realising amount due to Co. & for payment or discharge of liabilities or obligations of Co.**

Section 251 - Fraudulent application for removal of name

- 1) Where it is found that application by Co. u/s 248(2) made with object of **evading liabilities or with intention to deceive creditors or defraud any persons**, persons in **charge of management of Co.** notwithstanding that Co. has been notified as dissolved-
 - a) be **jointly & severally liable to persons who had incurred loss or damage** as result of Co. being notified as dissolved; &
 - b) be **punishable for fraud in manner u/s 447**
- 2) Registrar may also **recommend prosecution** of persons responsible for filing of application u/s 248(2)

Section 252 - Appeal to Tribunal

- 1) **Person aggrieved** by order of Registrar, notifying Co. as dissolved u/s 248, may **file appeal to Tribunal within 3 years** from date of order of Registrar & if **Tribunal is of opinion that removal of name of Co. from register of companies is not justified**, it may **order restoration of name of Co. in register**
 Tribunal shall **give reasonable opportunity of making representations & of being heard to Registrar, Co. & all persons concerned**
 If Registrar is satisfied, that name of Co. has been **struck off from register of companies inadvertently or on basis of incorrect information** furnished by Co. or its directors, which **requires restoration in register**, he may **within 3 years** from date of passing of order u/s 248, **file application before Tribunal seeking restoration of name of such Co.**
- 2) Copy of **order passed by Tribunal** be **filed by Co. with Registrar within 30 days** from date of order & on receipt of order, Registrar shall **restore name of co in register & issue fresh COI**
- 3) If Co., or any member or creditor or workman feels **aggrieved by Co. having its name struck off from register**, make **application, before expiry of 20 years** from publication in Official Gazette of notice u/s 248(5) may, Tribunal, if satisfied, it is just that name of Co. be restored, **order name of Co. to be restored to register, & give directions & make provisions as deemed just for placing Co. & all persons in same position as if name of Co. had not been struck off from register of companies**

Miscellaneous Provisions (Chart 10.3)

Section 403 - Fee for filing, Etc.

(1) Submission within time:

Any document, required to be submitted, filed, registered or recorded, or any fact or info. required or authorised to be registered under this Act, shall be submitted, filed, registered or recorded within time specified in relevant provision on payment of such fee as may be prescribed. **Provided that where any document, fact or information required to be submitted, filed, registered or recorded, as case may be, under sec 92 or 137 is not submitted, filed, registered or recorded, as case maybe, within period provided in those sections, without prejudice to any other legal action or liability under this Act, it may be submitted, filed, registered or recorded, as case maybe, after expiry of period so provided in those sections, on payment of such additional fee as may be prescribed, which shall not be less than 100 Rs. per day & different amts may be prescribed for different classes of companies.**

(2) Penalty or punishment on submission after expiration of above 270 days also:

Where a co. fails or commits any default to submit, file, register or record any document, fact or information under sub-sec (1) before expiry of period specified in relevant sec., co.& officers co. who are in default, shall, without prejudice to liability for payment of fee & additional fee, be liable for penalty or punishment provided under this Act for such failure or default."

Section 404 - Fees Etc. to be credited into a Public Account

All fees, charges & other sums received by any Registrar, Additional, Joint, Deputy or Assistant Registrar or any other officer of CG in pursuance of any provision of this Act shall be paid into the public account of India in RBI

Section 405 - Power of CG to direct companies to furnish information or 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

Section 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 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 ≤ 90 days of end of FY.**
 6. Every Nidhi Company complying with all of above provisions shall file **Form NDH-2 ≤ 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 & 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.**

Miscellaneous Provisions (Chart 10.4)

