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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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Team SPC Felicitating AIR’s of CA INTERMEDIATE NOV-2018
Appointment & Qualification of Directors (Chart 1.3)

Section 152 - 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(6) & (7), shall not apply to -
1) 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;
2) 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

Section 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(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 Ndhi 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
   OR/SR is required for his appointment or re-appointment
   In case of Section 8 Companies, BOD is to decide whether deposit is to be forfeited or refunded
   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

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
4) Casual vacancies of such directors shall be filled as per Section 161(4)
5) 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 capital is held by Govt. Co.
(iii) Private Company
(iv) Companies whose articles provide for election of directors by ballot
Appointment & Qualification of Directors (Chart 1.5)

Section 164 - Disqualifications for Appointment of Director

Section 164(1) Person cannot be Director if -
- Unsound mind declared by court
- Undischarged Insolvent
- Applied to be adjudicated as insolvent and application is pending
- Convicted by court, of offence involving moral turpitude or otherwise:
  - Imprisonment
  - Term of Disqualification
  - 6 months or more but less than 7 yrs
  - More than 7 yrs 
  - Forever Life time
- Order passed by Court or Tribunal
- Fails to deposit in arrears or shares for continuous 6 months from due date
- Enters into Related Party Transactions u/s 188 during last preceding 5 Years
- Not complied with Section 152(3) i.e does not hold DIN

Section 164(2) Company fails -
- To file:
  - Financial Statements
  - Annual Returns for any period of 3 financial years
- To repay:
  - Deposits or pay interest thereon
  - Any arrears of any director
  - Any dividend declared failure "continues for 1 year or more"

Section 164(2) is not applicable to Government company

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 134 violation
      - Does not disclose interest
      - Participates in Board Meeting in which he is interested
   d) disqualified by Court/ Tribunal's Order
   e) convicted by court, of any offence moral turpitude or otherwise,
      imprisonment for not less than 6 mths
   f) He is removed in pursuance of provisions of this Act
   g) Ex-officio director (a person who holds directorship
      by virtue of holding some other position)

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 liable for offences
   occurred during his tenure
8) 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
9) 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
    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)**

- **Section 165** - Number of directorship
  - 1) Individual shall hold maximum of 20 directorships including any alternate directorship
  - 2) For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included
  - 3) Out of limit of 20, maximum no. of Public Co. in which he is director shall not exceed 10
  - 4) Private Co. that is either holding or subsidiary Co. of public Co. be included in limit of Public Co.
  - 5) If contravention, Fine - Rs. 5,000/- to Rs. 25,000/- for every day after first during which contravention continues

- **Section 166** - Duties of Directors
  - 1) Act as per AOA, subject to this Act
  - 2) Act in good faith, to promote objects of Co. for benefit of its members, Co. its employees, shareholders
  - 3) Exercise duties with due, reasonable care, skill & diligence, exercise independent judgment
  - 4) Not involve in situation in which he may have interest that conflicts with Co's interest
  - 5) Not achieve undue gain to himself or his relatives, partners, associates, if found guilty be liable to pay amount of gain to Co.
  - 6) Not assign his office, if assignment made be void
  - 7) If contravention, Fine - Rs. 1,00,000/- to Rs. 5,00,000/-

- **Section 170** - Register of Directors and KMP and their shareholding
  - 1) Company shall keep register containing particulars of its directors & key managerial personnel (KMP) at its registered office
  - 2) It shall include details of securities held by each in company or its holding, subsidiary, subsidiary of its holding companies or associate companies
  - 3) Co. shall file return in Form DIR-12 with ROC within 30 days whenever it appoints director or KMP

- **Section 171** - Members right to inspect
  - 1) Register u/s 170(1) shall be open for inspection during business hrs
  - 2) Members have right to take extracts & copies on request
  - 3) Provided within 30 days of cost
  - 4) Open for inspection at every AGM
  - 5) Made accessible to person attending meeting
  - 3) If any inspection during business hours is refused, or if any copy required as above is not sent within 30 days from date of receipt of such request, Registrar shall on an application made to him order immediate inspection, supply of copies

- **Section 172** - Punishment
  - If company contravenes any sections from 149 to 171 (both inclusive) & for which no specific punishment is provided, company & every officer of in default shall be punishable with fine of Rs. 50,000/- to Rs. 5,00,000/-

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Not Applicable to:
- (i) Govt. Co. in which entire PSC is held by CG or by SG or by CG & 1 or more SG

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**Designed By: Swapnil Patni**

**Charts can also be downloaded from:**

[www.swapnilpatni.com](http://www.swapnilpatni.com)
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

To MD or WTD or Manager
- If there is only 1 MD/WTD/Manager: Maximum 5% of Net Profits
- If there is More than 1 MD/WTD/Manager: Maximum 10% of Net Profits

To Other Directors
- If there is no MD/WTD/Manager: Maximum 3% of Net Profits
- If there is MD/WTD/Manager: Maximum 1% of Net Profits

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 is required

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

Calls in Arrears to be reduced

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

With Permission of CG

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

Follow the Slab in (A)

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 2.3)

**Section 198 - Calculation of profits**
While calculating Net Profits for the purpose of Section 197 -

- **Section 198(2)** Items to be credited to P&L
- **Section 198(3)** Items not to be credited to P&L
- **Section 198(4)** Items to be deducted
- **Section 198(5)** Items not to be deducted

- 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 or 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
  - c) bonus/commission paid or 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
  - 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) outgoings 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
  - q) any compensation, damages or payments made like VRS
  - r) loss on Sale of Undertaking except Loss on Sale of Fixed Asset in Ordinary Course
  - s) change in carrying amount of an asset or liability recognised in equity reserves including surplus in P&L or 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 re-statement of financial statements.

