COMPANY LAW.

Module I

Introduction to company Act.

THE COMPANIES ACT, 2013ACT NO. 18 OF 2013

[29th August, 2013.]

An Act to consolidate and amend the law relating to companies.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

PRELIMINARY

1. Short title, extent, commencement and application.—(1) This Act may be called the Companies

Act, 2013.

(2) It extends to the whole of India.

(3) This section shall come into force at once and the remaining provisions of this Act shall come into

force on such date1

as the Central Government may, by notification in the Official Gazette, appoint and

different dates may be appointed for different provisions of this Act and any reference in any provision to

the commencement of this Act shall be construed as a reference to the coming into force of that provision.

(4) The provisions of this Act shall apply to—

(a) companies incorporated under this Act or under any previous company law;

(b) insurance companies, except in so far as the said provisions are inconsistent with the

provisions of the Insurance Act, 1938 (4 of 1938) or the Insurance Regulatory and Development

Authority Act, 1999 (41 of 1999);

(c) banking companies, except in so far as the said provisions are inconsistent with the provisions

of the Banking Regulation Act, 1949 (10 of 1949);

(d) companies engaged in the generation or supply of electricity, except in so far as the said

provisions are inconsistent with the provisions of the Electricity Act, 2003 (36 of 2003);

1. 1st April 2014 – S. 2(2), (7), (13), (31), (41), (42), (47), (48), (62), (83), (85) and Explanation (d) of clause (87); ss. 3, 4, 5, 6;

s. 7 [except sub-section (7)]; s. 8 [except sub-section (9)]; ss. 9, 10, 11, 12 and 13; s. 14 [except second proviso to sub-section (1)

and sub-section (2)]; ss. 15, 16, 17 and 18; section 20; clause (b) of sub-section (1) and sub-section (2) of section 23; sub-section

(3) of section 25; ss. 26, 27 and 28; sub-section (3) of s. 33; clause (e) of sub-section (1) of s. 35; sub-section (4) of s. 39; sub-

section (6) of s. 40; ss. 41, 42 and 43; ss. 46 and 47; ss. 52, 53 and 54; s. 55 [except sub-section (3)]; s. 56; s. 61 [except proviso

to clause (b) of sub-section (1)]; s. 62 [except sub-sections (4) to (6)]; ss. 63 and 64; ss. 67 and 68; sub-section (2) of section 70;

s. 71 [except sub-sections (9) to (11)]; ss. 72 and 73; sub-section (1) of s. 74; ss. 76, 77, 78, 79, 80, 81, 82, 83, 84 and 85; ss. 87,

88, 89 and 90; ss. 92, 93, 94, 95 and 96; sub-section (6) of s.100; s. 101; third and fourth provisos to sub-section (1) and sub-

section (7) of s. 105; ss. 108, 109 and 110; clause (b) of sub-section (1) of s. 113; s. 115; ss. 117 and 118; s. 119 [except sub-

section (4)]; ss. 120, 121, 122 and 123; s. 126; ss. 128 and 129; s.134; ss. 136, 137, 138 and 139; s. 140 [except second proviso to

sub-section (4) and sub-section (5)]; ss. 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158,

159 and 160; sub-section (2) of s. 161; ss. 164, 165, 166, 167 and 168; s. 169 [except sub-section (4)]; ss. 170, 171, 172, 173, 174

and 175; ss. 177, 178 and 179; s. 184; ss. 186, 187, 188, 189, 190 and 191; s. 193; ss. 196, 197, 198, 199, 200 and 201; ss. 203,

204, 205, 206, 207, 208, 209, 210 and 211; s. 212 [except references of sub-section (10) of s. 66, sub-section (5) of s. 140], s.

213, sub-section (1) of s. 251 and sub-section (3) of s. 339 made in sub-section (6) and also sub-sections (8) to (10)]; ss. 214,

215; s. 216 [except sub-section (2)]; s. 217; ss. 219 and 220; s. 223; s. 224 [except sub-sections (2) and (5)]; s. 225; ss. 228 and

229; ss. 366, 367, 368 and 369; s. 370 (except the proviso); s. 371; s. 374; ss. 380 and 381; ss. 384 and 385; clause (a) of s. 386;

ss. 387, 388, 389 and 390; sub-section (1) of s. 391; ss. 392 and 393; ss. 395, 396, 397 and 398; s. 399 [except reference of word

Tribunal in sub-section (2)]; ss. 400, 401, 402, 403 and 404; s. 406; s. 442; ss. 454 and 455; s. 464; Schs. I, II, III, IV, V and VI,

vide notification No. S.O. 902(E), dated 26th March, 2014, see Gazette of India, Extraordinary, Part II, sec.3(ii).

1st April, 2014 – S. 135 and Sch. VII, vide notification No. S.O. 582(E), dated 27th February, 2014, see Gazette of India,

Extraordinary, Part II, sec. 3 (ii).

6th June, 2014 –Sub-sections (2) and (3) of s. 74, vide notification No. S.O. 1459(E), dated 6th June, 2014, see Gazette of India,

Extraordinary, Part II, sec. 3(ii).15

(e) any other company governed by any special Act for the time being in force, except in so far as

the said provisions are inconsistent with the provisions of such special Act; and

(f) such body corporate, incorporated by any Act for the time being in force, as the Central

Government may, by notification, specify in this behalf, subject to such exceptions, modifications or

adaptation, as may be specified in the notification.

Important definitions:

2. Definitions.— In this Act, unless the context otherwise requires,—

(1) ―abridged prospectus‖ means a memorandum containing such salient features of a prospectus as

may be specified by the Securities and Exchange Board by making regulations in this behalf;

(2) ―accounting standards‖ means the standards of accounting or any addendum thereto for companies

or class of companies referred to in section 133;

(3) ―alter‖ or ―alteration‖ includes the making of additions, omissions and substitutions;

(4**) ―Appellate Tribuna**l‖ means the National Company Law Appellate Tribunal constituted under

section 410;

- (5) ―articles‖ means the articles of association of a company as originally framed or as altered from

time to time or applied in pursuance of any previous company law or of this Act;

(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 twenty

per cent. of total share capital, or of business decisions under an agreement;

(7) ―auditing standards‖ means the standards of auditing or any addendum thereto for companies or

class of companies referred to in sub-section (10) of section 143;

(8) ―authorised capital‖ or ―nominal capital‖ means such capital as is authorised by the memorandum

of a company to be the maximum amount of share capital of the company;

(9) ―banking company‖ means a banking company as defined in clause (c) of section 5 of the Banking

Regulation Act, 1949 (10 of 1949);

(10) ―Board of Directors‖ or ―Board‖, in relation to a company, means the collective body of the

directors of the company;

(11) ―body corporate‖ or ―corporation‖ includes a company incorporated outside India, but does not

include—

(i) a co-operative society registered under any law relating to co-operative societies; and

(ii) any other body corporate (not being a company as defined in this Act), which the Central

Government may, by notification, specify in this behalf;

(12) ―book and paper‖ and ―book or paper‖ include books of account, deeds, vouchers, writings,

documents, minutes and registers maintained on paper or in electronic form;

(13) ―books of account‖ includes records maintained in respect of—

(i) all sums of money received and expended by a company and matters in relation to which the

receipts and expenditure take place;

(ii) all sales and purchases of goods and services by the company;

(iii) the assets and liabilities of the company; and

(iv) the items of cost as may be prescribed under section 148 in the case of a company which

belongs to any class of companies specified under that section;

(14) ―branch office‖, in relation to a company, means any establishment described as such by the

company;

(15) ―called-up capital‖ means such part of the capital, which has been called for payment;16

(16) **―charge‖** means an interest or lien created on the property or assets of a company or any of its

undertakings or both as security and includes a mortgage;

(17) ―chartered accountant‖ means a chartered accountant as defined in clause (b) of sub-section (1)

of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) who holds a valid certificate of practice

under sub-section (1) of section 6 of that Act;

(18) ―Chief Executive Officer‖ means an officer of a company, who has been designated as such by

it;

(19) ―Chief Financial Officer‖ means a person appointed as the Chief Financial Officer of a company;

(20) **―company‖** means a company incorporated under this Act or under any previous company law;

(21) ―company limited by guarantee‖ means a company having the liability of its members limited by

the memorandum to such amount as the members may respectively undertake to contribute to the assets

of the company in the event of its being wound up;

(22) ―company limited by shares‖ means a company having the liability of its members limited by the

memorandum to the amount, if any, unpaid on the shares respectively held by them;

(23) ―Company Liquidator‖, in so far as it relates to the winding up of a company, means a person

appointed by—

(a) the Tribunal in case of winding up by the Tribunal; or

(b) the company or creditors in case of voluntary winding up,

as a Company Liquidator from a panel of professionals maintained by the Central Government under sub-

section (2) of section 275;

(24) ―company secretary‖ or ―secretary‖ means a company secretary as defined in clause (c) of sub-

section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) who is appointed by a

company to perform the functions of a company secretary under this Act;

(25) ―company secretary in practice‖ means a company secretary who is deemed to be in practice

under sub-section (2) of section 2 of the Company Secretaries Act, 1980 (56 of 1980);

(26) ―contributory‖ means a person liable to contribute towards the assets of the company in the event

of its being wound up.

Explanation.—For the purposes of this clause, it is hereby clarified that a person holding fully paid-

up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory

under the Act whilst retaining rights of such a contributory;

(27) ―control‖ shall include the right to appoint majority of the directors or to control the management

or policy decisions exercisable by a person or persons acting individually or in concert, directly or

indirectly, including by virtue of their shareholding or management rights or shareholders agreements or

voting agreements or in any other manner;

(28) ―cost accountant‖ means a cost accountant as defined in clause (b) of subsection (1) of section 2

of the Cost and Works Accountants Act, 1959 (23 of 1959);

(29) ―court‖ means—

(i) the High Court having jurisdiction in relation to the place at which the registered office of the

company concerned is situate, except to the extent to which jurisdiction has been conferred on any

district court or district courts subordinate to that High Court under sub-clause (ii);

(ii) the district court, in cases where the Central Government has, by notification, empowered any

district court to exercise all or any of the jurisdictions conferred upon the High Court, within the

scope of its jurisdiction in respect of a company whose registered office is situate in the district;

(iii) the Court of Session having jurisdiction to try any offence under this Act or under any

previous company law;17

(iv) the Special Court established under section 435;

(v) any Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to

try any offence under this Act or under any previous company law;

(30) ―debenture‖ includes debenture stock, bonds or any other instrument of a company evidencing a

debt, whether constituting a charge on the assets of the company or not;

(31) ―deposit‖ includes any receipt of money by way of deposit or loan or in any other form by a

company, but does not include such categories of amount as may be prescribed in consultation with the

Reserve Bank of India;

(32) ―depository‖ means a depository as defined in clause (e) of sub-section (1) of section 2 of the

Depositories Act, 1996 (22 of 1996);

(33) ―derivative‖ means the derivative as defined in clause (ac) of section 2 of the Securities

Contracts (Regulation) Act, 1956 (42 of 1956);

(34) ―**director**‖ means a director appointed to the Board of a company;

(35) ―**dividend**‖ includes any interim dividend;

(36) ―document‖ includes summons, notice, requisition, order, declaration, form and register, whether

issued, sent or kept in pursuance of this Act or under any other law for the time being in force or

otherwise, maintained on paper or in electronic form;

(37) ―employees‘ stock option‖ means the option given to the directors, officers or employees of a

company or of its holding company or subsidiary company or companies, if any, which gives such

directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the

company at a future date at a pre-determined price;

(38) ―expert‖ includes an engineer, a valuer, a chartered accountant, a company secretary, a cost

accountant and any other person who has the power or authority to issue a certificate in pursuance of any

law for the time being in force;

(39) ―financial institution‖ includes a scheduled bank, and any other financial institution defined or

notified under the Reserve Bank of India Act, 1934 (2 of 1934);

(40) ―financial statement‖ in relation to a company, includes—

(i) a balance sheet as at the end of the financial year;

(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit,

an income and expenditure account for the financial year;

(iii) cash flow statement for the financial year;

(iv) a statement of changes in equity, if applicable; and

(v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause

(i) to sub-clause (iv):

Provided that the financial statement, with respect to One Person Company, small company and

dormant company, may not include the cash flow statement;

(41) ―financial year‖, in relation to any company or body corporate, means the period ending on the

31st day of March every year, and where it has been incorporated on or after the 1st day of January of a

year, the period ending on the 31st day of March of the following year, in respect whereof financial

statement of the company or body corporate is made up:

Provided that on an application made by a company or body corporate, which is a holding company

or a subsidiary of a company incorporated outside India and is required to follow a different financial year

for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its

financial year, whether or not that period is a year:18

Provided further that a company or body corporate, existing on the commencement of this Act, shall,

within a period of two years from such commencement, align its financial year as per the provisions of

this clause;

(42) ―foreign company‖ means any company or body corporate incorporated outside India which—

(a) has a place of business in India whether by itself or through an agent, physically or through

electronic mode; and

(b) conducts any business activity in India in any other manner.

(43) ―free reserves‖ means such reserves which, as per the latest audited balance sheet of a company,

are available for distribution as dividend:

Provided that—

(i) any amount representing unrealised gains, notional gains or revaluation of assets, whether

shown as a reserve or otherwise, or

(ii) any change in carrying amount of an asset or of a liability recognised in equity, including

surplus in profit and loss account on measurement of the asset or the liability at fair value,

shall not be treated as free reserves;

(44) ―Global Depository Receipt‖ means any instrument in the form of a depository receipt, by

whatever name called, created by a foreign depository outside India and authorised by a company making

an issue of such depository receipts;

(45) ―Government company‖ means any company in which not less than fifty-one per cent. of the

paid-up share capital is held by the Central Government, or by any State Government or Governments, or

partly by the Central Government and partly by one or more State Governments, and includes a company

which is a subsidiary company of such a Government company;

(46) ―holding company‖, in relation to one or more other companies, means a company of which such

companies are subsidiary companies;

(47) ―independent director‖ means an independent director referred to in sub-section (6) of section

149;

(48) ―Indian Depository Receipt‖ means any instrument in the form of a depository receipt created by

a domestic depository in India and authorised by a company incorporated outside India making an issue

of such depository receipts;

(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;

(50) ―issued capital‖ means such capital as the company issues from time to time for subscription;

(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;

(52) ―listed company‖ means a company which has any of its securities listed on any recognised stock

exchange;

(53) ―manager‖ means an individual who, subject to the superintendence, control and direction of the

Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a19

company, and includes a director or any other person occupying the position of a manager, by whatever

name called, whether under a contract of service or not;

(54) ―managing director‖ means a director who, by virtue of the articles of a company or an

agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is

entrusted with substantial powers of management of the affairs of the company and includes a director

occupying the position of managing director, by whatever name called.

Explanation.—For the purposes of this clause, the power to do administrative acts of a routine nature

when so authorised by the Board such as the power to affix the common seal of the company to any

document or to draw and endorse any cheque on the account of the company in any bank or to draw and

endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of

any share, shall not be deemed to be included within the substantial powers of management;

(55) **—member‖**, in relation to a company, means—

(i) the subscriber to the memorandum of the company who shall be deemed to have agreed to

become member of the company, and on its registration, shall be entered as member in its register of

members;

(ii) every other person who agrees in writing to become a member of the company and whose

name is entered in the register of members of the company;

(iii) every person holding shares of the company and whose name is entered as a beneficial owner

in the records of a depository;

(56) **—memorandum‖** means the memorandum of association of a company as originally framed or as

altered from time to time in pursuance of any previous company law or of this Act;

(57) ―net worth‖ means the aggregate value of the paid-up share capital and all reserves created out of

the profits and securities premium account, after deducting the aggregate value of the accumulated losses,

deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but

does not include reserves created out of revaluation of assets, write-back of depreciation and

amalgamation;

(58) ―notification‖ means a notification published in the Official Gazette and the expression ―notify‖

shall be construed accordingly;

(59) ―officer‖ includes any director, manager or key managerial personnel or any person in

accordance with whose directions or instructions the Board of Directors or any one or more of the

directors is or are accustomed to act;

(60) ―officer who is in default‖, for the purpose of any provision in this Act which enacts that an

officer of the company who is in default shall be liable to any penalty or punishment by way of

imprisonment, fine or otherwise, means any of the following officers of a company, namely:―

(i) whole-time director;

(ii) key managerial personnel;

(iii) where there is no key managerial personnel, such director or directors as specified by the

Board in this behalf and who has or have given his or their consent in writing to the Board to such

specification, or all the directors, if no director is so specified;

(iv) any person who, under the immediate authority of the Board or any key managerial

personnel, is charged with any responsibility including maintenance, filing or distribution of accounts

or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active

steps to prevent, any default;

(v) any person in accordance with whose advice, directions or instructions the Board of Directors

of the company is accustomed to act, other than a person who gives advice to the Board in a

professional capacity;20

(vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware

of such contravention by virtue of the receipt by him of any proceedings of the Board or participation

in such proceedings without objecting to the same, or where such contravention had taken place with

his consent or connivance;

(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents,

registrars and merchant bankers to the issue or transfer;

(61) ―Official Liquidator‖ means an Official Liquidator appointed under sub-section (1) of section

359;

(**62) ―One Person Company‖** means a company which has only one person as a member;

(63) "ordinary or special resolution" means an ordinary resolution, or as the case may be, special

resolution referred to in section 114;

(64) ―paid-up share capital‖ or ―share capital paid-up‖ means such aggregate amount of money

credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also

includes any amount credited as paid-up in respect of shares of the company, but does not include any

other amount received in respect of such shares, by whatever name called;

(65) ―postal ballot‖ means voting by post or through any electronic mode;

(66) ―prescribed‖ means prescribed by rules made under this Act;

(67) ―previous company law‖ means any of the laws specified below:—

(i) Acts relating to companies in force before the Indian Companies Act, 1866 (10 of 1866);

(ii) the Indian Companies Act, 1866 (10 of 1866);

(iii) the Indian Companies Act, 1882 (6 of 1882);

(iv) the Indian Companies Act, 1913 (7 of 1913);

(v) the Registration of Transferred Companies Ordinance, 1942 (Ord. 54 of 1942);

(vi) the Companies Act, 1956 (1 of 1956); and

(vii) any law corresponding to any of the aforesaid Acts or the Ordinances and in force—

(A) in the merged territories or in a Part B State (other than the State of Jammu and Kashmir),

or any part thereof, before the extension thereto of the Indian Companies Act, 1913 (7 of 1913);

or

(B) in the State of Jammu and Kashmir, or any part thereof, before the commencement of the

Jammu and Kashmir (Extension of Laws) Act, 1956 (62 of 1956), in so far as banking, insurance

and financial corporations are concerned, and before the commencement of the Central Laws

(Extension to Jammu and Kashmir) Act, 1968 (25 of 1968), in so far as other corporations are

concerned;

(viii) the Portuguese Commercial Code, in so far as it relates to sociedadesanonimas; and

(ix) the Registration of Companies (Sikkim) Act, 1961 (Sikkim Act 8 of 1961);

(68) ―private company‖ means a company having a minimum paid-up share capital 1

*** as may be

prescribed, and which by its articles,—

(i) restricts the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for

the purposes of this clause, be treated as a single member:

1. The words ―of one lakh rupees or such higher paid-up share capital‖ omitted by Act 21 of 2015, s. 2 (w.e.f. 29-5-2015).21

Provided further that—

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the

company while in that employment and have continued to be members after the employment ceased,

shall not be included in the number of members; and

(iii) prohibits any invitation to the public to subscribe for any securities of the company;

(69) ―promoter‖ means a person—

(a) who has been named as such in a prospectus or is identified by the company in the annual

return referred to in section 92; or

(b) who has control over the affairs of the company, directly or indirectly whether as a

shareholder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the Board of Directors of the

company is accustomed to act:

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional

capacity;

(70) ―prospectus‖ means any document described or issued as a prospectus and includes a red herring

prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular,

advertisement or other document inviting offers from the public for the subscription or purchase of any

securities of body corporate;

(71) ―public company‖ means a company which—

(a) is not a private company;

(b) has a minimum paid-up share capital 1

*** as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be

deemed to be public company for the purposes of this Act even where such subsidiary company continues

to be a private company in its articles ;

(72) ―public financial institution‖ means—

(i) the Life Insurance Corporation of India, established under section 3 of the Life Insurance

Corporation Act, 1956 (31 of 1956);

(ii) the Infrastructure Development Finance Company Limited, referred to in clause (vi) of sub-

section (1) of section 4A of the Companies Act, 1956 (1 of 1956) so repealed under section 465 of

this Act;

(iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and

Repeal) Act, 2002 (58 of 2002);

(iv) institutions notified by the Central Government under sub-section (2) of section 4A of the

Companies Act, 1956 (1 of 1956) so repealed under section 465 of this Act;

(v) such other institution as may be notified by the Central Government in consultation with the

Reserve Bank of India:

Provided that no institution shall be so notified unless—

(A) it has been established or constituted by or under any Central or State Act; or

1. The words ―of five lakh rupees or such higher paid-up share capital,‖ omitted by Act 21 of 2015, s. 2 (w.e.f. 29-5-2015).22

(B) not less than fifty-one per cent. of the paid-up share capital is held or controlled by the

Central Government or by any State Government or Governments or partly by the Central

Government and partly by one or more State Governments;

(73) ―recognised stock exchange‖ means a recognised stock exchange as defined in clause (f) of

section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(74) ―register of companies‖ means the register of companies maintained by the Registrar on paper or

in any electronic mode under this Act;

(75) ―Registrar‖ means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or

an Assistant Registrar, having the duty of registering companies and discharging various functions under

this Act;

(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 is a member or director;

(v) a public company in which a director or manager is a director or holds along with his

relatives, more than two per cent. 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;

(ix) such other person as may be prescribed;

(77) ‗‗relative'', with reference to any person, means any one who is related to another, if—

(i) they are members of a Hindu Undivided Family;

(ii) they are husband and wife; or

(iii) one person is related to the other in such manner as may be prescribed;

(78) ―**remuneration**‖ means any money or its equivalent given or passed to any person for services

rendered by him and includes perquisites as defined under the Income-tax Act, 1961 (43 of 1961);

(79) ―Schedule‖ means a Schedule annexed to this Act;

(80) ―scheduled bank‖ means the scheduled bank as defined in clause (e) of section 2 of the Reserve

Bank of India Act, 1934 (2 of 1934);

(81) ―securities‖ means the securities as defined in clause (h) of section 2 of the Securities Contracts

(Regulation) Act, 1956 (42 of 1956);

(82) ―Securities and Exchange Board‖ means the Securities and Exchange Board of India established

under section 3 of the Securities and Exchange Board of India Act,1992 (15 of 1992);

(83) ―Serious Fraud Investigation Office‖ means the office referred to in section 211;

(84) ―share‖ means a share in the share capital of a company and includes stock;23

(85) __small company‘‘ means a company, other than a public company,—

(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may

be prescribed which shall not be more than five crore rupees; or

(ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or

such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Provided that nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act;

(86) ―subscribed capital‖ means such part of the capital which is for the time being subscribed by the

members of a company;

(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 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;

(88) ―sweat equity shares‖ means such equity shares as are issued by a company to its directors or

employees at a discount or for consideration, other than cash, for providing their know-how or making

available rights in the nature of intellectual property rights or value additions, by whatever name called;

(89) ―total voting power‖, in relation to any matter, means the total number of votes which may be

cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies

having a right to vote on that matter are present at the meeting and cast their votes;

(90) ―Tribunal‖ means the National Company Law Tribunal constituted under section 408;

(91) ―turnover‖ means the aggregate value of the realisation of amount made from the sale, supply or

distribution of goods or on account of services rendered, or both, by the company during a financial year;

(92) ―unlimited company‖ means a company not having any limit on the liability of its members;

(93) ―voting right‖ means the right of a member of a company to vote in any meeting of the company

or by means of postal ballot;

(94) ―whole-time director‖ includes a director in the whole-time employment of the company;24

(95) words and expressions used and not defined in this Act but defined in the Securities Contracts

(Regulation) Act, 1956 (42 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of

1992) or the Depositories Act, 1996 (22 of 1996) shall have the meanings respectively assigned to them

in those Acts.

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

3. Formation of company.— (1) A company may be formed for any lawful purpose by—

(a) seven or more persons, where the company to be formed is to be a public company;

(b) two or more persons, where the company to be formed is to be a private company; or

(c) one person, where the company to be formed is to be One Person Company that is to say, a

private company,

by subscribing their names or his name to a memorandum and complying with the requirements of this

Act in respect of registration:

Provided that the memorandum of One Person Company shall indicate the name of the other person,

with his prior written consent in the prescribed form, who shall, in the event of the subscriber‘s death or

his incapacity to contract become the member of the company and the written consent of such person

shall also be filed with the Registrar at the time of incorporation of the One Person Company along with

its memorandum and articles:

Provided further that such other person may withdraw his consent in such manner as may be

prescribed:

Provided also that the member of One Person Company may at any time change the name of such

other person by giving notice in such manner as may be prescribed:

Provided also that it shall be the duty of the member of One Person Company to intimate the

company the change, if any, in the name of the other person nominated by him by indicating in the

memorandum or otherwise within such time and in such manner as may be prescribed, and the company

shall intimate the Registrar any such change within such time and in such manner as may be prescribed:

Provided also that any such change in the name of the person shall not be deemed to be an alteration

of the memorandum.

(2) A company formed under sub-section (1) may be either—

(a) a company limited by shares; or

(b) a company limited by guarantee; or

(c) an unlimited company.

4. Memorandum.— (1) The memorandum of a company shall state—

(a) the name of the company with the last word ―Limited‖ in the case of a public limited

company, or the last words ―Private Limited‖ in the case of a private limited company:

Provided that nothing in this clause shall apply to a company registered under section 8;

(b) the State in which the registered office of the company is to be situated;

(c) the objects for which the company is proposed to be incorporated and any matter considered

necessary in furtherance thereof;

(d) the liability of members of the company, whether limited or unlimited, and also state,—

(i) in the case of a company limited by shares, that liability of its members is limited to the

amount unpaid, if any, on the shares held by them; and25

(ii) in the case of a company limited by guarantee, the amount up to which each member

undertakes to contribute—

(A) 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, as the case may be; and

(B) to the costs, charges and expenses of winding-up and for adjustment of the rights of

the contributories among themselves;

(e) in the case of a company having a share capital,—

(i) the amount of share capital with which the company is to be registered and the division

thereof into shares of a fixed amount and the number of shares which the subscribers to the

memorandum agree to subscribe which shall not be less than one share; and

(ii) the number of shares each subscriber to the memorandum intends to take, indicated

opposite his name;

(f) in the case of One Person Company, the name of the person who, in the event of death of the

subscriber, shall become the member of the company.

(2) The name stated in the memorandum shall not—

(a) be identical with or resemble too nearly to the name of an existing company registered under

this Act or any previous company law; or

(b) be such that its use by the company—

(i) will constitute an offence under any law for the time being in force; or

(ii) is undesirable in the opinion of the Central Government.

(3) Without prejudice to the provisions of sub-section (2), a company shall not be registered with a

name which contains—

(a) any word or expression which is likely to give the impression that the company is in any way

connected with, or having the patronage of, the Central Government, any State Government, or any

local authority, corporation or body constituted by the Central Government or any State Government

under any law for the time being in force; or

(b) such word or expression, as may be prescribed,

unless the previous approval of the Central Government has been obtained for the use of any such word or

expression.

(4) A person may make an application, in such form and manner and accompanied by such fee, as

may be prescribed, to the Registrar for the reservation of a name set out in the application as—

(a) the name of the proposed company; or

(b) the name to which the company proposes to change its name.

(5) (i) Upon receipt of an application under sub-section (4), the Registrar may, on the basis of

information and documents furnished along with the application, reserve the name for a period of sixty

days from the date of the application.

(ii) Where after reservation of name under clause (i), it is found that name was applied by furnishing

wrong or incorrect information, then,—

(a) if the company has not been incorporated, the reserved name shall be cancelled and the person

making application under sub-section (4) shall be liable to a penalty which may extend to one lakh

rupees;26

(b) if the company has been incorporated, the Registrar may, after giving the company an

opportunity of being heard—

(i) either direct the company to change its name within a period of three months, after passing

an ordinary resolution;

(ii) take action for striking off the name of the company from the register of companies; or

(iii) make a petition for winding up of the company.

(6) The memorandum of a company shall be in respective forms specified in Tables A, B, C, D and E

in Schedule I as may be applicable to such company.

(7) Any provision in the memorandum or articles, in the case of a company limited by guarantee and

not having a share capital, purporting to give any person a right to participate in the divisible profits of the

company otherwise than as a member, shall be void.

5. Articles.— (1) The articles of a company shall contain the regulations for management of the

company.

(2) The articles shall also contain such matters, as may be prescribed:

Provided that nothing prescribed in this sub-section shall be deemed to prevent a company from

including such additional matters in its articles as may be considered necessary for its management.

(3) The articles may contain provisions for entrenchment to the effect that specified provisions of the

articles may be altered only if conditions or procedures as that are more restrictive than those applicable

in the case of a special resolution, are met or complied with.

(4) The provisions for entrenchment referred to in sub-section (3) shall only be made either on

formation of a company, or by an amendment in the articles agreed to by all the members of the company

in the case of a private company and by a special resolution in the case of a public company.

(5) Where the articles contain provisions for entrenchment, whether made on formation or by

amendment, the company shall give notice to the Registrar of such provisions in such form and manner as

may be prescribed.

(6) The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in

Schedule I as may be applicable to such company.

(7) A company may adopt all or any of the regulations contained in the model articles applicable to

such company.

(8) In case of any company, which is registered after the commencement of this Act, in so far as the

registered articles of such company do not exclude or modify the regulations contained in the model

articles applicable to such company, those regulations shall, so far as applicable, be the regulations of that

company in the same manner and to the extent as if they were contained in the duly registered articles of

the company.

(9) Nothing in this section shall apply to the articles of a company registered under any previous

company law unless amended under this Act.

6. Act to override memorandum, articles, etc.— Save as otherwise expressly provided in this

Act—

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained

in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution

passed by the company in general meeting or by its Board of Directors, whether the same be

registered, executed or passed, as the case may be, before or after the commencement of this Act; and

(b) any provision contained in the memorandum, articles, agreement or resolution shall, to the

extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.27

7. Incorporation of company.— (1) There shall be filed with the Registrar within whose jurisdiction

the registered office of a company is proposed to be situated, the following documents and information

for registration, namely:—

(a) the memorandum and articles of the company duly signed by all the subscribers to the

memorandum in such manner as may be prescribed;

(b) a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or

company secretary in practice, who is engaged in the formation of the company, and by a person

named in the articles as a director, manager or secretary of the company, that all the requirements of

this Act and the rules made thereunder in respect of registration and matters precedent or incidental

thereto have been complied with;

(c) an affidavit from each of the subscribers to the memorandum and from persons named as the

first directors, if any, in the articles that he is not convicted of any offence in connection with the

promotion, formation or management of any company, or that he has not been found guilty of any

fraud or misfeasance or of any breach of duty to any company under this Act or any previous

company law during the preceding five years and that all the documents filed with the Registrar for

registration of the company contain information that is correct and complete and true to the best of his

knowledge and belief;

(d) the address for correspondence till its registered office is established;

(e) the particulars of name, including surname or family name, residential address, nationality and

such other particulars of every subscriber to the memorandum along with proof of identity, as may be

prescribed, and in the case of a subscriber being a body corporate, such particulars as may be

prescribed;

(f) the particulars of the persons mentioned in the articles as the first directors of the company,

their names, including surnames or family names, the Director Identification Number, residential

address, nationality and such other particulars including proof of identity as may be prescribed; and

(g) the particulars of the interests of the persons mentioned in the articles as the first directors of

the company in other firms or bodies corporate along with their consent to act as directors of the

company in such form and manner as may be prescribed.

(2) The Registrar on the basis of documents and information filed under sub-section (1) shall register

all the documents and information referred to in that subsection in the register and issue a certificate of

incorporation in the prescribed form to the effect that the proposed company is incorporated under this

Act.

(3) On and from the date mentioned in the certificate of incorporation issued under sub-section (2),

the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for

the company and which shall also be included in the certificate.

(4) The company shall maintain and preserve at its registered office copies of all documents and

information as originally filed under sub-section (1) till its dissolution under this Act.

(5) If any person furnishes any false or incorrect particulars of any information or suppresses any

material information, of which he is aware in any of the documents filed with the Registrar in relation to

the registration of a company, he shall be liable for action under section 447.

(6) Without prejudice to the provisions of sub-section (5) where, at any time after the incorporation of

a company, it is proved that the company has been got incorporated by furnishing any false or incorrect

information or representation or by suppressing any material fact or information in any of the documents

or declaration filed or made for incorporating such company, or by any fraudulent action, the promoters,

the persons named as the first directors of the company and the persons making declaration under clause

(b) of subsection (1) shall each be liable for action under section 447.

(7) Without prejudice to the provisions of sub-section (6), where a company has been got

incorporated by furnishing any false or incorrect information or representation or by suppressing any

material fact or information in any of the documents or declaration filed or made for incorporating such28

company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied

that the situation so warrants,—

(a) pass such orders, as it may think fit, for regulation of the management of the company

including changes, if any, in its memorandum and articles, in public interest or in the interest of the

company and its members and creditors; or

(b) direct that liability of the members shall be unlimited; or

(c) direct removal of the name of the company from the register of companies; or

(d) pass an order for the winding up of the company; or

(e) pass such other orders as it may deem fit:

Provided that before making any order under this sub-section,—

(i) the company shall be given a reasonable opportunity of being heard in the matter; and

(ii) the Tribunal shall take into consideration the transactions entered into by the company,

including the obligations, if any, contracted or payment of any liability.

8. Formulation of companies with charitable objects, etc.— (1) Where it is proved to the

satisfaction of the Central Government that a person or an association of persons proposed to be

registered under this Act as a limited company—

(a) has in its objects the promotion of commerce, art, science, sports, education, research, social

welfare, religion, charity, protection of environment or any such other object;

(b) intends to apply its profits, if any, or other income in promoting its objects; and

(c) intends to prohibit the payment of any dividend to its members,

the Central Government may, by licence issued in such manner as may be prescribed, and on such

conditions as it deems fit, allow that person or association of persons to be registered as a limited

company under this section without the addition to its name of the word ―Limited‖, or as the case may be,

the words ―Private Limited‖ , and thereupon the Registrar shall, on application, in the prescribed form,

register such person or association of persons as a company under this section.

(2) The company registered under this section shall enjoy all the privileges and be subject to all the

obligations of limited companies.

(3) A firm may be a member of the company registered under this section.

(4) (i) A company registered under this section shall not alter the provisions of its memorandum or

articles except with the previous approval of the Central Government.

(ii) A company registered under this section may convert itself into company of any other kind only

after complying with such conditions as may be prescribed.

(5) Where it is proved to the satisfaction of the Central Government that a limited company registered

under this Act or under any previous company law has been formed with any of the objects specified in

clause (a) of sub-section (1) and with the restrictions and prohibitions as mentioned respectively in

clauses (b) and (c) of that sub-section, it may, by licence, allow the company to be registered under this

section subject to such conditions as the Central Government deems fit and to change its name by

omitting the word ―Limited‖, or as the case may be, the words ―Private Limited‖ from its name and

thereupon the Registrar shall, on application, in the prescribed form, register such company under this

section and all the provisions of this section shall apply to that company.

(6) The Central Government may, by order, revoke the licence granted to a company registered under

this section if the company contravenes any of the requirements of this section or any of the conditions

subject to which a licence is issued or the affairs of the company are conducted fraudulently or in a

manner violative of the objects of the company or prejudicial to public interest, and without prejudice to

any other action against the company under this Act, direct the company to convert its status and change

its name to add the word ―Limited‖ or the words ―Private Limited‖, as the case may be, to its name and29

thereupon the Registrar shall, without prejudice to any action that may be taken under sub-section (7), on

application, in the prescribed form, register the company accordingly:

Provided that no such order shall be made unless the company is given a reasonable opportunity of

being heard:

Provided further that a copy of every such order shall be given to the Registrar.

