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SWAPNIL PATNI'S CLASSES ALL INDIA RANKERS - MAY 2018 PROUD TO BE YOUR MENTOR



Swapnil Sir & All India Rankers - May 2018

CA Final Law

Amendments for Nov 2018 Exams and Onwards

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Companies Amendment Act 2017 (Sec 46 - 93)

Applicability for Nov 2018 / May 2019 Exams

CA Final (Sec 149 - 470)

Course Name	Sections Applicable	Amendment Sections
CA Final (New)	Sections 149 - 470	48 Sections out of 93
CA Final (New)	Sections 123 - 470	62 Sections out of 93

Sections	Descriptions	Name of the Section as in Companies Act 2013	Notified on
46	Amendment in Section 149	Company to have Board of Directors	07.05.2018
47	Amendment in Section 152	Appointment of Directors	09.02.2018
48	Amendment in Section 153	Application for Allotment of Director Identification Number	09.02.2018
49	Amendment in Section 157	Company to Inform DIN to Registrar	07.05.2018
50	Amendment in Section 160	Right of Persons other than Retiring Directors to Stand for Directorship	09.02.2018
51	Amendment in Section 161	Appointment of Additional Director, Alternate Director and Nominee Director	09.02.2018
52	Amendment in Section 164	Disqualifications for Appointment of Director	07.05.2018
53	Amendment in Section 165	Number of Directorships	09.02.2018
54	Amendment in Section 167	Vacation of Office of Director	07.05.2018
55	Amendment in Section 168	Resignation of Directors	07.05.2018
56	Amendment in Section 173	Meetings of Board	07.05.2018
57	Amendment in Section 177	Audit Committee	07.05.2018
58	Amendment in Section 178	Nomination and Remuneration Committee and Stakeholders Relationship Committee	07.05.2018
59	Amendment in Section 180	Restrictions on Powers of Board	09.02.2018
60	Amendment in Section 184	Disclosure of Interest by Director	09.02.2018
61	Substitution of New Section for Section 185	Loan to Directors, etc.	07.05.2018
62	Amendment in Section 186	Loan & Investments by a Company	07.05.2018
63	Amendment in Section 188	Related Party Transactions	09.02.2018
64	Omission of Section 194	Prohibition on Forward Dealings in Securities of Company by Director or Key Managerial Personnel	09.02.2018
65	Omission of Section 195	Prohibition on Insider Trading of Securities	09.02.2018
66	Amendment in Section 196	Appointment of MD, WTD or Manager	Not yet

67	Amendment in Section 197	Overall Maximum Managerial Remuneration and Managerial Remuneration in case of Absence or Inadequacy of Profits	Not yet
68	Amendment in Section 198	Calculation of Profits	Not yet
69	Amendment in Section 200	CG or Company to Fix Limit with regard to Remuneration	Not yet
70	Amendment in Section 201	Forms of, and Procedure in relation to Certain Applications	Not yet
71	Amendment in Section 216	Investigation of Ownership of Company	13.06.2018
72	Amendment in Section 223	Inspector's Report	09.02.2018
73	Amendment in Section 236	Purchase of Minority Shareholding	09.02.2018
74	Amendment in Section 247	Valuation by Registered Valuers	09.02.2018
75	Amendment in Section 366	Companies Capable of being Registered	Not yet
76	Amendment in Section 374	Obligations of Companies registering under this Part (Part I – Chapter XXI)	Not yet
77	Amendment in Section 379	Application of Act to Foreign Companies	09.02.2018
78	Amendment in Section 384	Debentures, Annual Return, Registration of Charges, Books of Account & their Inspection	09.02.2018
79	Amendment in Section 391	Application of Sections 34 to 36 and Chapter XX	09.02.2018
80	Amendment in Section 403	Fee for Filing, etc.	07.05.2018
81	Amendment in Section 406	Power to Modify Act in its Application to Nidhis	Not yet
82	Amendment in Section 409	Qualification of President and Members of NCLT	09.02.2018
83	Amendment in Section 410	Constitution of Appellate Tribunal	07.05.2018
84	Amendment in Section 411	Qualifications of Chairperson and Members of Appellate Tribunal	09.02.2018
85	Amendment in Section 412	Selection of Members of Tribunal and Appellate Tribunal	09.02.2018
86	Amendment in Section 435	Establishments of Special Courts	07.05.2018
87	Amendment in Section 438	Application of Code to Proceedings before Special Courts	07.05.2018
88	Amendment in Section 439	Offences to be Non-Cognizable	07.05.2018
89	Amendment in Section 440	Transitional Provisions	07.05.2018
90	Amendment in Section 441	Compounding of Certain Offences	09.02.2018
91	New Section Inserted - 446A & 446B	Factors for determining level of Punishment & Lesser Penalties for OPC or Small Companies	09.02.2018
92	Amendment in Section 447	Punishment for Fraud	09.02.2018
93	Amendment in Section 458	Delegation by CG of its Powers and Functions	09.02.2018

Amendment in Section 2 (Definitions)

1) Associate Company [Section 2(6)]

Associate Company, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

~~Explanation.—For the purposes of this clause, significant influence means control of at least 20% of total share capital, or of business decisions under an agreement;~~

'Explanation.—For the purpose of this clause,—

(a) the expression "significant influence" means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement;

(b) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;

[Substituted via The Companies (Amendment) Act, 2017]

2) Holding Company [Section 2(46)]

“holding company”, in relation to one or more other companies, means a company of which such companies are subsidiary companies;

Explanation.—For the purposes of this clause, the expression "company" includes any body corporate. [Inserted by Companies (Amendment) Act, 2017]

3) Interested Director [Section 2(49)]

~~“Interested Director” means a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company;~~

[Omitted via The Companies (Amendment) Act, 2017]

4) Key Managerial Personnel [Section 2(51)]