Section 446A - Factors for determining level of punishment	Section 447 - Punishment for fraud	Section 449 - Punishment for false evidence	Section 450 - Punishment where no specific penalty or punishment is provided	Section 452 - Punishment for wrongful withholding of Property	Section 454 - Adjudication of penalties	Section 455 - Dormant Company	Section 457 - Non disclosure of information	Section 458 - Delegation of CG of its Powers & Functions	Section 459 - Powers of CG or Tribunal to accord approval	Section 460 - Condonation of Delay	Section 461 - Annual Report by CG
<p><i>Court or Special Court, while deciding amount of fine or imprisonment under this Act, shall have due regard to following factors, namely:</i></p> <p>a) size of company; b) nature of business carried on by company; c) injury to public interest; d) nature of the default; & e) repetition of default</p>	<p>1) Any person found to be guilty of fraud involving an amount of at least 10 lakh rupees or 1% of turnover of company, whichever is lower, shall be punishable with -</p> <p>a) Imprisonment - 6 months to 10 years & b) Fine not less than amount involved in fraud, but which may extend to 3 times amount involved in fraud</p> <p>2) If fraud involves public interest, term of imprisonment shall not be less than 3 years</p> <p>3) Where fraud involves amount less than 10 lakh rupees or 1% of turnover of company, whichever is lower, & does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for term which may extend to 5 years or with fine which may extend to Rs. 20 lakh or with both</p>	<p>If any person intentionally gives false evidence</p> <p>1) Upon any examination on oath or solemn affirmation</p> <p>2) In any affidavit, deposition or solemn affirmation</p> <p>Punishable with</p> <p>a) Imprisonment - 3 to 7 years and b) Fine upto Rs. 10 lakh</p>	<p>1) Penalty under this section applies in cases where penalty or punishment is not provided elsewhere in this Act</p> <p>2) Co & officer in default-</p> <p>a) Punishable with Fine upto Rs.10,000/- & b) Where contravention is continuing one, with further fine upto Rs.1,000/- for every day after first during which contravention continues</p> <p>3) List of Contraventions :</p> <p>If Co or any officer or any other person contravenes -</p> <p>a) any of provisions of this Act or b) rules or c) any condition, limitation or restriction</p>	<p>If any officer or employee of Co</p> <p>1) Wrongfully obtains possession of any property including Cash</p> <p>2) Wrongfully withholds it or knowingly applies it for purposes other than those expressed or directed in AOA</p> <p>Punishable with Fine - Rs. 1,00,000/- to Rs. 5,00,000/-</p>	<p>1) CG may appoint as many officers of CG, not below rank of Registrar, as adjudicating officers</p> <p>2) Adjudicating officer may impose penalty on Co & officer who is in default stating any non-compliance or default</p> <p>3) Officer shall give reasonable opportunity of being heard (OOBH)</p> <p>4) Any person aggrieved may prefer appeal to Regional Director (RD)</p> <p>5) Appeal by person aggrieved shall be filed within 60 days</p> <p>6) RD after giving OOBH, pass order as he thinks fit, confirming/ modifying/ setting aside</p>	<p>1) Co is formed & registered under this Act for future project or to hold an asset or intellectual property & has no significant accounting transaction</p> <p>2) Inactive Co shall obtain status of Dormant Co</p> <p>3) Co may make an application in Form MSC-1</p> <p>4) Registrar shall maintain register of Dormant Co</p> <p>5) In case of Co which has not filed financial statements or annual returns for 2 FY consecutively, Registrar shall issue notice to that Co & enter its name in register maintained</p> <p>6) Dormant Co shall have such minimum no. of directors, file such does & pay such annual fee as may be prescribed to Registrar to retain its dormant status in register & may become an active company on application</p>	<p>Registrar, any officer of Government or other person shall not be compelled to disclose to any court, Tribunal or other authority, source from where he got any information which has led CG to order an investigation or is material or relevant in connection with investigation</p>	<p>a) CG may, by notification, & subject to such conditions, limitations & restrictions as may be specified therein, delegate any of its powers or functions under this Act other than power to make rules to such authority or officer as may be specified in notification.</p> <p>b) However, powers to enforce provisions contained in Sec 194 & Sec 195 relating to forward dealing & insider trading shall be delegated to SEBI for listed companies.</p> <p>Copy of every notification issued under sub-section (1) shall, as soon as may be after it is issued, be laid before each House of Parliament</p>	<p>1) CG or Tribunal accord approval, sanction, consent, confirmation or recognition to, or give any direction or grant any exemption</p> <p>2) In case of contravention of any such condition, limitation or restriction, rescind or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption</p>	<p>1) Where any application to be made to CG in respect of any matter</p> <p>2) Where any document required to be filed with Registrar is not made/ filed within time specified therein, that Government may, for reasons to be recorded in writing, condone delay</p>	<p>CG shall cause a general annual report on the working and administration of this Act to be prepared and laid before each House of Parliament within one year of close of the year to which the report relates</p>
<p>Section 446B - Lesser penalties for OPC or small companies</p> <p>Notwithstanding anything contained in this Act, if OPC or small company fails to comply with provisions of section 92(5), section 117(2) or section 137(3), such company & officer in default of such company shall be punishable with fine or imprisonment or fine & imprisonment, as case may be, which shall not be more than one-half of fine or imprisonment or fine and imprisonment, as case may be, of minimum or maximum fine or imprisonment or fine and imprisonment, as the case may be, specified in such sections</p>	<p>Section 448 - Penalty for false statements</p> <p>If any person makes statement in any return, report, certificate, financial statement, prospectus, statement or other document required</p> <p>1) which is false in any material particulars, knowing it to be false</p> <p>2) which omits any material fact, knowing it to be material</p> <p>Punishable as per Section 447</p>	<p>Section 451 - Punishment in case of repeated default</p> <p>If Co or officer commits an offence punishable either with fine or imprisonment & where same offence is committed for 2nd or subsequent occasions within 3 years, then, punishable with twice amount of fine for such offence in addition to any imprisonment for that offence</p>	<p>Section 453 - Punishment for improper use of "Limited" or "Private Limited"</p> <p>Persons trading or carrying business under any name or title, of which word "Limited" or words "Private Limited" are last words shall be punishable with fine which shall not be less than Rs. 500/- to Rs. 2,000/- for every day for which name has been used</p>	<p>Section 456 - Protection of action taken in good faith</p> <p>No suit, prosecution or other legal proceeding shall lie against Government or any officer of Government or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder, or in respect of publication by or under authority of Government or such officer, of any report, paper or proceedings</p>							

Miscellaneous Provisions (Chart 10.5)