(7) Where a licence is revoked under sub-section (6), the Central Government may, by order, if it is

satisfied that it is essential in the public interest, direct that the company be wound up under this Act or

amalgamated with another company registered under this section:

Provided that no such order shall be made unless the company is given a reasonable opportunity of

being heard.

(8) Where a licence is revoked under sub-section (6) and where the Central Government is satisfied

that it is essential in the public interest that the company registered under this section should be

amalgamated with another company registered under this section and having similar objects, then,

notwithstanding anything to the contrary contained in this Act, the Central Government may, by order,

provide for such amalgamation to form a single company with such constitution, properties, powers,

rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be

specified in the order.

(9) If on the winding up or dissolution of a company registered under this section, there remains, after

the satisfaction of its debts and liabilities, any asset, they may be transferred to another company

registered under this section and having similar objects, subject to such conditions as the Tribunal may

impose, or may be sold and proceeds thereof credited to the Rehabilitation and Insolvency Fund formed

under section 269.

(10) A company registered under this section shall amalgamate only with another company registered

under this section and having similar objects.

(11) If a company makes any default in complying with any of the requirements laid down in this

section, the company shall, without prejudice to any other action under the provisions of this section, be

punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore

rupees and the directors and every officer of the company who is in default shall be punishable with

imprisonment for a term which may extend to three years or with fine which shall not be less than twenty-

five thousand rupees but which may extend to twenty-five lakh rupees, or with both:

Provided that when it is proved that the affairs of the company were conducted fraudulently, every

officer in default shall be liable for action under section 447.

9. Effect of registration.— From the date of incorporation mentioned in the certificate of

incorporation, such subscribers to the memorandum and all other persons, as may, from time to time,

become members of the company, shall be a body corporate by the name contained in the memorandum,

capable of exercising all the functions of an incorporated company under this Act and having perpetual

succession 1

*** with power to acquire, hold and dispose of property, both movable and immovable,

tangible and intangible, to contract and to sue and be sued, by the said name.

10. Effect of memorandum and articles.— (1) Subject to the provisions of this Act, the

memorandum and articles shall, when registered, bind the company and the members thereof to the same

extent as if they respectively had been signed by the company and by each member, and contained

covenants on its and his part to observe all the provisions of the memorandum and of the articles.

(2) All monies payable by any member to the company under the memorandum or articles shall be a

debt due from him to the company.

11. [Commencement of business, etc.] Omitted by the Companies (Amendment) Act, 2015 (21 of

2015), s. 4 (w.e.f. 29-5-2015).

1. The words ―and a common seal‖ omitted by Act 21 of 2015, s.3 (w.e.f. 29-5-2015).30

12. Registered office of company.— (1) A company shall, on and from the fifteenth day of its

incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging

all communications and notices as may be addressed to it.

(2) The company shall furnish to the Registrar verification of its registered office within a period of

thirty days of its incorporation in such manner as may be prescribed.

(3) Every company shall—

(a) paint or affix its name, and the address of its registered office, and keep the same painted or

affixed, on the outside of every office or place in which its business is carried on, in a conspicuous

position, in legible letters, and if the characters employed therefor are not those of the language or of

one of the languages in general use in that locality, also in the characters of that language or of one of

those languages;

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[(b) have its name engraved in legible characters on its seal, if any;]

(c) get its name, address of its registered office and the Corporate Identity Number along with

telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business

letters, billheads, letter papers and in all its notices and other official publications; and

(d) have its name printed on hundies, promissory notes, bills of exchange and such other

documents as may be prescribed:

Provided that where a company has changed its name or names during the last two years, it shall paint

or affix or print, as the case may be, along with its name, the former name or names so changed during the

last two years as required under clauses (a) and (c):

Provided further that the words __One Person Company‘‘ shall be mentioned in brackets below the

name of such company, wherever its name is printed, affixed or engraved.

(4) Notice of every change of the situation of the registered office, verified in the manner prescribed,

after the date of incorporation of the company, shall be given to the Registrar within fifteen days of the

change, who shall record the same.

(5) Except on the authority of a special resolution passed by a company, the registered office of the

company shall not be changed,—

(a) in the case of an existing company, outside the local limits of any city, town or village where

such office is situated at the commencement of this Act or where it may be situated later by virtue of

a special resolution passed by the company; and

(b) in the case of any other company, outside the local limits of any city, town or village where

such office is first situated or where it may be situated later by virtue of a special resolution passed by

the company:

Provided that no company shall change the place of its registered office from the jurisdiction of one

Registrar to the jurisdiction of another Registrar within the same State unless such change is confirmed by

the Regional Director on an application made in this behalf by the company in the prescribed manner.

(6) The confirmation referred to in sub-section (5) shall be communicated within a period of thirty

days from the date of receipt of application by the Regional Director to the company and the company

shall file the confirmation with the Registrar within a period of sixty days of the date of confirmation who

shall register the same and certify the registration within a period of thirty days from the date of filing of

such confirmation.

(7) The certificate referred to in sub-section (6) shall be conclusive evidence that all the requirements

of this Act with respect to change of registered office in pursuance of subsection (5) have been complied

with and the change shall take effect from the date of the certificate.

1. Subs. by Act 21 of 2015, s. 5, for cl. (b) (w.e.f. 29-5-2015).31

(8) If any default is made in complying with the requirements of this section, the company and every

officer who is in default shall be liable to a penalty of one thousand rupees for every day during which the

default continues but not exceeding one lakh rupees.

13. Alteration of memorandum.— (1) Save as provided in section 61, a company may, by a special

resolution and after complying with the procedure specified in this section, alter the provisions of its

memorandum.

(2) Any change in the name of a company shall be subject to the provisions of subsections (2) and (3)

of section 4 and shall not have effect except with the approval of the Central Government in writing:

Provided that no such approval shall be necessary where the only change in the name of the company

is the deletion therefrom, or addition thereto, of the word ―Private‖, consequent on the conversion of any

one class of companies to another class in accordance with the provisions of this Act.

(3) When any change in the name of a company is made under sub-section (2), the Registrar shall

enter the new name in the register of companies in place of the old name and issue a fresh certificate of

incorporation with the new name and the change in the name shall be complete and effective only on the

issue of such a certificate.

(4) The alteration of the memorandum relating to the place of the registered office from one State to

another shall not have any effect unless it is approved by the Central Government on an application in

such form and manner as may be prescribed.

(5) The Central Government shall dispose of the application under sub-section (4) within a period of

sixty days and before passing its order may satisfy itself that the alteration has the consent of the

creditors, debenture-holders and other persons concerned with the company or that the sufficient

provision has been made by the company either for the due discharge of all its debts and obligations or

that adequate security has been provided for such discharge.

(6) Save as provided in section 64, a company shall, in relation to any alteration of its memorandum,

file with the Registrar—

(a) the special resolution passed by the company under sub-section (1);

(b) the approval of the Central Government under sub-section (2), if the alteration involves any

change in the name of the company.

(7) Where an alteration of the memorandum results in the transfer of the registered office of a

company from one State to another, a certified copy of the order of the Central Government approving the

alteration shall be filed by the company with the Registrar of each of the States within such time and in

such manner as may be prescribed, who shall register the same, and the Registrar of the State where the

registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.

(8) A company, which has raised money from public through prospectus and still has any unutilised

amount out of the money so raised, shall not change its objects for which it raised the money through

prospectus unless a special resolution is passed by the company and—

(i) the details, as may be prescribed, in respect of such resolution shall also be published in the

newspapers (one in English and one in vernacular language) which is in circulation at the place where

the registered office of the company is situated and shall also be placed on the website of the

company, if any, indicating therein the justification for such change;

(ii) the dissenting shareholders shall be given an opportunity to exit by the promoters and

shareholders having control in accordance with regulations to be specified by the Securities and

Exchange Board.

(9) The Registrar shall register any alteration of the memorandum with respect to the objects of the

company and certify the registration within a period of thirty days from the date of filing of the special

resolution in accordance with clause (a) of sub-section (6) of this section.

(10) No alteration made under this section shall have any effect until it has been registered in

accordance with the provisions of this section.32

(11) Any alteration of the memorandum, in the case of a company limited by guarantee and not

having a share capital, purporting to give any person a right to participate in the divisible profits of the

company otherwise than as a member, shall be void.

14. Alteration of articles.— (1) Subject to the provisions of this Act and the conditions contained in

its memorandum, if any, a company may, by a special resolution, alter its articles including alterations

having the effect of conversion of—

(a) a private company into a public company; or

(b) a public company into a private company:

Provided that where a company being a private company alters its articles in such a manner that they

no longer include the restrictions and limitations which are required to be included in the articles of a

private company under this Act, the company shall, as from the date of such alteration, cease to be a

private company:

Provided further that any alteration having the effect of conversion of a public company into a private

company shall not take effect except with the approval of the Tribunal which shall make such order as it

may deem fit.

(2) Every alteration of the articles under this section and a copy of the order of the Tribunal approving

the alteration as per sub-section (1) shall be filed with the Registrar, together with a printed copy of the

altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the

same.

(3) Any alteration of the articles registered under sub-section (2) shall, subject to the provisions of

this Act, be valid as if it were originally in the articles.

15. Alteration of memorandum or articles to be noted in every copy.— (1) Every alteration made

in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles,

as the case may be.

(2) If a company makes any default in complying with the provisions of sub-section (1), the company

and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of

the memorandum or articles issued without such alteration.

16. Rectification of name of company.— (1) If, through inadvertence or otherwise, a company on its

first registration or on its registration by a new name, is registered by a name which,—

(a) in the opinion of the Central Government, is identical with or too nearly resembles the name

by which a company in existence had been previously registered, whether under this Act or any

previous company law, it may direct the company to change its name and the company shall change

its name or new name, as the case may be, within a period of three months from the issue of such

direction, after adopting an ordinary resolution for the purpose;

(b) on an application by a registered proprietor of a trade mark that the name is identical with or

too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999,

made to the Central Government within three years of incorporation or registration or change of name

of the company, whether under this Act or any previous company law, in the opinion of the Central

Government, is identical with or too nearly resembles to an existing trade mark, it may direct the

company to change its name and the company shall change its name or new name, as the case may be,

within a period of six months from the issue of such direction, after adopting an ordinary resolution

for the purpose.

(2) Where a company changes its name or obtains a new name under sub-section (1), it shall within a

period of fifteen days from the date of such change, give notice of the change to the Registrar along with

the order of the Central Government, who shall carry out necessary changes in the certificate of

incorporation and the memorandum.

(3) If a company makes default in complying with any direction given under sub-section (1), the

company shall be punishable with fine of one thousand rupees for every day during which the default33

continues and every officer who is in default shall be punishable with fine which shall not be less than

five thousand rupees but which may extend to one lakh rupees.

17. Copies of memorandum, articles, etc., to be given to members.— (1) A company shall, on

being so requested by a member, send to him within seven days of the request and subject to the payment

of such fees as may be prescribed, a copy of each of the following documents, namely:—

(a) the memorandum;

(b) the articles; and

(c) every agreement and every resolution referred to in sub-section (1) of section 117, if and in so

far as they have not been embodied in the memorandum or articles.

(2) If a company makes any default in complying with the provisions of this section, the company and

every officer of the company who is in default shall be liable for each default, to a penalty of one

thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

18. Conversion of companies already registered.— (1) A company of any class registered under

this Act may convert itself as a company of other class under this Act by alteration of memorandum and

articles of the company in accordance with the provisions of this Chapter.

(2) Where the conversion is required to be done under this section, the Registrar shall on an

application made by the company, after satisfying himself that the provisions of this Chapter applicable

for registration of companies have been complied with, close the former registration of the company and

after registering the documents referred to in sub-section (1), issue a certificate of incorporation in the

same manner as its first registration.

(3) The registration of a company under this section shall not affect any debts, liabilities, obligations

or contracts incurred or entered into, by or on behalf of the company before conversion and such debts,

liabilities, obligations and contracts may be enforced in the manner as if such registration had not been

done.

19. Subsidiary company not to hold shares in its holding company.— (1) No company shall,

either by itself or through its nominees, hold any shares in its holding company and no holding company

shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of

shares of a company to its subsidiary company shall be void:

Provided that nothing in this sub-section shall apply to a case—

(a) where the subsidiary company holds such shares as the legal representative of a deceased

member of the holding company; or

(b) where the subsidiary company holds such shares as a trustee; or

(c) where the subsidiary company is a shareholder even before it became a subsidiary company of

the holding company:

Provided further that the subsidiary company referred to in the preceding proviso shall have a right to

vote at a meeting of the holding company only in respect of the shares held by it as a legal representative

or as a trustee, as referred to in clause (a) or clause (b) of the said proviso.

(2) The reference in this section to the shares of a holding company which is a company limited by

guarantee or an unlimited company, not having a share capital, shall be construed as a reference to the

interest of its members, whatever be the form of interest.

20. Service of documents.— (1) A document may be served on a company or an officer thereof by

sending it to the company or the officer at the registered office of the company by registered post or by

speed post or by courier service or by leaving it at its registered office or by means of such electronic or

other mode as may be prescribed:

Provided that where securities are held with a depository, the records of the beneficial ownership may

be served by such depository on the company by means of electronic or other mode.34

(2) Save as provided in this Act or the rules made thereunder for filing of documents with the

Registrar in electronic mode, a document may be served on Registrar or any member by sending it to him

by post or by registered post or by speed post or by courier or by delivering at his office or address, or by

such electronic or other mode as may be prescribed:

Provided that a member may request for delivery of any document through a particular mode, for

which he shall pay such fees as may be determined by the company in its annual general meeting.

Explanation.—For the purposes of this section, the term ‗‗courier'' means a person or agency which

delivers the document and provides proof of its delivery.

21. Authentication of documents, proceedings and contracts.— Save as otherwise provided in this

Act,—

(a) a document or proceeding requiring authentication by a company; or

(b) contracts made by or on behalf of a company,

may be signed by any key managerial personnel or an officer of the company duly authorised by the

Board in this behalf.

22. Execution of bills of exchange, etc.— (1) A bill of exchange, hundi or promissory note shall be

deemed to have been made, accepted, drawn or endorsed on behalf of a company if made, accepted,

drawn, or endorsed in the name of, or on behalf of or on account of, the company by any person acting

under its authority, express or implied.

(2) A company may, by writing 1

[under its commoMl if any,] authorise any person, either

generally or in respect of any specified matters, as its attorney to execute other deeds on its behalf in any

place either in or outside India:

2

[Provided that in case a company does not have a common seal, the authorisation under this sub-

section shall be made by two directors or by a director and the Company Secretary, wherever the

company has appointed a Company Secretary.]

(3) A deed signed by such an attorney on behalf of the company and under his seal shall bind the

ModuleII

PROSPECTUS AND ALLOTMENT OF SECURITIES

Public offer:

23. Public offer and private placement.—(1) A public company may issue securities—

(a) to public through prospectus (herein referred to as "public offer") by complying with the

provisions of this Part; or

(b) through private placement by complying with the provisions of Part II of this Chapter; or

(c) through a rights issue or a bonus issue in accordance with the provisions of this Act and in

case of a listed company or a company which intends to get its securities listed also with the

provisions of the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and

regulations made thereunder.

(2) A private company may issue securities—

(a) by way of rights issue or bonus issue in accordance with the provisions of this Act; or

(b) through private placement by complying with the provisions of Part II of this Chapter.

Explanation.—For the purposes of this Chapter, "public offer" includes initial public offer or further

public offer of securities to the public by a company, or an offer for sale of securities to the public by an

existing shareholder, through issue of a prospectus.

1. Subs. by Act 21 of 2015, s. 6, for ―under its common seal‖ (w.e.f. 29-5-2015).

2. Ins. by s. 6, ibid. (w.e.f. 29-5-2015).

3. The words ―and have the effect as if it were made under its common seal‖ omitted by s. 6, ibid. (w.e.f. 29-5-2015).

ModuleII Continue

24. Power of Securities and Exchange Board to regulate issue and transfer of securities, etc.—

(1) The provisions contained in this Chapter, Chapter IV and in section 127 shall,—

(a) in so far as they relate to —

(i) issue and transfer of securities; and

(ii) non-payment of dividend,

by listed companies or those companies which intend to get their securities listed on any recognised

stock exchange in India, except as provided under this Act, be administered by the Securities and

Exchange Board by making regulations in this behalf;

(b) in any other case, be administered by the Central Government.

Explanation.—For the removal of doubts, it is hereby declared that all powers relating to all other

matters relating to prospectus, return of allotment, redemption of preference shares and any other matter

specifically provided in this Act, shall be exercised by the Central Government, the Tribunal or the

Registrar, as the case may be.

(2) The Securities and Exchange Board shall, in respect of matters specified in subsection (1) and the

matters delegated to it under proviso to sub-section (1) of section 458, exercise the powers conferred upon

it under sub-sections (1), (2A), (3) and (4) of section 11, sections 11A, 11B and 11D of the Securities and

Exchange Board of India Act, 1992 (15 of 1992).

25. Document containing offer of securities for sale to be deemed prospectus.—(1) Where a

company allots or agrees to allot any securities of the company with a view to all or any of those

securities being offered for sale to the public, any document by which the offer for sale to the public is

made shall, for all purposes, be deemed to be a prospectus issued by the company; and all enactments and

rules of law as to the contents of prospectus and as to liability in respect of mis-statements, in and

omissions from, prospectus, or otherwise relating to prospectus, shall apply with the modifications

specified in subsections (3) and (4) and shall have effect accordingly, as if the securities had been offered

to the public for subscription and as if persons accepting the offer in respect of any securities were

subscribers for those securities, but without prejudice to the liability, if any, of the persons by whom the

offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment

of, or an agreement to allot, securities was made with a view to the securities being offered for sale to the

public if it is shown—

(a) that an offer of the securities or of any of them for sale to the public was made within six

months after the allotment or agreement to allot; or

(b) that at the date when the offer was made, the whole consideration to be received by the

company in respect of the securities had not been received by it.

(3) Section 26 as applied by this section shall have effect as if —

(i) it required a prospectus to state in addition to the matters required by that section to be stated

in a prospectus—

(a) the net amount of the consideration received or to be received by the company in respect

of the securities to which the offer relates; and

(b) the time and place at which the contract where under the said securities have been or are

to be allotted may be inspected;

(ii) the persons making the offer were persons named in a prospectus as directors of a company.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be

sufficient if the document referred to in sub-section (1) is signed on behalf of the company or firm by two

directors of the company or by not less than one-half of the partners in the firm, as the case may be.35

24. Power of Securities and Exchange Board to regulate issue and transfer of securities, etc.—

(1) The provisions contained in this Chapter, Chapter IV and in section 127 shall,—

(a) in so far as they relate to —

(i) issue and transfer of securities; and

(ii) non-payment of dividend,

by listed companies or those companies which intend to get their securities listed on any recognised

stock exchange in India, except as provided under this Act, be administered by the Securities and

Exchange Board by making regulations in this behalf;

(b) in any other case, be administered by the Central Government.

Explanation.—For the removal of doubts, it is hereby declared that all powers relating to all other

matters relating to prospectus, return of allotment, redemption of preference shares and any other matter

specifically provided in this Act, shall be exercised by the Central Government, the Tribunal or the

Registrar, as the case may be.

(2) The Securities and Exchange Board shall, in respect of matters specified in subsection (1) and the

matters delegated to it under proviso to sub-section (1) of section 458, exercise the powers conferred upon

it under sub-sections (1), (2A), (3) and (4) of section 11, sections 11A, 11B and 11D of the Securities and

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securities being offered for sale to the public, any document by which the offer for sale to the public is

made shall, for all purposes, be deemed to be a prospectus issued by the company; and all enactments and

rules of law as to the contents of prospectus and as to liability in respect of mis-statements, in and

omissions from, prospectus, or otherwise relating to prospectus, shall apply with the modifications

specified in subsections (3) and (4) and shall have effect accordingly, as if the securities had been offered

to the public for subscription and as if persons accepting the offer in respect of any securities were

subscribers for those securities, but without prejudice to the liability, if any, of the persons by whom the

offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment

of, or an agreement to allot, securities was made with a view to the securities being offered for sale to the

public if it is shown—

(a) that an offer of the securities or of any of them for sale to the public was made within six

months after the allotment or agreement to allot; or

(b) that at the date when the offer was made, the whole consideration to be received by the

company in respect of the securities had not been received by it.

(3) Section 26 as applied by this section shall have effect as if —

(i) it required a prospectus to state in addition to the matters required by that section to be stated

in a prospectus—

(a) the net amount of the consideration received or to be received by the company in respect

of the securities to which the offer relates; and

(b) the time and place at which the contract where under the said securities have been or are

to be allotted may be inspected;

(ii) the persons making the offer were persons named in a prospectus as directors of a company.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be

sufficient if the document referred to in sub-section (1) is signed on behalf of the company or firm by two

directors of the company or by not less than one-half of the partners in the firm, as the case may be.36

26. Matters to be stated in prospectus.— (1) Every prospectus issued by or on behalf of a public

company either with reference to its formation or subsequently, or by or on behalf of any person who is

or has been engaged or interested in the formation of a public company, shall be dated and signed and

shall—

(a) state the following information, namely:—

(i) names and addresses of the registered office of the company, company secretary, Chief

Financial Officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other

persons as may be prescribed;

(ii) dates of the opening and closing of the issue, and declaration about the issue of allotment

letters and refunds within the prescribed time;

(iii) a statement by the Board of Directors about the separate bank account where all monies

received out of the issue are to be transferred and disclosure of details of all monies including

utilised and unutilised monies out of the previous issue in the prescribed manner;

(iv) details about underwriting of the issue;

(v) consent of the directors, auditors, bankers to the issue, expert‘s opinion, if any, and of

such other persons, as may be prescribed;

(vi) the authority for the issue and the details of the resolution passed therefor;

(vii) procedure and time schedule for allotment and issue of securities;

(viii) capital structure of the company in the prescribed manner;

(ix) main objects of public offer, terms of the present issue and such other particulars as may

be prescribed;

(x) main objects and present business of the company and its location, schedule of

implementation of the project;

(xi) particulars relating to—

(A) management perception of risk factors specific to the project;

(B) gestation period of the project;

(C) extent of progress made in the project;

(D) deadlines for completion of the project; and

(E) any litigation or legal action pending or taken by a Government Department or a

statutory body during the last five years immediately preceding the year of the issue of

prospectus against the promoter of the company;

(xii) minimum subscription, amount payable by way of premium, issue of shares otherwise

than on cash;

(xiii) details of directors including their appointments and remuneration, and such particulars

of the nature and extent of their interests in the company as may be prescribed; and

(xiv) disclosures in such manner as may be prescribed about sources of promoter‘s

contribution;

(b) set out the following reports for the purposes of the financial information, namely:—

(i) reports by the auditors of the company with respect to its profits and losses and assets and

liabilities and such other matters as may be prescribed;

(ii) reports relating to profits and losses for each of the five financial years immediately

preceding the financial year of the issue of prospectus including such reports of its subsidiaries

and in such manner as may be prescribed:37

Provided that in case of a company with respect to which a period of five years has not

elapsed from the date of incorporation, the prospectus shall set out in such manner as may be

prescribed, the reports relating to profits and losses for each of the financial years immediately

preceding the financial year of the issue of prospectus including such reports of its subsidiaries;

(iii) reports made in the prescribed manner by the auditors upon the profits and losses of the

business of the company for each of the five financial years immediately preceding issue and

assets and liabilities of its business on the last date to which the accounts of the business were

made up, being a date not more than one hundred and eighty days before the issue of the

prospectus:

Provided that in case of a company with respect to which a period of five years has not

elapsed from the date of incorporation, the prospectus shall set out in the prescribed manner, the

reports made by the auditors upon the profits and losses of the business of the company for all

financial years from the date of its incorporation, and assets and liabilities of its business on the

last date before the issue of prospectus; and

(iv) reports about the business or transaction to which the proceeds of the securities are to be

applied directly or indirectly;

(c) make a declaration about the compliance of the provisions of this Act and a statement to the

effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts

(Regulation) Act, 1956 (42 of 1956) and the Securities and Exchange Board of India Act, 1992 (15 of

1992) and the rules and regulations made thereunder; and

(d) state such other matters and set out such other reports, as may be prescribed.

(2) Nothing in sub-section (1) shall apply—

(a) to the issue to existing members or debenture-holders of a company, of a prospectus or form

of application relating to shares in or debentures of the company, whether an applicant has a right to

renounce the shares or not under sub-clause (ii) of clause (a) of sub-section (1) of section 62 in favour

of any other person; or

(b) to the issue of a prospectus or form of application relating to shares or debentures which are,

or are to be, in all respects uniform with shares or debentures previously issued and for the time being

dealt in or quoted on a recognised stock exchange.

(3) Subject to sub-section (2), the provisions of sub-section (1) shall apply to a prospectus or a form

of application, whether issued on or with reference to the formation of a company or subsequently.

Explanation.—The date indicated in the prospectus shall be deemed to be the date of its publication.

(4) No prospectus shall be issued by or on behalf of a company or in relation to an intended company

unless on or before the date of its publication, there has been delivered to the Registrar for registration, a

copy thereof signed by every person who is named therein as a director or proposed director of the

company or by his duly authorised attorney.

(5) A prospectus issued under sub-section (1) shall not include a statement purporting to be made by

an expert unless the expert is a person who is not, and has not been, engaged or interested in the formation

or promotion or management, of the company and has given his written consent to the issue of the

prospectus and has not withdrawn such consent before the delivery of a copy of the prospectus to the

Registrar for registration and a statement to that effect shall be included in the prospectus.

(6) Every prospectus issued under sub-section (1) shall, on the face of it,—

(a) state that a copy has been delivered for registration to the Registrar as required under sub-

section (4); and

(b) specify any documents required by this section to be attached to the copy so delivered or refer

to statements included in the prospectus which specify these documents.38

(7) The Registrar shall not register a prospectus unless the requirements of this section with respect to

its registration are complied with and the prospectus is accompanied by the consent in writing of all the

persons named in the prospectus.

(8) No prospectus shall be valid if it is issued more than ninety days after the date on which a copy

thereof is delivered to the Registrar under sub-section (4).

(9) If a prospectus is issued in contravention of the provisions of this section, the company shall be

punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh

rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable with

imprisonment for a term which may extend to three years or with fine which shall not be less than fifty

thousand rupees but which may extend to three lakh rupees, or with both.

27. Variation in terms of contract or objects in prospectus.—(1) A company shall not, at any time,

vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued,

except subject to the approval of, or except subject to an authority given by the company in general

meeting by way of special resolution:

Provided that the details, as may be prescribed, of the notice in respect of such resolution to

shareholders, shall also be published in the newspapers (one in English and one in vernacular language) in

the city where the registered office of the company is situated indicating clearly the justification for such

variation:

Provided further that such company shall not use any amount raised by it through prospectus for

buying, trading or otherwise dealing in equity shares of any other listed company.

(2) The dissenting shareholders being those shareholders who have not agreed to the proposal to vary

the terms of contracts or objects referred to in the prospectus, shall be given an exit offer by promoters or

controlling shareholders at such exit price, and in such manner and conditions as may be specified by the

Securities and Exchange Board by making regulations in this behalf.

28. Offer of sale of shares by certain members of company.— (1) Where certain members of a

company propose, in consultation with the Board of Directors to offer, in accordance with the provisions

of any law for the time being in force, whole or part of their holding of shares to the public, they may do

so in accordance with such procedure as may be prescribed.

(2) Any document by which the offer of sale to the public is made shall, for all purposes, be deemed

to be a prospectus issued by the company and all laws and rules made thereunder as to the contents of the

prospectus and as to liability in respect of mis-statements in and omission from prospectus or otherwise

relating to prospectus shall apply as if this is a prospectus issued by the company.

(3) The members, whether individuals or bodies corporate or both, whose shares are proposed to be

offered to the public, shall collectively authorise the company, whose shares are offered for sale to the

public, to take all actions in respect of offer of sale for and on their behalf and they shall reimburse the

company all expenses incurred by it on this matter.

29. Public offer of securities to be in dematerialised form.— (1) Notwithstanding anything

contained in any other provisions of this Act,—

(a) every company making public offer; and

(b) such other class or classes of public companies as may be prescribed,

shall issue the securities only in dematerialised form by complying with the provisions of the Depositories

Act, 1996 (22 of 1996) and the regulations made thereunder.

(2) Any company, other than a company mentioned in sub-section (1), may convert its securities into

dematerialised form or issue its securities in physical form in accordance with the provisions of this Act

or in dematerialised form in accordance with the provisions of the Depositories Act, 1996 (22 of 1996)

and the regulations made thereunder.

30. Advertisement of prospectus.— Where an advertisement of any prospectus of a company is

published in any manner, it shall be necessary to specify therein the contents of its memorandum as39

regards the objects, the liability of members and the amount of share capital of the company, and the

names of the signatories to the memorandum and the number of shares subscribed for by them, and its

capital structure.

31. Shelf prospectus.— (1) Any class or classes of companies, as the Securities and Exchange Board

may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage of the

first offer of securities included therein which shall indicate a period not exceeding one year as the period

of validity of such prospectus which shall commence from the date of opening of the first offer of

securities under that prospectus, and in respect of a second or subsequent offer of such securities issued

during the period of validity of that prospectus, no further prospectus is required.

(2) A company filing a shelf prospectus shall be required to file an information memorandum

containing all material facts relating to new charges created, changes in the financial position of the

company as have occurred between the first offer of securities or the previous offer of securities and the

succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the

prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus:

Provided that where a company or any other person has received applications for the allotment of

securities along with advance payments of subscription before the making of any such change, the

company or other person shall intimate the changes to such applicants and if they express a desire to

withdraw their application, the company or other person shall refund all the monies received as

subscription within fifteen days thereof.

(3) Where an information memorandum is filed, every time an offer of securities is made under sub-

section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

Explanation.—For the purposes of this section, the expression "shelf prospectus" means a prospectus

in respect of which the securities or class of securities included therein are issued for subscription in one

or more issues over a certain period without the issue of a further prospectus.

32. Red herring prospectus.— (1) A company proposing to make an offer of securities may issue a

red herring prospectus prior to the issue of a prospectus.

(2) A company proposing to issue a red herring prospectus under sub-section (1) shall file it with the

Registrar at least three days prior to the opening of the subscription list and the offer.

(3) A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any

variation between the red herring prospectus and a prospectus shall be highlighted as variations in the

prospectus.

(4) Upon the closing of the offer of securities under this section, the prospectus stating therein the

total capital raised, whether by way of debt or share capital, and the closing price of the securities and any

other details as are not included in the red herring prospectus shall be filed with the Registrar and the

Securities and Exchange Board.

Explanation.—For the purposes of this section, the expression "red herring prospectus" means a

prospectus which does not include complete particulars of the quantum or price of the securities included

therein.

33. Issue of application forms for securities.— (1) No form of application for the purchase of any

of the securities of a company shall be issued unless such form is accompanied by an abridged

prospectus:

Provided that nothing in this sub-section shall apply if it is shown that the form of application was

issued—

(a) in connection with a bona fide invitation to a person to enter into an underwriting agreement

with respect to such securities; or

(b) in relation to securities which were not offered to the public.

(2) A copy of the prospectus shall, on a request being made by any person before the closing of the

subscription list and the offer, be furnished to him.40

(3) If a company makes any default in complying with the provisions of this section, it shall be liable

to a penalty of fifty thousand rupees for each default.

34. Criminal liability for mis-statements in prospectus.— Where a prospectus, issued, circulated

or distributed under this Chapter, includes any statement which is untrue or misleading in form or context

in which it is included or where any inclusion or omission of any matter is likely to mislead, every person

who authorises the issue of such prospectus shall be liable under section 447:

Provided that nothing in this section shall apply to a person if he proves that such statement or

omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of

the prospectus believe, that the statement was true or the inclusion or omission was necessary.

35. Civil liability for mis-statements in prospectus.—(1) Where a person has subscribed for

securities of a company acting on any statement included, or the inclusion or omission of any matter, in

the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the

company and every person who—

(a) is a director of the company at the time of the issue of the prospectus;

(b) has authorised himself to be named and is named in the prospectus as a director of the

company, or has agreed to become such director, either immediately or after an interval of time;

(c) is a promoter of the company;

(d) has authorised the issue of the prospectus; and

(e) is an expert referred to in sub-section (5) of section 26,

shall, without prejudice to any punishment to which any person may be liable under section 36, be liable

to pay compensation to every person who has sustained such loss or damage.

(2) No person shall be liable under sub-section (1), if he proves—

(a) that, having consented to become a director of the company, he withdrew his consent before

the issue of the prospectus, and that it was issued without his authority or consent; or

(b) that the prospectus was issued without his knowledge or consent, and that on becoming aware

of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or

consent.

(3) Notwithstanding anything contained in this section, where it is proved that a prospectus has been

issued with intent to defraud the applicants for the securities of a company or any other person or for any

fraudulent purpose, every person referred to in subsection (1) shall be personally responsible, without any

limitation of liability, for all or any of the losses or damages that may have been incurred by any person

who subscribed to the securities on the basis of such prospectus.

36. Punishment for fraudulently inducing persons to invest money. — Any person who, either

knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading,

or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter

into,—

(a) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting

securities; or

(b) any agreement, the purpose or the pretended purpose of which is to secure a profit to any of

the parties from the yield of securities or by reference to fluctuations in the value of securities; or

(c) any agreement for, or with a view to obtaining credit facilities from any bank or financial

institution,

shall be liable for action under section 447.

37. Action by affected persons.—A suit may be filed or any other action may be taken under section

34 or section 35 or section 36 by any person, group of persons or any association of persons affected by

any misleading statement or the inclusion or omission of any matter in the prospectus.41

38. Punishment for personation for acquisition, etc., of securities.—(1) Any person who—

(a) makes or abets making of an application in a fictitious name to a company for acquiring, or

subscribing for, its securities; or

(b) makes or abets making of multiple applications to a company in different names or in

different combinations of his name or surname for acquiring or subscribing for its securities; or

(c) otherwise induces directly or indirectly a company to allot, or register any transfer of,

securities to him, or to any other person in a fictitious name,

shall be liable for action under section 447.

(2) The provisions of sub-section (1) shall be prominently reproduced in every prospectus issued by a

company and in every form of application for securities.

(3) Where a person has been convicted under this section, the Court may also order disgorgement of

gain, if any, made by, and seizure and disposal of the securities in possession of, such person.

(4) The amount received through disgorgement or disposal of securities under subsection (3) shall be

credited to the Investor Education and Protection Fund.

39. Allotment of securities by company.—(1) No allotment of any securities of a company offered

to the public for subscription shall be made unless the amount stated in the prospectus as the minimum

amount has been subscribed and the sums payable on application for the amount so stated have been paid

to and received by the company by cheque or other instrument.

(2) The amount payable on application on every security shall not be less than five per cent. of the

nominal amount of the security or such other percentage or amount, as may be specified by the Securities

and Exchange Board by making regulations in this behalf.

(3) If the stated minimum amount has not been subscribed and the sum payable on application is not

received within a period of thirty days from the date of issue of the prospectus, or such other period as

may be specified by the Securities and Exchange Board, the amount received under sub-section (1) shall

be returned within such time and manner as may be prescribed.

(4) Whenever a company having a share capital makes any allotment of securities, it shall file with

the Registrar a return of allotment in such manner as may be prescribed.

(5) In case of any default under sub-section (3) or sub-section (4), the company and its officer who is

in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which

such default continues or one lakh rupees, whichever is less.