Key Managerial Personnel, in relation to a company, means—

(i) the Chief Executive Officer or the managing director or the manager;

(ii) the company secretary;

(iii) the whole-time director;

(iv) the Chief Financial Officer; and

~~(v) such other officer as may be prescribed; [Omitted via The Companies (Amendment), 2017]~~

(v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and such other officer as may be prescribed; [Substituted via The Companies (Amendment), 2017]

5) Related Party [Section 2(76)]

Related Party, with reference to a company, means—

(i) a director or his relative;

(ii) a key managerial personnel or his relative;

- (iii) a firm, in which a director, manager or his relative is a partner;
 - (iv) a private company in which a director or manager or his relative is a member or director;
 - (v) a public company in which a director or manager is a director and holds along with his relatives, more than 2% of its paid-up share capital;
 - (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
 - (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:
Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
 - ~~(viii) any company which is—~~
 - ~~(A) a holding, subsidiary or an associate company of such company; or~~
 - ~~(B) a subsidiary of a holding company to which it is also a subsidiary;~~
 - (viii) any body corporate which is—*
 - (A) a holding, subsidiary or an associate company of such company;*
 - (B) a subsidiary of a holding company to which it is also a subsidiary; or*
 - (C) an investing company or the venturer of the company*
- Explanation—For the purpose of this clause, “the investing company or the venturer of a company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.*
- [Substituted via The Companies (Amendment), 2017]*
- (ix) such other person as may be prescribed;

6) Subsidiary Company [Section 2(87)]

Subsidiary Company or —subsidiary, in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the ~~total share capital~~ *total voting power* *[Substituted by The Companies (Amendment), 2017]* either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation—For the purposes of this clause—

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
- (c) the expression —company includes any body corporate;
- (d) layer in relation to a holding company means its subsidiary or subsidiaries;

Chapter- 1

APPOINTMENT AND QUALIFICATION OF DIRECTORS

1. INDEPENDENT DIRECTOR (SECTION 149)

Companies (Appointment and qualification of Directors) Amendment Rules, 2017

Sub-Rule 1 – Applicability & Extra Points

Listed Companies shall have at least 1/3 of its directors as Independent Directors. The following class or classes of companies shall have at least 2 directors as independent directors –

1) Public Companies having	PUSC \geq ₹ 10 Crores
2) Public Companies having	Turnover \geq ₹ 100 Crores
3) Public Companies having	Outstanding loans, debentures and deposits $>$ ₹ 50 crores

Sub-Rule 2 – Exceptions

The following classes of unlisted public company shall not be covered under sub- rule (1), namely:-

- a) a joint venture;*
- b) a wholly owned subsidiary; and*
- c) a dormant company as defined under section 455 of the Act.*

[inserted via Amendment in the Companies (Appointment and Qualification of Directors) Amendment Rules, 2017]

Note: It means that the above companies though satisfying 10/100/50 shall not be needed to appoint Independent Directors and also not needed to constitute an Audit Committee and Nomination and Remuneration Committee.

2. APPOINTMENT OF DIRECTORS (SECTION 152 OF THE COMPANIES ACT, 2013)

(1) Appointment of directors:

- (a) Where **no provision** is made in the **articles** of a company for the appointment of the first director, the **subscribers** to the **memorandum**, who are **individuals** shall **be deemed to be the first directors** of the company **until the directors are duly appointed**. [Section 152(1)]
In case of a **One Person Company**, an **individual being member** shall be **deemed to be its first director** **until the director or directors** are **duly appointed** by the member in accordance with the provisions of this section. [Section 152(1)]
- (b) Save as otherwise expressly provided in this Act, **every director** shall be **appointed** by the company **in general meeting**. [Section 152(2)]
- (c) **No person** shall be **appointed** as a director of a company **unless he has been allotted the Director Identification Number (DIN)** under section 154. *"or any other number as may be prescribed under section 153"* [Section 152(3)]
- (d) **Every person** proposed to be appointed as a director by the company in general meeting or otherwise, shall **furnish his Director Identification Number (DIN)** *"or such other number as may be pre-*

scribed under section 153” and a declaration that he is not disqualified to become a director under this Act. [Section 152(4)]

- (e) A person appointed as a director shall **not act** as a director **unless he gives his consent to hold the office as director** and such consent has been filed with the Registrar within thirty days of his appointment in **Form DIR-12** along with the fee as prescribed [Section 152 (5)].

The Companies (Appointment and Qualification of Directors) Rules, 2014 provides that every person who has been appointed to hold the office of a director shall **on or before the appointment furnish** to the **company consent in writing to act as director in Form DIR-2**. The proviso to Section 152 (5) states that in case of appointment of an independent director in the general meeting, an **explanatory statement for such appointment, annexed** to the **notice for the general meeting**, shall include a statement that in the opinion of the Board, he fulfills the conditions specified in this Act for such an appointment.