Section 462 - Power to Exempt Class or Classes of Companies from Provisions of this Act	Section 463 - Power of Court to grant relief	Section 464 - Prohibition of association or partnership of person exceeding certain numbers	Section 466 - Dissolution of Company Law Board and Consequential Provisions	Section 467 - Power of CG to amend Rules	468 - Powers of Central Government to Make Rules Relating to Winding Up.	Section 469 - Power of CG to make Rules	Section 470 - Power to remove Difficulties
<p>1) CG may in the public interest, by notification direct that any of provisions of this Act,—</p> <p>a) shall not apply to such class or classes of companies; or</p> <p>b) shall apply to class or classes of companies with such exceptions, modifications & adaptations as may be specified in notification.</p> <p>2) A copy of every notification proposed to be issued under sub-sec (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of 30 days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses</p> <p>3) In reckoning any such period of 30 days as is referred to in sub-section (2), no account shall be taken of any period during which the House referred to in subsection (2) is prorogued or adjourned for more than four consecutive days</p> <p>4) Copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament</p>	<p>1) If it appears to court hearing case that officer of Co is or may be liable in respect of negligence, default, breach of duty, misfeasance or breach of trust but he has acted honestly & reasonably</p> <p>a) he ought fairly to be excused</p> <p>b) court may relieve him, either wholly or partly</p> <p>2) In criminal proceeding, court shall have no power to grant relief from any civil liability</p> <p>3) No court shall grant any relief unless it has served notice in manner specified by it, required Registrar & such other person, if any, as it thinks necessary, to show cause why such relief should not be granted</p>	<p>1) No association or partnership consisting of more than such number of persons as may be prescribed shall be formed for purpose of carrying on any business that has for its object acquisition of gain, unless it is registered as Co</p> <p>2) Number of persons which may be prescribed shall not exceed 100 [Companies(Misc) Rules, 2014 provides no. of persons 50]</p> <p>3) Exceptions -</p> <p>a) Hindu undivided family</p> <p>b) an association or partnership, if it is formed by special Acts</p> <p>3) Contravention shall be punishable with fine upto Rs. 1 lakh & shall also be personally liable for all liabilities</p>	<p>1) Notwithstanding anything contained in section 465, Board of Company Law Administration constituted under the Companies Act, 1956 shall stand dissolved on constitution of Tribunal & Appellate Tribunal: Provided that until Tribunal & Appellate Tribunal is constituted, Chairman, Vice-Chairman & Members of Company Law Board immediately before constitution of Tribunal & Appellate Tribunal, who fulfil qualifications & requirements provided under this Act regarding appointment as President or Chairperson or Member of Tribunal or Appellate Tribunal, shall function as President, Chairperson or Member of Tribunal or Appellate Tribunal: Provided further that every officer or other employee, who had been appointed on deputation basis to Company Law Board, shall, on such dissolution,—</p> <p>(i) become officer or employee of Tribunal or the Appellate Tribunal, if he fulfils qualifications & requirements under this Act; and</p> <p>(ii) stand reverted to his parent cadre, Ministry or Department, in any other case</p> <p>Provided also that every officer and the other employee of CLB, employed on regular basis by that Board, shall become, on & from such dissolution officer & other employee, respectively, of Tribunal or Appellate Tribunal with same rights & privileges as to pension, gratuity & other like benefits as would have been admissible to him if he had continued to serve that Board and shall continue to do so unless and until his employment in Tribunal or Appellate Tribunal is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the Tribunal or the Appellate Tribunal, as the case may be</p>	<p>1) CG may, by notification, alter any of regulations, rules, Tables, forms & other provisions contained in any of Schedules to this Act</p> <p>2) No such alteration in Table F (AOA) of Schedule I shall apply to any Co registered before date of such alteration</p> <p>3) Every alteration made by CG shall be laid as soon as may be after it is made before each House of Parliament</p>	<p>1) CG shall, make rules consistent with Code of Civil Procedure, 1908 providing for all matters relating to winding up of companies, which by this Act, are to be prescribed, & may make rules providing for all such matters, as may be prescribed.</p> <p>2) In particular, & without prejudice to generality of foregoing power, such rules may provide for all or any of following matters, namely:-</p> <p>i) as to mode of proceedings to be held for winding up of a co by Tribunal under this Act;</p> <p>ii) for holding of meetings of creditors & members in connection with proceedings under sec 230;</p> <p>iii) for giving effect to provisions of this Act as to the reduction of capital;</p> <p>iv) generally for all applications to be made to Tribunal under provisions of this Act;</p> <p>v) holding & conducting of meetings to ascertain wishes of creditors & contributories;</p> <p>vi) settling of lists of contributories & rectifying of register of members where required, & collecting & applying assets;</p> <p>vii) Payment, delivery, conveyance, surrender or transfer of money, property, books or papers to liquidator;</p> <p>viii) Making of calls; and</p> <p>ix) Fixing of a time within which debts and claims shall be proved</p> <p>3) All rules made by Supreme Court on matters referred to in this section as it stood immediately before commencement of this Act & in force at such commencement, shall continue to be in force, till such time rules are made by CG & any reference to High Court in relation to winding up of a company in such rules shall be construed as a reference to Tribunal</p>	<p>1) CG may, by notification, make rules for all or any of matters which by this Act are required to be prescribed or in respect of which provision is to be made by rules</p> <p>2) Any rule made as above may provide that contravention thereof shall be punishable with fine upto Rs. 5,000/- & where contravention is continuing one, further fine upto Rs. 500/- for every day after first during which such contravention continues</p>	<p>1) If any difficulty arises in giving effect to provisions of this Act, CG by order published in Official Gazette, make such provisions, not inconsistent with provisions of this Act, as appear to it to be necessary or expedient for removing difficulty</p> <p>2) No such order shall be made after expiry of 5 years from date of commencement</p>

Special Courts (Chart 11.1)

Introduction	DEFINITION	Section 439 - Offences to be non-cognizable	Section 442 - Mediation and Conciliation Panel	Section 443 - Power of CG to appoint Company Prosecutors	Section 444 - Appeal against Acquittal	Section 445 - Compensation for Accusation without Reasonable Cause	Section 435 - Establishment of Special court
<p>1) This concept has assumed greater importance especially in recent times as this will help in speedy trial of all offences under Act</p> <p>2) It will facilitate in good corporate governance & stricter implementation of Law, stakeholders will be benefited at large</p> <p>3) With intent to punish guilty, Legislature has brought in, Special Courts in Companies Act, 2013</p> <p>4) Act focuses on establishment & jurisdiction of Special Court</p> <p>5) Companies Act, 2013 overrides related provisions of Cr.PC</p>	<p>Clause (iv) of Sub-section (29) of section 2 defines that court means the special court established under section 435.</p>	<p>"Non-cognizable offence" is offence for which police officer may not arrest without warrant</p> <p>1) Offences referred to in Section 212(6) of Companies Act, 2013, which deals with investigation into affairs of Co by SFIO, shall be cognizable & non-bailable</p> <p>2) Non-bailable nature of offences deter offender & others from committing further & similar offences</p> <p>3) Every offence under Companies Act, 2013 other than mentioned above, shall be deemed to be Non-Cognizable</p> <p>4) <u>Cognizance of offence:</u> Court shall take cognizance of offence under this Act which is alleged to have been committed by any Co or any officer thereof only on written complaint of -</p> <p>a) Registrar, b) Shareholder or member of Co, or c) Person authorised by CG in that behalf</p> <p><i>In case of Govt Co. court shall take cognizance of any offences under this Act which is alleged to have been committed by any Co. or any officer thereof on complaint in writing of person authorized by CG in that behalf</i></p> <p>5) Presence of officers shall not be necessary unless court requires his personal attendance at trial (except Liquidator)</p>	<p>1) "Mediation" means intervention of some third party in dispute with intention to resolve dispute</p> <p>2) "Conciliation" means process of adjusting or settling disputes in friendly manner through extra judicial means</p> <p>3) <u>Constitution & working of Mediation & Conciliation Panel:</u></p> <p>a) CG shall maintain panel of experts to be known as Mediation & conciliation panel for mediation between parties during pendency of any proceedings before CG/ Tribunal/ Appellate Tribunal (AT) under this Act (It is important that case should be pending before CG/ Tribunal/ AT under this Act)</p> <p>b) Panel shall consist of such number of experts having such qualification as may be prescribed</p> <p>c) <u>Application can be made by-</u></p> <p>i) Any parties to proceedings ii) CG/ Tribunal/ AT before which any proceeding is pending d) CG/ Tribunal/ AT before which any proceeding is pending may appoint 1 or more experts from Panel as may be deemed fit</p> <p>e) Fee & other terms & conditions shall be as may be prescribed</p> <p>g) Panel shall dispose of matter within period of 3 months from date of such reference & forward its recommendations to CG/ Tribunal/ AT</p> <p>h) Any party aggrieved may file objections to CG/ Tribunal/ AT as case may be</p>	<p>1) CG may appoint 1 or more persons, as Company prosecutors for conduct of prosecutions arising out of this Act</p> <p>2) Persons so appointed as Co prosecutors shall have all powers & privileges conferred on Public Prosecutors appointed u/s of Cr. PC.</p>	<p>1) CG may, in any case arising under this Act, direct -</p> <p>a) any Company Prosecutor, or b) Authorise other person, to present appeal from order of acquittal passed by any court, other than High Court</p> <p>2) Appeal presented by such prosecutor or other person shall be deemed to have been validly presented to appellate court</p>	<p>provisions of Section 250 of Code of Criminal Procedure, 1973 shall apply mutatis mutandis (with such changes as may be necessary) to compensation for accusation without reasonable cause before Special Court or Court of Session</p>	<p>(1) The CG may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.</p> <p>(2) A Special Court shall consist of—</p> <p>(a) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of 2 years or more; & (b) a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences, who shall be appointed by CG with concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.</p>