40. Securities to be dealt with in stock exchanges.—(1) Every company making public offer shall,

before making such offer, make an application to one or more recognised stock exchange or exchanges

and obtain permission for the securities to be dealt with in such stock exchange or exchanges.

(2) Where a prospectus states that an application under sub-section (1) has been made, such

prospectus shall also state the name or names of the stock exchange in which the securities shall be dealt

with.

(3) All monies received on application from the public for subscription to the securities shall be kept

in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—

(a) for adjustment against allotment of securities where the securities have been permitted to be

dealt with in the stock exchange or stock exchanges specified in the prospectus; or

(b) for the repayment of monies within the time specified by the Securities and Exchange Board,

received from applicants in pursuance of the prospectus, where the company is for any other reason

unable to allot securities.

(4) Any condition purporting to require or bind any applicant for securities to waive compliance with

any of the requirements of this section shall be void.41

38. Punishment for personation for acquisition, etc., of securities.—(1) Any person who—

(a) makes or abets making of an application in a fictitious name to a company for acquiring, or

subscribing for, its securities; or

(b) makes or abets making of multiple applications to a company in different names or in

different combinations of his name or surname for acquiring or subscribing for its securities; or

(c) otherwise induces directly or indirectly a company to allot, or register any transfer of,

securities to him, or to any other person in a fictitious name,

shall be liable for action under section 447.

(2) The provisions of sub-section (1) shall be prominently reproduced in every prospectus issued by a

company and in every form of application for securities.

(3) Where a person has been convicted under this section, the Court may also order disgorgement of

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amount has been subscribed and the sums payable on application for the amount so stated have been paid

to and received by the company by cheque or other instrument.

(2) The amount payable on application on every security shall not be less than five per cent. of the

nominal amount of the security or such other percentage or amount, as may be specified by the Securities

and Exchange Board by making regulations in this behalf.

(3) If the stated minimum amount has not been subscribed and the sum payable on application is not

received within a period of thirty days from the date of issue of the prospectus, or such other period as

may be specified by the Securities and Exchange Board, the amount received under sub-section (1) shall

be returned within such time and manner as may be prescribed.

(4) Whenever a company having a share capital makes any allotment of securities, it shall file with

the Registrar a return of allotment in such manner as may be prescribed.

(5) In case of any default under sub-section (3) or sub-section (4), the company and its officer who is

in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which

such default continues or one lakh rupees, whichever is less.

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before making such offer, make an application to one or more recognised stock exchange or exchanges

and obtain permission for the securities to be dealt with in such stock exchange or exchanges.

(2) Where a prospectus states that an application under sub-section (1) has been made, such

prospectus shall also state the name or names of the stock exchange in which the securities shall be dealt

with.

(3) All monies received on application from the public for subscription to the securities shall be kept

in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—

(a) for adjustment against allotment of securities where the securities have been permitted to be

dealt with in the stock exchange or stock exchanges specified in the prospectus; or

(b) for the repayment of monies within the time specified by the Securities and Exchange Board,

received from applicants in pursuance of the prospectus, where the company is for any other reason

unable to allot securities.

(4) Any condition purporting to require or bind any applicant for securities to waive compliance with

any of the requirements of this section shall be void.42

(5) If a default is made in complying with the provisions of this section, the company shall be

punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh

rupees and every officer of the company who is in default shall be punishable with imprisonment for a

term which may extend to one year or with fine which shall not be less than fifty thousand rupees but

which may extend to three lakh rupees, or with both.

(6) A company may pay commission to any person in connection with the subscription to its

securities subject to such conditions as may be prescribed.

41. Global depository receipt.— A company may, after passing a special resolution in its general

meeting, issue depository receipts in any foreign country in such manner, and subject to such conditions,

Private Placement.

as may or subscription of securities on private placement.—(1) Without

prejudice to the provisions of section 26, a company may, subject to the provisions of this section, make

private placement through issue of a private placement offer letter.

(2) Subject to sub-section (1), the offer of securities or invitation to subscribe securities, shall be

made to such number of persons not exceeding fifty or such higher number as may be prescribed,

[excluding qualified institutional buyers and employees of the company being offered securities under a

scheme of employees stock option as per provisions of clause (b) of sub-section (1) of section 62], in a

financial year and on such conditions (including the form and manner of private placement) as may be

prescribed.

Explanation I.—If a company, listed or unlisted, makes an offer to allot or invites subscription, or

allots, or enters into an agreement to allot, securities to more than the prescribed number of persons,

whether the payment for the securities has been received or not or whether the company intends to list its

securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an

offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter.

Explanation II.—For the purposes of this section, the expression—

(i) "qualified institutional buyer‘‘ means the qualified institutional buyer as defined in the

Securities and Exchange Board of India (Issue of Capital and Disclosure Requirments) Regulations,

2009 as amended from time to time.

(ii) "private placement" means any offer of securities or invitation to subscribe securities to a

select group of persons by a company (other than by way of public offer) through issue of a private

placement offer letter and which satisfies the conditions specified in this section.

(3) No fresh offer or invitation under this section shall be made unless the allotments with respect to

any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or

abandoned by the company.

(4) Any offer or invitation not in compliance with the provisions of this section shall be treated as a

public offer and all provisions of this Act, and the Securities Contracts (Regulation) Act, 1956 (42 of

1956) and the Securities and Exchange Board of India Act, 1992 (15 of 1992) shall be required to be

complied with.

(5) All monies payable towards subscription of securities under this section shall be paid through

cheque or demand draft or other banking channels but not by cash.

(6) A company making an offer or invitation under this section shall allot its securities within sixty

days from the date of receipt of the application money for such securities and if the company is not able to

allot the securities within that period, it shall repay the application money to the subscribers within fifteen

days from the date of completion of sixty days and if the company fails to repay the application money

within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per

cent. per annum from the expiry of the sixtieth day:43

Provided that monies received on application under this section shall be kept in a separate bank

account in a scheduled bank and shall not be utilised for any purpose other than—

(a) for adjustment against allotment of securities; or

(b) for the repayment of monies where the company is unable to allot securities.

(7) All offers covered under this section shall be made only to such persons whose names are

recorded by the company prior to the invitation to subscribe, and that such persons shall receive the offer

by name, and that a complete record of such offers shall be kept by the company in such manner as may

be prescribed and complete information about such offer shall be filed with the Registrar within a period

of thirty days of circulation of relevant private placement offer letter.

(8) No company offering securities under this section shall release any public advertisements or

utilise any media, marketing or distribution channels or agents to inform the public at large about such an

offer.

(9) Whenever a company makes any allotment of securities under this section, it shall file with the

Registrar a return of allotment in such manner as may be prescribed, including the complete list of all

security-holders, with their full names, addresses, number of securities allotted and such other relevant

information as may be prescribed.

(10) If a company makes an offer or accepts monies in contravention of this section, the company, its

promoters and directors shall be liable for a penalty which may extend to the amount involved in the offer

or invitation or two crore rupees, whichever is higher, and the company shall also refund all monies to

subscribers within a period of thirty days of the order imposing the penalty.

ModuleIII

SHARE CAPITAL AND DEBENTURES

43. Kinds of share capital.—The share capital of a company limited by shares shall be of two kinds,

namely:—

(a) equity share capital—

(i) with voting rights; or

(ii) with differential rights as to dividend, voting or otherwise in accordance with such rules

as may be prescribed; and

(b) preference share capital:

Provided that nothing contained in this Act shall affect the rights of the preference shareholders who

are entitled to participate in the proceeds of winding up before the commencement of this Act.

Explanation.—For the purposes of this section,—

(i) ‗‗equity share capital‘‘, with reference to any company limited by shares, means all share

capital which is not preference share capital;

(ii) ‗‗preference share capital‘‘, with reference to any company limited by shares, means that part

of the issued share capital of the company which carries or would carry a preferential right with

respect to—

(a) payment of dividend, either as a fixed amount or an amount calculated at a fixed rate,

which may either be free of or subject to income-tax; and

(b) repayment, in the case of a winding up or repayment of capital, of the amount of the share

capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the

payment of any fixed premium or premium on any fixed scale, specified in the memorandum or

articles of the company;

(iii) capital shall be deemed to be preference capital, notwithstanding that it is entitled to either or

both of the following rights, namely:—44

(a) that in respect of dividends, in addition to the preferential rights to the amounts specified

in sub-clause (a) of clause (ii), it has a right to participate, whether fully or to a limited extent,

with capital not entitled to the preferential right aforesaid;

(b) that in respect of capital, in addition to the preferential right to the repayment, on a

winding up, of the amounts specified in sub-clause (b) of clause (ii), it has a right to participate,

whether fully or to a limited extent, with capital not entitled to that preferential right in any

surplus which may remain after the entire capital has been repaid.

44. Nature of shares or debentures.—The shares or debentures or other interest of any member in a

company shall be movable property transferable in the manner provided by the articles of the company.

45. Numbering of shares.— Every share in a company having a share capital shall be distinguished

by its distinctive number:

Provided that nothing in this section shall apply to a share held by a person whose name is entered as

holder of beneficial interest in such share in the records of a depository.

46. Certificate of shares.—(1) A certificate, 1

[issued under the common seal, if any, of the company

or signed by two directors or by a director and the Company Secretary, wherever the company has

appointed a Company Secretary], specifying the shares held by any person, shall be prima facie evidence

of the title of the person to such shares.

(2) A duplicate certificate of shares may be issued, if such certificate —

(a) is proved to have been lost or destroyed; or

(b) has been defaced, mutilated or torn and is surrendered to the company.

(3) Notwithstanding anything contained in the articles of a company, the manner of issue of a

certificate of shares or the duplicate thereof, the form of such certificate, the particulars to be entered in

the register of members and other matters shall be such as may be prescribed.

(4) Where a share is held in depository form, the record of the depository is the prima facie evidence

of the interest of the beneficial owner.

(5) If a company with intent to defraud issues a duplicate certificate of shares, the company shall be

punishable with fine which shall not be less than five times the face value of the shares involved in the

issue of the duplicate certificate but which may extend to ten times the face value of such shares or rupees

ten crores whichever is higher and every officer of the company who is in default shall be liable for action

under section 447.

47. Voting rights.—(1) Subject to the provisions of section 43 and sub-section (2) of section 50,—

(a) every member of a company limited by shares and holding equity share capital therein, shall

have a right to vote on every resolution placed before the company; and

(b) his voting right on a poll shall be in proportion to his share in the paid-up equity share capital

of the company.

(2) Every member of a company limited by shares and holding any preference share capital therein

shall, in respect of such capital, have a right to vote only on resolutions placed before the company which

directly affect the rights attached to his preference shares and, any resolution for the winding up of the

company or for the repayment or reduction of its equity or preference share capital and his voting right on

a poll shall be in proportion to his share in the paid-up preference share capital of the company:

Provided that the proportion of the voting rights of equity shareholders to the voting rights of the

preference shareholders shall be in the same proportion as the paid-up capital in respect of the equity

shares bears to the paid-up capital in respect of the preference shares:

1. Subs. by Act 21 of 2015, s. 7, for ―issued under the common seal of the company‖ (w.e.f. 29-5-2015).45

Provided further that where the dividend in respect of a class of preference shares has not been paid

for a period of two years or more, such class of preference shareholders shall have a right to vote on all

the resolutions placed before the company.

48. Variations of shareholders‘ rights.—(1) Where a share capital of the company is divided into

different classes of shares, the rights attached to the shares of any class may be varied with the consent in

writing of the holders of not less than three-fourths of the issued shares of that class or by means of a

special resolution passed at a separate meeting of the holders of the issued shares of that class,—

(a) if provision with respect to such variation is contained in the memorandum or articles of the

company; or

(b) in the absence of any such provision in the memorandum or articles, if such variation is not

prohibited by the terms of issue of the shares of that class:

Provided that if variation by one class of shareholders affects the rights of any other class of

shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and

the provisions of this section shall apply to such variation.

(2) Where the holders of not less than ten per cent. of the issued shares of a class did not consent to

such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal

to have the variation cancelled, and where any such application is made, the variation shall not have effect

unless and until it is confirmed by the Tribunal:

Provided that an application under this section shall be made within twenty-one days after the date on

which the consent was given or the resolution was passed, as the case may be, and may be made on behalf

of the shareholders entitled to make the application by such one or more of their number as they may

appoint in writing for the purpose.

(3) The decision of the Tribunal on any application under sub-section (2) shall be binding on the

shareholders.

(4) The company shall, within thirty days of the date of the order of the Tribunal, file a copy thereof

with the Registrar.

(5) Where any default is made in complying with the provisions of this section, the company shall be

punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to

five lakh rupees and every officer of the company who is in default shall be punishable with

imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-

five thousand rupees but which may extend to five lakh rupees, or with both.

49. Calls on shares of same class to be made on uniform basis.—Where any calls for further share

capital are made on the shares of a class, such calls shall be made on a uniform basis on all shares falling

under that class.

Explanation.—For the purposes of this section, shares of the same nominal value on which different

amounts have been paid-up shall not be deemed to fall under the same class.

50. Company to accept unpaid share capital, although not called up.—(1) A company may, if so

authorised by its articles, accept from any member, the whole or a part of the amount remaining unpaid on

any shares held by him, even if no part of that amount has been called up.

(2) A member of the company limited by shares shall not be entitled to any voting rights in respect of

the amount paid by him under sub-section (1) until that amount has been called up.

51. Payment of dividend in proportion to amount paid-up.—A company may, if so authorised by

its articles, pay dividends in proportion to the amount paid-up on each share.

52. Application of premiums received on issue of shares.—(1) Where a company issues shares at a

premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on

those shares shall be transferred to a ―securities premium account‖ and the provisions of this Act relating

to reduction of share capital of a company shall, except as provided in this section, apply as if the

securities premium account were the paid-up share capital of the company.46

(2) Notwithstanding anything contained in sub-section (1), the securities premium account may be

applied by the company—

(a) towards the issue of unissued shares of the company to the members of the company as fully

paid bonus shares;

(b) in writing off the preliminary expenses of the company;

(c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of

shares or debentures of the company;

(d) in providing for the premium payable on the redemption of any redeemable preference shares

or of any debentures of the company; or

(e) for the purchase of its own shares or other securities under section 68.

(3) The securities premium account may, notwithstanding anything contained in sub-sections (1) and

(2), be applied by such class of companies, as may be prescribed and whose financial statement comply

with the accounting standards prescribed for such class of companies under section 133,—

(a) in paying up unissued equity shares of the company to be issued to members of the company

as fully paid bonus shares; or

(b) in writing off the expenses of or the commission paid or discount allowed on any issue of

equity shares of the company; or

(c) for the purchase of its own shares or other securities under section 68.

53. Prohibition on issue of shares at discount.—(1) Except as provided in section 54, a company

shall not issue shares at a discount.

(2) Any share issued by a company at a discounted price shall be void.

(3) Where a company contravenes the provisions of this section, the company shall be punishable

with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every

officer who is in default shall be punishable with imprisonment for a term which may extend to six

months or with fine which shall not be less than one lakh rupees but which may extend to five lakh

rupees, or with both.

54. Issue of sweat equity shares.—(1) Notwithstanding anything contained in section 53, a company

may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled,

namely:—

(a) the issue is authorised by a special resolution passed by the company;

(b) the resolution specifies the number of shares, the current market price, consideration, if any,

and the class or classes of directors or employees to whom such equity shares are to be issued;

(c) not less than one year has, at the date of such issue, elapsed since the date on which the

company had commenced business; and

(d) where the equity shares of the company are listed on a recognised stock exchange, the sweat

equity shares are issued in accordance with the regulations made by the Securities and Exchange

Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with

such rules as may be prescribed.

(2) The rights, limitations, restrictions and provisions as are for the time being applicable to equity

shares shall be applicable to the sweat equity shares issued under this section and the holders of such

shares shall rank paripassu with other equity shareholders.

55. Issue and redemption of preference shares.—(1) No company limited by shares shall, after the

commencement of this Act, issue any preference shares which are irredeemable.47

(2) A company limited by shares may, if so authorised by its articles, issue preference shares which

are liable to be redeemed within a period not exceeding twenty years from the date of their issue subject

to such conditions as may be prescribed:

Provided that a company may issue preference shares for a period exceeding twenty years for

infrastructure projects, subject to the redemption of such percentage of shares as may be prescribed on an

annual basis at the option of such preferential shareholders:

Provided further that—

(a) no such shares shall be redeemed except out of the profits of the company which would

otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the

purposes of such redemption;

(b) no such shares shall be redeemed unless they are fully paid;

(c) where such shares are proposed to be redeemed out of the profits of the company, there shall,

out of such profits, be transferred, a sum equal to the nominal amount of the shares to be redeemed, to

a reserve, to be called the Capital Redemption Reserve Account, and the provisions of this Act

relating to reduction of share capital of a company shall, except as provided in this section, apply as if

the Capital Redemption Reserve Account were paid-up share capital of the company; and

(d) (i) in case of such class of companies, as may be prescribed and whose financial statement

comply with the accounting standards prescribed for such class of companies under section 133, the

premium, if any, payable on redemption shall be provided for out of the profits of the company,

before the shares are redeemed:

Provided also that premium, if any, payable on redemption of any preference shares issued on or

before the commencement of this Act by any such company shall be provided for out of the profits of

the company or out of the company‘s securities premium account, before such shares are redeemed.

(ii) in a case not falling under sub-clause (i) above, the premium, if any, payable on redemption

shall be provided for out of the profits of the company or out of the company‘s securities premium

account, before such shares are redeemed.

(3) Where a company is not in a position to redeem any preference shares or to pay dividend, if any,

on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed

preference shares), it may, with the consent of the holders of three-fourths in value of such preference

shares and with the approval of the Tribunal on a petition made by it in this behalf, issue further

redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the

unredeemed preference shares, and on the issue of such further redeemable preference shares, the

unredeemed preference shares shall be deemed to have been redeemed:

Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption

forthwith of preference shares held by such persons who have not consented to the issue of further

redeemable preference shares.

Explanation.—For the removal of doubts, it is hereby declared that the issue of further redeemable

preference shares or the redemption of preference shares under this section shall not be deemed to be an

increase or, as the case may be, a reduction, in the share capital of the company.

(4) The capital redemption reserve account may, notwithstanding anything in this section, be applied

by the company, in paying up unissued shares of the company to be issued to members of the company as

fully paid bonus shares.

Explanation.—For the purposes of sub-section (2), the term __infrastructure projects‘‘ means the

infrastructure projects specified in Schedule VI.

56. Transfer and transmission of securities.—(1) A company shall not register a transfer of

securities of the company, or the interest of a member in the company in the case of a company having no

share capital, other than the transfer between persons both of whose names are entered as holders of

beneficial interest in the records of a depository, unless a proper instrument of transfer, in such form as48

may be prescribed, duly stamped, dated and executed by or on behalf of the transferor and the transferee

and specifying the name, address and occupation, if any, of the transferee has been delivered to the

company by the transferor or the transferee within a period of sixty days from the date of execution, along

with the certificate relating to the securities, or if no such certificate is in existence, along with the letter

of allotment of securities:

Provided that where the instrument of transfer has been lost or the instrument of transfer has not been

delivered within the prescribed period, the company may register the transfer on such terms as to

indemnity as the Board may think fit.

(2) Nothing in sub-section (1) shall prejudice the power of the company to register, on receipt of an

intimation of transmission of any right to securities by operation of law from any person to whom such

right has been transmitted.

(3) Where an application is made by the transferor alone and relates to partly paid shares, the transfer

shall not be registered, unless the company gives the notice of the application, in such manner as may be

prescribed, to the transferee and the transferee gives no objection to the transfer within two weeks from

the receipt of notice.

(4) Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or

other authority, deliver the certificates of all securities allotted, transferred or transmitted—

(a) within a period of two months from the date of incorporation, in the case of subscribers to the

memorandum;

(b) within a period of two months from the date of allotment, in the case of any allotment of any

of its shares;

(c) within a period of one month from the date of receipt by the company of the instrument of

transfer under sub-section (1) or, as the case may be, of the intimation of transmission under sub-

section (2), in the case of a transfer or transmission of securities;

(d) within a period of six months from the date of allotment in the case of any allotment of

debenture:

Provided that where the securities are dealt with in a depository, the company shall intimate the

details of allotment of securities to depository immediately on allotment of such securities.

(5) The transfer of any security or other interest of a deceased person in a company made by his legal

representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the

holder at the time of the execution of the instrument of transfer.

(6) Where any default is made in complying with the provisions of sub-sections (1) to (5), the

company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which

may extend to five lakh rupees and every officer of the company who is in default shall be punishable

with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

(7) Without prejudice to any liability under the Depositories Act, 1996 (22 of 1996), where any

depository or depository participant, with an intention to defraud a person, has transferred shares, it shall

be liable under section 447.

57. Punishment for personation of shareholder.—If any person deceitfully personates as an owner

of any security or interest in a company, or of any share warrant or coupon issued in pursuance of this

Act, and thereby obtains or attempts to obtain any such security or interest or any such share warrant or

coupon, or receives or attempts to receive any money due to any such owner, he shall be punishable with

imprisonment for a term which shall not be less than one year but which may extend to three years and

with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

58. Refusal of registration and appeal against refusal.—(1) If a private company limited by shares

refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the

transfer of, or the transmission by operation of law of the right to, any securities or interest of a member

in the company, it shall within a period of thirty days from the date on which the instrument of transfer, or49

the intimation of such transmission, as the case may be, was delivered to the company, send notice of the

refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the

case may be, giving reasons for such refusal.

(2) Without prejudice to sub-section (1), the securities or other interest of any member in a public

company shall be freely transferable:

Provided that any contract or arrangement between two or more persons in respect of transfer of

securities shall be enforceable as a contract.

(3) The transferee may appeal to the Tribunal against the refusal within a period of thirty days from

the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty

days from the date on which the instrument of transfer or the intimation of transmission, as the case may

be, was delivered to the company.

(4) If a public company without sufficient cause refuses to register the transfer of securities within a

period of thirty days from the date on which the instrument of transfer or the intimation of transmission,

as the case may be, is delivered to the company, the transferee may, within a period of sixty days of such

refusal or where no intimation has been received from the company, within ninety days of the delivery of

the instrument of transfer or intimation of transmission, appeal to the Tribunal.

(5) The Tribunal, while dealing with an appeal made under sub-section (3) or sub-section (4), may,

after hearing the parties, either dismiss the appeal, or by order—

(a) direct that the transfer or transmission shall be registered by the company and the company

shall comply with such order within a period of ten days of the receipt of the order; or

(b) direct rectification of the register and also direct the company to pay damages, if any,

sustained by any party aggrieved.

(6) If a person contravenes the order of the Tribunal under this section, he shall be punishable with

imprisonment for a term which shall not be less than one year but which may extend to three years and

with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

59. Rectification of register of members.—(1) If the name of any person is, without sufficient

cause, entered in the register of members of a company, or after having been entered in the register, is,

without sufficient cause, omitted therefrom, or if a default is made, or unnecessary delay takes place in

entering in the register, the fact of any person having become or ceased to be a member, the person

aggrieved, or any member of the company, or the company may appeal in such form as may be

prescribed, to the Tribunal, or to a competent court outside India, specified by the Central Government by

notification, in respect of foreign members or debenture holders residing outside India, for rectification of

the register.

(2) The Tribunal may, after hearing the parties to the appeal under sub-section (1) by order, either

dismiss the appeal or direct that the transfer or transmission shall be registered by the company within a

period of ten days of the receipt of the order or direct rectification of the records of the depository or the

register and in the latter case, direct the company to pay damages, if any, sustained by the party

aggrieved.

(3) The provisions of this section shall not restrict the right of a holder of securities, to transfer such

securities and any person acquiring such securities shall be entitled to voting rights unless the voting

rights have been suspended by an order of the Tribunal.

(4) Where the transfer of securities is in contravention of any of the provisions of the Securities

Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15

of 1992) or this Act or any other law for the time being in force, the Tribunal may, on an application

made by the depository, company, depository participant, the holder of the securities or the Securities and

Exchange Board, direct any company or a depository to set right the contravention and rectify its register

or records concerned.

(5) If any default is made in complying with the order of the Tribunal under this section, the company

shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five50

lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for

a term which may extend to one year or with fine which shall not be less than one lakh rupees but which

may extend to three lakh rupees, or with both.

60. Publication of authorised, subscribed and paid-up capital.—(1) Where any notice,

advertisement or other official publication, or any business letter, billhead or letter paper of a company

contains a statement of the amount of the authorised capital of the company, such notice, advertisement or

other official publication, or such letter, billhead or letter paper shall also contain a statement, in an

equally prominent position and in equally conspicuous characters, of the amount of the capital which has

been subscribed and the amount paid-up.

(2) If any default is made in complying with the requirements of sub-section (1), the company shall

be liable to pay a penalty of ten thousand rupees and every officer of the company who is in default shall

be liable to pay a penalty of five thousand rupees, for each default.

61. Power of limited company to alter its share capital.—(1) A limited company having a share

capital may, if so authorised by its articles, alter its memorandum in its general meeting to—

(a) increase its authorised share capital by such amount as it thinks expedient;

(b) consolidate and divide all or any of its share capital into shares of a larger amount than its

existing shares:

Provided that no consolidation and division which results in changes in the voting percentage of

shareholders shall take effect unless it is approved by the Tribunal on an application made in the

prescribed manner;

(c) convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully

paid-up shares of any denomination;

(d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the

memorandum, so, however, that in the sub-division the proportion between the amount paid and the

amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from

which the reduced share is derived;

(e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been

taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount

of the shares so cancelled.

(2) The cancellation of shares under sub-section (1) shall not be deemed to be a reduction of share

capital.

62. Further issue of share capital.—(1) Where at any time, a company having a share capital

proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—

(a) to persons who, at the date of the offer, are holders of equity shares of the company in

proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a

letter of offer subject to the following conditions, namely:—

(i) the offer shall be made by notice specifying the number of shares offered and limiting a

time not being less than fifteen days and not exceeding thirty days from the date of the offer

within which the offer, if not accepted, shall be deemed to have been declined;

(ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed

to include a right exercisable by the person concerned to renounce the shares offered to him or

any of them in favour of any other person; and the notice referred to in clause (i) shall contain a

statement of this right;

(iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier

intimation from the person to whom such notice is given that he declines to accept the shares

offered, the Board of Directors may dispose of them in such manner which is not dis-

advantageous to the shareholders and the company;51

(b) to employees under a scheme of employees‘ stock option, subject to special resolution passed

by company and subject to such conditions as may be prescribed; or

(c) to any persons, if it is authorised by a special resolution, whether or not those persons include

the persons referred to in clause (a) or clause (b), either for cash or for a consideration other than

cash, if the price of such shares is determined by the valuation report of a registered valuer subject to

such conditions as may be prescribed.

(2) The notice referred to in sub-clause (i) of clause (a) of sub-section (1) shall be despatched through

registered post or speed post or through electronic mode to all the existing shareholders at least three days

before the opening of the issue.

(3) Nothing in this section shall apply to the increase of the subscribed capital of a company caused

by the exercise of an option as a term attached to the debentures issued or loan raised by the company to

convert such debentures or loans into shares in the company:

Provided that the terms of issue of such debentures or loan containing such an option have been

approved before the issue of such debentures or the raising of loan by a special resolution passed by the

company in general meeting.

(4) Notwithstanding anything contained in sub-section (3), where any debentures have been issued, or

loan has been obtained from any Government by a company, and if that Government considers it

necessary in the public interest so to do, it may, by order, direct that such debentures or loans or any part

thereof shall be converted into shares in the company on such terms and conditions as appear to the

Government to be reasonable in the circumstances of the case even if terms of the issue of such

debentures or the raising of such loans do not include a term for providing for an option for such

conversion:

Provided that where the terms and conditions of such conversion are not acceptable to the company, it

may, within sixty days from the date of communication of such order, appeal to the Tribunal which shall

after hearing the company and the Government pass such order as it deems fit.

(5) In determining the terms and conditions of conversion under sub-section (4), the Government

shall have due regard to the financial position of the company, the terms of issue of debentures or loans,

as the case may be, the rate of interest payable on such debentures or loans and such other matters as it

may consider necessary.

(6) Where the Government has, by an order made under sub-section (4), directed that any debenture

or loan or any part thereof shall be converted into shares in a company and where no appeal has been

preferred to the Tribunal under sub-section (4) or where such appeal has been dismissed, the

memorandum of such company shall, where such order has the effect of increasing the authorised share

capital of the company, stand altered and the authorised share capital of such company shall stand

increased by an amount equal to the amount of the value of shares which such debentures or loans or part

thereof has been converted into.

63. Issue of bonus shares.—(1) A company may issue fully paid-up bonus shares to its members, in

any manner whatsoever, out of—

(i) its free reserves;

(ii) the securities premium account; or

(iii) the capital redemption reserve account:

Provided that no issue of bonus shares shall be made by capitalising reserves created by the

revaluation of assets.

(2) No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus

shares under sub-section (1), unless—

(a) it is authorised by its articles;52

(b) it has, on the recommendation of the Board, been authorised in the general meeting of the

company;

(c) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt

securities issued by it;

(d) it has not defaulted in respect of the payment of statutory dues of the employees, such as,

contribution to provident fund, gratuity and bonus;

(e) the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;

(f) it complies with such conditions as may be prescribed.

(3) The bonus shares shall not be issued in lieu of dividend.

64. Notice to be given to Registrar for alteration of share capital.—(1) Where —

(a) a company alters its share capital in any manner specified in sub-section (1) of section 61;

(b) an order made by the Government under sub-section (4) read with sub-section (6) of section

62 has the effect of increasing authorised capital of a company; or

(c) a company redeems any redeemable preference shares,

the company shall file a notice in the prescribed form with the Registrar within a period of thirty days of

such alteration or increase or redemption, as the case may be, along with an altered memorandum.

(2) If a company and any officer of the company who is in default contravenes the provisions of sub-

section (1), it or he shall be punishable with fine which may extend to one thousand rupees for each day

during which such default continues, or five lakh rupees, whichever is less.

65. Unlimited company to provide for reserve share capital on conversion into limited

company.—An unlimited company having a share capital may, by a resolution for registration as a

limited company under this Act, do either or both of the following things, namely—

(a) increase the nominal amount of its share capital by increasing the nominal amount of each of

its shares, subject to the condition that no part of the increased capital shall be capable of being called

up except in the event and for the purposes of the company being wound up;

(b) provide that a specified portion of its uncalled share capital shall not be capable of being

called up except in the event and for the purposes of the company being wound up.

66. Reduction of share capital.—(1) Subject to confirmation by the Tribunal on an application by

the company, a company limited by shares or limited by guarantee and having a share capital may, by a

special resolution, reduce the share capital in any manner and in particular, may—

(a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-

up; or

(b) either with or without extinguishing or reducing liability on any of its shares,—

(i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or

(ii) pay off any paid-up share capital which is in excess of the wants of the company,

alter its memorandum by reducing the amount of its share capital and of its shares accordingly:

Provided that no such reduction shall be made if the company is in arrears in the repayment of any

deposits accepted by it, either before or after the commencement of this Act, or the interest payable

thereon.

(2) The Tribunal shall give notice of every application made to it under sub-section (1) to the Central

Government, Registrar and to the Securities and Exchange Board, in the case of listed companies, and the

creditors of the company and shall take into consideration the representations, if any, made to it by that

Government, Registrar, the Securities and Exchange Board and the creditors within a period of three

months from the date of receipt of the notice:53

Provided that where no representation has been received from the Central Government, Registrar, the

Securities and Exchange Board or the creditors within the said period, it shall be presumed that they have

no objection to the reduction.

(3) The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been

discharged or determined or has been secured or his consent is obtained, make an order confirming the

reduction of share capital on such terms and conditions as it deems fit:

Provided that no application for reduction of share capital shall be sanctioned by the Tribunal unless

the accounting treatment, proposed by the company for such reduction is in conformity with the

accounting standards specified in section 133 or any other provision of this Act and a certificate to that

effect by the company‘s auditor has been filed with the Tribunal.

(4) The order of confirmation of the reduction of share capital by the Tribunal under sub-section (3)

shall be published by the company in such manner as the Tribunal may direct.

(5) The company shall deliver a certified copy of the order of the Tribunal under sub-section (3) and

of a minute approved by the Tribunal showing—

(a) the amount of share capital;

(b) the number of shares into which it is to be divided;

(c) the amount of each share; and

(d) the amount, if any, at the date of registration deemed to be paid-up on each share,

to the Registrar within thirty days of the receipt of the copy of the order, who shall register the same and

issue a certificate to that effect.

(6) Nothing in this section shall apply to buy-back of its own securities by a company under section (7) A member of the company, past or present, shall not be liable to any call or contribution in respect

of any share held by him exceeding the amount of difference, if any, between the amount paid on the

share, or reduced amount, if any, which is to be deemed to have been paid thereon, as the case may be,

and the amount of the share as fixed by the order of reduction.

(8) Where the name of any creditor entitled to object to the reduction of share capital under this

section is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with

respect to his debt or claim, not entered on the list of creditors, and after such reduction, the company is

unable, within the meaning of sub-section (2) of section 271, to pay the amount of his debt or claim,—

(a) every person, who was a member of the company on the date of the registration of the order

for reduction by the Registrar, shall be liable to contribute to the payment of that debt or claim, an

amount not exceeding the amount which he would have been liable to contribute if the company had

commenced winding up on the day immediately before the said date; and

(b) if the company is wound up, the Tribunal may, on the application of any such creditor and

proof of his ignorance as aforesaid, if it thinks fit, settle a list of persons so liable to contribute, and

make and enforce calls and orders on the contributories settled on the list, as if they were ordinary

contributories in a winding up.

(9) Nothing in sub-section (8) shall affect the rights of the contributories among themselves.

(10) If any officer of the company—

(a) knowingly conceals the name of any creditor entitled to object to the reduction;

(b) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or

(c) abets or is privy to any such concealment or misrepresentation as aforesaid,

he shall be liable under section 447.54

(11) If a company fails to comply with the provisions of sub-section (4), it shall be punishable with

fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees.

67. Restriction on purchase by company or giving of loans by it for purchase of its shares.—(1)

No company limited by shares or by guarantee and having a share capital shall have power to buy its own

shares unless the consequent reduction of share capital is effected under the provisions of this Act.

(2) No public company shall give, whether directly or indirectly and whether by means of a loan,

guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in

connection with, a purchase or subscription made or to be made, by any person of or for any shares in the

company or in its holding company.

(3) Nothing in sub-section (2) shall apply to—

(a) the lending of money by a banking company in the ordinary course of its business;

(b) the provision by a company of money in accordance with any scheme approved by company

through special resolution and in accordance with such requirements as may be prescribed, for the

purchase of, or subscription for, fully paid-up shares in the company or its holding company, if the

purchase of, or the subscription for, the shares held by trustees for the benefit of the employees or

such shares held by the employee of the company;

(c) the giving of loans by a company to persons in the employment of the company other than its

directors or key managerial personnel, for an amount not exceeding their salary or wages for a period

of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the

company or its holding company to be held by them by way of beneficial ownership:

Provided that disclosures in respect of voting rights not exercised directly by the employees in respect

of shares to which the scheme relates shall be made in the Board's report in such manner as may be

prescribed.

(4) Nothing in this section shall affect the right of a company to redeem any preference shares issued

by it under this Act or under any previous company law.

(5) If a company contravenes the provisions of this section, it shall be punishable with fine which

shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer

of the company who is in default shall be punishable with imprisonment for a term which may extend to

three years and with fine which shall not be less than one lakh rupees but which may extend to twenty-

five lakh rupees.