**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 ES5-5M, 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:
SPC KE SAARE AIR 01 NOV-2018
EK HI SAATH EK HI PLATFORM PAR
Do You Want To Be The Next?
# Meetings of Board and its Powers (Chart 3.2)

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

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<th>Nomination and Remuneration Committee</th>
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<td>Section 177(1) to 177(8)</td>
<td>Section 177(9) and 177(10)</td>
<td>Section 178 (1) to (4)</td>
<td>Section 178(5) and (6)</td>
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<td><strong>Objective</strong></td>
<td>To provide independent reassurance to Board relating to effectiveness of internal Control &amp; transparency &amp; accuracy of Financial Reporting</td>
<td>1) Form for Directors &amp; Employees to report genuine concerns 2) Provide adequate safeguards against victimisation of Persons</td>
<td>To ensure that remuneration arrangements support strategic aims of Business &amp; enable recruitment, motivation &amp; retention of Senior Executives</td>
<td>1) To consider and resolve grievances of security holders of company 2) To protect interests of all security holders, not merely equity investors</td>
</tr>
<tr>
<td><strong>Applicability</strong></td>
<td>1) Every Listed Public Company 2) Public Companies having- a) PSC Rs.10 Cr or more or b) Turnover Rs.100 Cr or more or c) Outstanding loans, debentures, deposits exceeding Rs.50 Cr in aggregate</td>
<td>1) Every Listed Public Company 2) Companies which accept Deposits from public 3) Companies which borrowed money from banks &amp; public financial institutions in excess of Rs. 50 Cr</td>
<td>1) Every Listed Company 2) Public Companies having- a) PSC Rs.10 Cr or more or b) Turnover Rs.100 Cr or more</td>
<td>Company which consists of more than 1000 shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year</td>
</tr>
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<td><strong>Composition</strong></td>
<td>Minimum - 3 Directors 1) Independent Directors - Majority &amp; Majority &amp; chairperson shall have ability to read and understand Financial Statements</td>
<td>Audit Committee itself 1) In case of other companies, Board shall nominate a director to play role of Audit Committee</td>
<td>Minimum - 3 Directors Non-executive 1) Independent Directors ≥ one half</td>
<td>Members shall be decided by Board 1) Chairperson shall be Non-executive Director</td>
</tr>
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<td><strong>Functions</strong></td>
<td>1) Recommend for appointment, remuneration &amp; terms of appointment of auditor of Co. 2) Review &amp; monitor auditor’s independence &amp; performance, &amp; effectiveness of audit process 3) Examination of financial statement &amp; auditors’ report thereon; 4) Approval or any subsequent modification of transactions of company with related parties 5) Scrutiny of inter-corporate loans &amp; 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 &amp; use of funds raised through public offers and related matters</td>
<td>1) Deal with matter of employees &amp; 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</td>
<td>1) Formulate criteria for determining qualifications; positive attributes &amp; independence of director recommended to Board policy, relating to remuneration for directors, KMP &amp; other employees 2) While formulating policy ensure that - a) level &amp; 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 &amp; meets appropriate performance benchmarks &amp; c) remuneration to directors, KMP &amp; senior management involves balance between fixed &amp; incentive pay reflecting short &amp; long-term performance objectives appropriate to working of company &amp; its goals</td>
<td></td>
</tr>
<tr>
<td><strong>Disclosure</strong></td>
<td>In Board's Report</td>
<td>On website and in Board's Report</td>
<td>In Board's Report</td>
<td>Not specified</td>
</tr>
<tr>
<td><strong>Other Points</strong></td>
<td>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 &amp; have full access to information contained in records 2) Audit Committee is empowered to: a) call for comments of auditors about: i) internal control systems, ii) scope of audit, including observations of auditors, iii) review of financial statement before their submission to Board, b) discuss any related issues with internal &amp; statutory auditors &amp; management 3) Auditors of company &amp; KMP shall have right to be heard in meetings of Audit Committee whenever it considers auditor's report but shall not have right to vote</td>
<td>Employees &amp; 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</td>
<td>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</td>
<td>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</td>
</tr>
</tbody>
</table>

Section 178(2) shall not apply to Government company except with regard to appointment of -Senior management & 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

<table>
<thead>
<tr>
<th>Section</th>
<th>Approval needed if limit is &quot;not exceeded&quot;</th>
<th>Approval needed if limit is exceeded</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 180 - Borrow Funds</td>
<td>BR in BM</td>
<td>SR</td>
</tr>
<tr>
<td>Section 186 - Invest in Securities of Body Corporate</td>
<td>UBR in BM</td>
<td>SR</td>
</tr>
<tr>
<td>Section 186 - Give loan/guarantee/security to person or Body Corporate</td>
<td>UBR in BM</td>
<td>SR</td>
</tr>
</tbody>
</table>
**Meetings of Board and its Powers (Chart 3.4)**

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

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

**Designed By:** Swapnil Patni
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- Expertise knowledge in BIS-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
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, or give any guarantee or provide any security in connection with any loan taken by — a) any director of the 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 conditions that — a) a SR is passed by Co. in GM. b) Loans are utilised by borrowing company for its principal business activities.

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

1) All investments made/held by a Co. in its own 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 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 MMB - 4.

4) Directors/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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ALL INDIA RANKERS - NOV 2018
एक ही साथ, एक ही मंच पर
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 assurance 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 IAS-SSM, 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 3.9)

#### Comparison between Section 184, 185, 188

<table>
<thead>
<tr>
<th>Point of Difference</th>
<th>Section 184 - Disclosure of Interest by Director</th>
<th>Section 185 - Loan to Directors</th>
<th>Section 188 - Related Party Transactions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Company</td>
<td>2% of PSC&lt;br&gt;Director + Relative + Any Director</td>
<td>25% of Voting Power&lt;br&gt;Director + Any Director</td>
<td>2% of PSC&lt;br&gt;Director + Relative</td>
</tr>
<tr>
<td>By whom?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private Company</td>
<td>2% of PSC&lt;br&gt;Director + Relative</td>
<td>Director + Member&lt;br&gt;Director</td>
<td>Member/ Director&lt;br&gt;Director + Relative</td>
</tr>
<tr>
<td>By whom?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Firm</td>
<td>Director/ Relative is Partner&lt;br&gt;NA</td>
<td>Director/ Relative is Partner&lt;br&gt;NA</td>
<td>Director/Manager/ Relative is Partner&lt;br&gt;NA</td>
</tr>
<tr>
<td>Person on whose advice, directions or instructions director or manager is accustomed to act</td>
<td>NA</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>Any body corporate whose BOD, MD or manager is accustomed to act in accordance with advice, directions or Instructions of director or manager</td>
<td>NA</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

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9011861796 / 9011864340  

**Prepared By:**  
- Swarangtee Deolekar
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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:
  - Listed Public Company
    - Paid Up Share Capital Rs. 10 Cr or more
    - Turnover Rs. 100 Cr or more
    - In aggregate, O/s loans or debentures or deposits Exceeding Rs. 50 Cr
  - Public Companies

**Section 177(9) - Formation of Vigil Mechanism**
- Vigil mechanism shall be formed -
  - Listed Company
  - Companies which accept deposits from public
  - Companies which have borrowed money from banks & public financial institutions in excess of Rs. 50 crore

**Section 178 - Nomination & Remuneration Committee**
- Listed Public Company
  - Paid Up Share Capital Rs. 10 Cr or more
- Public Companies
  - Turnover Rs. 100 Cr or more
  - In aggregate, O/s loans, debentures & deposits Exceeding Rs. 50 Cr