Team SPC Felicitating AIR's of MAY 2018



Special Courts (Chart 11.2)

SECTION 436 - OFFENCES TRIABLE BY SPECIAL COURTS

a) Offences triable by the special court: All offences specified under sub-sec (1) of sec 435 shall be triable only by the Special Court established for the area in which the registered office of co in relation to which offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned;

b) Authorise for detention of an accused in the custody: Where a person accused of, or suspected of the commission of, an offence under this Act is forwarded to a Magistrate such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding 15 days in whole where such Magistrate is a Judicial Magistrate & 7 days in the whole where such Magistrate is an Executive Magistrate: Provided that where such Magistrate considers that detention of such person upon or before expiry of period of detention is unnecessary, he shall order such person to be forwarded to Special Court having jurisdiction;

c) Vested with same power as that provided under the Cr. P.C: Special Court may exercise, in relation to the person forwarded to it under clause (b), same power which a Magistrate having jurisdiction to try a case may exercise under sec 167 of Code of Criminal Procedure, 1973 in relation to an accused person who has been forwarded to him under that sec &

d) Cognizance of offence by special court: A Special Court may, upon perusal of police report of facts constituting an offence under this Act or upon a complaint in that behalf, take cognizance of that offence without accused being committed to it for trial.

2) Special Court to try an offence other than an offence under this Act: When trying an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.

3) Summary Trial

a) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Special Court may, if it thinks fit, try in a summary way any offence under this Act which is punishable with imprisonment for term not exceeding 3 years

b) Provided that in case of any conviction in summary trial, no sentence of imprisonment for a term exceeding 1 year shall be passed

c) Provided further that when at commencement of, or in course of, summary trial, it appears to Special Court that nature of the case is such that sentence of imprisonment for a term exceeding 1 year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, Special Court shall, after hearing parties, record order to that effect & thereafter recall any witnesses who may have been examined & proceed to hear or rehear case in accordance with procedure for regular trial

SECTION 437 - Appeal & Revision

High Court may exercise, so far as may be applicable, all powers conferred by Chapters XXIX & XXX of Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within local limits of jurisdiction of High Court were a Court of Session trying cases within local limits of jurisdiction of High Court

SECTION 438 - Application of Code to Proceedings before Special Court

Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to proceedings before a Special Court & for purposes of said provisions, Special Court shall be deemed to be a Court of Session or court of Metropolitan Magistrate or a Judicial Magistrate of First Class, as case may be & person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

Section 440 - Transitional Provisions

Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be tried by a Court of Session or the Court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be exercising jurisdiction over the area, notwithstanding anything contained in Code of Criminal Procedure, 1973: Provided that nothing contained in this section shall affect the powers of High Court under sec 407 of Code to transfer any case or class of cases taken cognizance by a Court of Session or the Court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be under this sec

SECTION 441 - COMPOUNDING OF CERTAIN OFFENCES

1) Who may compound offence:

a) Notwithstanding anything contained in Code of Criminal Procedure, 1973, any offence punishable under this Act not being an offence punishable with imprisonment only, or punishable with imprisonment & also with fine, may, either before or after institution of any prosecution, be compounded by—

i) Tribunal; or

ii) where maximum amt of fine which may be imposed for such offence does not exceed 5L Rs, by Regional Director or any officer authorised by CG

on payment or credit, by co or, as case may be, officer, to CG of such sum as that Tribunal or Regional Director or any officer authorised by CG, as the case may be, may specify:

b) Provided that sum so specified shall not, in any case, exceed the maximum amt of fine which may be imposed for offence so compounded:

c) Provided further that in specifying sum required to be paid or credited for compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee u/s 403(2) shall be taken into account

d) Provided also that any offence covered under this sub-sec by any co. or its officer shall not be compounded if investigation against such co has been initiated or is pending under this Act

2) Restriction: offence committed by accompany or its officer within a period of 3 years from date on which a similar offence committed by it or him was compounded under this sec.

Explanation, For purposes of this sec a) any second or subsequent offence committed after expiry of a period of 3 years from date on which offence was previously compounded, shall be deemed to be a first offence;

b) "Regional Director" means a person appointed by the Central Government as a Regional Director for the purposes of this Act.