3. APPLICATION FOR ALLOTMENT OF DIRECTOR IDENTIFICATION NUMBER SECTION 153 OF THE COMPANIES ACT, 2013)

- “Director Identification Number” (DIN) means an identification number allotted by the Central Government to any individual, intending to be appointed as director or to any existing director of a company, for the purpose of his identification as a director of a company;
- Provided that the Director Identification Number (DIN) obtained by the individuals prior to the notification of these rules shall be the DIN for the purpose of the Companies Act, 2013:
- Provided further that “Director Identification Number” (DIN) includes the Designated Partnership Identification Number (DPIN) issued under section 7 of the Limited Liability Partnership Act, 2008 (6 of 2009) and the rules made thereunder; [Rule 2(1)(e) of the Companies (Specification of definitions details) Rules, 2014]
- Every **individual intending to be appointed as director** of a company shall **make an application for allotment of DIN to the Central Government** in such form and manner and along with such fees as may be prescribed.
- The Companies (Appointment and Qualification of Directors) Rules, 2014 provides for the procedure for making application for allotment of DIN according to which:
 - (1) Every **individual**, who is to be **appointed as director** of a company shall make an **application electronically in Form DIR-3**, to the Central Government for the allotment of a DIN along with such fees as prescribed.
 - (2) The Central Government shall provide an **electronic system to facilitate submission of application** for the allotment of DIN through the portal on the website of the Ministry of Corporate Affairs.
 - (3) (a) The applicant shall **download Form DIR-3** from the portal, **fill in** the required **particulars** sought therein and **sign** the form and after attaching copies of the following documents, scan and **file** the **entire set** of documents **electronically**-
 - (i) photograph;
 - (ii) proof of identity;
 - (iii) proof of residence;
 - (iv) verification by the applicant for applying for allotment of DIN in Form DIR-4; and
- (v) Board resolution (BR) proposing his appointment as director in an existing company (Amendment dated 26-Januray-2018).**
- (vi) specimen signature duly verified.
- (b) ~~Form DIR-3 shall be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate and shall be verified digitally by-~~
 - ~~(i) a chartered accountant in practice or a company secretary in practice or a cost accountant in practice; or~~
 - ~~(ii) a company secretary in full time employment of the company or by the managing director or director~~

of the company in which the applicant is to be appointed as director.

- (b) *Form DIR-3 shall be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate and shall be verified digitally by a CS in full time employment of the company or by the MD or director or CEO or CFO of the company in which the applicant is intended to be appointed as director in an existing company (Amendment dated 26-Januray-2018).*
- (4) In case the name of a person does not have a last name, then his or her father's or grandfather's surname shall be mentioned in the last name along with the declaration in Form No. DIR-3A
“Provided that the Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of this Act and in case any individual holds or acquires such identification number, the requirement of this section shall not apply or apply in such manner as may be prescribed.”

4. RIGHT OF PERSONS OTHER THAN RETIRING DIRECTORS TO STAND FOR DIRECTOR SHIP (SECTION 160 OF THE COMPANIES ACT, 2013)

- (1) A person who is **not a retiring director** in terms of section 152 shall, subject to this Act, **be eligible for appointment** to the **office of a director at any general meeting**, if he, or some member intending to propose him as a director, has, **not less than fourteen days** before the **meeting**, left at the **registered office** of the company, a **notice in writing under his hand signifying his candidature as a director** or, as the case may be, the intention of such member to propose him as a candidate for that office.
“Provided that requirements of deposit of amount shall not apply in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, if any, constituted under sub-section (1) of section 178 or a director recommended by the Board of Directors of the Company, in the case of a company not required to constitute Nomination and Remuneration Committee.”

5. ALTERNATE DIRECTOR [SECTION 161(2)]:

- (a) The **Board of Directors** of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, **appoint a person to act as an alternate director in place of another director** (original director) *“or holding directorship in the same company”* during his **absence** for a period of **not less than three months from India**.
- (b) A person who is holding any **alternate directorship** for **any other director** in the company **cannot be considered for appointment** as above.
- (c) No person shall be appointed as an alternate director for an independent director **unless he is qualified to be appointed as an independent director** under the provisions of this Act.
- (d) An **alternate director** shall **not hold office** for a **period longer than that permissible to the original director** in whose place he has been appointed and shall **vacate the office** if and when the **original director returns to India**.
- (e) If the **term of office of the original director** is **determined before he so returns to India**, any provision for the **automatic re-appointment of retiring directors** in default of another appointment shall **apply to the original**, and not to the alternate director.

6. CASUAL VACANCY [SECTION 161(4)]:

- (a) ~~In the case of a public company~~, if the **office of any director** appointed by the company in general meeting is **vacated before his term of office expires** in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the **articles of the company**, be **filled by the Board of Directors** at a meeting of the Board. *“which shall be subsequently approved by members in the immediate next general meeting”*
- (b) Any **person** so appointed shall **hold office only up to the date up to which the director in whose place**

he is appointed would have held office if it had not been vacated.

7. NUMBER OF DIRECTORSHIP (SECTION 165 OF THE COMPANIES ACT, 2013)

- (1) No person, after the commencement of this Act, shall hold office as director, including any alternate directorship, in more than 20 companies at the same time. [Section 165(1)]
 - Provided that out of the limit of 20, the maximum number of public companies in which a person can be appointed as a director shall not exceed 10. Private companies that is either holding or subsidiary company of a public company shall be included in reckoning the limit of public companies in which a person can be appointed as a director. [Proviso to section 165(1)]
 - *For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included.*”
 - The MCA vide Notification No. 466(E) dated 5th June, 2015, has clarified that section 165(1) of the Companies Act, 2013, [ie. Point (i)] shall not apply to section 8 companies.
- (2) The members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors. [Section 165(2)]
- (3) Transition period for complying with sub-section (1) is one year and within this period, if any director is holding office as director in companies more than the specified limits, he shall -
 - (a) choose not more than the specified limit of companies, in which he wishes to continue to hold the office of director;
 - (b) resign his office as director in the other remaining companies; and
 - (c) intimate the choice made by him under clause (a), to each of the companies in which he was holding the office of director before such commencement and to the Registrar having jurisdiction in respect of each such company. [Section 163(3)]
- (4) Any resignation made in pursuance of clause (b) of sub-section (3) shall become effective immediately on the dispatch thereof to the company concerned. [Section 163(4)]
- (5) After dispatching the resignation of his office as director or non-executive director or after the completion of the transition period of one year, whichever is earlier, no such person shall act as director in more than specified number of companies.
- (6) If a person accepts an appointment as a director in contravention of sub-section (1) i.e. holding directorship in more than 20 companies or more than 10 public companies, he shall be punishable with fine which shall not be less than five thousand rupees but which may extend to twenty- five thousand rupees for every day after the first during which the contravention continues.