**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
  - Listed Company
    - Paid Up Share Capital Rs. 10 Cr or more
  - Other Public Company
    - Company other than above mentioned companies, which has paid up share capital of Rs. 5 cr or more shall have whole-time company secretary

**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

(Similar to Audit Committee)

**Section 151 - Small Shareholders Director**
- Listed company, may upon notice of not less than:
  - One thousand small shareholders
  - One-tenth of total number of such shareholders
  - whichever is lower, have small shareholders’ director elected by small shareholders

"Small Shareholders" means shareholder holding shares of nominal value of not more than twenty thousand rupees or such other prescribed sum
# Forms covered in Chapter 1, 2, 3 of our notes

## Forms - Appointment and Qualification of Directors

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

## Forms - Meetings of Board and its Powers

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

## Forms - Appointment & Remuneration of Managerial Personnel

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Form No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>MR - 1</td>
<td>Return of Appointment of Key Managerial Personnel</td>
</tr>
<tr>
<td></td>
<td>(e-form)</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>MR - 2</td>
<td>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 &amp; Commission or remuneration to director</td>
</tr>
<tr>
<td></td>
<td>(e-form)</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>MR - 3</td>
<td>Secretarial Audit Report</td>
</tr>
</tbody>
</table>
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CA INTERMEDIATE
All India Rankers of Nov 2018.
Studied EIS-SM & FM From CA Swapnil Patni
Inspection, Inquiry & Investigation (Chart 4.4)

**Section 220 - Seizure of Documents by Inspector**

a) Where in course of an investigation under this Chapter, the Inspector has reasonable grounds to believe that books and papers of, or relating to, any company or other body corporate or managing director or manager of such company are likely to be destroyed, mutilated, altered, falsified or secreted, the Inspector may enter b) seize books and papers as he considers necessary c) custody books & papers seized under this section for such period not later than conclusion of investigation

**Section 221 - Freezing of Assets of Company on Inquiry & Investigation**

1) Order of the Tribunal: Where it appears to the Tribunal, on a reference made to it by CG or in connection with any inquiry or investigation into affairs of a company under this Chapter or on any complaint made by such number of members as specified under sub-section (1) of sec 244 or a creditor having ₹1 lakh amount outstanding against the company or any other person having a reasonable ground to believe that the removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of the company or its shareholders or creditors or in public interest, it may order direct that such transfer, removal or disposal shall not take place during such period not exceeding 3 years as may be specified in the order or may take place subject to such conditions and restrictions as the Tribunal may deem fit.

2) Punishment in case of contravention of order of Tribunal: In case of any removal, transfer or disposal of funds, assets, properties of the company in contravention of the order of the Tribunal under sub-section (1), the company shall be punishable with fine which shall not be less than ₹1 lakh rupees but which may extend to ₹25 lakh Rs & every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 3 years or with fine which shall not be less than ₹50,000 but which may extend to five lakh rupees, or with both.

**Section 222 - Imposition of Restrictions Upon Securities**

1) Tribunal may by order put restrictions upon securities: Where it appears to the Tribunal, in connection with any investigation under sec 216 or on any complaint made by any person in this behalf, that there is good reason to find out relevant facts about any securities issued or to be issued by a company & Tribunal is of opinion that such facts cannot be found out unless certain restrictions, as it may deem fit, are imposed, Tribunal may, by order, direct that securities shall be subject to such restrictions as it may deem fit for such period not exceeding 3 years as may be specified in order.

2) Punishment in case of contravention of order to an order: Where securities in any company are issued or transferred or acted upon in contravention of an order of Tribunal under sub-section (1), the company shall be punishable with fine which shall not be less than ₹1 lakh rupees but which may extend to ₹25 lakh Rs & every officer of the company 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 ₹25000 rupees but which may extend to 5 lakh rupees, or with both.

**Section 223 - Inspector’s Report**

An Inspector appointed under this Chapter (Chapter XIV- Inspection, Inquiry and Investigation) may, and if so directed by CG shall, submit interim reports to that Government, & on conclusion of investigation, shall submit a final report to CG

A copy of report may be obtained by members, creditors or any other person whose interest is likely to be affected by making an application in this regard to CG

**Section 224 - Action to be Taken in Pursuance of Inspector’s Report**

If, from Inspector’s report, made u/s 223, it appears to CG that any person has, in relation to company or in relation to any other body corporate or other person whose affairs have been investigated under this Chapter been guilty of any offence for which he is criminally liable, CG may prosecute such person for such offence and it shall be duty of all officers & other employees of company or body corporate to give CG necessary assistance.

**Section 225 - Expenses of Investigation**

1) Expenses of, & incidental to, an investigation by Inspector appointed by CG under this Chapter other than expenses of investigation u/s 214 shall be defrayed in first instance by CG, but shall be reimbursed by following persons to extent mentioned below, namely:
   a) any person who is convicted on prosecution instituted, or who is ordered to pay damages or restore any property in proceedings brought, u/s 224, to extent that he may in same proceedings be ordered to pay said expenses as may be specified by court convicting such person, or ordering him to pay such damages or restore such property, as case may be;
   b) any company or body corporate in whose name proceedings are brought as aforesaid, to the extent of amount or value of any sums or property recovered by it as a result of such proceedings;
   c) unless, as a result of investigation, prosecution is instituted u/s 224, i) any company, body corporate, managing director or principal managing director dealt with by report of Inspector; &
   ii) the applicants for investigation, where inspector was appointed u/s 213, to such extent as CG may direct;
   2) Any amount for which a company or body corporate is liable under clause (b) of sub-section (1) shall be a first charge on sums or property mentioned in that clause.
Inspection, Inquiry & Investigation (Chart 4.5)

Section 226 - Voluntary Winding up of Company Etc, Not to stop Investigation Proceedings
An investigation under this Chapter may be initiated notwithstanding, and no such investigation shall be stopped or suspended by reason only of, the fact that—
  a) an application has been made under section 241;
  b) the company has passed a special resolution for voluntary winding up; or
  c) any other proceeding for the winding up of the company is pending before the Tribunal.