3) Filing of application to Registrar:

a) Application to Whom? Every application for compounding of an offence shall be made to Registrar who shall forward same, together with his comments thereon, to Tribunal or Regional Director or any officer authorised by CG as case may be.

b) Intimation of compounding of offence: Where any offence is compounded under this sec, whether before or after institution of any prosecution, an intimation thereof shall be given by co. to Registrar within 7 days from date on which the offence is so compounded

c) No prosecution shall be instituted: Where any offence is compounded before institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by Registrar or by any shareholder co or by any person authorised by CG against offender in relation to whom the offence is so compounded

d) Compounding of any offence to be bought to the notice court: Where compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by Registrar in writing, to notice of court in which prosecution is pending & on such notice of compounding of offence being given, co or its officer in relation to whom offence is so compounded shall be discharged

4) CG to authorise for dealing with a proposal for compounding of offence: Tribunal or Regional Director or any officer authorised by CG, as case may be, while dealing with a proposal for compounding of an offence for a default in compliance with any provision of this Act which requires a co or its officer to file or register with, or deliver or send to, Registrar any return, account or other document,

5) In case of failure in compliance: Any officer or other employee of co who fails to comply with any order made by Tribunal or Regional Director or any officer authorised by CG under sub-sec(4) shall be punishable with imprisonment for a term which may extend to 6 months, or with fine not exceeding 1 lakh rupees, or with both.

6) Offences which can be compounded: Notwithstanding anything contained in Code of Criminal Procedure, 1973,—

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, in accordance with procedure laid down in that Act for compounding of offences;

b) any offence which is punishable under this Act with imprisonment only or with imprisonment & also with fine shall not be compoundable.

7) Restriction: No offence specified in this section shall be compounded except under & in accordance with provisions of this sec

National Company Law Tribunal and Appellate Tribunal (Chart 12.1)

Introduction	Section 407 - Definitions	Section 409 - Qualification of President and members of Tribunal	Section 410 - Constitution of Appellate Tribunal	Section 412 - Selection of members of Tribunal and Appellate Tribunal	Section 413 - Term of office of President, Chairperson and other members
<p>1) In past number of quasi judicial forums and tribunals for settlement</p> <p>2) Co act 2013 to constitute NCLT and NCLAT</p> <p>3) NCLT will replace CLB, BIFR and AAIFR</p> <p>4) will have judicial and technical members</p> <p>5) To bring all lawsuits pertaining to companies under one law</p>	<p>a) Chairperson = chairperson of AT</p> <p>b) Judicial member = member of tribunal or AT, includes president or chairperson</p> <p>c) Member = judicial/technical of tribunal or AT, includes president or chairperson</p> <p>d) President = president of tribunal.</p> <p>e) Technical mem = member of trib/ AT appointed as such</p>	<p>1) President- is/has been judge of HC for 5 yrs</p> <p>2) Judicial member-is/has been a judge of HC or b) District judge for at least 5 years or c) advocate of a court for at least 10 years [for (c) period during which person held judicial office or office of member of tribunal or any post under union/state, req special knowledge after becoming advocate will also be included]</p> <p>3) Technical Member- a) has been a member of Indian Corp law services or Indian legal services for at least 15 years, and has been holding the rank of Secretary or Additional Secretary to the Government of India</p> <p>b/c/ d) is/has been in practice as CA/CS/CWA for at least 15 years</p> <p>e) is a person of proven ability, integrity & standing having special knowledge & professional experience of not less than 15 years in industrial finance, industrial management, industrial reconstruction, investment & accountancy</p> <p>f) Presiding officer of Labour Court, tribunal or National trib under Industrial dispute act for at least 5 years</p>	<p>1) CG to constitute an AT known as NCLAT consisting a chairperson & judicial & technical members (not exceeding 11)</p> <p>2) NCLAT when constitute will be for hearing appeals against tribunal or of the NFRA</p> <p>3) MCA constitutes NCLAT with effect from 1st June 2016</p>	<p>1) President of Tribunal & Chairperson & Judicial member of AT appointed after consultation with Chief Justice of India.</p> <p>2) <i>Members of Tribunal & Technical Members of Appellate Tribunal shall be appointed on recommendation of Selection Committee consisting of -</i></p> <p>a) <i>Chief Justice of India or his nominee - Chairperson;</i></p> <p>b) <i>senior Judge of Supreme Court or Chief Justice of High Court - Member;</i></p> <p>c) <i>Secretary in MCA - Member; &</i></p> <p>d) <i>Secretary in Ministry of Law and Justice - Member</i></p> <p>3) <i>Where in meeting of Selection Committee, there is equality of votes on any matter, Chairperson shall have a casting vote</i></p> <p>4) Secretary, MCA shall be Convener of Selection Committee</p> <p>5) Selection Committee shall determine its procedure for recommending persons</p> <p>6) No appointment shall be invalid merely by reason of vacancy or any defect in constitution of Selection Committee</p>	<p>1) Term - President & member shall hold office for 5 years + eligible for reappointment for another term of 5 yrs</p> <p>2) Age bar on holding office-</p> <p>a) President- 67 years</p> <p>b) Member- 65 years* min age req for being member = 50 years* provided member may retain his lien with parent cadre or ministry while holding office for max 1 year</p> <p>Appellate Tribunal Term- Chairperson & member shall hold office for 5 years + eligible for reappointment for another term of 5 years. Restriction on holding of office</p> <p>a) Chairperson- 70 years</p> <p>b) Member- 67 years* min age req for being member = 50 yrs* provided member may retain his lien with parent cadre or ministry while holding office for max 1 year</p>
	Section 408 - Constitution of NCLT		Section 411 - Qualifications		
	<p>1) CG to constitute a tribunal known as NCLT, having a president and members (judicial/technical) as deemed necessary</p> <p>2) MCA constitutes NCLT with effect from 1st June 2016</p>		<p>1) Chairperson- is/has been Judge of Supreme court or Chief Justice of High court.</p> <p>2) Member- a) Judicial- is/has been a Judge of HC or is judicial member of tribunal for 5 years</p> <p>b) Technical - <i>Technical member shall be person of proven ability, integrity & standing having special knowledge & professional experience of not less than 25 years in industrial finance, industrial management, industrial reconstruction, investment & accountancy</i></p>		