68. Power of company to purchase its own securities.—(1) Notwithstanding anything contained in

this Act, but subject to the provisions of sub-section (2), a company may purchase its own shares or other

specified securities (hereinafter referred to as buy-back) out of—

(a) its free reserves;

(b) the securities premium account; or

(c) the proceeds of the issue of any shares or other specified securities:

Provided that no buy-back of any kind of shares or other specified securities shall be made out of the

proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

(2) No company shall purchase its own shares or other specified securities under sub-section (1),

unless—

(a) the buy-back is authorised by its articles;

(b) a special resolution has been passed at a general meeting of the company authorising the buy-

back:

Provided that nothing contained in this clause shall apply to a case where—

(i) the buy-back is, ten per cent. or less of the total paid-up equity capital and free reserves of the

company; and55

(ii) such buy-back has been authorised by the Board by means of a resolution passed at its

meeting;

(c) the buy-back is twenty-five per cent. or less of the aggregate of paid-up capital and free

reserves of the company:

Provided that in respect of the buy-back of equity shares in any financial year, the reference to

twenty-five per cent. in this clause shall be construed with respect to its total paid-up equity capital in that

financial year;

(d) the ratio of the aggregate of secured and unsecured debts owed by the company after buy-back

is not more than twice the paid-up capital and its free reserves:

Provided that the Central Government may, by order, notify a higher ratio of the debt to capital

and free reserves for a class or classes of companies;

(e) all the shares or other specified securities for buy-back are fully paid-up;

(f) the buy-back of the shares or other specified securities listed on any recognised stock

exchange is in accordance with the regulations made by the Securities and Exchange Board in this

behalf; and

(g) the buy-back in respect of shares or other specified securities other than those specified in

clause (f) is in accordance with such rules as may be prescribed:

Provided that no offer of buy-back under this sub-section shall be made within a period of one year

reckoned from the date of the closure of the preceding offer of buy-back, if any.

(3) The notice of the meeting at which the special resolution is proposed to be passed under clause (b)

of sub-section (2) shall be accompanied by an explanatory statement stating—

(a) a full and complete disclosure of all material facts;

(b) the necessity for the buy-back;

(c) the class of shares or securities intended to be purchased under the buy-back;

(d) the amount to be invested under the buy-back; and

(e) the time-limit for completion of buy-back.

(4) Every buy-back shall be completed within a period of one year from the date of passing of the

special resolution, or as the case may be, the resolution passed by the Board under clause (b) of sub-

section (2).

(5) The buy-back under sub-section (1) may be—

(a) from the existing shareholders or security holders on a proportionate basis;

(b) from the open market;

(c) by purchasing the securities issued to employees of the company pursuant to a scheme of

stock option or sweat equity.

(6) Where a company proposes to buy-back its own shares or other specified securities under this

section in pursuance of a special resolution under clause (b) of sub-section (2) or a resolution under item

(ii) of the proviso thereto, it shall, before making such buy-back, file with the Registrar and the Securities

and Exchange Board, a declaration of solvency signed by at least two directors of the company, one of

whom shall be the managing director, if any, in such form as may be prescribed and verified by an

affidavit to the effect that the Board of Directors of the company has made a full inquiry into the affairs of

the company as a result of which they have formed an opinion that it is capable of meeting its liabilities

and will not be rendered insolvent within a period of one year from the date of declaration adopted by the

Board:

Provided that no declaration of solvency shall be filed with the Securities and Exchange Board by a

company whose shares are not listed on any recognised stock exchange.56

(7) Where a company buys back its own shares or other specified securities, it shall extinguish and

physically destroy the shares or securities so bought back within seven days of the last date of completion

of buy-back.

(8) Where a company completes a buy-back of its shares or other specified securities under this

section, it shall not make a further issue of the same kind of shares or other securities including allotment

of new shares under clause (a) of sub-section (1) of section 62 or other specified securities within a period

of six months except by way of a bonus issue or in the discharge of subsisting obligations such as

conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or

debentures into equity shares.

(9) Where a company buys back its shares or other specified securities under this section, it shall

maintain a register of the shares or securities so bought, the consideration paid for the shares or securities

bought back, the date of cancellation of shares or securities, the date of extinguishing and physically

destroying the shares or securities and such other particulars as may be prescribed.

(10) A company shall, after the completion of the buy-back under this section, file with the Registrar

and the Securities and Exchange Board a return containing such particulars relating to the buy-back

within thirty days of such completion, as may be prescribed:

Provided that no return shall be filed with the Securities and Exchange Board by a company whose

shares are not listed on any recognised stock exchange.

(11) If a company makes any default in complying with the provisions of this section or any

regulation made by the Securities and Exchange Board, for the purposes of clause (f) of sub-section (2),

the company shall be punishable with fine which shall not be less than one lakh rupees but which may

extend to three lakh rupees and every officer of the company who is in default shall be punishable with

imprisonment for a term which may extend to three years or with fine which shall not be less than one

lakh rupees but which may extend to three lakh rupees, or with both.

Explanation I.—For the purposes of this section and section 70, ―specified securities‖ includes

employees‘ stock option or other securities as may be notified by the Central Government from time to

time.

Explanation II.—For the purposes of this section, ―free reserves‖ includes securities premium

account.

69. Transfer of certain sums to capital redemption reserve account.—(1) Where a company

purchases its own shares out of free reserves or securities premium account, a sum equal to the nominal

value of the shares so purchased shall be transferred to the capital redemption reserve account and details

of such transfer shall be disclosed in the balance sheet.

(2) The capital redemption reserve account may be applied by the company, in paying up unissued

shares of the company to be issued to members of the company as fully paid bonus shares.

70. Prohibition for buy-back in certain circumstances.—(1) No company shall directly or

indirectly purchase its own shares or other specified securities—

(a) through any subsidiary company including its own subsidiary companies;

(b) through any investment company or group of investment companies; or

(c) if a default, is made by the company, in the repayment of deposits accepted either before or

after the commencement of this Act, interest payment thereon, redemption of debentures or

preference shares or payment of dividend to any shareholder, or repayment of any term loan or

interest payable thereon to any financial institution or banking company:

Provided that the buy-back is not prohibited, if the default is remedied and a period of three years

has lapsed after such default ceased to subsist.

(2) No company shall, directly or indirectly, purchase its own shares or other specified securities in

case such company has not complied with the provisions of sections 92, 123, 127 and section 129.57

71. Debentures.—(1) A company may issue debentures with an option to convert such debentures

into shares, either wholly or partly at the time of redemption:

Provided that the issue of debentures with an option to convert such debentures into shares, wholly or

partly, shall be approved by a special resolution passed at a general meeting.

(2) No company shall issue any debentures carrying any voting rights.

(3) Secured debentures may be issued by a company subject to such terms and conditions as may be

prescribed.

(4) Where debentures are issued by a company under this section, the company shall create a

debenture redemption reserve account out of the profits of the company available for payment of dividend

and the amount credited to such account shall not be utilised by the company except for the redemption of

debentures.

(5) No company shall issue a prospectus or make an offer or invitation to the public or to its members

exceeding five hundred for the subscription of its debentures, unless the company has, before such issue

or offer, appointed one or more debenture trustees and the conditions governing the appointment of such

trustees shall be such as may be prescribed.

(6) A debenture trustee shall take steps to protect the interests of the debenture-holders and redress

their grievances in accordance with such rules as may be prescribed.

(7) Any provision contained in a trust deed for securing the issue of debentures, or in any contract

with the debenture-holders secured by a trust deed, shall be void in so far as it would have the effect of

exempting a trustee thereof from, or indemnifying him against, any liability for breach of trust, where he

fails to show the degree of care and due diligence required of him as a trustee, having regard to the

provisions of the trust deed conferring on him any power, authority or discretion:

Provided that the liability of the debenture trustee shall be subject to such exemptions as may be

agreed upon by a majority of debenture-holders holding not less than three-fourths in value of the total

debentures at a meeting held for the purpose.

(8) A company shall pay interest and redeem the debentures in accordance with the terms and

conditions of their issue.

(9) Where at any time the debenture trustee comes to a conclusion that the assets of the company are

insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes

due, the debenture trustee may file a petition before the Tribunal and the Tribunal may, after hearing the

company and any other person interested in the matter, by order, impose such restrictions on the incurring

of any further liabilities by the company as the Tribunal may consider necessary in the interests of the

debenture-holders.

(10) Where a company fails to redeem the debentures on the date of their maturity or fails to pay

interest on the debentures when it is due, the Tribunal may, on the application of any or all of the

debenture-holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the

company to redeem the debentures forthwith on payment of principal and interest due thereon.

(11) If any default is made in complying with the order of the Tribunal under this section, every

officer of the company who is in default shall be punishable with imprisonment for a term which may

extend to three years or with fine which shall not be less than two lakh rupees but which may extend to

five lakh rupees, or with both.

(12) A contract with the company to take up and pay for any debentures of the company may be

enforced by a decree for specific performance.

(13) The Central Government may prescribe the procedure, for securing the issue of debentures, the

form of debenture trust deed, the procedure for the debenture-holders to inspect the trust deed and to

obtain copies thereof, quantum of debenture redemption reserve required to be created and such other

matters.58

72. Power to nominate.—(1) Every holder of securities of a company may, at any time, nominate, in

the prescribed manner, any person to whom his securities shall vest in the event of his death.

(2) Where the securities of a company are held by more than one person jointly, the joint holders may

together nominate, in the prescribed manner, any person to whom all the rights in the securities shall vest

in the event of death of all the joint holders.

(3) Notwithstanding anything contained in any other law for the time being in force or in any

disposition, whether testamentary or otherwise, in respect of the securities of a company, where a

nomination made in the prescribed manner purports to confer on any person the right to vest the securities

of the company, the nominee shall, on the death of the holder of securities or, as the case may be, on the

death of the joint holders, become entitled to all the rights in the securities, of the holder or, as the case

may be, of all the joint holders, in relation to such securities, to the exclusion of all other persons, unless

the nomination is varied or cancelled in the prescribed manner.

(4) Where the nominee is a minor, it shall be lawful for the holder of the securities, making the

nomination to appoint, in the prescribed manner, any person to become entitled to the securities of the

company, in the event of the death of the n

73. Prohibition on acceptance of deposits from public.—(1) On and after the commencement of

this Act, no company shall invite, accept or renew deposits under this Act from the public except in a

manner provided under this Chapter:

Provided that nothing in this sub-section shall apply to a banking company and nonbanking financial

company as defined in the Reserve Bank of India Act, 1934 (2 of 1934) and to such other company as the

Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

(2) A company may, subject to the passing of a resolution in general meeting and subject to such rules

as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on

such terms and conditions, including the provision of security, if any, or for the repayment of such

deposits with interest, as may be agreed upon between the company and its members, subject to the

fulfilment of the following conditions, namely:—

(a) issuance of a circular to its members including therein a statement showing the financial

position of the company, the credit rating obtained, the total number of depositors and the amount due

towards deposits in respect of any previous deposits accepted by the company and such other

particulars in such form and in such manner as may be prescribed;

(b) filing a copy of the circular along with such statement with the Registrar within thirty days

before the date of issue of the circular;

(c) depositing such sum which shall not be less than fifteen per cent. of the amount of its deposits

maturing during a financial year and the financial year next following, and kept in a scheduled bank

in a separate bank account to be called as deposit repayment reserve account;

(d) providing such deposit insurance in such manner and to such extent as may be prescribed;

(e) certifying that the company has not committed any default in the repayment of deposits

accepted either before or after the commencement of this Act or payment of interest on such deposits;

and

(f) providing security, if any for the due repayment of the amount of deposit or the interest

thereon including the creation of such charge on the property or assets of the company:

Provided that in case where a company does not secure the deposits or secures such deposits

partially, then, the deposits shall be termed as __unsecured deposits‘‘ and shall be so quoted in every

circular, form, advertisement or in any document related to invitation or acceptance of deposits.58

72. Power to nominate.—(1) Every holder of securities of a company may, at any time, nominate, in

the prescribed manner, any person to whom his securities shall vest in the event of his death.

(2) Where the securities of a company are held by more than one person jointly, the joint holders may

together nominate, in the prescribed manner, any person to whom all the rights in the securities shall vest

in the event of death of all the joint holders.

(3) Notwithstanding anything contained in any other law for the time being in force or in any

disposition, whether testamentary or otherwise, in respect of the securities of a company, where a

nomination made in the prescribed manner purports to confer on any person the right to vest the securities

of the company, the nominee shall, on the death of the holder of securities or, as the case may be, on the

death of the joint holders, become entitled to all the rights in the securities, of the holder or, as the case

may be, of all the joint holders, in relation to such securities, to the exclusion of all other persons, unless

the nomination is varied or cancelled in the prescribed manner.

(4) Where the nominee is a minor, it shall be lawful for the holder of the securities, making the

nomination to appoint, in the prescribed manner, any person to become entitled to the securities of the

company, in the event of the death of the nominee during his minority.

ACCEPTANCE OF DEPOSITS BY COMPANIES

73. Prohibition on acceptance of deposits from public.—(1) On and after the commencement of

this Act, no company shall invite, accept or renew deposits under this Act from the public except in a

manner provided under this Chapter:

Provided that nothing in this sub-section shall apply to a banking company and nonbanking financial

company as defined in the Reserve Bank of India Act, 1934 (2 of 1934) and to such other company as the

Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

(2) A company may, subject to the passing of a resolution in general meeting and subject to such rules

as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on

such terms and conditions, including the provision of security, if any, or for the repayment of such

deposits with interest, as may be agreed upon between the company and its members, subject to the

fulfilment of the following conditions, namely:—

(a) issuance of a circular to its members including therein a statement showing the financial

position of the company, the credit rating obtained, the total number of depositors and the amount due

towards deposits in respect of any previous deposits accepted by the company and such other

particulars in such form and in such manner as may be prescribed;

(b) filing a copy of the circular along with such statement with the Registrar within thirty days

before the date of issue of the circular;

(c) depositing such sum which shall not be less than fifteen per cent. of the amount of its deposits

maturing during a financial year and the financial year next following, and kept in a scheduled bank

in a separate bank account to be called as deposit repayment reserve account;

(d) providing such deposit insurance in such manner and to such extent as may be prescribed;

(e) certifying that the company has not committed any default in the repayment of deposits

accepted either before or after the commencement of this Act or payment of interest on such deposits;

and

(f) providing security, if any for the due repayment of the amount of deposit or the interest

thereon including the creation of such charge on the property or assets of the company:

Provided that in case where a company does not secure the deposits or secures such deposits

partially, then, the deposits shall be termed as __unsecured deposits‘‘ and shall be so quoted in every

circular, form, advertisement or in any document related to invitation or acceptance of deposits.59

(3) Every deposit accepted by a company under sub-section (2) shall be repaid with interest in

accordance with the terms and conditions of the agreement referred to in that sub-section.

(4) Where a company fails to repay the deposit or part thereof or any interest thereon under sub-

section (3), the depositor concerned may apply to the Tribunal for an order directing the company to pay

the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other

orders as the Tribunal may deem fit.

(5) The deposit repayment reserve account referred to in clause (c) of sub-section (2) shall not be used

by the company for any purpose other than repayment of deposits.

74. Repayment of deposits, etc., accepted before commencement of this Act.—(1) Where in

respect of any deposit accepted by a company before the commencement of this Act, the amount of such

deposit or part thereof or any interest due thereon remains unpaid on such commencement or becomes

due at any time thereafter, the company shall—

(a) file, within a period of three months from such commencement or from the date on which

such payments, are due, with the Registrar a statement of all the deposits accepted by the company

and sums remaining unpaid on such amount with the interest payable thereon along with the

arrangements made for such repayment, notwithstanding anything contained in any other law for the

time being in force or under the terms and conditions subject to which the deposit was accepted or

any scheme framed under any law; and

(b) repay within one year from such commencement or from the date on which such payments are

due, whichever is earlier.

(2) The Tribunal may on an application made by the company, after considering the financial

condition of the company, the amount of deposit or part thereof and the interest payable thereon and such

other matters, allow further time as considered reasonable to the company to repay the deposit.

(3) If a company fails to repay the deposit or part thereof or any interest thereon within the time

specified in sub-section (1) or such further time as may be allowed by the Tribunal under sub-section (2),

the company shall, in addition to the payment of the amount of deposit or part thereof and the interest

due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten

crore rupees and every officer of the company who is in default shall be punishable with imprisonment

which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but

which may extend to two crore rupees, or with both.

75. Damages for fraud.—(1) Where a company fails to repay the deposit or part thereof or any

interest thereon referred to in section 74 within the time specified in sub-section (1) of that section or such

further time as may be allowed by the Tribunal under sub-section (2) of that section, and it is proved that

the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every

officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to

the provisions contained in subsection (3) of that section and liability under section 447, be personally

responsible, without any limitation of liability, for all or any of the losses or damages that may have been

incurred by the depositors.

(2) Any suit, proceedings or other action may be taken by any person, group of persons or any

association of persons who had incurred any loss as a result of the failure of the company to repay the

deposits or part thereof or any interest thereon.

76. Acceptance of deposits from public by certain companies.—(1) Notwithstanding anything

contained in section 73, a public company, having such net worth or turnover as may be prescribed, may

accept deposits from persons other than its members subject to compliance with the requirements

provided in sub-section (2) of section 73 and subject to such rules as the Central Government may, in

consultation with the Reserve Bank of India, prescribe:

Provided that such a company shall be required to obtain the rating (including its networth, liquidity

and ability to pay its deposits on due date) from a recognised credit rating agency for informing the public60

the rating given to the company at the time of invitation of deposits from the public which ensures

adequate safety and the rating shall be obtained for every year during the tenure of deposits:

Provided further that every company accepting secured deposits from the public shall within thirty

days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits

accepted in favour of the deposit holders in accordance with such rules as may be prescribed.

(2) The provisions of this Chapter shall, mutatis mutandis, apply to the acceptance of deposits from

public under this section.

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[76A. Punishment for contravention of section 73 or section 76.—Where a company accepts or

invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention

of the manner or the conditions prescribed under section 73 or section 76 or rules made thereunder or if a

company fails to repay the deposit or part thereof or any interest due thereon within the time specified

under section 73 or section 76 or rules made thereunder or such further time as may be allowed by the

Tribunal under section 73,—

(a) the company shall, in addition to the payment of the amount of deposit or part thereof and the

interest due, be punishable with fine which shall not be less than one crore rupees but which may

extend to ten crore rupees; and

(b) every officer of the company who is in default shall be punishable with imprisonment which

may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which

may extend to two crore rupees, or with both:

Provided that if it is proved that the officer of the company who is in default, has contravened such

provisions knowingly or wilfully with the intention to deceive the company or its shareholders or

depositors or creditors or tax authorities, he shall be liable for action under section 447.]

REGISTRATION OF CHARGES

77. Duty to register charges, etc.—(1) It shall be the duty of every company creating a charge

within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise,

and situated in or outside India, to register the particulars of the charge signed by the company and the

charge-holder together with the instruments, if any, creating such charge in such form, on payment of

such fees and in such manner as may be prescribed, with the Registrar within thirty days of its creation:

Provided that the Registrar may, on an application by the company, allow such registration to be

made within a period of three hundred days of such creation on payment of such additional fees as may be

prescribed:

Provided further that if registration is not made within a period of three hundred days of such

creation, the company shall seek extension of time in accordance with section 87:

Provided also that any subsequent registration of a charge shall not prejudice any right acquired in

respect of any property before the charge is actually registered.

(2) Where a charge is registered with the Registrar under sub-section (1), he shall issue a certificate of

registration of such charge in such form and in such manner as may be prescribed to the company and, as

the case may be, to the person in whose favour the charge is created.

(3) Notwithstanding anything contained in any other law for the time being in force, no charge

created by a company shall be taken into account by the liquidator or any other creditor unless it is duly

registered under sub-section (1) and a certificate of registration of such charge is given by the Registrar

under sub-section (2).

(4) Nothing in sub-section (3) shall prejudice any contract or obligation for the repayment of the

money secured by a charge.

1. Ins. by Act 21 of 2015, s. 8 (w.e.f. 29-5-2015).61

78. Application for registration of charge.—Where a company fails to register the charge within

the period specified in section 77, without prejudice to its liability in respect of any offence under this

Chapter, the person in whose favour the charge is created may apply to the Registrar for registration of

the charge along with the instrument created for the charge, within such time and in such form and

manner as may be prescribed and the Registrar may, on such application, within a period of fourteen days

after giving notice to the company, unless the company itself registers the charge or shows sufficient

cause why such charge should not be registered, allow such registration on payment of such fees, as may

be prescribed:

Provided that where registration is effected on application of the person in whose favour the charge is

created, that person shall be entitled to recover from the company the amount of any fees or additional

fees paid by him to the Registrar for the purpose of registration of charge.

79. Section 77 to apply in certain matters.—The provisions of section 77 relating to registration of

charges shall, so far as may be, apply to—

(a) a company acquiring any property subject to a charge within the meaning of that section; or

(b) any modification in the terms or conditions or the extent or operation of any charge registered

under that section.

80. Date of notice of charge.—Where any charge on any property or assets of a company or any of

its undertakings is registered under section 77, any person acquiring such property, assets, undertakings or

part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of

such registration.

81. Register of charges to be kept by Registrar.—(1) The Registrar shall, in respect of every

company, keep a register containing particulars of the charges registered under this Chapter in such form

and in such manner as may be prescribed.

(2) A register kept in pursuance of this section shall be open to inspection by any person on payment

of such fees as may be prescribed for each inspection.

82. Company to report satisfaction of charge.—(1) A company shall give intimation to the

Registrar in the prescribed form, of the payment or satisfaction in full of any charge registered under this

Chapter within a period of thirty days from the date of such payment or satisfaction and the provisions of

sub-section (1) of section 77 shall, as far as may be, apply to an intimation given under this section.

(2) The Registrar shall, on receipt of intimation under sub-section (1), cause a notice to be sent to the

holder of the charge calling upon him to show cause within such time not exceeding fourteen days, as

may be specified in such notice, as to why payment or satisfaction in full should not be recorded as

intimated to the Registrar, and if no cause is shown, by such holder of the charge, the Registrar shall order

that a memorandum of satisfaction shall be entered in the register of charges kept by him under section 81

and shall inform the company that he has done so:

Provided that the notice referred to in this sub-section shall not be required to be sent, in case the

intimation to the Registrar in this regard is in the specified form and signed by the holder of charge.

(3) If any cause is shown, the Registrar shall record a note to that effect in the register of charges and

shall inform the company.

(4) Nothing in this section shall be deemed to affect the powers of the Registrar to make an entry in

the register of charges under section 83 or otherwise than on receipt of an intimation from the company.

83. Power of Registrar to make entries of satisfaction and release in absence of intimation from

company.—(1) The Registrar may, on evidence being given to his satisfaction with respect to any

registered charge,—

(a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or

(b) that part of the property or undertaking charged has been released from the charge or has

ceased to form part of the company‘s property or undertaking,62

enter in the register of charges a memorandum of satisfaction in whole or in part, or of the fact that part of

the property or undertaking has been released from the charge or has ceased to form part of the

company‘s property or undertaking, as the case may be, notwithstanding the fact that no intimation has

been received by him from the company.

(2) The Registrar shall inform the affected parties within thirty days of making the entry in the

register of charges kept under sub-section (1) of section 81.

84. Intimation of appointment of receiver or manager.—(1) If any person obtains an order for the

appointment of a receiver of, or of a person to manage, the property, subject to a charge, of a company or

if any person appoints such receiver or person under any power contained in any instrument, he shall,

within a period of thirty days from the date of the passing of the order or of the making of the

appointment, give notice of such appointment to the company and the Registrar along with a copy of the

order or instrument and the Registrar shall, on payment of the prescribed fees, register particulars of the

receiver, person or instrument in the register of charges.

(2) Any person appointed under sub-section (1) shall, on ceasing to hold such appointment, give to

the company and the Registrar a notice to that effect and the Registrar shall register such notice.

85. Company‘s register of charges.—(1) Every company shall keep at its registered office a register

of charges in such form and in such manner as may be prescribed, which shall include therein all charges

and floating charges affecting any property or assets of the company or any of its undertakings, indicating

in each case such particulars as may be prescribed:

Provided that a copy of the instrument creating the charge shall also be kept at the registered office of

the company along with the register of charges.

(2) The register of charges and instrument of charges, kept under sub-section (1) shall be open for

inspection during business hours—

(a) by any member or creditor without any payment of fees; or

(b) by any other person on payment of such fees as may be prescribed,

subject to such reasonable restrictions as the company may, by its articles, impose.

86. Punishment for contravention.—If any company contravenes any provision of this Chapter, the

company shall be punishable with fine which shall not be less than one lakh rupees but which may extend

to ten lakh rupees and every officer of the company who is in default shall be punishable with

imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-

five thousand rupees but which may extend to one lakh rupees, or with both.

87. Rectification by Central Government in register of charges.—(1) The Central Government on

being satisfied that—

(i) (a) the omission to file with the Registrar the particulars of any charge created by a company

or any charge subject to which any property has been acquired by a company or any modification of

such charge; or

(b) the omission to register any charge within the time required under this Chapter or the

omission to give intimation to the Registrar of the payment or the satisfaction of a charge, within the

time required under this Chapter; or

(c) the omission or mis-statement of any particular with respect to any such charge or

modification or with respect to any memorandum of satisfaction or other entry made in pursuance of

section 82 or section 83,

was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice

the position of creditors or shareholders of the company; or

(ii) on any other grounds, it is just and equitable to grant relief,

it may on the application of the company or any person interested and on such terms and conditions as it

may seem to the Central Government just and expedient, direct that the time for the filing of the63

particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction

shall be extended or, as the case may require, that the omission or mis-statement shall be rectified.

(2) Where the Central Government extends the time for the registration of a charge, the order shall

not prejudice any rights acquired in respect of the property concerned before the charge is actually

registered.

ModuleIV

MANAGEMENT AND ADMINISTRATION

88. Register of members, etc.—(1) Every company shall keep and maintain the following registers

in such form and in such manner as may be prescribed, namely:—

(a) register of members indicating separately for each class of equity and preference shares held

by each member residing in or outside India;

(b) register of debenture-holders; and

(c) register of any other security holders.

(2) Every register maintained under sub-section (1) shall include an index of the names included

therein.

(3) The register and index of beneficial owners maintained by a depository under section 11 of the

Depositories Act, 1996 (22 of 1996), shall be deemed to be the corresponding register and index for the

purposes of this Act.

(4) A company may, if so authorised by its articles, keep in any country outside India, in such manner

as may be prescribed, a part of the register referred to in sub-section (1), called ―foreign register‖

containing the names and particulars of the members, debenture-holders, other security holders or

beneficial owners residing outside India.

(5) If a company does not maintain a register of members or debenture-holders or other security

holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2),

the company and every officer of the company who is in default shall be punishable with fine which shall

not be less than fifty thousand rupees but which may extend to three lakh rupees and where the failure is a

continuing one, with a further fine which may extend to one thousand rupees for every day, after the first

during which the failure continues.

89. Declaration in respect of beneficial interest in any share.—(1) Where the name of a person is

entered in the register of members of a company as the holder of shares in that company but who does not

hold the beneficial interest in such shares, such person shall make a declaration within such time and in

such form as may be prescribed to the company specifying the name and other particulars of the person

who holds the beneficial interest in such shares.

(2) Every person who holds or acquires a beneficial interest in share of a company shall make a

declaration to the company specifying the nature of his interest, particulars of the person in whose name

the shares stand registered in the books of the company and such other particulars as may be prescribed.

(3) Where any change occurs in the beneficial interest in such shares, the person referred to in sub-

section (1) and the beneficial owner specified in sub-section (2) shall, within a period of thirty days from

the date of such change, make a declaration to the company in such form and containing such particulars

as may be prescribed.

(4) The Central Government may make rules to provide for the manner of holding and disclosing

beneficial interest and beneficial ownership under this section.

(5) If any person fails, to make a declaration as required under sub-section (1) or sub-section (2) or

sub-section (3), without any reasonable cause, he shall be punishable with fine which may extend to fifty

thousand rupees and where the failure is a continuing one, with a further fine which may extend to one

thousand rupees for every day after the first during which the failure continues.64

(6) Where any declaration under this section is made to a company, the company shall make a note of

such declaration in the register concerned and shall file, within thirty days from the date of receipt of

declaration by it, a return in the prescribed form with the Registrar in respect of such declaration with

such fees or additional fees as may be prescribed, within the time specified under section 403.

(7) If a company, required to file a return under sub-section (6), fails to do so before the expiry of the

time specified under the first proviso to sub-section (1) of section 403, the company and every officer of

the company who is in default shall be punishable with fine which shall not be less than five hundred

rupees but which may extend to one thousand rupees and where the failure is a continuing one, with a

further fine which may extend to one thousand rupees for every day after the first during which the failure

continues.

(8) No right in relation to any share in respect of which a declaration is required to be made under this

section but not made by the beneficial owner, shall be enforceable by him or by any person claiming

through him.

(9) Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend

to its members under this Act and the said obligation shall, on such payment, stand discharged.

90. Investigation of beneficial ownership of shares in certain cases.—Where it appears to the

Central Government that there are reasons so to do, it may appoint one or more competent persons to

investigate and report as to beneficial ownership with regard to any share or class of shares and the

provisions of section 216 shall, as far as may be, apply to such investigation as if it were an investigation

ordered under that section.

91. Power to close register of members or debenture-holders or other security holders.—(1) A

company may close the register of members or the register of debenture-holders or the register of other

security holders for any period or periods not exceeding in the aggregate forty-five days in each year, but

not exceeding thirty days at any one time, subject to giving of previous notice of at least seven days or

such lesser period as may be specified by Securities and Exchange Board for listed companies or the

companies which intend to get their securities listed, in such manner as may be prescribed.

(2) If the register of members or of debenture-holders or of other security holders is closed without

giving the notice as provided in sub-section (1), or after giving shorter notice than that so provided, or for

a continuous or an aggregate period in excess of the limits specified in that sub-section, the company and

every officer of the company who is in default shall be liable to a penalty of five thousand rupees for

every day subject to a maximum of one lakh rupees during which the register is kept closed.

92. Annual return.—(1) Every company shall prepare a return (hereinafter referred to as the annual

return) in the prescribed form containing the particulars as they stood on the close of the financial year

regarding—

(a) its registered office, principal business activities, particulars of its holding, subsidiary and

associate companies;

(b) its shares, debentures and other securities and shareholding pattern;

(c) its indebtedness;

(d) its members and debenture-holders along with changes therein since the close of the previous

financial year;

(e) its promoters, directors, key managerial personnel along with changes therein since the close

of the previous financial year;

(f) meetings of members or a class thereof, Board and its various committees along with

attendance details;

(g) remuneration of directors and key managerial personnel;

(h) penalty or punishment imposed on the company, its directors or officers and details of

compounding of offences and appeals made against such penalty or punishment;65

(i) matters relating to certification of compliances, disclosures as may be prescribed;

(j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign

Institutional Investors indicating their names, addresses, countries of incorporation, registration and

percentage of shareholding held by them; and

(k) such other matters as may be prescribed,

and signed by a director and the company secretary, or where there is no company secretary, by a

company secretary in practice:

Provided that in relation to One Person Company and small company, the annual return shall be

signed by the company secretary, or where there is no company secretary, by the director of the company.

(2) The annual return, filed by a listed company or, by a company having such paid-up capital and

turnover as may be prescribed, shall be certified by a company secretary in practice in the prescribed

form, stating that the annual return discloses the facts correctly and adequately and that the company has

complied with all the provisions of this Act.

(3) An extract of the annual return in such form as may be prescribed shall form part of the Board‘s

report.

(4) Every company shall file with the Registrar a copy of the annual return, within sixty days from the

date on which the annual general meeting is held or where no annual general meeting is held in any year

within sixty days from the date on which the annual general meeting should have been held together with

the statement specifying the reasons for not holding the annual general meeting, with such fees or

additional fees as may be prescribed, within the time as specified, under section 403.

(5) If a company fails to file its annual return under sub-section (4), before the expiry of the period

specified under section 403 with additional fees, the company shall be punishable with fine which shall

not be less than fifty thousand rupees but which may extend to five lakhs rupees and every officer of the

company who is in default shall be punishable with imprisonment for a term which may extend to six

months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh

rupees, or with both.

(6) If a company secretary in practice certifies the annual return otherwise than in conformity with the

requirements of this section or the rules made thereunder, he shall be punishable with fine which shall not

be less than fifty thousand rupees but which may extend to five lakh rupees.

93. Return to be filed with Registrar in case promoters‘ stake changes.—Every listed company

shall file a return in the prescribed form with the Registrar with respect to change in the number of shares

held by promoters and top ten shareholders of such company, within fifteen days of such change.

94. Place of keeping and inspection of registers, returns, etc.—(1) The registers required to be kept

and maintained by a company under section 88 and copies of the annual return filed under section 92 shall

be kept at the registered office of the company:

Provided that such registers or copies of return may also be kept at any other place in India in which

more than one-tenth of the total number of members entered in the register of members reside, if

approved by a special resolution passed at a general meeting of the company and the Registrar has been

given a copy of the proposed special resolution in advance:

Provided further that the period for which the registers, returns and records are required to be kept

shall be such as may be prescribed.

(2) The registers and their indices, except when they are closed under the provisions of this Act, and

the copies of all the returns shall be open for inspection by any member, debenture-holder, other security

holder or beneficial owner, during business hours without payment of any fees and by any other person on

payment of such fees as may be prescribed.

(3) Any such member, debenture-holder, other security holder or beneficial owner or any other person

may—

(a) take extracts from any register, or index or return without payment of any fee; or66

(b) require a copy of any such register or entries therein or return on payment of such fees as may

be prescribed.

(4) If any inspection or the making of any extract or copy required under this section is refused, the

company and every officer of the company who is in default shall be liable, for each such default, to a

penalty of one thousand rupees for every day subject to a maximum of one lakh rupees during which the

refusal or default continues.

(5) The Central Government may also, by order, direct an immediate inspection of the document, or

direct that the extract required shall forthwith be allowed to be taken by the person requiring it.

95. Registers, etc., to be evidence.—The registers, their indices and copies of annual returns

maintained under sections 88 and 94 shall be prima facie evidence of any matter directed or authorised to

be inserted therein by or under this Act.

96. Annual general meeting.— (1) Every company other than a One Person Company shall in each

year hold in addition to any other meetings, a general meeting as its annual general meeting and shall

specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse

between the date of one annual general meeting of a company and that of the next:

Provided that in case of the first annual general meeting, it shall be held within a period of nine

months from the date of closing of the first financial year of the company and in any other case, within a

period of six months, from the date of closing of the financial year:

Provided further that if a company holds its first annual general meeting as aforesaid, it shall not be

necessary for the company to hold any annual general meeting in the year of its incorporation:

Provided also that the Registrar may, for any special reason, extend the time within which any annual

general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three

months.

(2) Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6

p.m. on any day that is not a National Holiday and shall be held either at the registered office of the

company or at some other place within the city, town or village in which the registered office of the

company is situate:

Provided that the Central Government may exempt any company from the provisions of this sub-

section subject to such conditions as it may impose.

Explanation.—For the purposes of this sub-section, ―National Holiday‖ means and includes a day

declared as National Holiday by the Central Government.

97. Power of Tribunal to call annual general meeting.—(1) If any default is made in holding the

annual general meeting of a company under section 96, the Tribunal may, notwithstanding anything

contained in this Act or the articles of the company, on the application of any member of the company,

call, or direct the calling of, an annual general meeting of the company and give such ancillary or

consequential directions as the Tribunal thinks expedient:

Provided that such directions may include a direction that one member of the company present in

person or by proxy shall be deemed to constitute a meeting.

(2) A general meeting held in pursuance of sub-section (1) shall, subject to any directions of the

Tribunal, be deemed to be an annual general meeting of the company under this Act.