Section 227 - Legal Advisers and Bankers Not to disclose certain Information
Nothing in this Chapter shall require the disclosure to the Tribunal or to CG or to Registrar or to an inspector appointed by CG
  a) by a legal adviser, of any privileged communication made to him in that capacity, except as respects name address of his client; or
  b) by the bankers of any company, body corporate, or other person, of any information as to the affairs of any of their customers, other than such company, body corporate, or person

Section 228 - Investigation Etc. of Foreign Company
Provisions of this Chapter (Chapter XIV- Inspection, Inquiry & Investigation) shall apply mutatis mutandis to inspection, inquiry or investigation in relation to foreign companies

Section 229 - Penalty for Furnishing False Statement, Mutilation, Destruction of Documents
Where a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation,—
  a) destroys, mutilates or falsifies, or conceals or tampers or unauthorisedly removes, or is a party to the destruction, mutilation or falsification or concealment or tampering or unauthorised removal of, documents relating to the property, assets or affairs of the company or the body corporate
  b) makes, or is a party to the making of, a false entry in any document concerning company or body corporate
  c) provides an explanation which is false or which he knows to be false he shall be punishable for fraud in manner as provided in section 447
<table>
<thead>
<tr>
<th>Sub-section (1)</th>
<th>Sub-section (2)</th>
<th>Sub-section (3)</th>
<th>Sub-section (4)</th>
<th>Sub-section (5)</th>
<th>Sub-section (6)</th>
<th>Sub-section (7)</th>
<th>Sub-section (8)</th>
</tr>
</thead>
</table>
| Where a compromise or arrangement is proposed between:  
  a) Co & its creditors;  
  b) Co & its members,  
  Tribunal may, on application in Form NCLT-1, order a meeting of creditors or members, to be called, held & conducted in manner as Tribunal directs.  
  2) Application sent by Co or by its member, or in case of Co, being wound up - liquidator  
  3) Explanation: Arrangement includes:  
      consolisation of capital by  
      reorganisation of company's shares or by division of shares, or by both methods  
  4) Notice of meeting pursuant to order of Tribunal in Form CAA-2 shall be sent to all creditors & all members & debenture-holders, individually by registered post/ speed post/ courier/ email/ hand delivery at registered address  
  5) 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  
  6) 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 accept or reject the scheme (Rule 8*).  
  7) Where, at meeting, majority of persons representing three-fourths of value of creditors or members, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement & sanctioned by Tribunal in the same manner, same shall be binding on Co, all creditors, or members, or in case of Co, being wound up on liquidator & contributories  |

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* 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

1) Where Tribunal makes order u/s 230 sanctioning compromise/arrangement, it:
   a) shall have power to supervise implementation of compromise/arrangement;
   b) give directions in regard to any matter or make modifications in compromise or arrangement;
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
3) Section also applies to Co. of which, order has been made before commencement of this Act

Section 232 - Merger & Amalgamation of Companies

Sub-section (1):
- Where application is made to Tribunal for sanctioning compromise/arrangement proposed between Co. & any persons & it is shown to Tribunal:
  - 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;
  - b) whole or any part of undertaking, property or liabilities of transferor Co. required to be transferred to transferee Co. is proposed to be divided among & transferred to 2 or more companies;
  - c) 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

Sub-section (2):
- 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:
  - a) draft of proposed terms of scheme drawn up & adopted by directors of merging Co.;
  - b) confirmation that copy of draft scheme has been filed with Registrar;
  - c) report adopted by directors of merging companies explaining effect of compromise on shareholders, KMP, promoters & non-promoter shareholders;
  - d) report of expert with regard to valuation;
  - 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

Sub-section (3):
- Tribunal, after satisfying that procedure has been complied with, by order, sanction compromise/arrangement & make provision for following matters:
  - 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;
  - 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
  - c) transfer of employees of transferor to transferee,
  - d) where transferee Co. shall remain unlisted until it becomes listed Co.
  - e) 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 predetermined price formula or after valuation is made
  - f) amount of payment or valuation not be less than that specified by SEBI under regulations framed by it
  - g) where transferee 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;
  - h) such incidental, consequential & supplemental matters necessary to secure that M & A is fully & effectively carried out
  - i) 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

Sub-section (4):
- 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

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 word "Central Government" shall be substituted. Hence, now process of compromise & arrangement will be executed by central government which was earlier executed by NCLT
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
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.
   b) Valuation of assets shall be obtained from registered valuers.
   c) existing & contingent liabilities of Co.
   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.
   a) Tribunal, at any stage of proceedings, or on examination of reports submitted by Co. Liquidator & after hearing Co. Liquidator, creditors or contributories or any interested person, is of opinion that it will not be advantageous or economical to continue proceedings, revise time limit.
   b) Tribunal may, also order sale of Co. as going concern or its assets or part thereof.
   c) Where it considers fit, appoint sale committee comprising such creditors, promoters & officers of Co. as Tribunal may decide to assist.
   d) 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.
   a) 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.
   b) 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.
   c) Promoters, directors, officers & employees, in employment of Co. or acting or associated with Co. shall extend full cooperation to Co. Liquidator in discharge of his functions & duties.
   d) 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 284 - Promoters, directors, etc., to cooperate with Co. Liquidator

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.
   a) 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.
   b) 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.
   c) 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