National Company Law Tribunal and Appellate Tribunal (Chart 12.2)

Section 414 - Salary, Allowances & other T&C of service of members	Section 416 - Resignation of member	Section 417 - Removal of Members		Section 418 - Staff of Tribunal & Appellate Tribunal	Section 419 - Number of Benches	
<p>a) Salary, allowance & other T&C of members of tribunal & AT as prescribed</p> <p>b) Provided, neither the salary & allowance nor the other T&C shall be varied to their disadvantage after their appointment</p>	<p>1) President, Chairperson or any other member may resign from office by giving notice addressing CG</p> <p>2) Provided president, chairperson, member shall continue to hold office until expiry of 3 months from the date of receipt of notice by CG or successor appointed or expiry of term, whichever is EARLIEST</p>	<p>1) Power of CG- CG after consulting chief Jus of India, remove president, chairperson or member who has been</p> <p>a) abjudged an insolvent. or</p> <p>b) Convicted of an offense, that involves moral turpitude or</p> <p>c) physically or mentally incapable</p> <p>d) acquired such financial or other interest as is likely to affect prejudicially his functions</p> <p>e) abused his position as to render his continuance in office prejudicial to public interest. Provided for points (b) to (e), no removal until reasonable opp of being heard (ROBH) given</p> <p>2) Grounds for Removal- Without prejudice to subsec (1), they shall not be removed from office except by an order made by CG on grounds of proved misbehaviour or incapacity after an enquiry made by judge of SC nominated by Chief Justice of India, in which president, chairperson, member have been informed of charges against them & ROBH given</p>	<p>3) Suspension by CG in concurrence with CJI- CG may, with concurrence of CJI, suspend from office, President, Chairperson or member in respect of whom reference has been made to Judge of SC under subsection (2) until the CG has passed orders</p> <p>4) CG to make regulations for inquiry procedure - CG shall, after consultation with SC, make rules to regulate the procedure for inquiry on ground of misbehaviour or incapacity referred in subsec(2)</p>	<p>1) Providing Staff to discharge Function- The CG in consultation with Tribunal & AT, provide, with such officers and other employees as may be necessary for exercise of powers and discharge of functions.</p> <p>2) Supervision of President on the discharge of function- officers & employees shall discharge their functions under general superintendence and control of president, chairperson or other member to whom superintendence & control delegated.</p> <p>3) Terms of service to be regulated by respective rules- Salaries & allowances & other condition of service of officer and employee as prescribed</p>	<p>1) Number of benches- Such number as specified by CG.</p> <p>2) Presiding of principal bench- principal bench shall be at New Delhi which shall be presided over by President of Tribunal</p> <p>3) Power exercisable by benches-</p> <p>a) Power of Tribunal exercisable by benches consisting of 2 members- Judicial and Technical</p> <p>b) Provided that is shall be competent for members of tribunal authorised in this behalf to function as a bench consisting single judicial member & exercise powers of a tribunal in respect of class of cases or matters relating to such class of cases, as the president may, by general or specific order specify.</p> <p>c) Provided further that if at any stage of hearing of any such matter, it appears that it ought to be heard by a bench consisting of 2 members, case may be transferred to such bench.</p>	<p>4) Constitution of Special benches - president shall, for disposal of any case related to rehabilitation, revival, restructuring of co's, constitute one or more special benches consisting of 3 or more members, majority necessarily being Judicial Members.</p> <p>5) Decision where members differ in opinion- If members differ in opinion on any point, it shall be decided according to the majority, if there is majority, but if members are equally divided, they shall state the point on which they differ & case shall be referred by president for hearing on such points by one or more members of tribunal & such point decided according to majority of members who have heard case, including those first heard it.</p>
<p>Section 415 - Acting President and Chairperson of tribunal or Appellate Tribunal</p> <p>1) In event of occurrence of any vacancy in office of president/chairperson by death, resignation or otherwise, senior most member will act as president/chairperson, until new appointed.</p> <p>2) When president/chairperson unable to discharge his functions owing to absence, illness or other causes, senior most member will discharge the functions, until the date president/chairperson resumes his duties.</p>						

National Company Law Tribunal and Appellate Tribunal (Chart 12.3)