Chapter- 3

Meeting Of Board And Its Power

1. BOARD MEETING THROUGH VIDEO CONFERENCING OR AUDIO VISUAL MEANS (RULES ON SECTION 173)

Notice of Board Meeting and Intimation by the director to attend Board Meeting by Video Conferencing

- (1) ~~The director, who desire, to participate may intimate his intention of participation through the electronic mode at the beginning of the calendar year and such declaration shall be valid for one calendar year.~~
Any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for 1 year:
Provided that such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person.
[Substituted via Companies (Meetings of Board & its Powers) 2nd Amendment Rules 2017]
- (2) In the absence of any intimation under clause (c), it shall be assumed that the director shall attend the meeting in person.

2. RESTRICTIONS ON POWERS OF BOARD (SECTION 180 OF THE COMPANIES ACT, 2013)

This section is not applicable to private company

- (1) The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely:—
- (a) To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.
- (i) "Undertaking" shall mean an undertaking in which the investment of the company exceeds twenty per cent. of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates twenty per cent. of the total income of the company during the previous financial year;
- (ii) The expression "substantially the whole of the undertaking" in any financial year shall mean twenty per cent. or more of the value of the undertaking as per the audited balance sheet of the preceding financial year;
- (b) To invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;
- (c) To borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, "paid-up share capital, free reserves and securities premium" apart from temporary loans obtained from the company's bankers in the ordinary course of business.
- (i) The acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or oth-

erwise, shall **not be deemed to be a borrowing of monies** by the banking company within the meaning of this clause.

"Temporary loans" means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature;

- (d) To remit, or give time for the repayment of, any debt due from a director.
- (2) Every special resolution passed by the company in general meeting in relation to the exercise of the powers referred to in point (c) above shall specify the total amount up to which monies may be borrowed by the Board of Directors.
- (3) Nothing contained in above point (a) shall affect—
- (a) the title of a buyer or other person who buys or takes on lease any property, investment or undertaking as is referred to in that clause, in good faith; or
- (b) The sale or lease of any property of the company where the ordinary business of the company consists of, or comprises, such selling or leasing.

3. PROHIBITION & RESTRICTIONS REGARDING POLITICAL CONTRIBUTIONS (SECTION 182)

Section 182(1) - Prohibitions & Restrictions regarding Political Contributions

Maximum Amount of Contribution

The aggregate of the amount which may be so contributed by the company in any financial year shall not exceed 7.5% of its average net profits during the 3 immediately preceding financial years.

[Omitted via Finance Act, 2017]

Section 182(3) - Disclosure in P & L A/c

Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party to which such amount has been contributed. [Section 182(3)]

Every company shall disclose in its profit and loss account the total amount contributed by it under this section during the financial year to which the account relates. [Substituted via Finance Act, 2017]

Contribution to be made by Cheque / DD or any Electronic Mode

Notwithstanding anything stated above, the contribution under this section shall not be made except by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account:

Provided that a company may make contribution through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties"

[Inserted via Finance Act, 2017]

4. DISCLOSURE OF INTEREST BY DIRECTOR (SECTION 184 OF THE COMPANIES ACT, 2013)

- Section 184 is applicable on all directors of the company and all types of Companies.

(1) When to disclose:

n Every director shall:

- (a) At the First meeting of the Board in which he participates as a director, and

- (b) Thereafter, at the first meeting of the Board in every financial year, or
- (c) Whenever there is any change in the disclosures already made, then at the first Board meeting held after such change.

(2) What to disclose:

- Every director shall disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed.
- The Companies (Meetings of Board and its Powers) Rules, 2014 has prescribed that the directors shall disclose his concern or interest, by giving a notice in writing.

(3) Circumstances in which disclosure is necessary:

- (a) Whenever any director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting.
- (b) Following are the circumstances where disclosure is necessary: Whenever any director of the company, who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—
- (i) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or
- (ii) with a firm or other entity in which, such director is a partner, owner or member, as the case may be.
- (c) However, where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.
- Whereas with respect to the companies covered under section 8 of the Companies Act, 2013, the Section 184(2) shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.

(4) Consequences of non disclosure:

(a) Voidable at the option of company:

- A contract or arrangement entered into by the company without disclosing or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.

(5) Nothing in this section

- a) *Shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with company.*
- b) *shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate.”*

5. RELATED PARTY TRANSACTIONS (SECTION 188 OF THE COMPANIES ACT, 2013)

(1) Contracts with related parties which are covered under section 188 [Section 188(1)]:

- Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions¹ as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to—
 - 1) sale, purchase or supply of any goods or materials;
 - 2) selling or otherwise disposing of, or buying, property of any kind;
 - 3) leasing of property of any kind;
 - 4) availing or rendering of any services;
 - 5) appointment of any agent for purchase or sale of goods, materials, services or property;
 - 6) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
 - 7) underwriting the subscription of any securities or derivatives thereof, of the company:
 - Provided that, no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a special resolution. [First proviso to section 188(1)]
 - Provided further that no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party.
 - *“Provided also that nothing contained in the second proviso shall apply to a company in which ninety per cent. or more members, in number, are relatives of promoters or are related par-ties:”;*
 - According to Rule 15(3) of the Companies (Meetings of Board and its Powers) Rules, 2014 except with the prior approval of the company by a resolution, a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into,—
- (A) as contracts or arrangements with respect to clauses (a) to (e) of sub-section (1) of section 188, with criteria as mentioned below -