98. Power of Tribunal to call meetings of members, etc.—(1) If for any reason it is impracticable

to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of you

the company may be called, or to hold or conduct the meeting of the company in the manner prescribed

by this Act or the articles of the company, the Tribunal may, either suomotu or on the application of any

director or member of the company who would be entitled to vote at the meeting,—

(a) order a meeting of the company to be called, held and conducted in such manner as the

Tribunal thinks fit; and67

(b) give such ancillary or consequential directions as the Tribunal thinks expedient, including

directions modifying or supplementing in relation to the calling, holding and conducting of the

meeting, the operation of the provisions of this Act or articles of the company:

Provided that such directions may include a direction that one member of the company present in

person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with any order made under sub-section (1)

shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

99. Punishment for default in complying with provisions of sections 96 to 98.—If any default is

made in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in

complying with any directions of the Tribunal, the company and every officer of the company who is in

default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing

default, with a further fine which may extend to five thousand rupees for every day during which such

default continues.

100. Calling of extraordinary general meeting.—(1) The Board may, whenever it deems fit, call an

extraordinary general meeting of the company.

(2) The Board shall, at the requisition made by,—

(a) in the case of a company having a share capital, such number of members who hold, on the

date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the

company as on that date carries the right of voting;

(b) in the case of a company not having a share capital, such number of members who have, on

the date of receipt of the requisition, not less than one-tenth of the total voting power of all the

members having on the said date a right to vote,

call an extraordinary general meeting of the company within the period specified in sub-section (4).

(3) The requisition made under sub-section (2) shall set out the matters for the consideration of which

the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the

company.

(4) If the Board does not, within twenty-one days from the date of receipt of a valid requisition in

regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than

forty-five days from the date of receipt of such requisition, the meeting may be called and held by the

requisitionists themselves within a period of three months from the date of the requisition.

(5) A meeting under sub-section (4) by the requisitionists shall be called and held in the same manner

in which the meeting is called and held by the Board.

(6) Any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (4)

shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any

fee or other remuneration under section 197 payable to such of the directors who were in default in calling

the meeting.

101. Notice of meeting.—(1) A general meeting of a company may be called by giving not less than

clear twenty-one days‘ notice either in writing or through electronic mode in such manner as may be

prescribed:

Provided that a general meeting may be called after giving a shorter notice if consent is given in

writing or by electronic mode by not less than ninety-five per cent. of the members entitled to vote at such

meeting.

(2) Every notice of a meeting shall specify the place, date, day and the hour of the meeting and shall

contain a statement of the business to be transacted at such meeting.

(3) The notice of every meeting of the company shall be given to—

(a) every member of the company, legal representative of any deceased member or the assignee

of an insolvent member;68

(b) the auditor or auditors of the company; and

(c) every director of the company.

(4) Any accidental omission to give notice to, or the non-receipt of such notice by, any member or

other person who is entitled to such notice for any meeting shall not invalidate the proceedings of the

meeting.

102. Statement to be annexed to notice.—(1) A statement setting out the following material facts

concerning each item of special business to be transacted at a general meeting, shall be annexed to the

notice calling such meeting, namely:—

(a) the nature of concern or interest, financial or otherwise, if any, in respect of each items of—

(i) every director and the manager, if any;

(ii) every other key managerial personnel; and

(iii) relatives of the persons mentioned in sub-clauses (i) and (ii);

(b) any other information and facts that may enable members to understand the meaning, scope

and implications of the items of business and to take decision thereon.

(2) For the purposes of sub-section (1),—

(a) in the case of an annual general meeting, all business to be transacted thereat shall be deemed

special, other than—

(i) the consideration of financial statements and the reports of the Board of Directors and

auditors;

(ii) the declaration of any dividend;

(iii) the appointment of directors in place of those retiring;

(iv) the appointment of, and the fixing of the remuneration of, the auditors; and

(b) in the case of any other meeting, all business shall be deemed to be special:

Provided that where any item of special business to be transacted at a meeting of the company relates

to or affects any other company, the extent of shareholding interest in that other company of every

promoter, director, manager, if any, and of every other key managerial personnel of the first mentioned

company shall, if the extent of such shareholding is not less than two per cent. of the paid-up share capital

of that company, also be set out in the statement.

(3) Where any item of business refers to any document, which is to be considered at the meeting, the

time and place where such document can be inspected shall be specified in the statement under sub-

section (1).

(4) Where as a result of the non-disclosure or insufficient disclosure in any statement referred to in

sub-section (1), being made by a promoter, director, manager, if any, or other key managerial personnel,

any benefit which accrues to such promoter, director, manager or other key managerial personnel or their

relatives, either directly or indirectly, the promoter, director, manager or other key managerial personnel,

as the case may be, shall hold such benefit in trust for the company, and shall, without prejudice to any

other action being taken against him under this Act or under any other law for the time being in force, be

liable to compensate the company to the extent of the benefit received by him.

(5) If any default is made in complying with the provisions of this section, every promoter, director,

manager or other key managerial personnel who is in default shall be punishable with fine which may

extend to fifty thousand rupees or five times the amount of benefit accruing to the promoter, director,

manager or other key managerial personnel or any of his relatives, whichever is more.69

103. Quorum for meetings.—(1) Unless the articles of the company provide for a larger number,—

(a) in case of a public company,—

(i) five members personally present if the number of members as on the date of meeting is not

more than one thousand;

(ii) fifteen members personally present if the number of members as on the date of meeting is

more than one thousand but up to five thousand;

(iii) thirty members personally present if the number of members as on the date of the

meeting exceeds five thousand;

(b) in the case of a private company, two members personally present, shall be the quorum for a

meeting of the company.

(2) If the quorum is not present within half-an-hour from the time appointed for holding a meeting of

the company—

(a) the meeting shall stand adjourned to the same day in the next week at the same time and place,

or to such other date and such other time and place as the Board may determine; or

(b) the meeting, if called by requisitionists under section 100, shall stand cancelled:

Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under

clause (a), the company shall give not less than three days notice to the members either individually or by

publishing an advertisement in the newspapers (one in English and one in vernacular language) which is

in circulation at the place where the registered office of the company is situated.

(3) If at the adjourned meeting also, a quorum is not present within half-an-hour from the time

appointed for holding meeting, the members present shall be the quorum.

104. Chairman of meetings.—(1) Unless the articles of the company otherwise provide, the

members personally present at the meeting shall elect one of themselves to be the Chairman thereof on a

show of hands.

(2) If a poll is demanded on the election of the Chairman, it shall be taken forthwith in accordance

with the provisions of this Act and the Chairman elected on a show of hands under sub-section (1) shall

continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of

the poll, and such other person shall be the Chairman for the rest of the meeting.

105. Proxies.— (1) Any member of a company entitled to attend and vote at a meeting of the

company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his

behalf:

Provided that a proxy shall not have the right to speak at such meeting and shall not be entitled to

vote except on a poll:

Provided further that, unless the articles of a company otherwise provide, this subsection shall not

apply in the case of a company not having a share capital:

Provided also that the Central Government may prescribe a class or classes of companies whose

members shall not be entitled to appoint another person as a proxy:

Provided also that a person appointed as proxy shall act on behalf of such member or number of

members not exceeding fifty and such number of shares as may be prescribed.

(2) In every notice calling a meeting of a company which has a share capital, or the articles of which

provide for voting by proxy at the meeting, there shall appear with reasonable prominence a statement

that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or

more proxies, to attend and vote instead of himself, and that a proxy need not be a member.

(3) If default is made in complying with sub-section (2), every officer of the company who is in

default shall be punishable with fine which may extend to five thousand rupees.70

(4) Any provision contained in the articles of a company which specifies or requires a longer period

than forty-eight hours before a meeting of the company, for depositing with the company or any other

person any instrument appointing a proxy or any other document necessary to show the validity or

otherwise relating to the appointment of a proxy in order that the appointment may be effective at such

meeting, shall have effect as if a period of forty-eight hours had been specified in or required by such

provision for such deposit.

(5) If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of

a number of persons specified in the invitations are issued at the company‘s expense to any member

entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the

company who knowingly issues the invitations as aforesaid or wilfullyauthorises or permits their issue

shall be punishable with fine which may extend to one lakh rupees:

Provided that an officer shall not be punishable under this sub-section by reason only of the issue to a

member at his request in writing of a form of appointment naming the proxy, or of a list of persons

willing to act as proxies, if the form or list is available on request in writing to every member entitled to

vote at the meeting by proxy.

(6) The instrument appointing a proxy shall—

(a) be in writing; and

(b) be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a

body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.

(7) An instrument appointing a proxy, if in the form as may be prescribed, shall not be questioned on

the ground that it fails to comply with any special requirements specified for such instrument by the

articles of a company.

(8) Every member entitled to vote at a meeting of the company, or on any resolution to be moved

thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the

commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies

lodged, at any time during the business hours of the company, provided not less than three days‘ notice in

writing of the intention so to inspect is given to the company.

106. Restriction on voting rights.—(1) Notwithstanding anything contained in this Act, the articles

of a company may provide that no member shall exercise any voting right in respect of any shares

registered in his name on which any calls or other sums presently payable by him have not been paid, or

in regard to which the company has exercised any right of lien.

(2) A company shall not, except on the grounds specified in sub-section (1), prohibit any member

from exercising his voting right on any other ground.

(3) On a poll taken at a meeting of a company, a member entitled to more than one vote, or his proxy,

where allowed, or other person entitled to vote for him, as the case may be, need not, if he votes, use all

his votes or cast in the same way all the votes he uses.

107. Voting by show of hands.—(1) At any general meeting, a resolution put to the vote of the

meeting shall, unless a poll is demanded under section 109 or the voting is carried out electronically, be

decided on a show of hands.

(2) A declaration by the Chairman of the meeting of the passing of a resolution or otherwise by show

of hands under sub-section (1) and an entry to that effect in the books containing the minutes of the

meeting of the company shall be conclusive evidence of the fact of passing of such resolution or

otherwise.

108. Voting through electronic means.—The Central Government may prescribe the class or classes

of companies and manner in which a member may exercise his right to vote by the electronic means.71

109. Demand for poll.—(1) Before or on the declaration of the result of the voting on any resolution

on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion,

and shall be ordered to be taken by him on a demand made in that behalf,—

(a) in the case a company having a share capital, by the members present in person or by proxy,

where allowed, and having not less than one-tenth of the total voting power or holding shares on

which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed

has been paid-up; and

(b) in the case of any other company, by any member or members present in person or by proxy,

where allowed, and having not less than one-tenth of the total voting power.

(2) The demand for a poll may be withdrawn at any time by the persons who made the demand.

(3) A poll demanded for adjournment of the meeting or appointment of Chairman of the meeting shall

be taken forthwith.

(4) A poll demanded on any question other than adjournment of the meeting or appointment of

Chairman shall be taken at such time, not being later than forty-eight hours from the time when the

demand was made, as the Chairman of the meeting may direct.

(5) Where a poll is to be taken, the Chairman of the meeting shall appoint such number of persons, as

he deems necessary, to scrutinise the poll process and votes given on the poll and to report thereon to him

in the manner as may be prescribed.

(6) Subject to the provisions of this section, the Chairman of the meeting shall have power to regulate

the manner in which the poll shall be taken.

(7) The result of the poll shall be deemed to be the decision of the meeting on the resolution on which

the poll was taken.

110. Postal ballot.—(1) Notwithstanding anything contained in this Act, a company—

(a) shall, in respect of such items of business as the Central Government may, by notification,

declare to be transacted only by means of postal ballot; and

(b) may, in respect of any item of business, other than ordinary business and any business in

respect of which directors or auditors have a right to be heard at any meeting, transact by means of

postal ballot,

in such manner as may be prescribed, instead of transacting such business at a general meeting.

(2) If a resolution is assented to by the requisite majority of the shareholders by means of postal

ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

111. Circulation of members‘ resolution.—(1) A company shall, on requisition in writing of such

number of members, as required in section 100,—

(a) give notice to members of any resolution which may properly be moved and is intended to be

moved at a meeting; and

(b) circulate to members any statement with respect to the matters referred to in proposed

resolution or business to be dealt with at that meeting.

(2) A company shall not be bound under this section to give notice of any resolution or to circulate

any statement unless—

(a) a copy of the requisition signed by the requisitionists (or two or more copies which, between

them, contain the signatures of all the requisitionists) is deposited at the registered office of the

company,—

(i) in the case of a requisition requiring notice of a resolution, not less than six weeks before

the meeting;

(ii) in the case of any other requisition, not less than two weeks before the meeting; and72

(b) there is deposited or tendered with the requisition, a sum reasonably sufficient to meet the

company‘s expenses in giving effect thereto:

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the

registered office of the company, an annual general meeting is called on a date within six weeks after the

copy has been deposited, the copy, although not deposited within the time required by this sub-section,

shall be deemed to have been properly deposited for the purposes thereof.

(3) The company shall not be bound to circulate any statement as required by clause (b) of sub-

section (1), if on the application either of the company or of any other person who claims to be aggrieved,

the Central Government, by order, declares that the rights conferred by this section are being abused to

secure needless publicity for defamatory matter.

(4) An order made under sub-section (3) may also direct that the cost incurred by the company by

virtue of this section shall be paid to the company by the requisitionists, notwithstanding that they are not

parties to the application.

(5) If any default is made in complying with the provisions of this section, the company and every

officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees.

112. Representation of President and Governors in meetings.—(1) The President of India or the

Governor of a State, if he is a member of a company, may appoint such person as he thinks fit to act as his

representative at any meeting of the company or at any meeting of any class of members of the company.

(2) A person appointed to act under sub-section (1) shall, for the purposes of this Act, be deemed to

be a member of such a company and shall be entitled to exercise the same rights and powers, including

the right to vote by proxy and postal ballot, as the President or, as the case may be, the Governor could

exercise as a member of the company.

113. Representation of corporations at meeting of companies and of creditors.—(1) A body

corporate, whether a company within the meaning of this Act or not, may, —

(a) if it is a member of a company within the meaning of this Act, by resolution of its Board of

Directors or other governing body, authorise such person as it thinks fit to act as its representative at

any meeting of the company, or at any meeting of any class of members of the company;

(b) if it is a creditor, including a holder of debentures, of a company within the meaning of this

Act, by resolution of its directors or other governing body, authorise such person as it thinks fit to act

as its representative at any meeting of any creditors of the company held in pursuance of this Act or

of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust

deed, as the case may be.

(2) A person authorised by resolution under sub-section (1) shall be entitled to exercise the same

rights and powers, including the right to vote by proxy and by postal ballot, on behalf of the body

corporate which he represents as that body could exercise if it were an individual member, creditor or

holder of debentures of the company.

114. Ordinary and special resolutions.—(1) A resolution shall be an ordinary resolution if the

notice required under this Act has been duly given and it is required to be passed by the votes cast,

whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution,

including the casting vote, if any, of the Chairman, by members who, being entitled so to do, vote in

person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any, cast against

the resolution by members, so entitled and voting.

(2) A resolution shall be a special resolution when—

(a) the intention to propose the resolution as a special resolution has been duly specified in the

notice calling the general meeting or other intimation given to the members of the resolution;

(b) the notice required under this Act has been duly given; and

(c) the votes cast in favour of the resolution, whether on a show of hands, or electronically or on a

poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by73

postal ballot, are required to be not less than three times the number of the votes, if any, cast against

the resolution by members so entitled and voting.

115. Resolutions requiring special notice.—Where, by any provision contained in this Act or in the

articles of a company, special notice is required of any resolution, notice of the intention to move such

resolution shall be given to the company by such number of members holding not less than one per cent.

of total voting power or holding shares on which such aggregate sum not exceeding five lakh rupees, as

may be prescribed, has been paid-up and the company shall give its members notice of the resolution in

such manner as may be prescribed.

116. Resolutions passed at adjourned meeting.—Where a resolution is passed at an adjourned

meeting of—

(a) a company; or

(b) the holders of any class of shares in a company; or

(c) the Board of Directors of a company,

the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact

passed, and shall not be deemed to have been passed on any earlier date.

117. Resolutions and agreements to be filed.—(1) A copy of every resolution or any agreement, in

respect of matters specified in sub-section (3) together with the explanatory statement under section 102,

if any, annexed to the notice calling the meeting in which the resolution is proposed, shall be filed with

the Registrar within thirty days of the passing or making thereof in such manner and with such fees as

may be prescribed within the time specified under section 403:

Provided that the copy of every resolution which has the effect of altering the articles and the copy of

every agreement referred to in sub-section (3) shall be embodied in or annexed to every copy of the

articles issued after passing of the resolution or making of the agreement.

(2) If a company fails to file the resolution or the agreement under sub-section (1) before the expiry of

the period specified under section 403 with additional fees, the company shall be punishable with fine

which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every

officer of the company who is in default, including liquidator of the company, if any, shall be punishable

with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(3) The provisions of this section shall apply to—

(a) special resolutions;

(b) resolutions which have been agreed to by all the members of a company, but which, if not so

agreed to, would not have been effective for their purpose unless they had been passed as special

resolutions;

(c) any resolution of the Board of Directors of a company or agreement executed by a company,

relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms

of appointment, of a managing director;

(d) resolutions or agreements which have been agreed to by any class of members but which, if

not so agreed to, would not have been effective for their purpose unless they had been passed by a

specified majority or otherwise in some particular manner; and all resolutions or agreements which

effectively bind such class of members though not agreed to by all those members;

(e) resolutions passed by a company according consent to the exercise by its Board of Directors

of any of the powers under clause (a) and clause (c) of sub-section (1) of section 180;

(f) resolutions requiring a company to be wound up voluntarily passed in pursuance of section

304;

(g) resolutions passed in pursuance of sub-section (3) of section 179: 1

1. The word ―and‖ omitted by Act 21 of 2015, s. 9 (w.e.f. 29-5-2015).74

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[Provided that no person shall be entitled under section 399 to inspect or obtain copies of

such resolutions; and]

(h) any other resolution or agreement as may be prescribed and placed in the public domain.

118. Minutes of proceedings of general meeting, meeting of Board of Directors and other

meeting and resolutions passed by postal ballot.—(1) Every company shall cause minutes of the

proceedings of every general meeting of any class of shareholders or creditors, and every resolution

passed by postal ballot and every meeting of its Board of Directors or of every committee of the Board, to

be prepared and signed in such manner as may be prescribed and kept within thirty days of the conclusion

of every such meeting concerned, or passing of resolution by postal ballot in books kept for that purpose

with their pages consecutively numbered.

(2) The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat.

(3) All appointments made at any of the meetings aforesaid shall be included in the minutes of the

meeting.

(4) In the case of a meeting of the Board of Directors or of a committee of the Board, the minutes

shall also contain—

(a) the names of the directors present at the meeting; and

(b) in the case of each resolution passed at the meeting, the names of the directors,

if any, dissenting from, or not concurring with the resolution.

(5) There shall not be included in the minutes, any matter which, in the opinion of the Chairman of

the meeting,—

(a) is or could reasonably be regarded as defamatory of any person; or

(b) is irrelevant or immaterial to the proceedings; or

(c) is detrimental to the interests of the company.

(6) The Chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any

matter in the minutes on the grounds specified in sub-section (5).

(7) The minutes kept in accordance with the provisions of this section shall be evidence of the

proceedings recorded therein.

(8) Where the minutes have been kept in accordance with sub-section (1) then, until the contrary is

proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to

have duly taken place, and the resolutions passed by postal ballot to have been duly passed and in

particular, all appointments of directors, key managerial personnel, auditors or company secretary in

practice, shall be deemed to be valid.

(9) No document purporting to be a report of the proceedings of any general meeting of a company

shall be circulated or advertised at the expense of the company, unless it includes the matters required by

this section to be contained in the minutes of the proceedings of such meeting.

(10) Every company shall observe secretarial standards with respect to general and Board meetings

specified by the Institute of Company Secretaries of India constituted under section 3 of the Company

Secretaries Act, 1980 (56 of 1980), and approved as such by the Central Government.

(11) If any default is made in complying with the provisions of this section in respect of any meeting,

the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company

who is in default shall be liable to a penalty of five thousand rupees.

(12) If a person is found guilty of tampering with the minutes of the proceedings of meeting, he shall

be punishable with imprisonment for a term which may extend to two years and with fine which shall not

be less than twenty-five thousand rupees but which may extend to one lakh rupees.

1. Ins. by Act 21 of 2015, s. 9 (w.e.f. 29-5-2015).75

119. Inspection of minute-books of general meeting.—(1) The books containing the minutes of the

proceedings of any general meeting of a company or of a resolution passed by postal ballot, shall—

(a) be kept at the registered office of the company; and

(b) be open, during business hours, to the inspection by any member without charge, subject to

such reasonable restrictions as the company may, by its articles or in general meeting, impose, so,

however, that not less than two hours in each business day are allowed for inspection.

(2) Any member shall be entitled to be furnished, within seven working days after he has made a

request in that behalf to the company, and on payment of such fees as may be prescribed, with a copy of

any minutes referred to in sub-section (1).

(3) If any inspection under sub-section (1) is refused, or if any copy required under sub-section (2) is

not furnished within the time specified therein, the company shall be liable to a penalty of twenty-five

thousand rupees and every officer of the company who is in default shall be liable to a penalty of five

thousand rupees for each such refusal or default, as the case may be.

(4) In the case of any such refusal or default, the Tribunal may, without prejudice to any action being

taken under sub-section (3), by order, direct an immediate inspection of the minute-books or direct that

the copy required shall forthwith be sent to the person requiring it.

120. Maintenance and inspection of documents in electronic form.—Without prejudice to any

other provisions of this Act, any document, record, register, minutes, etc.,—

(a) required to be kept by a company; or

(b) allowed to be inspected or copies to be given to any person by a company under this Act, may

be kept or inspected or copies given, as the case may be, in electronic form in such form and manner

as may be prescribed.

121. Report on annual general meeting.—(1) Every listed public company shall prepare in the

prescribed manner a report on each annual general meeting including the confirmation to the effect that

the meeting was convened, held and conducted as per the provisions of this Act and the rules made

thereunder.

(2) The company shall file with the Registrar a copy of the report referred to in subsection (1) within

thirty days of the conclusion of the annual general meeting with such fees as may be prescribed, or with

such additional fees as may be prescribed, within the time as specified, under section 403.

(3) If the company fails to file the report under sub-section (2) before the expiry of the period

specified under section 403 with additional fees, the company shall be punishable with fine which shall

not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the

company who is in default shall be punishable with fine which shall not be less than twenty-five thousand

rupees but which may extend to one lakh rupees.

122. Applicability of this Chapter to One Person Company.—(1) The provisions of section 98 and

sections 100 to 111 (both inclusive) shall not apply to a One Person Company.

(2) The ordinary businesses as mentioned under clause (a) of sub-section (2) of section 102 which a

company, other than a One Person Company, is required to transact at its annual general meeting, shall be

transacted, in case of One Person Company, as provided in sub-section (3).

(3) For the purposes of section 114, any business which is required to be transacted at an annual

general meeting or other general meeting of a company by means of an ordinary or special resolution, it

shall be sufficient if, in case of One Person Company, the resolution is communicated by the member to

the company and entered in the minutes-book required to be maintained under section 118 and signed and

dated by the member and such date shall be deemed to be the date of the meeting for all the purposes

under this Act.

(4) Notwithstanding anything in this Act, where there is only one director on the Board of Director of

a One Person Company, any business which is required to be transacted at the meeting of the Board of

Directors of a company, it shall be sufficient if, in case of such One Person Company, the resolution by89

138. Internal audit.— (1) Such class or classes of companies as may be prescribed shall be required

to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such

other professional as may be decided by the Board to conduct internal audit of the functions and activities

of the company.

(2) The Central Government may, by rules, prescribe the manner and the intervals in which the

internal audit shall be conducted and reported to the Board.

AUDIT AND AUDITORS

139. Appointment of auditors.— (1) Subject to the provisions of this Chapter, every company shall,

at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office

from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter

till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the

members of the company at such meeting shall be such as may be prescribed:

Provided that the company shall place the matter relating to such appointment for ratification by

members at every annual general meeting:

Provided further that before such appointment is made, the written consent of the auditor to such

appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with

the conditions as may be prescribed, shall be obtained from the auditor:

Provided also that the certificate shall also indicate whether the auditor satisfies the criteria provided

in section 141:

Provided also that the company shall inform the auditor concerned of his or its appointment, and also

file a notice of such appointment with the Registrar within fifteen days of the meeting in which the

auditor is appointed.

Explanation.—For the purposes of this Chapter, ―appointment‖ includes re-appointment.

(2) No listed company or a company belonging to such class or classes of companies as may be

prescribed, shall appoint or re-appoint—

(a) an individual as auditor for more than one term of five consecutive years; and

(b) an audit firm as auditor for more than two terms of five consecutive years:

Provided that—

(i) an individual auditor who has completed his term under clause (a) shall not be eligible for

re-appointment as auditor in the same company for five years from the completion of his term;

(ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-

appointment as auditor in the same company for five years from the completion of such term:

Provided further that as on the date of appointment no audit firm having a common partner or partners

to the other audit firm, whose tenure has expired in a company immediately preceding the financial year,

shall be appointed as auditor of the same company for a period of five years:

Provided also that every company, existing on or before the commencement of this Act which is

required to comply with provisions of this sub-section, shall comply with the requirements of this sub-

section within three years from the date of commencement of this Act:

Provided also that, nothing contained in this sub-section shall prejudice the right of the company to

remove an auditor or the right of the auditor to resign from such office of the company.

(3) Subject to the provisions of this Act, members of a company may resolve to provide that—

(a) in the audit firm appointed by it, the auditing partner and his team shall be rotated at such

intervals as may be resolved by members; or

(b) the audit shall be conducted by more than one auditor.90

(4) The Central Government may, by rules, prescribe the manner in which the companies shall rotate

their auditors in pursuance of sub-section (2).

Explanation.—For the purposes of this Chapter, the word ―firm‖ shall include a limited liability

partnership incorporated under the Limited Liability Partnership Act, 2008 (6 of 2009).

(5) Notwithstanding anything contained in sub-section (1), in the case of a Government company or

any other company owned or controlled, directly or indirectly, by the Central Government, or by any

State Government or Governments, or partly by the Central Government and partly by one or more State

Governments, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint

an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one

hundred and eighty days from the commencement of the financial year, who shall hold office till the

conclusion of the annual general meeting.

(6) Notwithstanding anything contained in sub-section (1), the first auditor of a company, other than a

Government company, shall be appointed by the Board of Directors within thirty days from the date of

registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform

the members of the company, who shall within ninety days at an extraordinary general meeting appoint

such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

(7) Notwithstanding anything contained in sub-section (1) or sub-section (5), in the case of a

Government company or any other company owned or controlled, directly or indirectly, by the Central

Government, or by any State Government, or Governments, or partly by the Central Government and

partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and

Auditor-General of India within sixty days from the date of registration of the company and in case the

Comptroller and Auditor-General of India does not appoint such auditor within the said period, the Board

of Directors of the company shall appoint such auditor within the next thirty days; and in the case of

failure of the Board to appoint such auditor within the next thirty days, it shall inform the members of the

company who shall appoint such auditor within the sixty days at an extraordinary general meeting, who

shall hold office till the conclusion of the first annual general meeting.

(8) Any casual vacancy in the office of an auditor shall—

(i) in the case of a company other than a company whose accounts are subject to audit by an

auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of

Directors within thirty days, but if such casual vacancy is as a result of the resignation of an auditor,

such appointment shall also be approved by the company at a general meeting convened within three

months of the recommendation of the Board and he shall hold the office till the conclusion of the next

annual general meeting;

(ii) in the case of a company whose accounts are subject to audit by an auditor appointed by the

Comptroller and Auditor-General of India, be filled by the Comptroller and Auditor-General of India

within thirty days:

Provided that in case the Comptroller and Auditor-General of India does not fill the vacancy

within the said period, the Board of Directors shall fill the vacancy within next thirty days.

(9) Subject to the provisions of sub-section (1) and the rules made thereunder, a retiring auditor may

be re-appointed at an annual general meeting, if—

(a) he is not disqualified for re-appointment;

(b) he has not given the company a notice in writing of his unwillingness to be re-appointed; and

(c) a special resolution has not been passed at that meeting appointing some other auditor or

providing expressly that he shall not be re-appointed.

(10) Where at any annual general meeting, no auditor is appointed or re-appointed, the existing

auditor shall continue to be the auditor of the company.91

(11) Where a company is required to constitute an Audit Committee under section 177, all

appointments, including the filling of a casual vacancy of an auditor under this section shall be made after

taking into account the recommendations of such committee.

140. Removal, resignation of auditor and giving of special notice.— (1) The auditor appointed

under section 139 may be removed from his office before the expiry of his term only by a special

resolution of the company, after obtaining the previous approval of the Central Government in that behalf

in the prescribed manner:

Provided that before taking any action under this sub-section, the auditor concerned shall be given a

reasonable opportunity of being heard.

(2) The auditor who has resigned from the company shall file within a period of thirty days from the

date of resignation, a statement in the prescribed form with the company and the Registrar, and in case of

companies referred to in sub-section (5) of section 139, the auditor shall also file such statement with the

Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with

regard to his resignation.

(3) If the auditor does not comply with sub-section (2), he or it shall be punishable with fine which

shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

(4) (i) Special notice shall be required for a resolution at an annual general meeting appointing as

auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-

appointed, except where the retiring auditor has completed a consecutive tenure of five years or, as the

case may be, ten years, as provided under sub-section (2) of section 139.

(ii) On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the

retiring auditor.

(iii) Where notice is given of such a resolution and the retiring auditor makes with respect thereto

representation in writing to the company (not exceeding a reasonable length) and requests its notification

to members of the company, the company shall, unless the representation is received by it too late for it to

do so,—

(a) in any notice of the resolution given to members of the company, state the fact of the

representation having been made; and

(b) send a copy of the representation to every member of the company to whom notice of the

meeting is sent, whether before or after the receipt of the representation by the company,

and if a copy of the representation is not sent as aforesaid because it was received too late or because of

the company‘s default, the auditor may (without prejudice to his right to be heard orally) require that the

representation shall be read out at the meeting:

Provided that if a copy of representation is not sent as aforesaid, a copy thereof shall be filed with the

Registrar:

Provided further that if the Tribunal is satisfied on an application either of the company or of any

other aggrieved person that the rights conferred by this sub-section are being abused by the auditor, then,

the copy of the representation may not be sent and the representation need not be read out at the meeting.

(5) Without prejudice to any action under the provisions of this Act or any other law for the time

being in force, the Tribunal either suomotu or on an application made to it by the Central Government or

by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly,

acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its

directors or officers, it may, by order, direct the company to change its auditors:

Provided that if the application is made by the Central Government and the Tribunal is satisfied that

any change of the auditor is required, it shall within fifteen days of receipt of such application, make an

order that he shall not function as an auditor and the Central Government may appoint another auditor in

his place:92

Provided further that an auditor, whether individual or firm, against whom final order has been passed

by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a

period of five years from the date of passing of the order and the auditor shall also be liable for action

under section 447.

Explanation I.—It is hereby clarified that the case of a firm, the liability shall be of the firm and that

of every partner or partners who acted in a fraudulent manner or abetted or colluded in any fraud by, or in

relation to, the company or its director or officers.

Explanation II.—For the purposes of this Chapter the word ―auditor‖ includes a firm of auditors.

141. Eligibility, qualifications and disqualifications of auditors.— (1) A person shall be eligible

for appointment as an auditor of a company only if he is a chartered accountant:

Provided that a firm whereof majority of partners practising in India are qualified for appointment as

aforesaid may be appointed by its firm name to be auditor of a company.

(2) Where a firm including a limited liability partnership is appointed as an auditor of a company,

only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm.

(3) The following persons shall not be eligible for appointment as an auditor of a company,

namely:—

(a) a body corporate other than a limited liability partnership registered under the Limited

Liability Partnership Act, 2008 (6 of 2009);

(b) an officer or employee of the company;

(c) a person who is a partner, or who is in the employment, of an officer or employee of the

company;

(d) a person who, or his relative or partner—

(i) is holding any security of or interest in the company or its subsidiary, or of its holding or

associate company or a subsidiary of such holding company:

Provided that the relative may hold security or interest in the company of face value not

exceeding one thousand rupees or such sum as may be prescribed;

(ii) is indebted to the company, or its subsidiary, or its holding or associate company or a

subsidiary of such holding company, in excess of such amount as may be prescribed; or

(iii) has given a guarantee or provided any security in connection with the indebtedness of

any third person to the company, or its subsidiary, or its holding or associate company or a

subsidiary of such holding company, for such amount as may be prescribed;

(e) a person or a firm who, whether directly or indirectly, has business relationship with the

company, or its subsidiary, or its holding or associate company or subsidiary of such holding

company or associate company of such nature as may be prescribed;

(f) a person whose relative is a director or is in the employment of the company as a director or

key managerial personnel;

(g) a person who is in full time employment elsewhere or a person or a partner of a firm holding

appointment as its auditor, if such persons or partner is at the date of such appointment or

reappointment holding appointment as auditor of more than twenty companies;

(h) a person who has been convicted by a court of an offence involving fraud and a period of ten

years has not elapsed from the date of such conviction;

(i) any person whose subsidiary or associate company or any other form of entity, is engaged as

on the date of appointment in consulting and specialised services as provided in section 144.93

(4) Where a person appointed as an auditor of a company incurs any of the disqualifications

mentioned in sub-section (3) after his appointment, he shall vacate his office as such auditor and such

vacation shall be deemed to be a casual vacancy in the office of the auditor.

142. Remuneration of auditors.— (1) The remuneration of the auditor of a company shall be fixed

in its general meeting or in such manner as may be determined therein:

Provided that the Board may fix remuneration of the first auditor appointed by it.

(2) The remuneration under sub-section (1) shall, in addition to the fee payable to an auditor, include

the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility

extended to him but does not include any remuneration paid to him for any other service rendered by him

at the request of the company.

143. Powers and duties of auditors and auditing standards.— (1) Every auditor of a company

shall have a right of access at all times to the books of account and vouchers of the company, whether

kept at the registered office of the company or at any other place and shall be entitled to require from the

officers of the company such information and explanation as he may consider necessary for the

performance of his duties as auditor and amongst other matters inquire into the following matters,

namely:—

(a) whether loans and advances made by the company on the basis of security have been properly

secured and whether the terms on which they have been made are prejudicial to the interests of the

company or its members;

(b) whether transactions of the company which are represented merely by book entries are

prejudicial to the interests of the company;

(c) where the company not being an investment company or a banking company, whether so

much of the assets of the company as consist of shares, debentures and other securities have been sold

at a price less than that at which they were purchased by the company;

(d) whether loans and advances made by the company have been shown as deposits;

(e) whether personal expenses have been charged to revenue account;

(f) where it is stated in the books and documents of the company that any shares have been

allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash

has actually been so received, whether the position as stated in the account books and the balance

sheet is correct, regular and not misleading:

Provided that the auditor of a company which is a holding company shall also have the right of access

to the records of all its subsidiaries in so far as it relates to the consolidation of its financial statements

with that of its subsidiaries.

(2) The auditor shall make a report to the members of the company on the accounts examined by him

and on every financial statements which are required by or under this Act to be laid before the company

in general meeting and the report shall after taking into account the provisions of this Act, the accounting

and auditing standards and matters which are required to be included in the audit report under the

provisions of this Act or any rules made thereunder or under any order made under sub-section (11) and

to the best of his information and knowledge, the said accounts, financial statements give a true and fair

view of the state of the company‘s affairs as at the end of its financial year and profit or loss and cash

flow for the year and such other matters as may be prescribed.