Section 420 - Orders of Tribunal	Section 421 - Appeal from Orders of Tribunal	Section 422 - Expeditious disposal by tribunal and Appellate Tribunal	Section 423 - Appeal to Supreme Court	Section 424 - Procedure before Tribunal and Appellate Tribunal	Section 425 Power to punish for Contempt	Section 426 Delegation of Power
<p>1) Reasonable opportunity of being heard- The tribunal after giving the parties ROBH, pass such order as it thinks fit</p> <p>2) Amendments in order</p> <p>a) The tribunal may at any time within 2 years from date of order, with a view to rectify any mistake apparent from the record, amend any order passed by it.</p> <p>b) no such amendment in respect of any order against which an appeal has been preferred.</p> <p>3) To send copy of order- Tribunal shall send copy of every order passed to all concerned parties.</p>	<p>1) Appeal to an order- any person aggrieved by order of tribunal may prefer an appeal to AT.</p> <p>2) Requires consent of Parties- No appeal shall lie to AT from an order made by the tribunal with consent of parties.</p> <p>3) Period of filing of appeal-</p> <p>a) shall be filed within 45 days from the date the copy of order is made available to the aggrieved (with form and fees).</p> <p>b) additional 45 days if AT satisfied that sufficient cause for delay.</p> <p>4) pass order after giving ROBH- after ROBH, AT may pass such order thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.</p> <p>5) AT shall send copy of order to tribunal and parties to appeal</p>	<p>1) Speedy disposal- Every application or petition presented before tribunal or appeal filed before AT, shall be dealt and disposed of as expeditiously as possible and within 3 months from the date of its presentation before tribunal or AT.</p> <p>2) Reasons to be recorded for delay- If not disposed of within the time specified in sub-section (1), record reasons & president or chairperson may grant an extension of not exceeding 90 days.</p>	<p>1) Any person aggrieved by order of AT may file appeal to SC within 60 days of receipt of order of AT.</p> <p>2) Additional 60 days if SC satisfied that sufficient cause of delay.</p>	<p>1) Tribunal regulate their own procedure based on natural Justice - Tribunal & AT, while disposing any case or appeal, be bound by procedures of Code of Civil Procedures, 1908, but shall be guided by principles of Natural Justice & subject to other provisions & rules of this Act, have power to regulate their own procedure</p> <p>2) Vested with same power as that of Civil court-</p> <p>a) Summon & enforcing the attendance of any person & examining him under oath</p> <p>b) requiring discovery & production of documents</p> <p>c) receiving evidence on affidavits</p> <p>d) Subject to Sec 123 & 124 of Indian Evidence Act- requisitioning any public document or record</p> <p>e) issuing commission for the examination of witness/document</p> <p>f) dismissing a representation for default or deciding it ex parte</p> <p>g) setting aside any order of dismissal of any representation for default or any order passed by it ex-parte</p> <p>h) any other matter</p> <p>3) Nature of Decree and its execution- any order made by tribunal or AT may be enforced as if it were decree made by a court in a suit pending & it shall be lawful for tribunal or AT to send for execution of its order to court within local limits of whose jurisdiction</p> <p>a) order against CO- Registered office of Co situate or</p> <p>b) order against any other person- person concerns voluntarily resides or carries on business or personally works for gain.</p> <p>4) Nature of proceedings- all proceedings before tribunal and AT deemed to be judicial proceedings.</p>	<p>The tribunal & AT shall have same jurisdiction, powers and authority in respect of contempt of themselves as HC has & may exercise powers under Contempt of Court Act, subject to modification</p> <p>a) Reference to HC shall be construed as including a reference to tribunal and AT.</p> <p>b) Reference to advocate general shall be construed as reference to such law officer as CG specify</p>	<p>Tribunal or AT by general or specific order direct any of its officer or employees or any other person to inquire into matter connected with any proceedings</p> <p>Section 427 President, members, officers to be public servants</p> <p>Deemed to be Public servants within meaning of Section 21 of IPC.</p>

National Company Law Tribunal and Appellate Tribunal (Chart 12.4)

Section 428 - Protection of action taken in good faith	Section 429 - Power to seek assistance of Chief Metropolitan Magistrate	Section 430 - Civil court not to have jurisdiction	Section 432 - Right to legal representation	Section 434 - Transfer of certain pending proceedings
<p>No suit, prosecution or legal proceedings shall lie against tribunal, president, member, officer, AT, chairperson, member of AT, liquidator or any other person for discharge of function in respect of any loss, damage or likely loss, by an act done in good faith or in pursuance of this act</p>	<p>1) tribunal in any proceeding relating to sick company or winding up of any co., in order to take custody or under its control any property, book of accounts or other documents, request in writing, the Chief Metropolitan Magistrate, Chief Judicial Magistrate or district collector having jurisdiction any such property, books or other documents are found to take possession thereof and CMM, CJM and DC may-</p> <p>a) Take possession of such property, books of accounts or other doc.</p> <p>b) cause same to be entrusted tribunal or person authorised.</p> <p>2) Steps for securing Compliance- for purpose of subsection(1), the CMM, CMJ and DC may take steps and use of such force, as necessary.</p> <p>3) No act of magistrate shall be called in question in any court or before any authority on any ground whatsoever</p>	<p>No civil court shall have jurisdiction to entertain any suit or proceedings or to grant injunction in respect of any matter which tribunal or AT is empowered to determine</p>	<p>A party to any proceedings or appeal before tribunal or AT, may either appear in person or authorise 1 or more CA/CS/CWA/legal practitioner to present his case</p>	<p>1) On such date as notified by CG-</p> <p>a) all matters pending before Company Law Administration, Co Act 1956 shall stand transferred to tribunal</p> <p>b) any person aggrieved by any decision or order of CLB may file an appeal to HC within 60 days from date of communication of decision (HC court may allow to file appeal not exceeding 60 days, if sufficient cause for delay)</p> <p>c) all proceedings under Companies Act, 1956, pending immediately before such date before any District Court or High Court, shall stand transferred to Tribunal</p> <p><i>Proceedings relating to cases of voluntary winding up of company where notice of resolution by advertisement has been given u/s 485(1) of Companies Act, 1956 but company has not been dissolved before 1st April, 2017 shall continue to be dealt with in accordance with provisions of Companies Act, 1956 & Companies (Court) Rules, 1959</i></p> <p><i>Thus, now pending proceedings of voluntary winding up will be proceeded as it is i.e. it will be conducted as per old provisions of companies act 1956 by court</i></p> <p>2) CG may make rules consistent with provisions of ACT to ensure timely transfer of all matters, proceedings or cases pending before CLB or court to tribunal under this section</p>
		Section 431 - Vacancy not to invalidate acts or proceedings	Section 433 - Limitation	
		<p>No act or proceedings of tribunal or AT can be questioned or shall be invalid merely on ground of existence of any vacancy or defect in constitution.</p>	<p>The provision of Limitation Act, 1963 shall apply to proceedings in tribunal and AT.</p>	

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Swapnil Sir & All India Rankers - May 2018

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VIVANT GABRAH
AIR- 31



ANKUR GARG
AIR- 40



RAHUL MOONDRA
AIR- 48



SHIKHA AGARWAL
AIR- 4



CHARU GOYAL
AIR- 33

DEEPA JAIN
AIR- 1



RASHEDI PILLAI
AIR- 19



ANKITA AGARWAL
AIR- 34

BINAYA JAIN
AIR- 44



**Swapnil Sir
and
AIR-May 2018**

Section 247 - Valuation by Registered Valuers (Chart 13.1)