Conditions with respect to transactions to be entered into with the prior approval	Prescribed limits for the transactions to be entered into as contracts or arrangements with respect to clauses (a) to (e) of sub-section (1) of section 188
sale, purchase or supply of any goods or materials, directly or through appointment of agent	Amounting to 10% or more of the turnover of the company or rupees 100 crore, whichever is lower, as mentioned in clause (a) and clause (e) respectively of sub- section (1) of section 188
selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent	Amounting to 10% or more of net worth of the company or rupees 100 crore, whichever is lower, as mentioned in clause (b) and clause (e) respectively of sub- section (1) of section 188
leasing of property of any kind	Amounting to 10% or more of the net worth of the company or 10% or more of turnover of the company or rupees 100 crore, whichever is lower, as mentioned in clause (c) of sub- section (1) of section 188

availing or rendering of any services, directly or through appointment of agent	Amounting to 10% or more of the turnover of the company or rupees 50 crore, whichever is lower, as mentioned in clause (d) and clause (e) respectively of sub-section (1) of section 188:
---	---

Explanation—

- It is hereby clarified that the limits specified in sub-clauses (i) to (iv) shall apply for transaction or trans- actions to be entered into either individually or taken together with the previous transactions during a financial year.
- (B) is for appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding 2.5 lakh rupees as mentioned in clause (f) of subsection (1) of section 188; or
- (C) is for remuneration for underwriting the subscription of any securities or derivatives thereof, of the company exceeding 1% of the net worth as mentioned in clause (g) of sub-section (1) of section 188.

Explanation -

- The Turnover or Net Worth referred in the above sub-rules shall be computed on the basis of the Audited Financial Statement of the preceding financial year.
- In case of a wholly owned subsidiary, the resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between the wholly owned subsidiary and the holding company.

6. RELATED PARTY TRANSACTION CAN BE VOIDABLE AT THE OPTION AT THE BOARD [SECTION 188 (3)]:

- A **contract or arrangement** shall be **voidable** at the option of the Board:
- (a) Where any contract or arrangement is entered into by a director or any other employee, **without obtaining the consent of the Board or approval by a special resolution** in the general meeting as required under section 186(1), and
- (b) if it is **not ratified by the Board or**, as the case may be, **by the shareholders** at a meeting **within 3 months** from the **date on which such contract or arrangement was entered into**.

Such contract or arrangement shall be voidable at the option of the board or, as the case may be, of the shareholders, and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the director, the director concerned shall identify the company against any loss incurred by it.

- Further, if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall **indemnify the company against any loss incurred** by it.

7. PROHIBITION ON FORWARD DEALINGS IN SECURITIES OF COMPANY BY DIRECTOR OR KEY MANAGERIAL PERSONNEL (SECTION 194 OF THE COMPANIES ACT, 2013) (*OMITTED*)

8. PROHIBITION ON INSIDER TRADING OF SECURITIES (SECTION 195 OF THE COMPANIES ACT, 2013) (*OMITTED*)

CHAPTER - 4

INSPECTION, INQUIRY AND INVESTIGATION

1. INSPECTOR'S REPORT (SECTION 223 OF THE COMPANIES ACT, 2013)

(1) Submission of interim report and final report [Sub section (1)]:

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

(2) Report to be writing or printed [Sub section (2)]:

- **Every report** made under sub section (1) above, shall be **in writing or printed** as the **Central Government** may direct.

(3) Obtaining copy of report [Sub section (3)]:

- A **copy** of the **above 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 the **Central Government**.

(5) Exceptions [Sub section (5)]:

- **Nothing in this section** shall **apply** to the **report** referred to in **Section 212** of the Companies Act, 2013.
-

Chapter- 5

COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

1. PURCHASE OF MINORITY SHAREHOLDING (SECTION 236)

- (1) In the event of an acquirer, or a person acting in concert with such acquirer, becoming **registered holder of ninety per cent.** or more of the issued equity share capital of a company, or in the event of any person or group of persons **becoming ninety per cent. majority or holding ninety per cent.** of the issued equity share capital of a company, by virtue of an amalgamation, **share exchange, conversion of securities** or for any other reason, such acquirer, person or group of persons, as the case may be, shall notify the company of their intention to buy the remaining equity shares.
- (2) The **acquirer**, person or group of persons under sub-section (1) shall offer to the **minority shareholders of the company** for buying the equity shares held by such shareholders at a price determined on the basis of valuation by a registered valuer in accordance with such rules as may be prescribed.
- (3) **Without prejudice to the provisions** of sub-sections (1) and (2), the **minority shareholders** of the company may **offer to the majority shareholders to purchase the minority equity shareholding** of the company at the **price determined in accordance with such rules** as may be prescribed under sub-section (2).
- (4) The **majority shareholders** shall **deposit an amount equal to the value of shares** to be **acquired by them** under sub-section (2) or sub-section (3), as the case may be, **in a separate bank account** to be **operated by the transferor company** *“company whose shares are being transferred”* for at least **one year** for payment to the **minority shareholders** and such amount shall be disbursed to the entitled shareholders **within sixty days**:
 - Provided that **such disbursement** shall **continue** to be made to the entitled shareholders for a **period of one year**, who for any reason had not been made disbursement **within the said period of sixty days** or if the disbursement have been made within the aforesaid period of sixty days, **fail to receive or claim payment** arising out of such disbursement.
- (5) **In the event of a purchase** under this section, the ~~transferor company~~ *“company whose shares are being transferred”* shall act as a transfer agent for receiving and paying the **price to the minority shareholders** and for taking delivery of the shares and delivering such shares to the majority, as the case may be.
- (6) In the event of a majority shareholder or shareholders requiring a full purchase and making payment of price by deposit with the company for any shareholder or shareholders **who have died or ceased to exist**, or **whose heirs, successors, administrators or assignees** have **not been brought on record** by transmission, the right of such shareholders to make an offer for sale of minority equity shareholding shall continue and be **available for a period of three years from the date of majority acquisition or majority shareholding**.
- (7) Where the shares of minority shareholders have been acquired in pursuance of this section and as on or prior to the date of transfer following such acquisition, the **shareholders holding seventy-five per cent. or more minority equity shareholding negotiate** or reach an understanding on a **higher price** for any transfer, **proposed or agreed** upon, of the shares held by them without disclosing the fact or likelihood of transfer taking place on the basis of such negotiation, understanding or agreement, the **majority shareholders shall share the additional compensation** so received by them with such minority shareholders on a pro rata **basis**.