<table>
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<tr>
<th>Section 286 - Obligations of directors &amp; managers</th>
<th>Section 287 - Advisory committee</th>
<th>Section 288 - Submission of periodical reports to Tribunal</th>
<th>Section 290 - Powers &amp; duties of Co. Liquidator</th>
<th>Section 291 - Provision for professional assistance to Co. Liquidator</th>
</tr>
</thead>
<tbody>
<tr>
<td>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:</td>
<td>1. Tribunal may, while passing order of winding up, direct that there shall be, Advisory committee to advise Co. Liquidator &amp; to report to Tribunal</td>
<td>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 &amp; to execute, in name &amp; on behalf of Co., all deeds, receipts &amp; other documents, to use, when necessary, Co.'s seal; c) to sell immovable &amp; movable property &amp; 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 wholesale 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 &amp; on behalf of Co; g) to invite &amp; settle claim of creditors, employees or other claimant &amp; distribute sale proceeds in accordance with priorities established under this Act; h) to inspect records &amp; returns of Co. on files of Registrar or other authority;</td>
<td>1. Co. Liquidator may, with sanction of Tribunal, appoint one or more CAs/ CS / Cost Accountants or legal practitioners or other professionals on terms &amp; conditions, necessary, to assist him in performance of his duties &amp; functions</td>
<td>1. Co. Liquidator may, with sanction of Tribunal, appoint one or more CAs/ CS / Cost Accountants or legal practitioners or other professionals on terms &amp; conditions, necessary, to assist him in performance of his duties &amp; functions</td>
</tr>
<tr>
<td>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 &amp; liabilities of Co., &amp; costs, charges &amp; expenses of winding up</td>
<td>2. It shall consist of not more than 12 members, being creditors &amp; contributories or other persons</td>
<td>2. To Tribunal may, on application by Co. Liquidator, review orders made by it &amp; make such modifications as it thinks fit</td>
<td>2. Person appointed under this section shall disclose to Tribunal any conflict of interest or lack of independence in respect of his appointment</td>
<td></td>
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<tr>
<th>Section 292 - Exercise &amp; control of Co. Liquidator's powers</th>
<th>Section 293 - Books to be kept by Co. Liquidator</th>
<th>Section 294 - Audit of Co. Liquidator's accounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>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</td>
<td>1. Co. Liquidator shall keep proper books, in which he shall cause entries or minutes to be made of proceedings at meetings</td>
<td>1. Co. Liquidator shall maintain proper &amp; regular books of account including accounts of receipts &amp; payments made by him</td>
</tr>
<tr>
<td>2. Directions given by creditors or contributories at GM shall, in case of conflict, be deemed to override directions given by advisory committee</td>
<td>2. Any creditor or contributory may, subject to control of tribunal, inspect books, personally or through his agent</td>
<td>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 &amp; payments as such liquidator in duplicate, which be verified by declaration</td>
</tr>
<tr>
<td>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</td>
<td>3. Tribunal shall cause accounts to be audited in manner as it thinks fit; Co. Liquidator shall furnish vouchers &amp; information as Tribunal may require, &amp; Tribunal may, require production of, &amp; inspect, any books of account kept by Co. Liquidator</td>
<td>4. When accounts of Co. have been audited, one copy be filed by Co. Liquidator with Tribunal, &amp; other copy be delivered to Registrar which shall be open to inspection by any creditor, contributory or person interested</td>
</tr>
<tr>
<td>4. Person aggrieved by act or decision of Co. Liquidator may apply to Tribunal, &amp; Tribunal may confirm, reverse or modify act or decision complained of &amp; make further order as it thinks just &amp; proper</td>
<td>4. When accounts of Co. have been audited, one copy be filed by Co. Liquidator with Tribunal, &amp; other copy be delivered to Registrar which shall be open to inspection by any creditor, contributory or person interested</td>
<td></td>
</tr>
</tbody>
</table>
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, as far as possible, of value of such debts or claims as may 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 any of his assignees in respect of services rendered to Co. & due for a period of 4 months prior to 12 months immediately before relevant date;
(c) all accrued wages or salary including wages for time, piece work & commission of employee in respect of services rendered to Co. & due for a period not exceeding 4 months within 12 months immediately before relevant date;
(d) all accrued holiday remuneration to employee, in case of his death, person claiming under him;
(e) the amount due in respect of 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"

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) any securities held against the company under the company’s agreement.

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.

Section 328 - Fraudulent preference

1) Where Co. has given preference to one of its creditors or surety or guarantor for any of its debts or other liabilities of Co., which has effect of putting that person in 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 its creditors shall be void.

Diagram Details:
- Section numbers are color-coded:
  - Section 324: Orange
  - Section 326: Pink
  - Section 327: Purple
  - Section 328: Blue
  - Section 329: Green
  - Section 330: Pink

- Diagram flow is from top to bottom, with each section connected to the next.
- Key points are highlighted in the diagram.
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Under One Roof With Team SPC
## Part III - Provisions applicable to every mode of Winding Up

**Section 349 - OT to make payments into public account of India**
- Every OT shall, pay monies received by him as OT of any Co., into public account of India in RBI.

**Section 350 - Co. Liquidator to deposit monies into scheduled bank**
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:
   - If Tribunal considers advantageous for creditors or contributories or Co., it may permit account to be opened in other bank specified by it
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:
   - Pay interest on amount so retained in excess, @ 12% per annum & also pay such penalty as may be determined by Tribunal;
   - Be liable to pay expenses by reason of his default;
   - 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 351 - Liquidator not to deposit monies into private banking account**
- Neither OT nor Co. Liquidator of Co. shall deposit any monies received by him in his capacity as such into private banking account

**Section 352 - Co. Liquidation Dividend & Undistributed Assets Account**
1. Where Co. is being wound up & liquidator has in his hands or under his control money representing:
   - Dividends payable to any creditor but which had remained unpaid for 6 months after they were declared;
   - Assets refundable to any contributory which have remained undistributed for 6 months after date on which they become refundable
   - Liquidator shall deposit said money into separate special account to be known as Co. Liquidation Dividend & Undistributed Assets A/c in scheduled bank
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
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

**Section 353 - Liquidator to make returns, etc.**
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
2. Order may provide all costs of, & incidental to, application be borne by Co. Liquidator
3. Nothing in this section shall prejudice operation of any enactment imposing penalties on Co. Liquidator

**Section 354 - Meetings to ascertain wishes of creditors or contributories**
- In all matters relating to winding up of Co., Tribunal may:
  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 such meeting & to report result thereof to Tribunal
2. While ascertaining wishes of creditors, regard shall be had to value of each debt of creditor
3. While ascertaining wishes of contributories, regard shall be had to number of votes which may be cast by each contributory

**Section 355 - Court, tribunal or person, etc., before whom affidavit may be sworn**
1. Affidavit required to be sworn under provisions of this Chapter may be sworn:
   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
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

**Section 356 - Powers of Tribunal to declare dissolution of Co. void**
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
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 up to Rs.10,000/- for every day during which default continues

**Section 357 - Commencement of winding up by Tribunal**
The winding up of a company by the Tribunal under this Act shall be deemed to commence at the time of the presentation of the petition for the winding up.

**Section 358 - Exclusion of certain time in computing period of limitation**
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.
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) OL shall examine all or any of the powers of 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.
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Do You Want To Be The Next?
# Producer Company (Chart 8.1)

## Meaning

1. **Producer Company** means a body corporate having objects or activities specified in Section 581B & registered as Producer Company under Companies Act, 1956.
2. Producer Co is a hybrid combination of Private Limited Co & Co-operative Society, it deals basically with the active member for carrying out any of its objects.