(3) The auditor‘s report shall also state—

(a) whether he has sought and obtained all the information and explanations which to the best of

his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and

the effect of such information on the financial statements;

(b) whether, in his opinion, proper books of account as required by law have been kept by the

company so far as appears from his examination of those books and proper returns adequate for the

purposes of his audit have been received from branches not visited by him;94

(c) whether the report on the accounts of any branch office of the company audited under sub-

section (8) by a person other than the company‘s auditor has been sent to him under the proviso to

that sub-section and the manner in which he has dealt with it in preparing his report;

(d) whether the company‘s balance sheet and profit and loss account dealt with in the report are in

agreement with the books of account and returns;

(e) whether, in his opinion, the financial statements comply with the accounting standards;

(f) the observations or comments of the auditors on financial transactions or matters which have

any adverse effect on the functioning of the company;

(g) whether any director is disqualified from being appointed as a director under sub-section (2)

of section 164;

(h) any qualification, reservation or adverse remark relating to the maintenance of accounts and

other matters connected therewith;

(i) whether the company has adequate internal financial controls system in place and the

operating effectiveness of such controls;

(j) such other matters as may be prescribed.

(4) Where any of the matters required to be included in the audit report under this section is answered

in the negative or with a qualification, the report shall state the reasons therefor.

(5) In the case of a Government company, the Comptroller and Auditor-General of India shall appoint

the auditor under sub-section (5) or sub-section (7) of section 139 and direct such auditor the manner in

which the accounts of the Government company are required to be audited and thereupon the auditor so

appointed shall submit a copy of the audit report to the Comptroller and Auditor-General of India which,

among other things, include the directions, if any, issued by the Comptroller and Auditor-General of

India, the action taken thereon and its impact on the accounts and financial statement of the company.

(6) The Comptroller and Auditor-General of India shall within sixty days from the date of receipt of

the audit report under sub-section (5) have a right to,—

(a) conduct a supplementary audit of the financial statement of the company by such person or

persons as he may authorise in this behalf; and for the purposes of such audit, require information or

additional information to be furnished to any person or persons, so authorised, on such matters, by

such person or persons, and in such form, as the Comptroller and Auditor-General of India may

direct; and

(b) comment upon or supplement such audit report:

Provided that any comments given by the Comptroller and Auditor-General of India upon, or

supplement to, the audit report shall be sent by the company to every person entitled to copies of

audited financial statements under sub section (1) of section 136 and also be placed before the annual

general meeting of the company at the same time and in the same manner as the audit report.

(7) Without prejudice to the provisions of this Chapter, the Comptroller and Auditor-General of India

may, in case of any company covered under sub-section (5) or sub-section (7) of section 139, if he

considers necessary, by an order, cause test audit to be conducted of the accounts of such company and

the provisions of section 19A of the Comptroller and Auditor-General‘s (Duties, Powers and Conditions

of Service) Act, 1971 (56 of 1971), shall apply to the report of such test audit.

(8) Where a company has a branch office, the accounts of that office shall be audited either by the

auditor appointed for the company (herein referred to as the company‘s auditor) under this Act or by any

other person qualified for appointment as an auditor of the company under this Act and appointed as such

under section 139, or where the branch office is situated in a country outside India, the accounts of the

branch office shall be audited either by the company‘s auditor or by an accountant or by any other person

duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that

country and the duties and powers of the company‘s auditor with reference to the audit of the branch and

the branch auditor, if any, shall be such as may be prescribed:95

Provided that the branch auditor shall prepare a report on the accounts of the branch examined by him

and send it to the auditor of the company who shall deal with it in his report in such manner as he

considers necessary.

(9) Every auditor shall comply with the auditing standards.

(10) The Central Government may prescribe the standards of auditing or any addendum thereto, as

recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the

Chartered Accountants Act, 1949 (38 of 1949), in consultation with and after examination of the

recommendations made by the National Financial Reporting Authority:

Provided that until any auditing standards are notified, any standard or standards of auditing specified

by the Institute of Chartered Accountants of India shall be deemed to be the auditing standards.

(11) The Central Government may, in consultation with the National Financial Reporting Authority,

by general or special order, direct, in respect of such class or description of companies, as may be

specified in the order, that the auditor‘s report shall also include a statement on such matters as may be

specified therein.

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[(12) Notwithstanding anything contained in this section, if an auditor of a company, in the course of

the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or

has been committed against the company by officers or employees of the company, he shall immediately

report the matter to the Central Government within such time and in such manner as may be prescribed.]

(13) No duty to which an auditor of a company may be subject to shall be regarded as having been

contravened by reason of his reporting the matter referred to in sub-section (12) if it is done in good faith.

(14) The provisions of this section shall mutatis mutandis apply to—

(a) the cost accountant in practice conducting cost audit under section 148; or

(b) the company secretary in practice conducting secretarial audit under section 204.

(15) If any auditor, cost accountant or company secretary in practice do not comply with the

provisions of sub-section (12), he shall be punishable with fine which shall not be less than one lakh

rupees but which may extend to twenty-five lakh rupees.

144. Auditor not to render certain services.—An auditor appointed under this Act shall provide to

the company only such other services as are approved by the Board of Directors or the audit committee,

as the case may be, but which shall not include any of the following services (whether such services are

rendered directly or indirectly to the company), or its holding company or subsidiary company, namely:—

(a) accounting and book keeping services;

(b) internal audit;

(c) design and implementation of any financial information system;

(d) actuarial services;

(e) investment advisory services;

(f) investment banking services;

1. Sub-section (12) shall stand substituted (date to be notified) by Act 21 of 2015, s. 13, to read as under:

―(12) Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his

duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being

or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government

within such time and in such manner as may be prescribed:

Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit

committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be

prescribed:

Provided further that the companies, whose auditors have reported frauds under this sub-section to the audit committee or

the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board‘s report in such

manner as may be prescribed.‖.96

(g) rendering of outsourced financial services;

(h) management services; and

(i) any other kind of services as may be prescribed:

Provided that an auditor or audit firm who or which has been performing any non-audit services on or

before the commencement of this Act shall comply with the provisions of this section before the closure

of the first financial year after the date of such commencement.

Explanation.—For the purposes of this sub-section, the term ―directly or indirectly‖ shall include

rendering of services by the auditor,—

(i) in case of auditor being an individual, either himself or through his relative or any other person

connected or associated with such individual or through any other entity, whatsoever, in which such

individual has significant influence or control, or whose name or trade mark or brand is used by such

individual;

(ii) in case of auditor being a firm, either itself or through any of its partners or through its parent,

subsidiary or associate entity or through any other entity, whatsoever, in which the firm or any partner

of the firm has significant influence or control, or whose name or trade mark or brand is used by the

firm or any of its partners.

145. Auditor to sign audit reports, etc.— The person appointed as an auditor of the company shall

sign the auditor‘s report or sign or certify any other document of the company in accordance with the

provisions of sub-section (2) of section 141, and the qualifications, observations or comments on financial

transactions or matters, which have any adverse effect on the functioning of the company mentioned in

the auditor‘s report shall be read before the company in general meeting and shall be open to inspection

by any member of the company.

146. Auditors to attend general meeting.— All notices of, and other communications relating to,

any general meeting shall be forwarded to the auditor of the company, and the auditor shall, unless

otherwise exempted by the company, attend either by himself or through his authorised representative,

who shall also be qualified to be an auditor, any general meeting and shall have right to be heard at such

meeting on any part of the business which concerns him as the auditor.

147. Punishment for contravention.— (1) If any of the provisions of sections 139 to 146 (both

inclusive) is contravened, the company shall be punishable with fine which shall not be less than twenty-

five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in

default shall be punishable with imprisonment for a term which may extend to one year or with fine

which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both.

(2) If an auditor of a company contravenes any of the provisions of section 139, section 143, section

144 or section 145, the auditor shall be punishable with fine which shall not be less than twenty-five

thousand rupees but which may extend to five lakh rupees:

Provided that if an auditor has contravened such provisions knowingly or wilfully with the intention

to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with

imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh

rupees but which may extend to twenty-five lakh rupees.

(3) Where an auditor has been convicted under sub-section (2), he shall be liable to—

(i) refund the remuneration received by him to the company; and

(ii) pay for damages to the company, statutory bodies or authorities or to any other persons for

loss arising out of incorrect or misleading statements of particulars made in his audit report.

(4) The Central Government shall, by notification, specify any statutory body or authority or an

officer for ensuring prompt payment of damages to the company or the persons under clause (ii) of sub-

section (3) and such body, authority or officer shall after payment of damages to such company or persons

file a report with the Central Government in respect of making such damages in such manner as may be

specified in the said notification.97

(5) Where, in case of audit of a company being conducted by an audit firm, it is proved that the

partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any

fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or

criminal as provided in this Act or in any other law for the time being in force, for such act shall be of the

partner or partners concerned of the audit firm and of the firm jointly and severally.

148. Central Government to specify audit of items of cost in respect of certain companies.— (1)

Notwithstanding anything contained in this Chapter, the Central Government may, by order, in respect of

such class of companies engaged in the production of such goods or providing such services as may be

prescribed, direct that particulars relating to the utilisation of material or labour or to other items of cost

as may be prescribed shall also be included in the books of account kept by that class of companies:

Provided that the Central Government shall, before issuing such order in respect of any class of

companies regulated under a special Act, consult the regulatory body constituted or established under

such special Act.

(2) If the Central Government is of the opinion, that it is necessary to do so, it may, by order, direct

that the audit of cost records of class of companies, which are covered under sub-section (1) and which

have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed,

shall be conducted in the manner specified in the order.

(3) The audit under sub-section (2) shall be conducted by a Cost Accountant in practice who shall be

appointed by the Board on such remuneration as may be determined by the members in such manner as

may be prescribed:

Provided that no person appointed under section 139 as an auditor of the company shall be appointed

for conducting the audit of cost records:

Provided further that the auditor conducting the cost audit shall comply with the cost auditing

standards.

Explanation.—For the purposes of this sub-section, the expression ―cost auditing standards‖ mean

such standards as are issued by the Institute of Cost and Works Accountants of India, constituted under

the Cost and Works Accountants Act, 1959 (23 of 1959), with the approval of the Central Government.

(4) An audit conducted under this section shall be in addition to the audit conducted under section

143.

(5) The qualifications, disqualifications, rights, duties and obligations applicable to auditors under this

Chapter shall, so far as may be applicable, apply to a cost auditor appointed under this section and it shall

be the duty of the company to give all assistance and facilities to the cost auditor appointed under this

section for auditing the cost records of the company:

Provided that the report on the audit of cost records shall be submitted by the cost accountant in

practice to the Board of Directors of the company.

(6) A company shall within thirty days from the date of receipt of a copy of the cost audit report

prepared in pursuance of a direction under sub-section (2) furnish the Central Government with such

report along with full information and explanation on every reservation or qualification contained therein.

(7) If, after considering the cost audit report referred to under this section and the information and

explanation furnished by the company under sub-section (6), the Central Government is of the opinion

that any further information or explanation is necessary, it may call for such further information and

explanation and the company shall furnish the same within such time as may be specified by that

Government.

(8) If any default is made in complying with the provisions of this section,—

(a) the company and every officer of the company who is in default shall be punishable in the

manner as provided in sub-section (1) of section 147;

(b) the cost auditor of the company who is in default shall be punishable in the manner as

provided in sub-sections (2) to (4) of section 147.98

APPOINTMENT AND QUALIFICATIONS OF DIRECTORS

149. Company to have Board of Directors.— (1) Every company shall have a Board of Directors

consisting of individuals as directors and shall have—

(a) a minimum number of three directors in the case of a public company, two directors in the

case of a private company, and one director in the case of a One Person Company; and

(b) a maximum of fifteen directors:

Provided that a company may appoint more than fifteen directors after passing a special resolution:

Provided further that such class or classes of companies as may be prescribed, shall have at least one

woman director.

(2) Every company existing on or before the date of commencement of this Act shall within one year

from such commencement comply with the requirements of the provisions of sub-section (1).

(3) Every company shall have at least one director who has stayed in India for a total period of not

less than one hundred and eighty-two days in the previous calendar year.

(4) Every listed public company shall have at least one-third of the total number of directors as

independent directors and the Central Government may prescribe the minimum number of independent

directors in case of any class or classes of public companies.

Explanation.—For the purposes of this sub-section, any fraction contained in such one-third number

shall be rounded off as one.

(5) Every company existing on or before the date of commencement of this Act shall, within one year

from such commencement or from the date of notification of the rules in this regard as may be applicable,

comply with the requirements of the provisions of sub-section (4).

(6) An independent director in relation to a company, means a director other than a managing director

or a whole-time director or a nominee director,—

(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and

experience;

(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate

company;

(ii) who is not related to promoters or directors in the company, its holding, subsidiary or

associate company;

(c) who has or had no pecuniary relationship with the company, its holding, subsidiary or

associate company, or their promoters, or directors, during the two immediately preceding financial

years or during the current financial year;

(d) none of whose relatives has or had pecuniary relationship or transaction with the company, its

holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent.

or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be

prescribed, whichever is lower, during the two immediately preceding financial years or during the

current financial year;

(e) who, neither himself nor any of his relatives—

(i) holds or has held the position of a key managerial personnel or is or has been employee of

the company or its holding, subsidiary or associate company in any of the three financial years

immediately preceding the financial year in which he is proposed to be appointed;

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years

immediately preceding the financial year in which he is proposed to be appointed, of—99

(A) a firm of auditors or company secretaries in practice or cost auditors of the company

or its holding, subsidiary or associate company; or

(B) any legal or a consulting firm that has or had any transaction with the company, its

holding, subsidiary or associate company amounting to ten per cent. or more of the gross

turnover of such firm;

(iii) holds together with his relatives two per cent. or more of the total voting power of the

company; or

(iv) is a Chief Executive or director, by whatever name called, of any nonprofit organisation

that receives twenty-five per cent. or more of its receipts from the company, any of its promoters,

directors or its holding, subsidiary or associate company or that holds two per cent. or more of the

total voting power of the company; or

(f) who possesses such other qualifications as may be prescribed.

(7) Every independent director shall at the first meeting of the Board in which he participates as a

director and thereafter at the first meeting of the Board in every financial year or whenever there is any

change in the circumstances which may affect his status as an independent director, give a declaration that

he meets the criteria of independence as provided in sub-section (6).

Explanation.—For the purposes of this section, ―nominee director‖ means a director nominated by

any financial institution in pursuance of the provisions of any law for the time being in force, or of any

agreement, or appointed by any Government, or any other person to represent its interests.

(8) The company and independent directors shall abide by the provisions specified in Schedule IV.

(9) Notwithstanding anything contained in any other provision of this Act, but subject to the

provisions of sections 197 and 198, an independent director shall not be entitled to any stock option and

may receive remuneration by way of fee provided under sub-section (5) of section 197, reimbursement of

expenses for participation in the Board and other meetings and profit related commission as may be

approved by the members.

(10) Subject to the provisions of section 152, an independent director shall hold office for a term up to

five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a

special resolution by the company and disclosure of such appointment in the Board's report.

(11) Notwithstanding anything contained in sub-section (10), no independent director shall hold

office for more than two consecutive terms, but such independent director shall be eligible for

appointment after the expiration of three years of ceasing to become an independent director:

Provided that an independent director shall not, during the said period of three years, be appointed in

or be associated with the company in any other capacity, either directly or indirectly.

Explanation.—For the purposes of sub-sections (10) and (11), any tenure of an independent director

on the date of commencement of this Act shall not be counted as a term under those sub-sections.

(12) Notwithstanding anything contained in this Act,—

(i) an independent director;

(ii) a non-executive director not being promoter or key managerial personnel,

shall be held liable, only in respect of such acts of omission or commission by a company which had

occurred with his knowledge, attributable through Board processes, and with his consent or connivance or

where he had not acted diligently.

(13) The provisions of sub-sections (6) and (7) of section 152 in respect of retirement of directors by

rotation shall not be applicable to appointment of independent directors.

150. Manner of selection of independent directors and maintenance of databank of independent

directors.— (1) Subject to the provisions contained in sub-section (6) of section 149, an independent

director may be selected from a data bank containing names, addresses and qualifications of persons who

are eligible and willing to act as independent directors, maintained by any body, institute or association,100

as may by notified by the Central Government, having expertise in creation and maintenance of such data

bank and put on their website for the use by the company making the appointment of such directors:

Provided that responsibility of exercising due diligence before selecting a person from the data bank

referred to above, as an independent director shall lie with the company making such appointment.

(2) The appointment of independent director shall be approved by the company in general meeting as

provided in sub-section (2) of section 152 and the explanatory statement annexed to the notice of the

general meeting called to consider the said appointment shall indicate the justification for choosing the

appointee for appointment as independent director.

(3) The data bank referred to in sub-section (1), shall create and maintain data of persons willing to

act as independent director in accordance with such rules as may be prescribed.

(4) The Central Government may prescribe the manner and procedure of selection of independent

directors who fulfil the qualifications and requirements specified under section 149.

151. Appointment of director elected by small shareholders.— A listed company may have one

director elected by such small shareholders in such manner and with such terms and conditions as may be

prescribed.

Explanation.—For the purposes of this section ―small shareholders‖ means a shareholder holding

shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

152. Appointment of directors.— (1) 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 and 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.

(2) Save as otherwise expressly provided in this Act, every director shall be appointed by the

company in general meeting.

(3) No person shall be appointed as a director of a company unless he has been allotted the Director

Identification Number under section 154.

(4) Every person proposed to be appointed as a director by the company in general meeting or

otherwise, shall furnish his Director Identification Number and a declaration that he is not disqualified to

become a director under this Act.

(5) 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 such manner as may be prescribed:

Provided that in the 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 fulfils the conditions specified in this Act for such an

appointment.

(6) (a) Unless the articles provide for the retirement of all directors at every annual general meeting,

not less than two-thirds of the total number of directors of a public company shall—

(i) be persons whose period of office is liable to determination by retirement of directors by

rotation; and

(ii) save as otherwise expressly provided in this Act, be appointed by the company in general

meeting.

(b) The remaining directors in the case of any such company shall, in default of, and subject to

any regulations in the articles of the company, also be appointed by the company in general meeting.

(c) At the first annual general meeting of a public company held next after the date of the general

meeting at which the first directors are appointed in accordance with clauses (a) and (b) and at every

subsequent annual general meeting, one-third of such of the directors for the time being as are liable101

to retire by rotation, or if their number is neither three nor a multiple of three, then, the number

nearest to one-third, shall retire from office.

(d) The directors to retire by rotation at every annual general meeting shall be those who have

been longest in office since their last appointment, but as between persons who became directors on

the same day, those who are to retire shall, in default of and subject to any agreement among

themselves, be determined by lot.

(e) At the annual general meeting at which a director retires as aforesaid, the company may fill up

the vacancy by appointing the retiring director or some other person thereto.

Explanation.—For the purposes of this sub-section, ―total number of directors‖ shall not include

independent directors, whether appointed under this Act or any other law for the time being in force,

on the Board of a company.

(7) (a) If the vacancy of the retiring director is not so filled-up and the meeting has not expressly

resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at

the same time and place, or if that day is a national holiday, till the next succeeding day which is not a

holiday, at the same time and place.

(b) If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that

meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to

have been re-appointed at the adjourned meeting, unless—

(i) at that meeting or at the previous meeting a resolution for the re-appointment of such director

has been put to the meeting and lost;

(ii) the retiring director has, by a notice in writing addressed to the company or its Board of

directors, expressed his unwillingness to be so re-appointed;

(iii) he is not qualified or is disqualified for appointment;

(iv) a resolution, whether special or ordinary, is required for his appointment or re-appointment

by virtue of any provisions of this Act; or

(v) section 162 is applicable to the case.

Explanation.—For the purposes of this section and section 160, the expression ―retiring director‖

means a director retiring by rotation.

153. Application for allotment of Director Identification Number.— Every individual intending to

be appointed as director of a company shall make an application for allotment of Director Identification

Number to the Central Government in such form and manner and along with such fees as may be

prescribed.

154. Allotment of Director Identification Number.— The Central Government shall, within one

month from the receipt of the application under section 153, allot a Director Identification Number to an

applicant in such manner as may be prescribed.

155. Prohibition to obtain more than one Director Identification Number.— No individual, who

has already been allotted a Director Identification Number under section 154, shall apply for, obtain or

possess another Director Identification Number.

156. Director to intimate Director Identification Number.— Every existing director shall, within

one month of the receipt of Director Identification Number from the Central Government, intimate his

Director Identification Number to the company or all companies wherein he is a director.

157. Company to inform Director Identification Number to Registrar.— (1) Every company

shall, within fifteen days of the receipt of intimation under section 156, furnish the Director Identification

Number of all its directors to the Registrar or any other officer or authority as may be specified by the

Central Government with such fees as may be prescribed or with such additional fees as may be

prescribed within the time specified under section 403 and every such intimation shall be furnished in

such form and manner as may be prescribed.

(2) If a company fails to furnish Director Identification Number under sub-section (1), before the

expiry of the period specified under section 403 with additional fee, the company shall be punishable with

fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees

and every officer of the company who is in default shall be punishable with fine which shall not be less

than twenty-five thousand rupees but which may extend to one lakh rupees.

158. Obligation to indicate Director Identification Number.— Every person or company, while

furnishing any return, information or particulars as are required to be furnished under this Act, shall

mention the Director Identification Number in such return, information or particulars in case such return,

information or particulars relate to the director or contain any reference of any director.

159. Punishment for contravention.— If any individual or director of a company, contravenes any

of the provisions of section 152, section 155 and section 156, such individual or director of the company

shall be punishable with imprisonment for a term which may extend to six months or with fine which may

extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which

may extend to five hundred rupees for every day after the first during which the contravention continues.

160. Right of persons other than retiring directors to stand for directorship.— (1) A person who

is not a retiring director in terms of section 152 shall, subject to the provisions of 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, along with the deposit of

one lakh rupees or such higher amount as may be prescribed which shall be refunded to such person or, as

the case may be, to the member, if the person proposed gets elected as a director or gets more than

twenty-five per cent. of total valid votes cast either on show of hands or on poll on such resolution.

(2) The company shall inform its members of the candidature of a person for the office of director

under sub-section (1) in such manner as may be prescribed.

161. Appointment of additional director, alternate director and nominee director.— (1) The

articles of a company may confer on its Board of Directors the power to appoint any person, other than a

person who fails to get appointed as a director in a general meeting, as an additional director at any time

who shall hold office up to the date of the next annual general meeting or the last date on which the

annual general meeting should have been held, whichever is earlier.

(2) 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, not being a person holding any alternate

directorship for any other director in the company, to act as an alternate director for a director during his

absence for a period of not less than three months from India:

Provided that 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:

Provided further that an alternate director shall not hold office for a period longer than that

permissible to the director in whose place he has been appointed and shall vacate the office if and when

the director in whose place he has been appointed returns to India:

Provided also that 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.

(3) Subject to the articles of a company, the Board may appoint any person as a director nominated by

any institution in pursuance of the provisions of any law for the time being in force or of any agreement

or by the Central Government or the State Government by virtue of its shareholding in a Government

company.

(4) 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 vacancy103

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:

Provided that 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.

162. Appointment of directors to be voted individually.— (1) At a general meeting of a company,

a motion for the appointment of two or more persons as directors of the company by a single resolution

shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting

without any vote being cast against it.

(2) A resolution moved in contravention of sub-section (1) shall be void, whether or not any objection

was taken when it was moved.

(3) A motion for approving a person for appointment, or for nominating a person for appointment as a

director, shall be treated as a motion for his appointment.

163. Option to adopt principle of proportional representation for appointment of directors.—

Notwithstanding anything contained in this Act, the articles of a company may provide for the

appointment of not less than two-thirds of the total number of the directors of a company in accordance

with the principle of proportional representation, whether by the single transferable vote or by a system of

cumulative voting or otherwise and such appointments may be made once in every three years and casual

vacancies of such directors shall be filled as provided in sub-section (4) of section 161.

164. Disqualifications for appointment of director.— (1) A person shall not be eligible for

appointment as a director of a company, if —

(a) he is of unsound mind and stands so declared by a competent court;

(b) he is an undischarged insolvent;

(c) he has applied to be adjudicated as an insolvent and his application is pending;

(d) he has been convicted by a court of any offence, whether involving moral turpitude or

otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period

of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to

imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a

director in any company;

(e) an order disqualifying him for appointment as a director has been passed by a court or

Tribunal and the order is in force;

(f) he has not paid any calls in respect of any shares of the company held by him, whether alone

or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;

(g) he has been convicted of the offence dealing with related party transactions under section 188

at any time during the last preceding five years; or

(h) he has not complied with sub-section (3) of section 152.

(2) No person who is or has been a director of a company which—

(a) has not filed financial statements or annual returns for any continuous period of three financial

years; or

(b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any

debentures on the due date or pay interest due thereon or pay any dividend declared and such failure

to pay or redeem continues for one year or more,

shall be eligible to be re-appointed as a director of that company or appointed in other company for a

period of five years from the date on which the said company fails to do so.104

(3) A private company may by its articles provide for any disqualifications for appointment as a

director in addition to those specified in sub-sections (1) and (2):

Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall not

take effect—

(i) for thirty days from the date of conviction or order of disqualification;

(ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction

resulting in sentence or order, until expiry of seven days from the date on which such appeal or

petition is disposed off; or

(iii) where any further appeal or petition is preferred against order or sentence within seven days,

until such further appeal or petition is disposed off.

165. Number of directorships. — (1) No person, after the commencement of this Act, shall hold

office as a director, including any alternate directorship, in more than twenty companies at the same time:

Provided that the maximum number of public companies in which a person can be appointed as a

director shall not exceed ten.

Explanation.— For reckoning the limit of public companies in which a person can be appointed as

director, directorship in private companies that are either holding or subsidiary company of a public

company shall be included.

(2) Subject to the provisions of sub-section (1), 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.

(3) Any person holding office as director in companies more than the limits as specified in sub-

section (1), immediately before the commencement of this Act shall, within a period of one year from

such commencement,—

(a) choose not more than the specified limit of those companies, as 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.

(4) Any resignation made in pursuance of clause (b) of sub-section (3) shall become effective

immediately on the despatch thereof to the company concerned.

(5) No such person shall act as director in more than the specified number of companies,—

(a) after despatching the resignation of his office as director or non-executive director thereof, in

pursuance of clause (b) of sub-section (3); or

(b) after the expiry of one year from the commencement of this Act,

whichever is earlier.

(6) If a person accepts an appointment as a director in contravention of sub-section (1), 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.

166. Duties of directors.— (1) Subject to the provisions of this Act, a director of a company shall act

in accordance with the articles of the company.

(2) A director of a company shall act in good faith in order to promote the objects of the company for

the benefit of its members as a whole, and in the best interests of the company, its employees, the

shareholders, the community and for the protection of environment.105

(3) A director of a company shall exercise his duties with due and reasonable care, skill and diligence

and shall exercise independent judgment.

(4) A director of a company shall not involve in a situation in which he may have a direct or indirect

interest that conflicts, or possibly may conflict, with the interest of the company.

(5) A director of a company shall not achieve or attempt to achieve any undue gain or advantage

either to himself or to his relatives, partners, or associates and if such director is found guilty of making

any undue gain, he shall be liable to pay an amount equal to that gain to the company.

(6) A director of a company shall not assign his office and any assignment so made shall be void.

(7) If a director of the company contravenes the provisions of this section such director shall be

punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh

rupees.

167. Vacation of office of director.— (1) The office of a director shall become vacant in case—

(a) he incurs any of the disqualifications specified in section 164;

(b) he absents himself from all the meetings of the Board of Directors held during a period of

twelve months with or without seeking leave of absence of the Board;

(c) he acts in contravention of the provisions of section 184 relating to entering into contracts or

arrangements in which he is directly or indirectly interested;

(d) he fails to disclose his interest in any contract or arrangement in which he is directly or

indirectly interested, in contravention of the provisions of section 184;

(e) he becomes disqualified by an order of a court or the Tribunal;

(f) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and

sentenced in respect thereof to imprisonment for not less than six months:

Provided that the office shall be vacated by the director even if he has filed an appeal against the

order of such court;

(g) he is removed in pursuance of the provisions of this Act;

(h) he, having been appointed a director by virtue of his holding any office or other employment

in the holding, subsidiary or associate company, ceases to hold such office or other employment in

that company.

(2) If a person, functions as a director even when he knows that the office of director held by him has

become vacant on account of any of the disqualifications specified in subsection (1), he shall be

punishable with imprisonment for a term which may extend to one year or with fine which shall not be

less than one lakh rupees but which may extend to five lakh rupees, or with both.

(3) Where all the directors of a company vacate their offices under any of the disqualifications

specified in sub-section (1), the promoter or, in his absence, the Central Government shall appoint the

required number of directors who shall hold office till the directors are appointed by the company in the

general meeting.

(4) A private company may, by its articles, provide any other ground for the vacation of the office of

a director in addition to those specified in sub-section (1).

168. Resignation of director.— (1) A director may resign from his office by giving a notice in

writing to the company and the Board shall on receipt of such notice take note of the same and the

company shall intimate the Registrar in such manner, within such time and in such form as may be

prescribed and shall also place the fact of such resignation in the report of directors laid in the

immediately following general meeting by the company:

Provided that a director shall also forward a copy of his resignation along with detailed reasons for

the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.106

(2) The resignation of a director shall take effect from the date on which the notice is received by the

company or the date, if any, specified by the director in the notice, whichever is later:

Provided that the director who has resigned shall be liable even after his resignation for the offences

which occurred during his tenure.

(3) Where all the directors of a company resign from their offices, or vacate their offices under

section 167, the promoter or, in his absence, the Central Government shall appoint the required number of

directors who shall hold office till the directors are appointed by the company in general meeting.

169. Removal of directors.— (1) A company may, by ordinary resolution, remove a director, not

being a director appointed by the Tribunal under section 242, before the expiry of the period of his office

after giving him a reasonable opportunity of being heard:

Provided that nothing contained in this sub-section shall apply where the company has availed itself

of the option given to it under section 163 to appoint not less than two-thirds of the total number of

directors according to the principle of proportional representation.

(2) A special notice shall be required of any resolution, to remove a director under this section, or to

appoint somebody in place of a director so removed, at the meeting at which he is removed.

(3) On receipt of notice of a resolution to remove a director under this section, the company shall

forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of

the company, shall be entitled to be heard on the resolution at the meeting.

(4) Where notice has been given of a resolution to remove a director under this section and the

director concerned makes with respect thereto representation in writing to the company and requests its

notification to members of the company, the company shall, if the time permits it to do so,—

(a) in any notice of the resolution given to members of the company, state the fact of the

representation having been made; and

(b) send a copy of the representation to every member of the company to whom notice of the

meeting is sent (whether before or after receipt of the representation by the company),

and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company‘s

default, the director may without prejudice to his right to be heard orally require that the representation

shall be read out at the meeting:

Provided that copy of the representation need not be sent out and the representation need not be read

out at the meeting if, on the application either of the company or of any other person who claims to be

aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure

needless publicity for defamatory matter; and the Tribunal may order the company‘s costs on the

application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

(5) A vacancy created by the removal of a director under this section may, if he had been appointed

by the company in general meeting or by the Board, be filled by the appointment of another director in his

place at the meeting at which he is removed, provided special notice of the intended appointment has been

given under sub-section (2).

(6) A director so appointed shall hold office till the date up to which his predecessor would have held

office if he had not been removed.

(7) If the vacancy is not filled under sub-section (5), it may be filled as a casual vacancy in

accordance with the provisions of this Act:

Provided that the director who was removed from office shall not be re-appointed as a director by the

Board of Directors.

(8) Nothing in this section shall be taken—

(a) as depriving a person removed under this section of any compensation or damages payable to

him in respect of the termination of his appointment as director as per the terms of contract or terms

of his appointment as director, or of any other appointment terminating with that as director; or107

(b) as derogating from any power to remove a director under other provisions of this Act.

170. Register of directors and key managerial personnel and their shareholding.—(1) Every

company shall keep at its registered office a register containing such particulars of its directors and key

managerial personnel as may be prescribed, which shall include the details of securities held by each of

them in the company or its holding, subsidiary, subsidiary of company‘s holding company or associate

companies.

(2) A return containing such particulars and documents as may be prescribed, of the directors and the

key managerial personnel shall be filed with the Registrar within thirty days from the appointment of

every director and key managerial personnel, as the case may be, and within thirty days of any change

taking place.

171. Members‘ right to inspect.— (1) The register kept under sub-section (1) of section 170,—

(a) shall be open for inspection during business hours and the members shall have a right to take

extracts therefrom and copies thereof, on a request by the members, be provided to them free of cost

within thirty days; and

(b) shall also be kept open for inspection at every annual general meeting of the company and

shall be made accessible to any person attending the meeting.

(2) If any inspection as provided in clause (a) of sub-section (1) is refused, or if any copy required

under that clause is not sent within thirty days from the date of receipt of such request, the Registrar shall

on an application made to him order immediate inspection and supply of copies required thereunder.

172. **Punishment**.— If a company contravenes any of the provisions of this Chapter and for which no

specific punishment is provided therein, the company and every officer of the company who is in default

shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to

five lakh rupees.

MEETINGS OF BOARD AND ITS POWERS

173. Meetings of Board.— (1) Every company shall hold the first meeting of the Board of Directors

within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings

of its Board of Directors every year in such a manner that not more than one hundred and twenty days

shall intervene between two consecutive meetings of the Board:

Provided that the Central Government may, by notification, direct that the provisions of this sub-

section shall not apply in relation to any class or description of companies or shall apply subject to such

exceptions, modifications or conditions as may be specified in the notification.

(2) The participation of directors in a meeting of the Board may be either in person or through video

conferencing or other audio visual means, as may be prescribed, which are capable of recording and

recognising the participation of the directors and of recording and storing the proceedings of such

meetings along with date and time:

Provided that the Central Government may, by notification, specify such matters which shall not be

dealt with in a meeting through video conferencing or other audio visual means.

(3) A meeting of the Board shall be called by giving not less than seven days‘ notice in writing to

every director at his address registered with the company and such notice shall be sent by hand delivery or

by post or by electronic means:

Provided that a meeting of the Board may be called at shorter notice to transact urgent business

subject to the condition that at least one independent director, if any, shall be present at the meeting:

Provided further that in case of absence of independent directors from such a meeting of the Board,

decisions taken at such a meeting shall be circulated to all the directors and shall be final only on

ratification thereof by at least one independent director, if any.108

(4) Every officer of the company whose duty is to give notice under this section and who fails to do

so shall be liable to a penalty of twenty-five thousand rupees.

(5) A One Person Company, small company and dormant company shall be deemed to have complied

with the provisions of this section if at least one meeting of the Board of Directors has been conducted in

each half of a calendar year and the gap between the two meetings is not less than ninety days:

Provided that nothing contained in this sub-section and in section 174 shall apply to One Person

Company in which there is only one director on its Board of Directors.

174. Quorum for meetings of Board.— (1) The quorum for a meeting of the Board of Directors of a

company hall be one-third of its total strength or two directors, whichever is higher, and the participation

of the directors by video conferencing or by other audio visual means shall also be counted for the

purposes of quorum under this sub-section.

(2) The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as

their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing

directors or director may act for the purpose of increasing the number of directors to that fixed for the

quorum, or of summoning a general meeting of the company and for no other purpose.

(3) Where at any time the number of interested directors exceeds or is equal to two-thirds of the total

strength of the Board of Directors, the number of directors who are not interested directors and present at

the meeting, being not less than two, shall be the quorum during such time.

Explanation.—For the purposes of this sub-section, ―interested director‖ means a director within the

meaning of sub-section (2) of section 184.

(4) Where a meeting of the Board could not be held for want of quorum, then, unless the articles of

the company otherwise provide, the meeting shall automatically stand adjourned to the same day at the

same time and place in the next week or if that day is a national holiday, till the next succeeding day,

which is not a national holiday, at the same time and place.

Explanation.—For the purposes of this section,—

(i) any fraction of a number shall be rounded off as one;

(ii) ―total strength‖ shall not include directors whose places are vacant.