Chapter - 14

Valuation by Registered Valuers

1. IMPARTIAL & DILIGENT (SECTION 247(2))

The Valuer appointed as above shall-

- a) Make an impartial, true and fair valuation of any assets which may be required to be valued;
 - b) Exercise due diligence while performing the functions as valuer;
 - c) Make the valuation in accordance with such rules as may be prescribed; and
 - d) Not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time ~~during or after the valuation of assets~~ *during a period of 3 years prior to his appointment as valuer or 3 years after the valuation of assets was conducted by him.*
- (Substituted by Amendment Act 2017)
-

Chapter - 9

COMPANIES INCORPORATED OUTSIDE INDIA

1. APPLICATION OF ACT TO FOREIGN COMPANIES (SECTION 379 OF THE COMPANIES ACT, 2013)

- (1) *Sections 380 to 386 (both inclusive) and sections 392 and 393 shall apply to all foreign companies:*
- *Provided that the Central Government may, by Order published in the Official Gazette, exempt any class of foreign companies, specified in the Order, from any of the provisions of sections 380 to 386 and sections 392 and 393 and a copy of every such Order shall, as soon as may be after it is made, be laid before both Houses of Parliament. ”*
- (2) Where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by:
- (a) one or more citizens of India; or
 - (b) by one or more companies or bodies corporate incorporated in India; or
 - (c) by one or more citizens of India and one or more companies or bodies corporate incorporated in India,
- whether singly or in the aggregate, such company shall comply with the provisions of Chapter XXII and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.
 - Note: Chapter XXII referred to above deals with the legal provisions for companies incorporated outside India.

2. DEBENTURES, ANNUAL RETURN, REGISTRATION OF CHARGES, BOOKS OF ACCOUNT AND THEIR INSPECTION (SECTION 384 OF THE COMPANIES ACT, 2013)

- (1) The provisions of Section 71 (Issue of Debentures) shall apply mutatis mutandis to a foreign company.
- (2) The provisions of Section 92 and section 135 (Preparation and filing of Annual return) shall, subject to such exceptions, modifications and adaptations as may be made therein by rules made under this Act, apply to a foreign company as they apply to a company incorporated in India.
 - According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall prepare and file an annual return in Form FC-4 along with prescribed fees, within a period of 60 days from the last day of its financial year, to the Registrar containing the particulars as they stood on the close of the financial year.
- (3) The provisions of Section 128 (Books of account, etc., to be kept by company) shall apply to a foreign company to the extent of requiring it to keep at its principal place of business in India, the books of account referred to in that section, with respect to monies received and spent, sales and purchases made, and assets and liabilities, in the course of or in relation to its business in India.
- (4) The provisions of Chapter VI (Registration of Charges) shall apply mutatis mutandis to charges on properties which are created or acquired by any foreign company.
- (5) The provisions of Chapter XIV (Inspection, inquiry and investigation) shall apply mutatis mutandis to the Indian business of a foreign company as they apply to a company incorporated in India.

3. APPLICATION OF SECTIONS 34 TO 36 OF CHAPTER XX (SECTION 391 OF THE COMPANIES ACT, 2013)

- Section 391 of the Companies Act, 2013 provides for Application of sections 34 to 36 and Chapter XX. According to this section:
- According to sub-section (1), the provisions of sections 34 to 36 (both inclusive) shall apply to—
 - (i) the issue of a prospectus by a company incorporated outside India under section 389 as they apply to prospectus issued by an Indian company;
 - (ii) the issue of IDR by a foreign company.
- Section 34 deals with criminal liability for mis-statements in prospectus Section 35 deals with Civil Liability for mis-statement in prospectus
- Section 36 deals with punishment for fraudulently inducing persons to invest money
- Sub-section (2) *Subject to the provisions of section 376, the provisions of Chapter XX shall apply mutatis mutandis for closure of the place of business of a foreign company in India as if it were a company incorporated in India in case such foreign company has raised monies through offer or issue of securities under this Chapter which have not been repaid or redeemed.*”

Chapter - 10

Miscellaneous Provisions

1. PUNISHMENT FOR FRAUD [SECTION 447]

- (i) *Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to 3 times the amount involved in the fraud.*
- (ii) *Provided that Where the fraud in question involves public interest, the term of imprisonment shall not be less than 3 years.*
- (iii) *Provided further that where the fraud involves an amount less than ten lakh rupees or one percent. of the turn over of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both*

Explanation.— For the purposes of this section—

- (a) *“fraud” in relation to affairs of a company or anybody corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;*
- (b) *“wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled;*
“wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.

2. DELEGATION BY CENTRAL GOVERNMENT OF ITS POWERS AND FUNCTIONS (SECTION 458 OF THE COMPANIES ACT, 2013)

- (1) The Central Government may, by notification, and subject to such conditions, limitations and restrictions as may be specified therein, delegate any of its powers or functions under this Act other than the power to make rules to such authority or officer as may be specified in the notification.
- However, the powers to enforce the provisions contained in Section 194 and Section 195 relating to forward dealing and insider trading shall be delegated to SEBI for listed companies or the company which intend to get their securities listed.
 - In such case, any officer authorised by the SEBI shall have the power to file a complaint in the court of competent jurisdiction.
- (2) A copy of every notification issued under point (1) shall, as soon as may be after it is issued, be laid before each House of Parliament.

Chapter- 12

National Company Law Tribunal and Appellate Tribunal

1. QUALIFICATION OF PRESIDENT AND MEMBERS OF TRIBUNAL (SECTION 409)

(1) Qualification for the President:

- He shall be a person who is or has been a Judge of a High Court for five years.