## Section 581B - Objects

- a) Insurance of producers or their primary produce
- b) Promoting techniques of mutualism & mutual assistance
- c) Rendering technical services, consultancy services for promotion of interests of its members
- d) Welfare measures or facilities for benefit of members
- e) Manufacture, sale or supply of machinery, equipment or consumables mainly to its members
- f) Providing education on mutual assistance principles to its members & others
- g) Production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of members or import of goods or services for their benefit
- h) Other activity, ancillary or incidental to any activities referred to in clauses (a) to (g) for mutual assistance of members

## Incorporation of Producer Company

- **581C - Formation of Producer Co**
  - Similar formalities as applicable to Private Co only to be complied
  - 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
  - Is satisfied that all requirements of this Act are complied, within 30 days of receipt of documents, register MOA, AOA & issue CDI
  - Liability of members limited by MOA to amount unpaid on shares
  - Submit to the Registrar (MOA & AOA duly signed by subscriber)

- **581D - Membership & Voting Rights of Members**
  - Members consist solely of individual members - Single Vote irrespective of his shareholding or patronage
  - Members consist of producers only - Participation in business of Producer Co in previous year, may be specified by articles
  - Members consist of individual producers & producer institutions - Single Vote
  - Person, who has any business interest which is not in conflict with business shall become member
  - AOA may provide for conditions, manner in which voting rights be exercised by members

- **581E - Memorandum**
  - Name of company with "Producer Company Limited" as last words of name of such Co
  - State in which Registered Office is to situate
  - Main objects be 1 or more of objects specified in Section 581B
  - Names & addresses of persons who have subscribed to memorandum
  - Amount of share capital of which Producer Co is to be registered
  - That liability of its member is limited
  - Opposite to Subscriber's name, no. of shares each subscriber takes

## Section 581F - Articles Amendment

- **581G - Annual General Meeting**
  - AGM in each year & time gap between one AGM to another, should not be more than 15 months
  - First AGM within 90 days from date of incorporation
  - Notice calling AGM shall be accompanied with - Agenda
  - Minutes of previous AGM
  - Names of candidates for election as Director
  - Audited B/S & P&L A/c
  - GM shall be called by giving not less than 14 days prior notice in writing
  - 1/4th of total no. of members shall be quorum

## Section 581H - Chief Executive & His Function

- **581I - Chief Executive & his Function**
  - It shall have full time Chief Executive to be appointed by Board
  - He shall be ex-officio director of Board & not retire by rotation
  - Qualifications, experience & terms & conditions of service of be determined by Board
  - He shall be entrusted with substantial powers of management
  - Chief Executive shall manage affairs of Producer Co under general superintendence, direction & control of Board & be accountable for performance

## Section 581J - Conversion of Interstate Cooperative Societies (ISC) to Producer Co

- **581K - Powers & Functions of Board & Quorum**
  - Any ISC having objects for multiplicity of states may make application to Registrar for registration as Producer Co, Application to include
  - Copy of AOA, of not less than 1/3rd of total members of ISC
  - Statement of names & addresses or occupation of directors & Chief Executive & list of members of such ISC
  - Statement indicating engagement in any one or more of objects specified in Section 581B
  - Declaration by 2 or more directors certifying correctness of above particulars
  - "Producer Company Limited" should form part of its name to show its identity
  - On compliance, Registrar shall, within 30 days of receipt of application, certify that ISC is registered & thereby incorporated as Producer Co
  - Upon registration, ROC is required to intimate Registrar of ISC for deletion from its register

## Section 581L - Meeting of Board & Quorum

- **581M - Meeting of Board & Quorum**
  - Board Meeting (BM) shall be held not less than once in every 3 months & at least 4 meetings shall be held every year
  - Notice of BM shall be given in writing to every director
  - Chief Executive shall give notice as aforesaid not less than 7 days prior to date of meeting
  - Quorum for meeting of Board shall be 1/3rd of total strength of directors, subject to minimum of 3
  - BM may be called at shorter notice & reasons thereof be recorded

## Section 581N - Chief Executive & His Function

- **581O - Chief Executive & his Function**
  - It shall have full time Chief Executive to be appointed by Board
  - He shall be ex-officio director of Board & not retire by rotation
  - Qualifications, experience & terms & conditions of service of be determined by Board
  - He shall be entrusted with substantial powers of management
  - Chief Executive shall manage affairs of Producer Co under general superintendence, direction & control of Board & be accountable for performance

## Section 581P - Secretary

- **581Q - Secretary**
  - Producer Co having average annual turnover exceeding Rs. 5 crore in each of 3 consecutive FY shall have Whole Time Secretary
  - In case of failure to comply with this, Co & every officer in default, shall be punishable with fine which may extend to Rs. 500 for every day during which default continues
  - 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

## Section 581R - Annual General Meeting

- **581S - Annual General Meeting**
  - AGM in each year & time gap between one AGM to another, should not be more than 15 months
  - First AGM within 90 days from date of incorporation
  - Notice calling AGM shall be accompanied with - Agenda
  - Minutes of previous AGM
  - Names of candidates for election as Director
  - Audited B/S & P&L A/c
  - GM shall be called by giving not less than 14 days prior notice in writing
  - 1/4th of total no. of members shall be quorum

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# 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 their members, decide to—
   - amalgamate & form a new producer company
   - 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.

## 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;
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;

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 producer company,
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.
### Miscellaneous Provisions (Chart 10.1)