247(1)	247(2)	247(3)	247(4)
Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under provision of this Act, it shall be valued by a person having such qualifications & experience & registered as a valuer in such manner, on such terms and conditions as may be prescribed & appointed by Audit committee or in its absence by BOD of that company.	Valuer appointed under sub-sec (1) shall,- (a) Make an impartial, true & fair valuation of any assets which may be required to be valued; (b) Exercise due diligence while performing functions as valuer; (c) Make the valuation in accordance with such rules as may be prescribed; & (d) Not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during a period of 3 yrs prior to his appointment as valuer or 3 yrs after valuation of assets was conducted by him.	If a valuer contravenes provisions of this section or rules made thereunder, valuer shall be punishable with fine which shall not be less than 25,000 Rs. but which may extend to 1L Rs. Provided that if 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 1 year and with fine which shall not be less than 1L Rs. but which may extend to 5L Rs.	Where a valuer has been convicted under sub-sec (3), he shall be liable to- (i) refund remuneration received by him to company; & (ii) pay for damages to company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

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Section 247 - Valuation by Registered Valuers (Chart 13.3)

COMPANIES (REGISTERED VALUERS AND VALUATION) RULES, 2017

Temporary surrender	Functions of a Valuer	Eligibility for registered valuers organisations	Conditions of Recognition	Cancellation or suspension of certificate of registration or recognition	Complaint against a registered valuer or registered valuers org.	Committee to advise on valuation matters	Punishment for contravention
<p>1) Registered valuer may temporarily surrender his registration certificate in accordance with the bye-laws or regulations, as the case may be, of registered valuers organisation & on such surrender, valuer shall inform authority for taking such info. on record</p> <p>2) Registered valuers org. 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 7 days from approval of application for temporary surrender or revival, as the case may be</p> <p>3) Every registered valuers org. shall place, on its website, in a searchable format, names & other details of its valuers members who have surrendered or revived their memberships</p>	<p>A valuer shall conduct valuation required under the Act as per these rules & he may conduct valuation as per these rules if required under any other law or by any other regulatory authority.</p> <p style="text-align: center;">Transitional Arrangement</p> <p>Any person who may be rendering valuation services under the Act, on the date of commencement of these rules, may continue to render valuation services without a certificate of registration under these rules upto 31st January, 2019</p>	<p>1) An organisation that meets requirements under sub-rule (2) may be recognised as a registered valuers org. for valuation of a specific asset class or asset classes if -</p> <p>i) it has been registered under sec. 25 of the Companies Act, 1956 (1 of 1956) or sec. 8 of the Companies Act, 2013 (18 of 2013) with sole object of dealing with matters relating to regulation of valuers of an asset class or asset classes and has in its bye laws the requirements specified in Annexure-III; ii) a professional institute established by an Act of Parliament enacted for purpose of regulation of a profession;</p> <p>2) The organisation referred to in sub-rule (1) shall be recognised if it -</p> <p>a) conducts educational courses in valuation, in accordance with syllabus determined by authority. b) grants membership or certificate of practice to individuals, who possess qualifications & experience as specified. c) conducts training for individual members before a certificate of practice is issued to them. d) lays down & enforces a code of conduct for valuers who are its members e) provides for continuing education of individuals who are its members; f) monitors & reviews functioning, including quality of service, of valuers who are its members; & g) has a mechanism to address grievances & conduct disciplinary proceedings against valuers who are its members.</p>	<p>a) at all times continue to satisfy eligibility requirements</p> <p>b) maintain a register of members who are registered valuers, which shall be publicly available;</p> <p>c) admits only individuals who possess educational qualifications & experience requirements</p> <p>d) make such reports to authority as may be required by it;</p> <p>e) comply with any directions, including with regard to course to be conducted by valuation org.</p> <p>f) be converted or registered as company under sec. 8 of the Act, with governance structure & bye laws specified</p> <p>g) shall have the governance structure & incorporate in its bye laws the requirements</p> <p>h) display on its website, status & specified details of every registered valuer being its valuer members including action taken against him; & i) comply with such other conditions as may be specified by authority.</p>	<p>The authority may cancel or suspend the registration of a valuer or recognition of a registered valuers organisation for violation of the provisions of the Act, any other law allowing him to perform valuation, these rules or any condition of registration or recognition, as the case may be in the manner specified in rule 17.</p>	<p>A complaint may be filed against a registered valuer or registered valuers organisation before the authority in person or by post or courier along with a non-refundable fees of Rs. 1000 in favour of the authority & authority shall examine complaint & take such necessary action as it deems fit</p> <p style="text-align: center;">Valuation Standards</p> <p>CG shall notify & may modify (from time to time) valuation standards on recommendations of the Committee set up under rule 19.</p>	<p>The CG may constitute a Committee to be known as "Committee to advise on valuation matters" to make recommendations on formulation & laying down of valuation stds. & policies for compliance by companies & registered valuers.</p> <p>Committee shall comprise of-</p> <p>a) a Chairperson who shall be a person of eminence & well versed in valuation, accountancy, finance, business administration, business law, corporate law, economics;</p> <p>b) 1 member nominated by Ministry of Corporate Affairs;</p> <p>c) 1 member nominated by Insolvency and Bankruptcy Board of India;</p> <p>d) 1 member nominated by Legislative Department;</p> <p>e) upto 4 members nominated by CG representing authorities which are allowing valuations by registered valuers;</p> <p>f) upto 4 members who are representatives of registered valuers org's, nominated by CG</p> <p>g) upto 2 members to represent industry & other stakeholder nominated by the CG in consultation with authority;</p> <p>h) Presidents of, ICAI, the ICSI, the Institute of Cost Accountants of India as ex-officio members.</p> <p>iii) The Chairperson & Members of the Committee shall have a tenure of 3 years & they shall not have more than 2 tenures.</p>	<p>punishable in accordance with sub-section (3) of section 469 of the Act</p> <p style="text-align: center;">Punishment for false statement</p> <p>a) If in any report, certificate or other document required by, or for, the purposes of any of the provisions of the Act or the rules made thereunder or these rules, any person makes a statement,— which is false in any material particulars, knowing it to be false; or b) Which omits any material fact, knowing it to be material, he shall be liable under section 448 of the Act.</p>

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