(2) Qualification for the Judicial member:

- A person shall not be qualified for appointment as a Judicial Member unless he is or has been -
 - (a) a judge of a High Court; or
 - (b) a District Judge for at least five years; or
 - (c) an advocate of a court for at least ten years.

- **Explanation:** For the purposes of clause (c) above, in computing the period for which a person has been an advocate of a court, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he become an advocate.

(3) Qualification for Technical member:

- A person shall not be qualified for appointment as a Technical Member unless he—
 - (a) has been a member of the Indian Corporate Law Service or Indian Legal Service for at least fifteen years and has been holding the rank of Secretary or Additional Secretary to the Government of India” or
 - (b) is, or has been, in practice as a chartered accountant for at least fifteen years; or
 - (c) is, or has been, in practice as a cost accountant for at least fifteen years; or
 - (d) is, or has been, in practice as a company secretary for at least fifteen years; or
 - (e) *is a person of proven ability, integrity and standing having special knowledge and professional experience of not less than fifteen years in industrial finance, industrial management, industrial reconstruction, investment and accountancy.*”
 - (f) is, or has been, for at least five years, a presiding officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947.

2. QUALIFICATIONS OF CHAIRPERSON AND MEMBERS OF APPELLATE TRIBUNAL (SECTION 411)

(1) Qualification of Chairperson:

- The chairperson shall be a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court.

(2) Qualification of members:

- (a) A Judicial Member shall be a person who is or has been a Judge of a High Court or is a Judicial Member of the Tribunal for five years.

(b) A technical member shall be a person of proven ability, integrity and standing having special knowledge and professional experience of not less than twenty-five years in industrial finance, industrial management, industrial reconstruction, investment and accountancy. ”

3. SELECTION OF MEMBERS OF TRIBUNAL AND APPELLATE TRIBUNAL (SECTION 412)

(1) The President of the Tribunal and the chairperson and Judicial Members of the Appellate Tribunal shall be appointed after consultation with the Chief Justice of India.

(2) The Members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed on the recommendation of a Selection Committee consisting of—

(a) Chief Justice of India or his nominee—Chairperson;

(b) a senior Judge of the Supreme Court or Chief Justice of High Court—Member;

(c) Secretary in the Ministry of Corporate Affairs—Member; and

(d) Secretary in the Ministry of Law and Justice—Member.

(2A) Where in a meeting of the Selection Committee, there is equality of votes on any matter, the Chairperson shall have a casting vote. ”

(4) Under section 412 (3) the Secretary, Ministry of Corporate Affairs shall be the Convener of the Selection Committee.

(5) Functioning of the Selection committee:

- The Selection Committee shall determine its procedure for recommending persons for the appointment of the members of the Tribunal and the technical members of the Appellate Tribunal.

(6) No appointment of members shall be invalid:

- No appointment of the Members of the Tribunal or the Appellate Tribunal shall be invalid merely by reason of any vacancy or any defect in the constitution of the Selection Committee.

Chapter- 11

COMPOUNDING OF OFFENCES, ADJUDICATION AND SPECIAL COURTS

1. COMPOUNDING OF CERTAIN OFFENCES (SECTION 441 OF THE COMPANIES ACT, 2013)

(1) Who may compound the offence:

- (a) Notwithstanding any thing contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act (whether committed by a company or any officer thereof) ~~with fine only~~, “not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine” may, either before or after the institution of any prosecution, be compounded by—
- (i) the Tribunal; or
- (ii) where the maximum amount of fine which may be imposed for such offence does not exceed five lakh rupees, by the Regional Director or any officer authorised by the Central Government, on payment or credit, by the company or, as the case may be, the officer, to the Central Government of such sum as that Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, may specify:
- (b) Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded:
- (c) Provided further that in specifying the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 403 shall be taken into account:
- (d) Provided also that any offence covered under this sub-section by any company or its officer shall not be compounded if the investigation against such company has been initiated or is pending under this Act.

2. APPLICATION OF FINES (SECTION 446)

- The court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the payment of a reward to the person on whose information the proceedings were instituted.
 - “446A. The court or the Special Court, while deciding the amount of fine or imprisonment under this Act, shall have due regard to the following factors, namely:—
- (a) size of the company;
- (b) nature of business carried on by the company;
- (c) injury to public interest;
- (d) nature of the default; and
- (e) repetition of the default.
- 446B. Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (5) of section 92, sub-section (2) of

section 117 or sub-section (3) of section 137, such company and officer in default of such company shall be punishable with fine or imprisonment or fine and imprisonment, as the case may be, which shall not be more than one-half of the fine or imprisonment or fine and imprisonment, as the case may be, of the minimum or maximum fine or imprisonment or fine and imprisonment, as the case may be, specified in such sections.”

COMPANIES AUTHORISED TO REGISTER

1. COMPANIES CAPABLE OF BEING REGISTERED (SECTION 366)

- (1) For the purposes of this Part, the word “company” includes any partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law for the time being in force which applies for registration under this Part.
- (2) With the exceptions and subject to the provisions contained in this section, any company formed, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act or of any other law for the time being in force or being otherwise duly constituted according to law, and consisting of ~~seven or more members~~, *two or more members* may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee, in such manner as may be prescribed and the registration shall not be invalid by reason only that it has taken place with a view to the company’s being wound up:

Provided that—

- (i) a company registered under the Indian Companies Act, 1882 or under the Indian Companies Act, 1913 or the Companies Act, 1956, shall not register in pursuance of this section;
- (ii) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other law for the time being in force, shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;
- (iii) a company shall be registered in pursuance of this section as a company limited by shares only if it has a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in the one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons;
- (iv) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person, or where proxies are allowed, by proxy, at a general meeting summoned for the purpose;
- (v) where a company not having the liability of its members limited by any Act of Parliament or any other law for the time being in force is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person, or where proxies are allowed, by proxy, at the meeting;
- (vi) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(vii) The company with less than 7 members shall register as private company