175. Passing of resolution by circulation.— (1) No resolution shall be deemed to have been duly

passed by the Board or by a committee thereof by circulation, unless the resolution has been circulated in

draft, together with the necessary papers, if any, to all the directors, or members of the committee, as the

case may be, at their addresses registered with the company in India by hand delivery or by post or by

courier, or through such electronic means as may be prescribed and has been approved by a majority of

the directors or members, who are entitled to vote on the resolution:

Provided that, where not less than one-third of the total number of directors of the company for the

time being require that any resolution under circulation must be decided at a meeting, the chairperson

shall put the resolution to be decided at a meeting of the Board.

(2) A resolution under sub-section (1) shall be noted at a subsequent meeting of the Board or the

committee thereof, as the case may be, and made part of the minutes of such meeting.

176. Defects in appointment of directors not to invalidate actions taken.— No act done by a

person as a director shall be deemed to be invalid, notwithstanding that it was subsequently noticed that

his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any

provision contained in this Act or in the articles of the company:

Provided that nothing in this section shall be deemed to give validity to any act done by the director

after his appointment has been noticed by the company to be invalid or to have terminated.

177. Audit Committee.— (1) The Board of Directors of every listed company and such other class or

classes of companies, as may be prescribed, shall constitute an Audit Committee.109

(2) The Audit Committee shall consist of a minimum of three directors with independent directors

forming a majority:

Provided that majority of members of Audit Committee including its Chairperson shall be persons

with ability to read and understand, the financial statement.

(3) Every Audit Committee of a company existing immediately before the commencement of this Act

shall, within one year of such commencement, be reconstituted in accordance with sub-section (2).

(4) Every Audit Committee shall act in accordance with the terms of reference specified in writing by

the Board which shall, inter alia, include,—

(i) the recommendation for appointment, remuneration and terms of appointment of auditors of

the company;

(ii) review and monitor the auditor‘s independence and performance, and effectiveness of audit

process;

(iii) examination of the financial statement and the auditors‘ report thereon;

(iv) approval or any subsequent modification of transactions of the company with related parties:

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[Provided that the Audit Committee may make omnibus approval for related party transactions

proposed to be entered into by the company subject to such conditions as may be prescribed;]

(v) scrutiny of inter-corporate loans and investments;

(vi) valuation of undertakings or assets of the company, wherever it is necessary;

(vii) evaluation of internal financial controls and risk management systems;

(viii) monitoring the end use of funds raised through public offers and related matters.

(5) The Audit Committee may call for the comments of the auditors about internal control systems,

the scope of audit, including the observations of the auditors and review of financial statement before

their submission to the Board and may also discuss any related issues with the internal and statutory

auditors and the management of the company.

(6) The Audit Committee shall have authority to investigate into any matter in relation to the items

specified in sub-section (4) or referred to it by the Board and for this purpose shall have power to obtain

professional advice from external sources and have full access to information contained in the records of

the company.

(7) The auditors of a company and the key managerial personnel shall have a right to be heard in the

meetings of the Audit Committee when it considers the auditor‘s report but shall not have the right to

vote.

(8) The Board‘s report under sub-section (3) of section 134 shall disclose the composition of an Audit

Committee and where the Board had not accepted any recommendation of the Audit Committee, the same

shall be disclosed in such report along with the reasons therefor.

(9) Every listed company or such class or classes of companies, as may be prescribed, shall establish

a vigil mechanism for directors and employees to report genuine concerns in such manner as may be

prescribed.

(10) The vigil mechanism under sub-section (9) shall provide for adequate safeguards against

victimisation of persons who use such mechanism and make provision for direct access to the chairperson

of the Audit Committee in appropriate or exceptional cases:

Provided that the details of establishment of such mechanism shall be disclosed by the company on its

website, if any, and in the Board‘s report.

178. Nomination and Remuneration Committee and Stakeholders Relationship Committee.—

(1) The Board of Directors of every listed company and such other class or classes of companies, as may

1. Proviso shall stand inserted (date to be notified) by Act 21 of 2015, s. 14.110

be prescribed shall constitute the Nomination and Remuneration Committee consisting of three or more

non-executive directors out of which not less than one-half shall be independent directors:

Provided that the chairperson of the company (whether executive or non-executive) may be appointed

as a member of the Nomination and Remuneration Committee but shall not chair such Committee.

(2) The Nomination and Remuneration Committee shall identify persons who are qualified to become

directors and who may be appointed in senior management in accordance with the criteria laid down,

recommend to the Board their appointment and removal and shall carry out evaluation of every director‘s

performance.

(3) The Nomination and Remuneration Committee shall formulate the criteria for determining

qualifications, positive attributes and independence of a director and recommend to the Board a policy,

relating to the remuneration for the directors, key managerial personnel and other employees.

(4) The Nomination and Remuneration Committee shall, while formulating the policy under sub-

section (3) ensure that—

(a) the level and composition of remuneration is reasonable and sufficient to attract, retain and

motivate directors of the quality required to run the company successfully;

(b) relationship of remuneration to performance is clear and meets appropriate performance

benchmarks; and

(c) remuneration to directors, key managerial personnel and senior management involves a

balance between fixed and incentive pay reflecting short and long-term performance objectives

appropriate to the working of the company and its goals:

Provided that such policy shall be disclosed in the Board's report.

(5) The Board of Directors of a company which consists of more than one thousand shareholders,

debenture-holders, deposit-holders and any other security holders at any time during a financial year shall

constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-

executive director and such other members as may be decided by the Board.

(6) The Stakeholders Relationship Committee shall consider and resolve the grievances of security

holders of the company.

(7) The chairperson of each of the committees constituted under this section or, in his absence, any

other member of the committee authorised by him in this behalf shall attend the general meetings of the

company.

(8) In case of any contravention of the provisions of section 177 and this section, the company shall

be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh

rupees and every officer of the company who is in default shall be punishable with imprisonment for a

term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees

but which may extend to one lakh rupees, or with both:

Provided that non-consideration of resolution of any grievance by the Stakeholders Relationship

Committee in good faith shall not constitute a contravention of this section.

Explanation.—The expression ‗senior management‘‘ means personnel of the company who are

members of its core management team excluding Board of Directors comprising all members of

management one level below the executive directors, including the functional heads.

179. Powers of Board.— (1) The Board of Directors of a company shall be entitled to exercise all

such powers, and to do all such acts and things, as the company is authorised to exercise and do:

Provided that in exercising such power or doing such act or thing, the Board shall be subject to the

provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations not

inconsistent therewith and duly made thereunder, including regulations made by the company in general

meeting:111

Provided further that the Board shall not exercise any power or do any act or thing which is directed

or required, whether under this Act or by the memorandum or articles of the company or otherwise, to be

exercised or done by the company in general meeting.

(2) No regulation made by the company in general meeting shall invalidate any prior act of the Board

which would have been valid if that regulation had not been made.

(3) The Board of Directors of a company shall exercise the following powers on behalf of the

company by means of resolutions passed at meetings of the Board, namely:—

(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 the funds of the company;

(f) to grant loans or give guarantee or provide security in respect of loans;

(g) to approve financial statement and the Board‘s report;

(h) to diversify the business of the company;

(i) to approve amalgamation, merger or reconstruction;

(j) to take over a company or acquire a controlling or substantial stake in another company;

(k) any other matter which may be prescribed:

Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of

directors, the managing director, the manager or any other principal officer of the company or in the case

of a branch office of the company, the principal officer of the branch office, the powers specified in

clauses (d) to (f) on such conditions as it may specify:

Provided further that 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 otherwise, or the placing of monies on deposit by a banking company with another banking

company on such conditions as the Board may prescribe, shall not be deemed to be a borrowing of

monies or, as the case may be, a making of loans by a banking company within the meaning of this

section.

Explanation I.—Nothing in clause (d) shall apply to borrowings by a banking company from other

banking companies or from the Reserve Bank of India, the State Bank of India or any other banks

established by or under any Act.

Explanation II.—In respect of dealings between a company and its bankers, the exercise by the

company of the power specified in clause (d) shall mean the arrangement made by the company with its

bankers for the borrowing of money by way of overdraft or cash credit or otherwise and not the actual

day-to-day operation on overdraft, cash credit or other accounts by means of which the arrangement so

made is actually availed of.

(4) Nothing in this section shall be deemed to affect the right of the company in general meeting to

impose restrictions and conditions on the exercise by the Board of any of the powers specified in this

section.

180. Restriction on powers of Board.— (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.112

Explanation.—For the purposes of this clause,—

(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, apart

from temporary loans obtained from the company‘s bankers in the ordinary course of business:

Provided that 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 otherwise, shall not be deemed to be a borrowing of monies by the banking company

within the meaning of this clause.

Explanation.—For the purposes of this clause, the expression ―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 clause (c) of sub-section (1) shall specify the total amount up to which monies

may be borrowed by the Board of Directors.

(3) Nothing contained in clause (a) of sub-section (1) 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.

(4) Any special resolution passed by the company consenting to the transaction as is referred to in

clause (a) of sub-section (1) may stipulate such conditions as may be specified in such resolution,

including conditions regarding the use, disposal or investment of the sale proceeds which may result from

the transactions:

Provided that this sub-section shall not be deemed to authorise the company to effect any reduction in

its capital except in accordance with the provisions contained in this Act.

(5) No debt incurred by the company in excess of the limit imposed by clause (c) of sub-section (1)

shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without

knowledge that the limit imposed by that clause had been exceeded.

181. Company to contribute to bona fide and charitable funds, etc.— The Board of Directors of a

company may contribute to bona fide charitable and other funds:

Provided that prior permission of the company in general meeting shall be required for such

contribution in case any amount the aggregate of which, in any financial year, exceed five per cent. of its

average net profits for the three immediately preceding financial years.

182. Prohibitions and restrictions regarding political contributions.— (1) Notwithstanding

anything contained in any other provision of this Act, a company, other than a Government company and113

a company which has been in existence for less than three financial years, may contribute any amount

directly or indirectly to any political party:

Provided that the amount referred to in sub-section (1) or, as the case may be, the aggregate of the

amount which may be so contributed by the company in any financial year shall not exceed seven and a

half per cent. of its average net profits during the three immediately preceding financial years:

Provided further that no such contribution shall be made by a company unless a resolution authorising

the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall,

subject to the other provisions of this section, be deemed to be justification in law for the making and the

acceptance of the contribution authorised by it.

(2) Without prejudice to the generality of the provisions of sub-section (1),—

(a) a donation or subscription or payment caused to be given by a company on its behalf or on its

account to a person who, to its knowledge, is carrying on any activity which, at the time at which

such donation or subscription or payment was given or made, can reasonably be regarded as likely to

affect public support for a political party shall also be deemed to be contribution of the amount of

such donation, subscription or payment to such person for a political purpose;

(b) the amount of expenditure incurred, directly or indirectly, by a company on an advertisement

in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the

like, shall also be deemed,—

(i) where such publication is by or on behalf of a political party, to be a contribution of such

amount to such political party, and

(ii) where such publication is not by or on behalf of, but for the advantage of a political party,

to be a contribution for a political purpose.

(3) 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.

(4) If a company makes any contribution in contravention of the provisions of this section, the

company shall be punishable with fine which may extend to five times the amount so contributed and

every officer of the company who is in default shall be punishable with imprisonment for a term which

may extend to six months and with fine which may extend to five times the amount so contributed.

Explanation.—For the purposes of this section, ―political party‖ means a political party registered

under section 29A of the Representation of the People Act, 1951 (43 of 1951).

183. Power of Board and other persons to make contributions to national defence fund, etc.—

(1) The Board of Directors of any company or any person or authority exercising the powers of the Board

of Directors of a company, or of the company in general meeting, may, notwithstanding anything

contained in sections 180, 181 and section 182 or any other provision of this Act or in the memorandum,

articles or any other instrument relating to the company, contribute such amount as it thinks fit to the

National Defence Fund or any other Fund approved by the Central Government for the purpose of

national defence.

(2) Every company shall disclose in its profits and loss account the total amount or amounts

contributed by it to the Fund referred to in sub-section (1) during the financial year to which the amount

relates.

184. Disclosure of interest by director.— (1) Every director shall at the first meeting of the Board in

which he participates as a director and thereafter at the first meeting of the Board in every financial year

or whenever there is any change in the disclosures already made, then at the first Board meeting held after

such change, 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.114

(2) Every 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—

(a) 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

(b) with a firm or other entity in which, such director is a partner, owner or member, as the case

may be,

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:

Provided that 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.

(3) A contract or arrangement entered into by the company without disclosure under sub-section (2)

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.

(4) If a director of the company contravenes the provisions of sub-section (1) or subsection (2), such

director shall be punishable with imprisonment for a term which may extend to one year or with fine

which shall not be less than fifty thousand rupees but which may extend to one lakh rupees, or with both.

(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 the company;

(b) shall apply to any contract or arrangement entered into or to be entered into between two

companies where any of the directors of the one company 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.

185. Loan to directors, etc.— (1) Save as otherwise provided in this Act, no company shall, directly

or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to

any other person in whom the director is interested or give any guarantee or provide any security in

connection with any loan taken by him or such other person:

Provided that nothing contained in this sub-section shall apply to—

(a) the giving of any loan to a managing or whole-time director—

(i) as a part of the conditions of service extended by the company to all its employees; or

(ii) pursuant to any scheme approved by the members by a special resolution; or

(b) a company which in the ordinary course of its business provides loans or gives guarantees or

securities for the due repayment of any loan and in respect of such loans an interest is charged at a

rate not less than the bank rate declared by the Reserve Bank of India;

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[(c) any loan made by a holding company to its wholly owned subsidiary company or any

guarantee given or security provided by a holding company in respect of any loan made to its wholly

owned subsidiary company; or

(d) any guarantee given or security provided by a holding company in respect of loan made by

any bank or financial institution to its subsidiary company:

Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for

its principal business activities.]

1. Ins. by Act 21 of 2015, s. 15 (w.e.f. 29-5-2015).115

Explanation.—For the purposes of this section, the expression ―to any other person in whom

director is interested‖ means—

(a) any director of the lending company, or of a company which is its holding company or

any partner or relative of any such director;

(b) any firm in which any such director or relative is a partner;

(c) any private company of which any such director is a director or member;

(d) any body corporate at a general meeting of which not less than twenty-five per cent. of the

total voting power may be exercised or controlled by any such director, or by two or more such

directors, together; or

(e) any body corporate, the Board of directors, managing director or manager, whereof is

accustomed to act in accordance with the directions or instructions of the Board, or of any

director or directors, of the lending company.

(2) If any loan is advanced or a guarantee or security is given or provided in contravention of the

provisions of sub-section (1), the company shall be punishable with fine which shall not be less than five

lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to

whom any loan is advanced or guarantee or security is given or provided in connection with any loan

taken by him or the other person, shall be punishable with imprisonment which may extend to six months

or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh

rupees, or with both.

186. Loan and investment by company.— (1) Without prejudice to the provisions contained in this

Act, a company shall unless otherwise prescribed, make investment through not more than two layers of

investment companies:

Provided that the provisions of this sub-section shall not affect,—

(i) a company from acquiring any other company incorporated in a country outside India if such

other company has investment subsidiaries beyond two layers as per the laws of such country;

(ii) a subsidiary company from having any investment subsidiary for the purposes of meeting the

requirements under any law or under any rule or regulation framed under any law for the time being

in force.

(2) No company shall directly or indirectly —

(a) give any loan to any person or other body corporate;

(b) give any guarantee or provide security in connection with a loan to any other body corporate

or person; and

(c) acquire by way of subscription, purchase or otherwise, the securities of any other body

corporate,

exceeding sixty per cent. of its paid-up share capital, free reserves and securities premium account or one

hundred per cent. of its free reserves and securities premium account, whichever is more.

(3) Where the giving of any loan or guarantee or providing any security or the acquisition under sub-

section (2) exceeds the limits specified in that sub-section, prior approval by means of a special resolution

passed at a general meeting shall be necessary.

(4) The company shall disclose to the members in the financial statement the full particulars of the

loans given, investment made or guarantee given or security provided and the purpose for which the loan

or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security.

(5) No investment shall be made or loan or guarantee or security given by the company unless the

resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at

the meeting and the prior approval of the public financial institution concerned where any term loan is

subsisting, is obtained:116

Provided that prior approval of a public financial institution shall not be required where the aggregate

of the loans and investments so far made, the amount for which guarantee or security so far provided to or

in all other bodies corporate, along with the investments, loans, guarantee or security proposed to be made

or given does not exceed the limit as specified in sub-section (2), and there is no default in repayment of

loan instalments or payment of interest thereon as per the terms and conditions of such loan to the public

financial institution.

(6) No company, which is registered under section 12 of the Securities and Exchange Board of India

Act, 1992 (15 of 1992) and covered under such class or classes of companies as may be prescribed, shall

take inter-corporate loan or deposits exceeding the prescribed limit and such company shall furnish in its

financial statement the details of the loan or deposits.

(7) No loan shall be given under this section at a rate of interest lower than the prevailing yield of one

year, three year, five year or ten year Government Security closest to the tenor of the loan.

(8) No company which is in default in the repayment of any deposits accepted before or after the

commencement of this Act or in payment of interest thereon, shall give any loan or give any guarantee or

provide any security or make an acquisition till such default is subsisting.

(9) Every company giving loan or giving a guarantee or providing security or making an acquisition

under this section shall keep a register which shall contain such particulars and shall be maintained in

such manner as may be prescribed.

(10) The register referred to in sub-section (9) shall be kept at the registered office of the company

and —

(a) shall be open to inspection at such office; and

(b) extracts may be taken therefrom by any member, and copies thereof may be furnished to any

member of the company on payment of such fees as may be prescribed.

(11) Nothing contained in this section, except sub-section (1), shall apply—

(a) to a loan made, guarantee given or security provided by a banking company or an insurance

company or a housing finance company in the ordinary course of its business or a company engaged

in the business of financing of companies or of providing infrastructural facilities;

(b) to any acquisition—

(i) made by a non-banking financial company registered under Chapter IIIB of the Reserve

Bank of India Act, 1934 (2 of 1934) and whose principal business is acquisition of securities:

Provided that exemption to non-banking financial company shall be in respect of its

investment and lending activities;

(ii) made by a company whose principal business is the acquisition of securities;

(iii) of shares allotted in pursuance of clause (a) of sub-section (1) of section 62.

(12) The Central Government may make rules for the purposes of this section.

(13) If a company contravenes the provisions of this section, the company shall be punishable with

fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees

and every officer of the company who is in default shall be punishable with imprisonment for a term

which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but

which may extend to one lakh rupees.

Explanation.—For the purposes of this section,—

(a) the expression ―investment company‖ means a company whose principal business is the

acquisition of shares, debentures or other securities;

(b) the expression ―infrastructure facilities‖ means the facilities specified in Schedule VI.117

187. Investments of company to be held in its own name.— (1) All investments made or held by a

company in any property, security or other asset shall be made and held by it in its own name:

Provided that the company may hold any shares in its subsidiary company in the name of any

nominee or nominees of the company, if it is necessary to do so, to ensure that the number of members of

the subsidiary company is not reduced below the statutory limit.

(2) Nothing in this section shall be deemed to prevent a company—

(a) from depositing with a bank, being the bankers of the company, any shares or securities for

the collection of any dividend or interest payable thereon; or

(b) from depositing with, or transferring to, or holding in the name of, the State Bank of India or a

scheduled bank, being the bankers of the company, shares or securities, in order to facilitate the

transfer thereof:

Provided that if within a period of six months from the date on which the shares or securities are

transferred by the company to, or are first held by the company in the name of, the State Bank of

India or a scheduled bank as aforesaid, no transfer of such shares or securities takes place, the

company shall, as soon as practicable after the expiry of that period, have the shares or securities re-

transferred to it from the State Bank of India or the scheduled bank or, as the case may be, again hold

the shares or securities in its own name; or

(c) from depositing with, or transferring to, any person any shares or securities, by way of

security for the repayment of any loan advanced to the company or the performance of any obligation

undertaken by it;

(d) from holding investments in the name of a depository when such investments are in the form

of securities held by the company as a beneficial owner.

(3) Where in pursuance of clause (d) of sub-section (2), any shares or securities in which investments

have been made by a company are not held by it in its own name, the company shall maintain a register

which shall contain such particulars as may be prescribed and such register shall be open to inspection by

any member or debenture-holder of the company without any charge during business hours subject to

such reasonable restrictions as the company may by its articles or in general meeting impose.

(4) If a company contravenes the provisions of this section, the company shall be punishable with fine

which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees

and every officer of the company who is in default shall be punishable with imprisonment for a term

which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but

which may extend to one lakh rupees, or with both.

188. Related party transactions.— (1) Except with the consent of the Board of Directors given by a

resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company

shall enter into any contract or arrangement with a related party with respect to—

(a) sale, purchase or supply of any goods or materials;

(b) selling or otherwise disposing of, or buying, property of any kind;

(c) leasing of property of any kind;

(d) availing or rendering of any services;

(e) appointment of any agent for purchase or sale of goods, materials, services or property;

(f) such related party's appointment to any office or place of profit in the company, its subsidiary

company or associate company; and

(g) underwriting the subscription of any securities or derivatives thereof, of the company:118

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 exceeding such sums, as may be prescribed, shall be entered

into except with the prior approval of the company by a 1

[resolution]:

Provided further that no member of the company shall vote on such 1

[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 in this sub-section shall apply to any transactions entered into by the

company in its ordinary course of business other than transactions which are not on an arm‘s length basis:

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[Provided also that the requirement of passing the resolution under first proviso shall not be

applicable for transactions entered into between a holding company and its wholly owned subsidiary

whose accounts are consolidated with such holding company and placed before the shareholders at the

general meeting for approval.]

Explanation.— In this sub-section,—

(a) the expression ―office or place of profit‖ means any office or place—

(i) where such office or place is held by a director, if the director holding it receives from the

company anything by way of remuneration over and above the remuneration to which he is

entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation,

or otherwise;

(ii) where such office or place is held by an individual other than a director or by any firm,

private company or other body corporate, if the individual, firm, private company or body

corporate holding it receives from the company anything by way of remuneration, salary, fee,

commission, perquisites, any rent-free accommodation, or otherwise;

(b) the expression ―arm‘s length transaction‖ means a transaction between two related parties that

is conducted as if they were unrelated, so that there is no conflict of interest.

(2) Every contract or arrangement entered into under sub-section (1) shall be referred to in the

Board‘s report to the shareholders along with the justification for entering into such contract or

arrangement.

(3) 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 1

[resolution] in the general meeting under sub-section

(1) and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within

three 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 and 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.

(4) Without prejudice to anything contained in sub-section (3), it shall be open to the company to

proceed against a director or any other employee who had entered into such contract or arrangement in

contravention of the provisions of this section for recovery of any loss sustained by it as a result of such

contract or arrangement.

(5) Any director or any other employee of a company, who had entered into or authorised the contract

or arrangement in violation of the provisions of this section shall,—

(i) in case of listed company, be punishable with imprisonment for a term which may extend to

one year or with fine which shall not be less than twenty-five thousand rupees but which may extend

to five lakh rupees, or with both; and

(ii) in case of any other company, be punishable with fine which shall not be less than twenty-five

thousand rupees but which may extend to five lakh rupees.

1. Subs. by Act 21 of 2015, s. 16, for ―special resolution‖ (w.e.f. 29-5-2015).

2. Ins. by s. 16, ibid. (w.e.f. 29-5-2015)119

189. Register of contracts or arrangements in which directors are interested.— (1) Every

company shall keep one or more registers giving separately the particulars of all contracts or

arrangements to which sub-section (2) of section 184 or section 188 applies, in such manner and

containing such particulars as may be prescribed and after entering the particulars, such register or

registers shall be placed before the next meeting of the Board and signed by all the directors present at the

meeting.

(2) Every director or key managerial personnel shall, within a period of thirty days of his

appointment, or relinquishment of his office, as the case may be, disclose to the company the particulars

specified in sub-section (1) of section 184 relating to his concern or interest in the other associations

which are required to be included in the register under that sub-section or such other information relating

to himself as may be prescribed.

(3) The register referred to in sub-section (1) shall be kept at the registered office of the company and

it shall be open for inspection at such office during business hours and extracts may be taken therefrom,

and copies thereof as may be required by any member of the company shall be furnished by the company

to such extent, in such manner, and on payment of such fees as may be prescribed.

(4) The register to be kept under this section shall also be produced at the commencement of every

annual general meeting of the company and shall remain open and accessible during the continuance of

the meeting to any person having the right to attend the meeting.

(5) Nothing contained in sub-section (1) shall apply to any contract or arrangement—

(a) for the sale, purchase or supply of any goods, materials or services if the value of such goods

and materials or the cost of such services does not exceed five lakh rupees in the aggregate in any

year; or

(b) by a banking company for the collection of bills in the ordinary course of its business.

(6) Every director who fails to comply with the provisions of this section and the rules made

thereunder shall be liable to a penalty of twenty-five thousand rupees.

190. Contract of employment with managing or whole-time directions.— (1) Every company

shall keep at its registered office,—

(a) where a contract of service with a managing or whole-time director is in writing, a copy of the

contract; or

(b) where such a contract is not in writing, a written memorandum setting out its terms.

(2) The copies of the contract or the memorandum kept under sub-section (1) shall be open to

inspection by any member of the company without payment of fee.

(3) If any default is made in complying with the provisions of sub-section (1) or sub-section (2), the

company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company

who is in default shall be liable to a penalty of five thousand rupees for each default.

(4) The provisions of this section shall not apply to a private company.

191. Payment to director for loss of office, etc., in connection with transfer of undertaking,

property or shares.— (1) No director of a company shall, in connection with—

(a) the transfer of the whole or any part of any undertaking or property of the company; or

(b) the transfer to any person of all or any of the shares in a company being a transfer resulting

from—

(i) an offer made to the general body of shareholders;

(ii) an offer made by or on behalf of some other body corporate with a view to a company

becoming a subsidiary company of such body corporate or a subsidiary company of its holding

company;120

(iii) an offer made by or on behalf of an individual with a view to his obtaining the right to

exercise, or control the exercise of, not less than one-third of the total voting power at any general

meeting of the company; or

(iv) any other offer which is conditional on acceptance to a given extent, receive any payment

by way of compensation for loss of office or as consideration for retirement from office, or in

connection with such loss or retirement from such company or from the transferee of such

undertaking or property, or from the transferees of shares or from any other person, not being

such company, unless particulars as may be prescribed with respect to the payment proposed to

be made by such transferee or person, including the amount thereof, have been disclosed to the

members of the company and the proposal has been approved by the company in general meeting.

(2) Nothing in sub-section (1) shall affect any payment made by a company to a managing director or

whole-time director or manager of the company by way of compensation for loss of office or as

consideration for retirement from office or in connection with such loss or retirement subject to limits or

priorities, as may be prescribed.

(3) If the payment under sub-section (1) or sub-section (2) is not approved for want of quorum either

in a meeting or an adjourned meeting, the proposal shall not be deemed to have been approved.

(4) Where a director of a company receives payment of any amount in contravention of sub-section

(1) or the proposed payment is made before it is approved in the meeting, the amount so received by the

director shall be deemed to have been received by him in trust for the company.

(5) If a director of the company contravenes the provisions of this section, such director shall be

punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to

one lakh rupees.

(6) Nothing in this section shall be taken to prejudice the operation of any law requiring disclosure to

be made with respect to any payment received under this section or such other like payments made to a

director.

192. Restriction on non-cash transactions involving directors.— (1) No company shall enter into

an arrangement by which—

(a) a director of the company or its holding, subsidiary or associate company or a person

connected with him acquires or is to acquire assets for consideration other than cash, from the

company; or

(b) the company acquires or is to acquire assets for consideration other than cash, from such

director or person so connected,

unless prior approval for such arrangement is accorded by a resolution of the company in general meeting

and if the director or connected person is a director of its holding company, approval under this sub-

section shall also be required to be obtained by passing a resolution in general meeting of the holding

company.

(2) The notice for approval of the resolution by the company or holding company in general meeting

under sub-section (1) shall include the particulars of the arrangement along with the value of the assets

involved in such arrangement duly calculated by a registered valuer.

(3) Any arrangement entered into by a company or its holding company in contravention of the

provisions of this section shall be voidable at the instance of the company unless—

(a) the restitution of any money or other consideration which is the subject matter of the

arrangement is no longer possible and the company has been indemnified by any other person for any

loss or damage caused to it; or

(b) any rights are acquired bona fide for value and without notice of the contravention of the

provisions of this section by any other person.

193. Contract by One Person Company.— (1) Where One Person Company limited by shares or by

guarantee enters into a contract with the sole member of the company who is also the director of the121

company, the company shall, unless the contract is in writing, ensure that the terms of the contract or

offer are contained in a memorandum or are recorded in the minutes of the first meeting of the Board of

Directors of the company held next after entering into contract:

Provided that nothing in this sub-section shall apply to contracts entered into by the company in the

ordinary course of its business.

(2) The company shall inform the Registrar about every contract entered into by the company and

recorded in the minutes of the meeting of its Board of Directors under sub-section (1) within a period of

fifteen days of the date of approval by the Board of Directors.

194. Prohibition on forward dealings in securities of company by director or key managerial

personnel.— (1) No director of a company or any of its key managerial personnel shall buy in the

company, or in its holding, subsidiary or associate company—

(a) a right to call for delivery or a right to make delivery at a specified price and within a

specified time, of a specified number of relevant shares or a specified amount of relevant debentures;

or

(b) a right, as he may elect, to call for delivery or to make delivery at a specified price and within

a specified time, of a specified number of relevant shares or a specified amount of relevant

debentures.

(2) If a director or any key managerial personnel of the company contravenes the provisions of sub-

section (1), such director or key managerial personnel shall be punishable with imprisonment for a term

which may extend to two years or with fine which shall not be less than one lakh rupees but which may

extend to five lakh rupees, or with both.

(3) Where a director or other key managerial personnel acquires any securities in contravention of

sub-section (1), he shall, subject to the provisions contained in sub-section (2), be liable to surrender the

same to the company and the company shall not register the securities so acquired in his name in the

register, and if they are in dematerialised form, it shall inform the depository not to record such

acquisition and such securities, in both the cases, shall continue to remain in the names of the transferors.

Explanation.—For the purposes of this section, ‗‗relevant shares'' and ‗‗relevant debentures'' mean

shares and debentures of the company in which the concerned person is a whole-time director or other

key managerial personnel or shares and debentures of its holding and subsidiary companies.

195. Prohibition on insider trading of securities.— (1) No person including any director or key

managerial personnel of a company shall enter into insider trading:

Provided that nothing contained in this sub-section shall apply to any communication required in the

ordinary course of business or profession or employment or under any law.

Explanation.—For the purposes of this section,—

(a) ―insider trading‖ means—

(i) an act of subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in

any securities by any director or key managerial personnel or any other officer of a company

either as principal or agent if such director or key managerial personnel or any other officer of the

company is reasonably expected to have access to any non-public price sensitive information in

respect of securities of company; or

(ii) an act of counselling about procuring or communicating directly or indirectly any non-

public price-sensitive information to any person;

(b) ―price-sensitive information‖ means any information which relates, directly or indirectly, to a

company and which if published is likely to materially affect the price of securities of the company.

(2) If any person contravenes the provisions of this section, he shall be punishable with imprisonment

for a term which may extend to five years or with fine which shall not be less than five lakh rupees but149

(8) 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.

Explanation.—For the purposes of this section, the expressions ―acquirer‖ and ―person acting in

concert‖ shall have the meanings respectively assigned to them in clause (b) and clause (e) of sub-

regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of

Shares and Takeovers) Regulations, 1997.

(9) When a shareholder or the majority equity shareholder fails to acquire full purchase of the shares

of the minority equity shareholders, then, the provisions of this section shall continue to apply to the

residual minority equity shareholders, even though,—

(a) the shares of the company of the residual minority equity shareholder had been delisted; and

(b) the period of one year or the period specified in the regulations made by the Securities and

Exchange Board under the Securities and Exchange Board of India Act, 1992 (15 of 1992), had

elapsed.

237. Power of Central Government to provide for amalgamation of companies in public interest.—

(1) Where the Central Government is satisfied that it is essential in the public interest that two

or more companies should amalgamate, the Central Government may, by order notified in the Official

Gazette, provide for the amalgamation of those companies into a single company with such constitution,

with such property, powers, rights, interests, authorities and privileges, and with such liabilities, duties

and obligations, as may be specified in the order.

(2) The order under sub-section (1) may also provide for the continuation by or against the transferee

company of any legal proceedings pending by or against any transferor company and such consequential,

incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to

give effect to the amalgamation.

(3) Every member or creditor, including a debenture holder, of each of the transferor companies

before the amalgamation shall have, as nearly as may be, the same interest in or rights against the

transferee company as he had in the company of which he was originally a member or creditor, and in

case the interest or rights of such member or creditor in or against the transferee company are less than his

interest in or rights against the original company, he shall be entitled to compensation to that extent,

which shall be assessed by such authority as may be prescribed and every such assessment shall be

published in the Official Gazette, and the compensation so assessed shall be paid to the member or

creditor concerned by the transferee company.

(4) Any person aggrieved by any assessment of compensation made by the prescribed authority under

sub-section (3) may, within a period of thirty days from the date of publication of such assessment in the

Official Gazette, prefer an appeal to the Tribunal and thereupon the assessment of the compensation shall

be made by the Tribunal.

(5) No order shall be made under this section unless—

(a) a copy of the proposed order has been sent in draft to each of the companies concerned;

(b) the time for preferring an appeal under sub-section (4) has expired, or where any such appeal

has been preferred, the appeal has been finally disposed off; and

(c) the Central Government has considered, and made such modifications, if any, in the draft

order as it may deem fit in the light of suggestions and objections which may be received by it from

any such company within such period as the Central Government may fix in that behalf, not being

less than two months from the date on which the copy aforesaid is received by that company, or from

any class of shareholders therein, or from any creditors or any class of creditors thereof.150

(6) The copies of every order made under this section shall, as soon as may be after it has been made,

be laid before each House of Parliament.

238. Registration of offer of schemes involving transfer of shares. — (1) In relation to every offer

of a scheme or contract involving the transfer of shares or any class of shares in the transferor company to

the transferee company under section 235,—

(a) every circular containing such offer and recommendation to the members of the transferor

company by its directors to accept such offer shall be accompanied by such information and in such

manner as may be prescribed;

(b) every such offer shall contain a statement by or on behalf of the transferee company,

disclosing the steps it has taken to ensure that necessary cash will be available; and

(c) every such circular shall be presented to the Registrar for registration and no such circular

shall be issued until it is so registered:

Provided that the Registrar may refuse, for reasons to be recorded in writing, to register any such

circular which does not contain the information required to be given under clause (a) or which sets out

such information in a manner likely to give a false impression, and communicate such refusal to the

parties within thirty days of the application.

(2) An appeal shall lie to the Tribunal against an order of the Registrar refusing to register any

circular under sub-section (1).

(3) The director who issues a circular which has not been presented for registration and registered

under clause (c) of sub-section (1), shall be punishable with fine which shall not be less than twenty-five

thousand rupees but which may extend to five lakh rupees.

239. Preservation of books and papers of amalgamated companies.— The books and papers of a

company which has been amalgamated with, or whose shares have been acquired by, another company

under this Chapter shall not be disposed of without the prior permission of the Central Government and

before granting such permission, that Government may appoint a person to examine the books and papers

or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an

offence in connection with the promotion or formation, or the management of the affairs, of the transferor

company or its amalgamation or the acquisition of its shares.

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

Notwithstanding anything in any other law for the time being in force, the liability in respect of offences

committed under this Act by the officers in default, of the transferor company prior to its merger,

amalgamation or acquisition shall continue after such merger, amalgamation or acquisition.