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

<table>
<thead>
<tr>
<th>Sub-section (1)</th>
<th>Rule 3*</th>
<th>Sub-section (2)</th>
<th>Rule 4*</th>
<th>Sub-section (3)</th>
<th>Rule 5*</th>
<th>Rule 8*</th>
<th>Sub-section (5)</th>
<th>Sub-section (6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Where Registrar has reasonable cause to believe:</td>
<td>Following categories of companies shall not be removed from register of companies:</td>
<td>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 &amp; Registrar shall, on receipt of such application, cause public notice</td>
<td>Every application shall accompany no objection certificate from appropriate Regulatory Authority concerned in respect of following companies:</td>
<td>Rule 6*</td>
<td>Application in Form STK-2 shall be signed by director authorised by Board in their behalf</td>
<td>If person is foreign national or NRI, indemnity bond &amp; declaration shall be notified or apostilled or consularised</td>
<td>Registrar shall cause notice u/s 248(5) of striking off name of Co. from register of companies &amp; its dissolution to be published in Official Gazette for information of general public</td>
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<tr>
<td>a) Co. failed to commence business within 1 year of its incorporation;</td>
<td>i) listed companies; ii) vanishing companies; iii) delisted companies due to non-compliance of listing regulations or listing agreement or other statutory laws;</td>
<td>companies which, where inspection or investigation is ordered &amp; 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;</td>
<td>companies which have conducted or conducting non-banking financial &amp; investment activities,</td>
<td>Form STK 2 shall be signed by CA/CS/Cost Accountant in whole time practice</td>
<td>Rule 7*</td>
<td>Notice issued u/s 248(1)/(2) be published as per Rule 7 &amp; also in Official Gazette for information of general public</td>
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<td>b) subscribers to memorandum have not paid subscription which they had undertaken to pay within 180 days from date of incorporation of Co. &amp; declaration u/s 11(1) to this effect not been filed within 180 days of its incorporation;</td>
<td>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 &amp; reply is pending</td>
<td>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 &amp; reply is pending</td>
<td>companies engaged in collective investment schemes,</td>
<td>Rule 10*</td>
<td>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 &amp; publish notice in Official Gazette</td>
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<td>c) Co. not carrying on business or operation for period of 2 immediately preceding financial years &amp; has not made application within such period of status of dormant Co. u/s 455, &amp; he shall send notice in Form STK-1 to Co. &amp; all directors of Co. of his intention to remove name of Co. from register of companies &amp; requesting them to send representations, within 30 days from date of notice</td>
<td>companies which have accepted public deposits either outstanding or Co. is in default in repayment;</td>
<td>companies which have accepted public deposits either outstanding or Co. is in default in repayment;</td>
<td>contesting accounts containing assets &amp; liabilities of company made up to day, not more than 30 days before date of application &amp; certified by CA,</td>
<td>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</td>
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<td><em>Companies (Removal of Names of Companies from Register of Companies) Rules, 2016</em></td>
<td>companies which have accepted public deposits either outstanding or Co. is in default in repayment;</td>
<td>companies which have accepted public deposits either outstanding or Co. is in default in repayment;</td>
<td>Affidavit in Form STK-4 by every director,</td>
<td>Sub-section (7)</td>
<td>Nothing in this section shall affect power of Tribunal to wind up Co. name of which has been struck off</td>
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<td>Sub-section (2)</td>
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<td>companies which have accepted public deposits either outstanding or Co. is in default in repayment;</td>
<td>copy of SR duly certified by each director or consent of 75% of members in terms of PSC as on date of application;</td>
<td>Sub-section (8)</td>
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<td>Rule 3*</td>
<td>companies which have accepted public deposits either outstanding or Co. is in default in repayment;</td>
<td>every application shall accompany no objection certificate from appropriate Regulatory Authority concerned in respect of following companies:</td>
<td>statement regarding pending litigations;</td>
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Sakshi Airan
NAHA, JODHPUR

AIR 1
Deepa Jain
DELHI

AIR 3
Paarth Gupta
DEHRADUN

AIR 4
Sunita Agarwal
DEHRADUN

AIR 8
Naya Shanu
VARANASI

AIR 11
Rachit Nagpal
DOHRA

AIR 14
Ariba Zahir
ALLAHABAD

AIR 24
Aakriti Aggarwal
DELHI

AIR 27
Param Sengal
AGRA

AIR 29
Vrystant Gabrani
CACHARHURUP

AIR 32
Sharad Malpani
PUDHIA

AIR 33
Chhavi Goyal
Mumbai

AIR 40
Aniket Sard
DEHRADUN

AIR 48
Nihal Moondra
SHWAL
Section 249 - Restrictions on making application under section 248 in certain situations:
1) Application under section 248(2) on behalf of the Company shall not be made if, at any time in the previous 3 months, Co. has changed its name or shifted its registered office from one State to another;
2) 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 a business;
3) has engaged in any other activity except one which is necessary for making application, or concluding affairs of Co., or complying with statutory requirement;
4) has made application to Tribunal for sanctioning compromise or arrangement & matter has not been finally concluded;
5) is being wound up under Chapter XX
6) If Co. files application under section 248(2) in violation of 249(1), it shall be punishable with fine which may extend to Rs.1,00,000/-
7) Application filed under section 248(2) be withdrawn by Co. or rejected by Registrar as soon as conditions under section 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 the date mentioned in the notice under section 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. under section 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) shall be jointly & severally liable to persons who had incurred loss or damage as result of Co. being notified as dissolved;
   b) shall be punishable for fraud in manner u/s 447.
2) Registrar may also recommend prosecution of persons responsible for filing of application under section 248(2).

Section 252 - Appeal to Tribunal:
1) Person aggrieved by order of Registrar, notifying Co. as dissolved under section 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 under section 248, file application before Tribunal seeking restoration of name of such Co.
2) Copy of order passed by Tribunal shall 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 under section 248(5), to 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.
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 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 ams 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 the 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 10.5)

<table>
<thead>
<tr>
<th>Section 462 - Power to Exempt Class or Classes of Companies from Provisions of this Act</th>
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<th>Section 466 - Dissolution of Company Law Board and Consequential Provisions</th>
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</table>
| 1) CG may in the public interest, by notification direct that any of provisions of this Act, — a) shall not apply to such class or classes of companies; or b) shall apply to such class or classes of companies with such exceptions, modifications & adaptations as may be specified in notification. 2) A copy of every notification proposed to be issued under sub-section (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. 3) In reserving 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. 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. | 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 a) he ought fairly to be excused b) court may relieve him, either wholly or partly. 2) In an appeal or revision, a court may refuse to grant relief if it is satisfied that, having regard to all the circumstances of the case, it is unreasonable to grant relief. 3) If there is no adequate reason for the omission of any of the conditions of the relief, the court may, if it considers fit, make an order directing the person to whom the order is made to pay the expenses of the proceedings. | 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 the acquisition of gain, unless it is registered as Co. 2) Number of persons which may be prescribed shall not exceed 100 (Companies (Miscellaneous Rules, 2014) provides no. of persons 50) 3) Exception — a) Hindu undivided family b) an association or partnership, if it is formed by special acts of variation. | 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, — (i) become the officer of Tribunal or the Appellate Tribunal, if he fulfils qualifications & requirements under this Act; and (ii) stand reverted to his parent cadre, Ministry or Department, in any other case. Provided also that every officer and the other employee of CBL, 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 person, 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 & conditions of employment are duly altered by the Tribunal or the Appellate Tribunal, as the case may be. | 1) CG may, by notification, after any of regulations, rules, tables, forms & other provisions contained in any of Schedules to this Act 2) No such alteration in Table F (AOA) of Schedule I shall apply to any Co registered before date of such alteration | 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. 2) In particular, without prejudice to generality of foregoing power, such rules may provide for all or any of following matters, namely— i) as to modes of proceedings to be held for winding up of a company by Tribunal under this Act; ii) for holding of meetings of creditors & members in connection with proceedings under sec 230; iii) for giving effect to provisions of this Act as to the reduction of capital; iv) generally for all applications to be made to Tribunal under provisions of this Act; v) holding & conducting of meetings to ascertain wishes of creditors & contributories; vi) settling of lists of contributories & rectifying of register of members where required, & collecting & paying assets; vii) Payment, delivery, conveyance, surrender or transfer of money, property, books or papers to liquidator; viii) Making of calls; and (a) if a call is made on any creditor or contributory, the same shall be deemed to be called in such manner as the Tribunal may direct; and (b) if a call is made on any creditor or contributory, the same shall be deemed to be called in such manner as the Tribunal may direct. 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 | 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. 2) Any rule made under this sub-section shall be published in such manner as the CG thinks fit. 3) Any rule made under this sub-section shall be published in such manner as the CG thinks fit. For the removal of difficulties: 1) If any difficulty arises in giving effect to provisions of this Act, CG by order published in Official Gazette, may make such provisions, not inconsistent with provisions of this Act, as appear to it to be necessary or expedient for removing difficulty. 2) No such order shall be made after expiry of 5 years from date of commencement.