- (3) In computing any majority required for the purposes of sub-section (7), when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

2. OBLIGATION OF COMPANIES REGISTERING UNDER THIS PART (SECTION 374)

Every company which is seeking registration under this Part shall,—

- (a) ensure that secured creditors of the company, prior to its registration under this Part, have either consented to or have given their no objection to company's registration under this Part;
- (b) publish in a newspaper, advertisement one in English and one in vernacular language in such form as may be prescribed giving notice about registration under this Part, seeking objections and address them suitably;
- (c) file an affidavit, duly notarised, from all the members or partners to provide that in the event of registration under this Part, necessary documents or papers shall be submitted to the registering or other authority with which the company was earlier registered, for its dissolution as partnership firm, limited liability partnership, cooperative society, society or any other business entity, as the case may be.
- (d) comply with such other conditions as may be prescribed.

“Provided that upon registration as a company under this Part a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008 shall be deemed to have been dissolved under that Act without any further act or deed.”

Section 446A – Factors for determining level of punishment

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

a) size of company

b) nature of business carried on by company

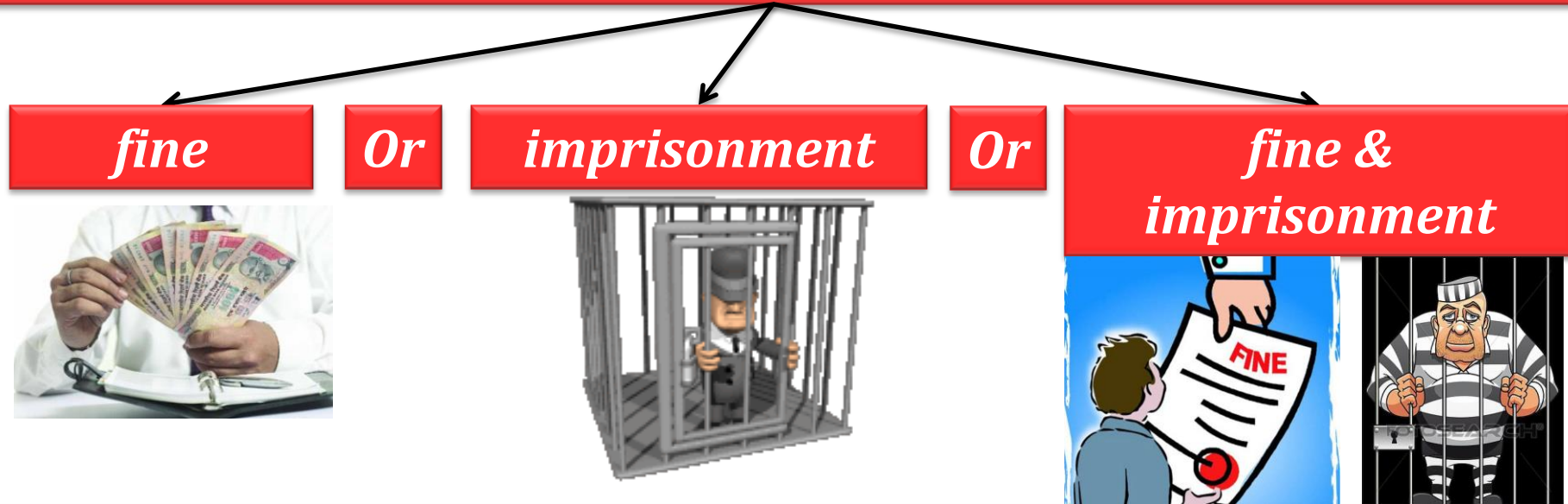
c) injury to public interest

d) nature of the default

e) repetition of default

Section 446B – Lesser penalties for OPC or small companies

Notwithstanding anything contained in this Act, if OPC or small company fails to comply with provisions of section 92(5), section 117(2) or section 137(3), such company & officer in default of such company shall be punishable with -



which shall not be more than one-half of fine or imprisonment or fine and imprisonment, as case may be, of minimum or maximum fine or imprisonment or fine and imprisonment, as the case may be, specified in such sections

Section 447 – Punishment for Fraud



	Fraud involves Public Interest	<i>Fraud of at least Rs. 10 lakh or 1% of turnover of company, whichever is lower</i>
Minimum Imprisonment	3 years	6 months
Maximum Imprisonment	10 years	10 years
Minimum Fine	Amount involved in Fraud	Amount involved in Fraud
Maximum Fine	3 times amount involved in Fraud	3 times amount involved in Fraud

Where fraud involves amount less than 10 lakh rupees or 1% of turnover of company, whichever is lower, & does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for term which may extend to 5 years or with fine which may extend to Rs. 20 lakh or with both

Person liable u/s 447 shall continue to be liable for any other liability under this Act or any other law for the time being in force (including repayment of any debt)

Section 447 – Punishment for Fraud

1) Any person found to be guilty of fraud involving an amount of at least 10 lakh rupees or 1% of turnover of company, whichever is lower, shall be punishable with -

a) Imprisonment - 6 months to 10 years &

b) Fine not less than amount involved in fraud, but which may extend to 3 times amount involved in fraud

2) If fraud involves public interest, term of imprisonment shall not be less than 3 years

3) Where fraud involves amount less than 10 lakh rupees or 1% of turnover of company, whichever is lower, & does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for term which may extend to 5 years or with fine which may extend to Rs. 20 lakh or with both

Explanation: For the purposes of this section:

- (a) **“fraud”** in relation to affairs of a company or anybody corporate, includes any **act, omission, concealment of any fact or abuse of position** committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;
- (b) **“wrongful gain”** means the **gain by unlawful means** of property to which the person gaining is not legally entitled;
- (c) **“wrongful loss”** means the **loss by unlawful means** of property to which the person losing is legally entitled..



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