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Note: The chart contains a large amount of text and details related to the provisions of the Companies Act, 1956, and the rules and regulations pertaining to winding up of companies. The text is structured in a table format to provide a clear and organized presentation of the information.
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

1) This concept has assumed greater importance especially in recent times as this will help in speedy trial of all offences under Act
2) It will facilitate in good corporate governance & stricter implementation of Law, stakeholders will be benefited at large
3) With intent to punish guilty, Legislature has brought in, Special Courts in Companies Act, 2013
4) Act focuses on establishment & jurisdiction of Special Court
5) Companies Act, 2013 overrides related provisions of Cr. PC

Clause (iv) of Sub-section (29) of section 2 defines that court means the special court established under section 435.

"Non-cognizable offence" is offence for which police officer may not arrest without warrant.
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
2) Non-bailable nature of offences deter offender & others from committing further & similar offences
3) Every offence under Companies Act, 2013 other than mentioned above, shall be deemed to be Non-Cognizable

Cognizance of offence:
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 -
- Registrar,
- Shareholder or member of Co, or
- Person authorised by CG in that behalf

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 authorised by CG in that behalf

5) Presence of officers shall not be necessary unless court requires his personal attendance at trial (except Liquidator)

1) "Mediation" means intervention of some third party in dispute with intention to resolve dispute
2) "Conciliation" means process of adjusting or settling disputes in friendly manner through extra judicial means
3) Constitution & working of Mediation & Conciliation Panel:
   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
   b) Panel shall consist of such number of experts having such qualification as may be prescribed
   c) Application can be made by -
      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
   e) Fee & other terms & conditions shall be as may be prescribed
   f) Panel shall dispose of matter within period of 3 months from date of such reference & forward its recommendations to CG/ Tribunal/ AT
   g) Any party aggrieved may file objections to CG/ Tribunal/ AT as case may be

1) CG may appoint 1 or more persons, as Company prosecutors for conduct of prosecutions arising out of this Act
2) Persons so appointed as Co prosecutors shall have all powers & privileges conferred on Public Prosecutors appointed u/s of Cr. PC.

1) CG may, in any case arising under this Act, direct -
   a) any Company Prosecutor, or
   b) Authorise other person, to present appeal from order of acquittal passed by any court, other than High Court
2) Appeal presented by such prosecutor or other person shall be deemed to have been validly presented to appellate court

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

(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.
(2) A Special Court shall consist of-
   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 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.
Team SPC Felicitating AIR’s of MAY 2018
### National Company Law Tribunal and Appellate Tribunal (Chart 12.2)

#### Section 414 - Salary, Allowances & other T&C of service of members
1. **Salary, allowance & other T&C of members of tribunal & AT as prescribed**
2. **Provided, neither the salary & allowance nor the other T&C shall be varied to their disadvantage after their appointment**

#### Section 415 - Acting President and Chairperson of tribunal or Appellate Tribunal
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.**
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.**

#### Section 416 - Resignation of member
1. **President, Chairperson or any other member may resign from office by giving notice addressing CG.**
2. **Provided, president, chairperson or 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.**

#### Section 417 - Removal of Members
1. **Power of CG - CG after consulting chief Jus of India, remove president, chairperson or member who has been:**
   - abjured an insolvent, or
   - convicted of an offense, that involves moral turpitude or
   - physically or mentally incapable, as is likely to affect prejudicially his functions
   - 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
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
   - CG shall, after consultation with SC, make rules to regulate the procedure for inquiry on ground of misbehaviour or incapacity referred in subsec (2)
3. **Suspension by CG in concurrence with CJI:**
   - CG may, with concurrence of CJI, suspend from office, President, Chairperson or member in respect of whose reference has been made to Judge of SC under subsection (2) until the CG has passed orders
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)
5. **Terms of service to be regulated by respective rules:**
   - Salaries & allowances & other condition of service of officer and employee as prescribed

#### Section 418 - Staff of Tribunal & Appellate Tribunal
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.
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.
3. **Terms of service to be regulated by respective rules:**
   - Salaries & allowances & other condition of service of officer and employee as prescribed
4. **Number of benches -**
   - Such number as specified by CG.
   - Presiding of principal bench - principal bench shall be at New Delhi which shall be presided over by President of Tribunal
   - Power exercisable by benches -
     1. Power of Tribunal exercisable by benches consisting of 2 members - Judicial and Technical
     2. 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.
     3. 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.

#### Section 419 - Constitution of Special benches
1. **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.**
2. **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.
National Company Law Tribunal and Appellate Tribunal (Chart 12.4)

Section 428 - Protection of action taken in good faith
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.

Section 429 - Power to seek assistance of Chief Metropolitan Magistrate
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:
   a) Take possession of such property, books of accounts or other doc.
   b) Cause same to be entrusted tribunal or person authorised.
   2. Steps for securing Compliance - for purpose of subsection(1), the CMM, CJM and DC may take steps and use of such force, as necessary.
3. No act of magistrate shall be called in question in any court or before any authority on any ground whatsoever.

Section 430 - Civil court not to have jurisdiction
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.

Section 432 - Right to legal representation
A party to any proceedings or appeal before tribunal or AT, may either appear in person or authorize 1 or more CA/CS/CWA/legal practitioner to present his case.

Section 434 - Transfer of certain pending proceedings
1. On such date as notified by CG-
   a) all matters pending before Company Law Administration, Co Act 1956 shall stand transferred to tribunal
   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)
   c) all proceedings under Companies Act, 1956, pending immediately before such date before any District Court or High Court, shall stand transferred to Tribunal

Section 431 - Vacancy not to invalidate acts or proceedings
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

Section 433 - Limitation
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
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
PROUD TO BE YOUR MENTOR

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Swapnil Sir and AIR-May 2018
Section 247 - Valuation by Registered Valuers (Chart 13.1)

247(1)
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.

247(2)
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.

247(3)
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 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.

247(4)
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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