ModuleV

PREVENTION OF OPPRESSION AND MISMANAGEMENT

241. Application to Tribunal for relief in cases of oppression, etc.— (1) Any member of a

company who complains that—

(a) the affairs of the company have been or are being conducted in a manner prejudicial to public

interest or in a manner prejudicial or oppressive to him or any other member or members or in a

manner prejudicial to the interests of the company; or

(b) the material change, not being a change brought about by, or in the interests of, any creditors,

including debenture holders or any class of shareholders of the company, has taken place in the

management or control of the company, whether by an alteration in the Board of Directors, or

manager, or in the ownership of the company‘s shares, or if it has no share capital, in its membership,

or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of

the company will be conducted in a manner prejudicial to its interests or its members or any class of

members,

may apply to the Tribunal, provided such member has a right to apply under section 244, for an order

under this Chapter.151

(2) The Central Government, if it is of the opinion that the affairs of the company are being conducted

in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this

Chapter.

242. Powers of Tribunal.— (1) If, on any application made under section 241, the Tribunal is of the

opinion—

(a) that the company‘s affairs have been or are being conducted in a manner prejudicial or

oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to

the interests of the company; and

(b) that to wind up the company would unfairly prejudice such member or members, but that

otherwise the facts would justify the making of a winding-up order on the ground that it was just and

equitable that the company should be wound up,

the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it

thinks fit.

(2) Without prejudice to the generality of the powers under sub-section (1), an order under that sub-

section may provide for—

(a) the regulation of conduct of affairs of the company in future;

(b) the purchase of shares or interests of any members of the company by other members thereof

or by the company;

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction

of its share capital;

(d) restrictions on the transfer or allotment of the shares of the company;

(e) the termination, setting aside or modification, of any agreement, howsoever arrived at,

between the company and the managing director, any other director or manager, upon such terms and

conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the

case;

(f) the termination, setting aside or modification of any agreement between the company and any

person other than those referred to in clause (e):

Provided that no such agreement shall be terminated, set aside or modified except after due notice

and after obtaining the consent of the party concerned;

(g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to

property made or done by or against the company within three months before the date of the

application under this section, which would, if made or done by or against an individual, be deemed

in his insolvency to be a fraudulent preference;

(h) removal of the managing director, manager or any of the directors of the company;

(i) recovery of undue gains made by any managing director, manager or director during the period

of his appointment as such and the manner of utilisation of the recovery including transfer to Investor

Education and Protection Fund or repayment to identifiable victims;

(j) the manner in which the managing director or manager of the company may be appointed

subsequent to an order removing the existing managing director or manager of the company made

under clause (h);

(k) appointment of such number of persons as directors, who may be required by the Tribunal to

report to the Tribunal on such matters as the Tribunal may direct;

(l) imposition of costs as may be deemed fit by the Tribunal;

(m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that

provision should be made.152

(3) A certified copy of the order of the Tribunal under sub-section (1) shall be filed by the company

with the Registrar within thirty days of the order of the Tribunal.

(4) The Tribunal may, on the application of any party to the proceeding, make any interim order

which it thinks fit for regulating the conduct of the company‘s affairs upon such terms and conditions as

appear to it to be just and equitable.

(5) Where an order of the Tribunal under sub-section (1) makes any alteration in the memorandum or

articles of a company, then, notwithstanding any other provision of this Act, the company shall not have

power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any

alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

(6) Subject to the provisions of sub-section (1), the alterations made by the order in the memorandum

or articles of a company shall, in all respects, have the same effect as if they had been duly made by the

company in accordance with the provisions of this Act and the said provisions shall apply accordingly to

the memorandum or articles so altered.

(7) A certified copy of every order altering, or giving leave to alter, a company‘s memorandum or

articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who

shall register the same.

(8) If a company contravenes the provisions of sub-section (5), the company shall be punishable with

fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and

every officer of the company who is in default shall be punishable with imprisonment for a term which

may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which

may extend to one lakh rupees, or with both.

243. Consequences of termination or modification of certain agreements.— (1) Where an order

made under section 242 terminates, sets aside or modifies an agreement such as is referred to in sub-

section (2) of that section,—

(a) such order shall not give rise to any claims whatever against the company by any person for

damages or for compensation for loss of office or in any other respect either in pursuance of the

agreement or otherwise;

(b) no managing director or other director or manager whose agreement is so terminated or set

aside shall, for a period of five years from the date of the order terminating or setting aside the

agreement, without the leave of the Tribunal, be appointed, or act, as the managing director or other

director or manager of the company:

Provided that the Tribunal shall not grant leave under this clause unless notice of the intention to

apply for leave has been served on the Central Government and that Government has been given a

reasonable opportunity of being heard in the matter.

(2) Any person who knowingly acts as a managing director or other director or manager of a company

in contravention of clause (b) of sub-section (1), and every other director of the company who is

knowingly a party to such contravention, shall be punishable with imprisonment for a term which may

extend to six months or with fine which may extend to five lakh rupees, or with both.

244. Right to apply under section 241.— (1) The following members of a company shall have the

right to apply under section 241, namely:—

(a) in the case of a company having a share capital, not less than one hundred members of the

company or not less than one-tenth of the total number of its members, whichever is less, or any

member or members holding not less than one-tenth of the issued share capital of the company,

subject to the condition that the applicant or applicants has or have paid all calls and other sums due

on his or their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number

of its members:153

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the

requirements specified in clause (a) or clause (b) so as to enable the members to apply under section 241.

Explanation.—For the purposes of this sub-section, where any share or shares are held by two or

more persons jointly, they shall be counted only as one member.

(2) Where any members of a company are entitled to make an application under subsection (1), any

one or more of them having obtained the consent in writing of the rest, may make the application on

behalf and for the benefit of all of them.

245. Class action.— (1) Such number of member or members, depositor or depositors or any class of

them, as the case may be, as are indicated in sub-section (2) may, if they are of the opinion that the

management or conduct of the affairs of the company are being conducted in a manner prejudicial to the

interests of the company or its members or depositors, file an application before the Tribunal on behalf of

the members or depositors for seeking all or any of the following orders, namely:—

(a) to restrain the company from committing an act which is ultra vires the articles or

memorandum of the company;

(b) to restrain the company from committing breach of any provision of the company‘s

memorandum or articles;

(c) to declare a resolution altering the memorandum or articles of the company as void if the

resolution was passed by suppression of material facts or obtained by mis-statement to the members

or depositors;

(d) to restrain the company and its directors from acting on such resolution;

(e) to restrain the company from doing an act which is contrary to the provisions of this Act or

any other law for the time being in force;

(f) to restrain the company from taking action contrary to any resolution passed by the members;

(g) to claim damages or compensation or demand any other suitable action from or against—

(i) the company or its directors for any fraudulent, unlawful or wrongful act or omission or

conduct or any likely act or omission or conduct on its or their part;

(ii) the auditor including audit firm of the company for any improper or misleading statement

of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct;

or

(iii) any expert or advisor or consultant or any other person for any incorrect or misleading

statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any

likely act or conduct on his part;

(h) to seek any other remedy as the Tribunal may deem fit.

(2) Where the members or depositors seek any damages or compensation or demand any other

suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner

who was involved in making any improper or misleading statement of particulars in the audit report or

who acted in a fraudulent, unlawful or wrongful manner.

(3) (i) The requisite number of members provided in sub-section (1) shall be as under:—

(a) in the case of a company having a share capital, not less than one hundred members of the

company or not less than such percentage of the total number of its members as may be prescribed,

whichever is less, or any member or members holding not less than such percentage of the issued

share capital of the company as may be prescribed, subject to the condition that the applicant or

applicants has or have paid all calls and other sums due on his or their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number

of its members.154

(ii) The requisite number of depositors provided in sub-section (1) shall not be less than one hundred

depositors or not less than such percentage of the total number of depositors as may be prescribed,

whichever is less, or any depositor or depositors to whom the company owes such percentage of total

deposits of the company as may be prescribed.

(4) In considering an application under sub-section (1), the Tribunal shall take into account, in

particular—

(a) whether the member or depositor is acting in good faith in making the application for seeking

an order;

(b) any evidence before it as to the involvement of any person other than directors or officers of

the company on any of the matters provided in clauses (a) to (f) of subsection (1);

(c) whether the cause of action is one which the member or depositor could pursue in his own

right rather than through an order under this section;

(d) any evidence before it as to the views of the members or depositors of the company who have

no personal interest, direct or indirect, in the matter being proceeded under this section;

(e) where the cause of action is an act or omission that is yet to occur, whether the act or omission

could be, and in the circumstances would be likely to be—

(i) authorised by the company before it occurs; or

(ii) ratified by the company after it occurs;

(f) where the cause of action is an act or omission that has already occurred, whether the act or

omission could be, and in the circumstances would be likely to be, ratified by the company.

(5) If an application filed under sub-section (1) is admitted, then the Tribunal shall have regard to the

following, namely:—

(a) public notice shall be served on admission of the application to all the members or depositors

of the class in such manner as may be prescribed;

(b) all similar applications prevalent in any jurisdiction should be consolidated into a single

application and the class members or depositors should be allowed to choose the lead applicant and in

the event the members or depositors of the class are unable to come to a consensus, the Tribunal shall

have the power to appoint a lead applicant, who shall be in charge of the proceedings from the

applicant‘s side;

(c) two class action applications for the same cause of action shall not be allowed;

(d) the cost or expenses connected with the application for class action shall be defrayed by the

company or any other person responsible for any oppressive act.

(6) Any order passed by the Tribunal shall be binding on the company and all its members, depositors

and auditor including audit firm or expert or consultant or advisor or any other person associated with the

company.

(7) Any company which fails to comply with an order passed by the Tribunal under this section shall

be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five

lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for

a term which may extend to three years and with fine which shall not be less than twenty-five thousand

rupees but which may extend to one lakh rupees.

(8) Where any application filed before the Tribunal is found to be frivolous or vexatious, it shall, for

reasons to be recorded in writing, reject the application and make an order that the applicant shall pay to

the opposite party such cost, not exceeding one lakh rupees, as may be specified in the order.

(9) Nothing contained in this section shall apply to a banking company.

ModuleVI

269. Rehabilitation and insolvency fund.—

(1) There shall be formed a Fund to be called the

Rehabilitation and Insolvency Fund for the purposes of rehabilitation, revival and liquidation of the sick

companies.

(2) There shall be credited to the Fund—

(a) the grants made by the Central Government for the purposes of the Fund;

(b) the amount deposited by the companies as contribution to the Fund;

(c) the amount given to the Fund from any other source; and

(d) the income from investment of the amount in the Fund.

(3) A company which has contributed any amount to the Fund shall, in the event of proceedings

initiated in respect of such company under this Chapter or Chapter XX, may make an application to the

Tribunal for withdrawal of funds not exceeding the amount contributed by it, for making payments to

workmen, protecting the assets of the company or meeting the incidental costs during proceedings.

(4) The Fund shall be managed by an administrator to be appointed by the Central Government in

such manner as may be prescribed.

CHAPTER XX

WINDING UP

270. Modes of winding up.— (1) The winding up of a company may be either—

(a) by the Tribunal; or

(b) voluntary.

(2) Notwithstanding anything contained in any other Act, the provisions of this Act with respect to

winding up shall apply to the winding up of a company in any of the modes specified under sub-section

(1).

PART I.—Winding up by the Tribunal

271. Circumstances in which company may be wound up by Tribunal.— (1) A company may, on

a petition under section 272, be wound up by the Tribunal,—

(a) if the company is unable to pay its debts;

(b) if the company has, by special resolution, resolved that the company be wound up by the

Tribunal;

(c) if the company has acted against the interests of the sovereignty and integrity of India, the

security of the State, friendly relations with foreign States, public order, decency or morality;

(d) if the Tribunal has ordered the winding up of the company under Chapter XIX;

(e) if on an application made by the Registrar or any other person authorised by the Central

Government by notification under this Act, the Tribunal is of the opinion that the affairs of the

company have been conducted in a fraudulent manner or the company was formed for fraudulent and

unlawful purpose or the persons concerned in the formation or management of its affairs have been

guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the

company be wound up;

(f) if the company has made a default in filing with the Registrar its financial statements or annual

returns for immediately preceding five consecutive financial years; or

(g) if the Tribunal is of the opinion that it is just and equitable that the company should be wound

up.165

(2) A company shall be deemed to be unable to pay its debts,—

(a) if a creditor, by assignment or otherwise, to whom the company is indebted for an amount

exceeding one lakh rupees then due, has served on the company, by causing it to be delivered at its

registered office, by registered post or otherwise, a demand requiring the company to pay the amount

so due and the company has failed to pay the sum within twenty-one days after the receipt of such

demand or to provide adequate security or re-structure or compound the debt to the reasonable

satisfaction of the creditor;

(b) if any execution or other process issued on a decree or order of any court or tribunal in favour

of a creditor of the company is returned unsatisfied in whole or in part; or

(c) if it is proved to the satisfaction of the Tribunal that the company is unable to pay its debts,

and, in determining whether a company is unable to pay its debts, the Tribunal shall take into account

the contingent and prospective liabilities of the company.

272. Petition for winding up.— (1) Subject to the provisions of this section, a petition to the

Tribunal for the winding up of a company shall be presented by—

(a) the company;

(b) any creditor or creditors, including any contingent or prospective creditor or creditors;

(c) any contributory or contributories;

(d) all or any of the persons specified in clauses (a), (b) and (c) together;

(e) the Registrar;

(f) any person authorised by the Central Government in that behalf; or

(g) in a case falling under clause (c) of sub-section (1) of section 271, by the Central Government

or a State Government.

(2) A secured creditor, the holder of any debentures, whether or not any trustee or trustees have been

appointed in respect of such and other like debentures, and the trustee for the holders of debentures shall

be deemed to be creditors within the meaning of clause (b) of sub-section (1).

(3) A contributory shall be entitled to present a petition for the winding up of a company,

notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets

at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its

liabilities, and shares in respect of which he is a contributory or some of them were either originally

allotted to him or have been held by him, and registered in his name, for at least six months during the

eighteen months immediately before the commencement of the winding up or have devolved on him

through the death of a former holder.

(4) The Registrar shall be entitled to present a petition for winding up under subsection (1) on any of

the grounds specified in sub-section (1) of section 271, except on the grounds specified in clause (b),

clause (d) or clause (g) of that sub-section:

Provided that the Registrar shall not present a petition on the ground that the company is unable to

pay its debts unless it appears to him either from the financial condition of the company as disclosed in its

balance sheet or from the report of an inspector appointed under section 210 that the company is unable to

pay its debts:

Provided further that the Registrar shall obtain the previous sanction of the Central Government to the

presentation of a petition:

Provided also that the Central Government shall not accord its sanction unless the company has been

given a reasonable opportunity of making representations.

(5) A petition presented by the company for winding up before the Tribunal shall be admitted only if

accompanied by a statement of affairs in such form and in such manner as may be prescribed.166

(6) Before a petition for winding up of a company presented by a contingent or prospective creditor is

admitted, the leave of the Tribunal shall be obtained for the admission of the petition and such leave shall

not be granted, unless in the opinion of the Tribunal there is a prima facie case for the winding up of the

company and until such security for costs has been given as the Tribunal thinks reasonable.

(7) A copy of the petition made under this section shall also be filed with the Registrar and the

Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty

days of receipt of such petition.

273. Powers of Tribunal.— (1) The Tribunal may, on receipt of a petition for winding up under

section 272 pass any of the following orders, namely:—

(a) dismiss it, with or without costs;

(b) make any interim order as it thinks fit;

(c) appoint a provisional liquidator of the company till the making of a winding up order;

(d) make an order for the winding up of the company with or without costs; or

(e) any other order as it thinks fit:

Provided that an order under this sub-section shall be made within ninety days from the date of

presentation of the petition:

Provided further that before appointing a provisional liquidator under clause (c), the Tribunal shall

give notice to the company and afford a reasonable opportunity to it to make its representations, if any,

unless for special reasons to be recorded in writing, the Tribunal thinks fit to dispense with such notice:

Provided also that the Tribunal shall not refuse to make a winding up order on the ground only that

the assets of the company have been mortgaged for an amount equal to or in excess of those assets, or that

the company has no assets.

(2) Where a petition is presented on the ground that it is just and equitable that the company should be

wound up, the Tribunal may refuse to make an order of winding up, if it is of the opinion that some other

remedy is available to the petitioners and that they are acting unreasonably in seeking to have the

company wound up instead of pursuing the other remedy.

274. Direction for filing statement of affairs.— (1) Where a petition for winding up is filed before

the Tribunal by any person other than the company, the Tribunal shall, if satisfied that a prima facie case

for winding up of the company is made out, by an order direct the company to file its objections along

with a statement of its affairs within thirty days of the order in such form and in such manner as may be

prescribed:

Provided that the Tribunal may allow a further period of thirty days in a situation of contingency or

special circumstances:

Provided further that the Tribunal may direct the petitioner to deposit such security for costs as it may

consider reasonable as a precondition to issue directions to the company.

(2) A company, which fails to file the statement of affairs as referred to in sub-section (1), shall

forfeit the right to oppose the petition and such directors and officers of the company as found responsible

for such non-compliance, shall be liable for punishment under sub-section (4).

(3) The directors and other officers of the company, in respect of which an order for winding up is

passed by the Tribunal under clause (d) of sub-section (1) of section 273, shall, within a period of thirty

days of such order, submit, at the cost of the company, the books of account of the company completed

and audited up to the date of the order, to such liquidator and in the manner specified by the Tribunal.

(4) If any director or officer of the company contravenes the provisions of this section, the director or

the officer of the company who is in default shall be punishable with imprisonment for a term which may

extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may

extend to five lakh rupees, or with both.167

(5) The complaint may be filed in this behalf before the Special Court by Registrar, provisional

liquidator, Company Liquidator or any person authorised by the Tribunal.

275. Company Liquidators and their appointments.— (1) For the purposes of winding up of a

company by the Tribunal, the Tribunal at the time of the passing of the order of winding up, shall appoint

an Official Liquidator or a liquidator from the panel maintained under sub-section (2) as the Company

Liquidator.

(2) The provisional liquidator or the Company Liquidator, as the case may be, shall be appointed

from a panel maintained by the Central Government consisting of the names of chartered accountants,

advocates, company secretaries, cost accountants or firms or bodies corporate having such chartered

accountants, advocates, company secretaries, cost accountants and such other professionals as may be

notified by the Central Government or from a firm or a body corporate of persons having a combination

of such professionals as may be prescribed and having at least ten years' experience in company matters.

(3) Where a provisional liquidator is appointed by the Tribunal, the Tribunal may limit and restrict his

powers by the order appointing him or it or by a subsequent order, but otherwise he shall have the same

powers as a liquidator.

(4) The Central Government may remove the name of any person or firm or body corporate from the

panel maintained under sub-section (2) on the grounds of misconduct, fraud, misfeasance, breach of

duties or professional incompetence:

Provided that the Central Government before removing him or it from the panel shall give him or it a

reasonable opportunity of being heard.

(5) The terms and conditions of appointment of a provisional liquidator or Company Liquidator and

the fee payable to him or it shall be specified by the Tribunal on the basis of task required to be

performed, experience, qualification of such liquidator and size of the company.

(6) On appointment as provisional liquidator or Company Liquidator, as the case may be, such

liquidator shall file a declaration within seven days from the date of appointment in the prescribed form

disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the

Tribunal and such obligation shall continue throughout the term of his appointment.

(7) While passing a winding up order, the Tribunal may appoint a provisional liquidator, if any,

appointed under clause (c) of sub-section (1) of section 273, as the Company Liquidator for the conduct

of the proceedings for the winding up of the company.

276. Removal and replacement of liquidator.— (1) The Tribunal may, on a reasonable cause being

shown and for reasons to be recorded in writing, remove the provisional liquidator or the Company

Liquidator, as the case may be, as liquidator of the company on any of the following grounds, namely:—

(a) misconduct;

(b) fraud or misfeasance;

(c) professional incompetence or failure to exercise due care and diligence in performance of the

powers and functions;

(d) inability to act as provisional liquidator or as the case may be, Company Liquidator;

(e) conflict of interest or lack of independence during the term of his appointment that would

justify removal.

(2) In the event of death, resignation or removal of the provisional liquidator or as the case may be,

Company Liquidator, the Tribunal may transfer the work assigned to him or it to another Company

Liquidator for reasons to be recorded in writing.

(3) Where the Tribunal is of the opinion that any liquidator is responsible for causing any loss or

damage to the company due to fraud or misfeasance or failure to exercise due care and diligence in the

performance of his or its powers and functions, the Tribunal may recover or cause to be recovered such

loss or damage from the liquidator and pass such other orders as it may think fit.168

(4) The Tribunal shall, before passing any order under this section, provide a reasonable opportunity

of being heard to the provisional liquidator or, as the case may be, Company Liquidator.

277. Intimation to Company Liquidator, provisional liquidator and Registrar.— (1) Where the

Tribunal makes an order for appointment of provisional liquidator or for the winding up of a company, it

shall, within a period not exceeding seven days from the date of passing of the order, cause intimation

thereof to be sent to the Company Liquidator or provisional liquidator, as the case may be, and the

Registrar.

(2) On receipt of the copy of order of appointment of provisional liquidator or winding up order, the

Registrar shall make an endorsement to that effect in his records relating to the company and notify in the

Official Gazette that such an order has been made and in the case of a listed company, the Registrar shall

intimate about such appointment or order, as the case may be, to the stock exchange or exchanges where

the securities of the company are listed.

(3) The winding up order shall be deemed to be a notice of discharge to the officers, employees and

workmen of the company, except when the business of the company is continued.

(4) Within three weeks from the date of passing of winding up order, the Company Liquidator shall

make an application to the Tribunal for constitution of a winding up committee to assist and monitor the

progress of liquidation proceedings by the Company Liquidator in carrying out the function as provided

in sub-section (5) and such winding up committee shall comprise of the following persons, namely:—

(i) Official Liquidator attached to the Tribunal;

(ii) nominee of secured creditors; and

(iii) a professional nominated by the Tribunal.

(5) The Company Liquidator shall be the convener of the meetings of the winding up committee

which shall assist and monitor the liquidation proceedings in following areas of liquidation functions,

namely:—

(i) taking over assets;

(ii) examination of the statement of affairs;

(iii) recovery of property, cash or any other assets of the company including benefits derived

therefrom;

(iv) review of audit reports and accounts of the company;

(v) sale of assets;

(vi) finalisation of list of creditors and contributories;

(vii) compromise, abandonment and settlement of claims;

(viii) payment of dividends, if any; and

(ix) any other function, as the Tribunal may direct from time to time.

(6) The Company Liquidator shall place before the Tribunal a report along with minutes of the

meetings of the committee on monthly basis duly signed by the members present in the meeting for

consideration till the final report for dissolution of the company is submitted before the Tribunal.

(7) The Company Liquidator shall prepare the draft final report for consideration and approval of the

winding up committee.

(8) The final report so approved by the winding up committee shall be submitted by the Company

Liquidator before the Tribunal for passing of a dissolution order in respect of the company.

278. Effect of winding up order.— The order for the winding up of a company shall operate in

favour of all the creditors and all contributories of the company as if it had been made out on the joint

petition of creditors and contributories.169

279. Stay of suits, etc., on winding up order.— (1) When a winding up order has been passed or a

provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if

pending at the date of the winding up order, shall be proceeded with, by or against the company, except

with the leave of the Tribunal and subject to such terms as the Tribunal may impose:

Provided that any application to the Tribunal seeking leave under this section shall be disposed of by

the Tribunal within sixty days.

(2) Nothing in sub-section (1) shall apply to any proceeding pending in appeal before the Supreme

Court or a High Court.

280. Jurisdiction of Tribunal.— The Tribunal shall, notwithstanding anything contained in any

other law for the time being in force, have jurisdiction to entertain, or dispose of,—

(a) any suit or proceeding by or against the company;

(b) any claim made by or against the company, including claims by or against any of its branches

in India;

(c) any application made under section 233;

(d) any scheme submitted under section 262;

(e) any question of priorities or any other question whatsoever, whether of law or facts, including

those relating to assets, business, actions, rights, entitlements, privileges, benefits, duties,

responsibilities, obligations or in any matter arising out of, or in relation to winding up of the

company,

whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen

or arises or such application has been made or is made or such scheme has been submitted, or is

submitted, before or after the order for the winding up of the company is made.

281. Submission of report by Company Liquidator.— (1) Where the Tribunal has made a winding

up order or appointed a Company Liquidator, such liquidator shall, within sixty days from the order,

submit to the Tribunal, a report containing the following particulars, namely:—

(a) the nature and details of the assets of the company including their location and value, stating

separately the cash balance in hand and in the bank, if any, and the negotiable securities, if any, held

by the company:

Provided that the valuation of the assets shall be obtained from registered valuers for this

purpose;

(b) amount of capital issued, subscribed and paid-up;

(c) the existing and contingent liabilities of the company including names, addresses and

occupations of its creditors, stating separately the amount of secured and unsecured debts, and in the

case of secured debts, particulars of the securities given, whether by the company or an officer

thereof, their value and the dates on which they were given;

(d) the debts due to the company and the names, addresses and occupations of the persons from

whom they are due and the amount likely to be realised on account thereof;

(e) guarantees, if any, extended by the company;

(f) list of contributories and dues, if any, payable by them and details of any unpaid call;

(g) details of trade marks and intellectual properties, if any, owned by the company;

(h) details of subsisting contracts, joint ventures and collaborations, if any;

(i) details of holding and subsidiary companies, if any;

(j) details of legal cases filed by or against the company; and170

(k) any other information which the Tribunal may direct or the Company Liquidator may consider

necessary to include.

(2) The Company Liquidator shall include in his report the manner in which the company was

promoted or formed and whether in his opinion any fraud has been committed by any person in its

promotion or formation or by any officer of the company in relation to the company since the formation

thereof and any other matters which, in his opinion, it is desirable to bring to the notice of the Tribunal.

(3) The Company Liquidator shall also make a report on the viability of the business of the company

or the steps which, in his opinion, are necessary for maximising the value of the assets of the company.

(4) The Company Liquidator may also, if he thinks fit, make any further report or reports.

(5) Any person describing himself in writing to be a creditor or a contributory of the company shall

be entitled by himself or by his agent at all reasonable times to inspect the report submitted in accordance

with this section and take copies thereof or extracts therefrom on payment of the prescribed fees.

282. Directions of Tribunal on report of Company Liquidator.— (1) The Tribunal shall, on

consideration of the report of the Company Liquidator, fix a time limit within which the entire

proceedings shall be completed and the company be dissolved:

Provided that the Tribunal may, if it is of the opinion, at any stage of the proceedings, or on

examination of the reports submitted to it by the Company Liquidator and after hearing the Company

Liquidator, creditors or contributories or any other interested person, that it will not be advantageous or

economical to continue the proceedings, revise the time limit within which the entire proceedings shall be

completed and the company be dissolved.

(2) The Tribunal may, on examination of the reports submitted to it by the Company Liquidator and

after hearing the Company Liquidator, creditors or contributories or any other interested person, order

sale of the company as a going concern or its assets or part thereof:

Provided that the Tribunal may, where it considers fit, appoint a sale committee comprising such

creditors, promoters and officers of the company as the Tribunal may decide to assist the Company

Liquidator in sale under this sub-section.

(3) Where a report is received from the Company Liquidator or the Central Government or any

person that a fraud has been committed in respect of the company, the Tribunal shall, without prejudice to

the process of winding up, order for investigation under section 210, and on consideration of the report of

such investigation it may pass order and give directions under sections 339 to 342 or direct the Company

Liquidator to file a criminal complaint against persons who were involved in the commission of fraud.

(4) The Tribunal may order for taking such steps and measures, as may be necessary, to protect,

preserve or enhance the value of the assets of the company.

(5) The Tribunal may pass such other order or give such other directions as it considers fit.

283. Custody of company‘s properties.— (1) Where a winding up order has been made or where a

provisional liquidator has been appointed, the Company Liquidator or the provisional liquidator, as the

case may be, shall, on the order of the Tribunal, forthwith take into his or its custody or control all the

property, effects and actionable claims to which the company is or appears to be entitled to and take such

steps and measures, as may be necessary, to protect and preserve the properties of the company.

(2) Notwithstanding anything contained in sub-section (1), all the property and effects of the company

shall be deemed to be in the custody of the Tribunal from the date of the order for the winding up of the

company.

(3) On an application by the Company Liquidator or otherwise, the Tribunal may, at any time after

the making of a winding up order, require any contributory for the time being on the list of contributories,

and any trustee, receiver, banker, agent, officer or other employee of the company, to pay, deliver,

surrender or transfer forthwith, or within such time as the Tribunal directs, to the Company Liquidator,

any money, property or books and papers in his custody or under his control to which the company is or

appears to be entitled.171

284. Promoters, directors, etc., to cooperate with Company Liquidator.— (1) The promoters,

directors, officers and employees, who are or have been in employment of the company or acting or

associated with the company shall extend full cooperation to the Company Liquidator in discharge of his

functions and duties.

(2) Where any person, without reasonable cause, fails to discharge his obligations under sub-section

(1), he shall be punishable with imprisonment which may extend to six months or with fine which may

extend to fifty thousand rupees, or with both.

285. Settlement of list of contributories and application of assets.— (1) As soon as may be after

the passing of a winding up order by the Tribunal, the Tribunal shall settle a list of contributories, cause

rectification of register of members in all cases where rectification is required in pursuance of this Act

and shall cause the assets of the company to be applied for the discharge of its liability:

Provided that where it appears to the Tribunal that it would not be necessary to make calls on or

adjust the rights of contributories, the Tribunal may dispense with the settlement of a list of

contributories.

(2) In settling the list of contributories, the Tribunal shall distinguish between those who are

contributories in their own right and those who are contributories as being representatives of, or liable for

the debts of, others.

(3) While settling the list of contributories, the Tribunal shall include every person, who is or has

been a member, who shall be liable to contribute to the assets of the company an amount sufficient for

payment of the debts and liabilities and the costs, charges and expenses of winding up, and for the

adjustment of the rights of the contributories among themselves, subject to the following conditions,

namely:—

(a) a person who has been a member shall not be liable to contribute if he has ceased to be a

member for the preceding one year or more before the commencement of the winding up;

(b) a person who has been a member shall not be liable to contribute in respect of any debt or

liability of the company contracted after he ceased to be a member;

(c) no person who has been a member shall be liable to contribute unless it appears to the

Tribunal that the present members are unable to satisfy the contributions required to be made by them

in pursuance of this Act;

(d) in the case of a company limited by shares, no contribution shall be required from any person,

who is or has been a member exceeding the amount, if any, unpaid on the shares in respect of which

he is liable as such member;

(e) in the case of a company limited by guarantee, no contribution shall be required from any

person, who is or has been a member exceeding the amount undertaken to be contributed by him to

the assets of the company in the event of its being wound up but if the company has a share capital,

such member shall be liable to contribute to the extent of any sum unpaid on any shares held by him

as if the company were a company limited by shares.

286. Obligations of directors and managers.— In the case of a limited company, any person who is

or has been a director or manager, whose liability is unlimited under the provisions of this Act, shall, in

addition to his liability, if any, to contribute as an ordinary member, be liable to make a further

contribution as if he were at the commencement of winding up, a member of an unlimited company:

Provided that —

(a) a person who has been a director or manager shall not be liable to make such further

contribution, if he has ceased to hold office for a year or upwards before the commencement of the

winding up;

(b) a person who has been a director or manager shall not be liable to make such further

contribution in respect of any debt or liability of the company contracted after he ceased to hold

office;172

(c) subject to the articles of the company, a director or manager shall not be liable to make such

further contribution unless the Tribunal deems it necessary to require the contribution in order to

satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding

up.

287. Advisory committee.— (1) The Tribunal may, while passing an order of winding up of a

company, direct that there shall be, an advisory committee to advise the Company Liquidator and to

report to the Tribunal on such matters as the Tribunal may direct.

(2) The advisory committee appointed by the Tribunal shall consist of not more than twelve members,

being creditors and contributories of the company or such other persons in such proportion as the Tribunal

may, keeping in view the circumstances of the company under liquidation, direct.

(3) The Company Liquidator shall convene a meeting of creditors and contributories, as ascertained

from the books and documents, of the company within thirty days from the date of order of winding up

for enabling the Tribunal to determine the persons who may be members of the advisory committee.

(4) The advisory committee shall have the right to inspect the books of account and other documents,

assets and properties of the company under liquidation at a reasonable time.

(5) The provisions relating to the convening of the meetings, the procedure to be followed thereat and

other matters relating to conduct of business by the advisory committee shall be such as may be

prescribed.

(6) The meeting of advisory committee shall be chaired by the Company Liquidator.

288. Submission of periodical reports to Tribunal.— (1) The Company Liquidator shall make

periodical reports to the Tribunal and in any case make a report at the end of each quarter with respect to

the progress of the winding up of the company in such form and manner as may be prescribed.

(2) The Tribunal may, on an application by the Company Liquidator, review the orders made by it

and make such modifications as it thinks fit.

289. Power of Tribunal on application for stay of winding up. — (1) The Tribunal may, at any

time after making a winding up order, on an application of promoter, shareholders or creditors or any

other interested person, if satisfied, make an order that it is just and fair that an opportunity to revive and

rehabilitate the company be provided staying the proceedings for such time but not exceeding one

hundred and eighty days and on such terms and conditions as it thinks fit:

Provided that an order under this sub-section shall be made by the Tribunal only when the application

is accompanied with a scheme for rehabilitation.

(2) The Tribunal may, while passing the order under sub-section (1), require the applicant to furnish

such security as to costs as it considers fit.

(3) Where an order under sub-section (1) is passed by the Tribunal, the provisions of Chapter XIX

shall be followed in respect of the consideration and sanction of the scheme of revival of the company.

(4) Without prejudice to the provisions of sub-section (1), the Tribunal may at any time after making

a winding up order, on an application of the Company Liquidator, make an order staying the winding up

proceedings or any part thereof, for such time and on such terms and conditions as it thinks fit.

(5) The Tribunal may, before making an order, under this section, require the Company Liquidator to

furnish to it a report with respect to any facts or matters which are in his opinion relevant to the

application.

(6) A copy of every order made under this section shall forthwith be forwarded by the Company

Liquidator to the Registrar who shall make an endorsement of the order in his books and records relating

to the company.

290. Powers and duties of Company Liquidator.— (1) Subject to directions by the Tribunal, if any,

in this regard, the Company Liquidator, in a winding up of a company by the Tribunal, shall have the

power—173

(a) to carry on the business of the company so far as may be necessary for the beneficial winding

up of the company;

(b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and

other documents, and for that purpose, to use, when necessary, the company‘s seal;

(c) to sell the immovable and movable property and actionable claims of the company by public

auction or private contract, with power to transfer such property to any person or body corporate, or

to sell the same in parcels;

(d) to sell the whole of the undertaking of the company as a going concern;

(e) to raise any money required on the security of the assets of the company;

(f) to institute or defend any suit, prosecution or other legal proceeding, civil or criminal, in the

name and on behalf of the company;

(g) to invite and settle claim of creditors, employees or any other claimant and distribute sale

proceeds in accordance with priorities established under this Act;

(h) to inspect the records and returns of the company on the files of the Registrar or any other

authority;

(i) to prove rank and claim in the insolvency of any contributory for any balance against his

estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due

from the insolvent, and rateably with the other separate creditors;

(j) to draw, accept, make and endorse any negotiable instruments including cheque, bill of

exchange, hundi or promissory note in the name and on behalf of the company, with the same effect

with respect to the liability of the company as if such instruments had been drawn, accepted, made or

endorsed by or on behalf of the company in the course of its business;

(k) to take out, in his official name, letters of administration to any deceased contributory, and to

do in his official name any other act necessary for obtaining payment of any money due from a

contributory or his estate which cannot be conveniently done in the name of the company, and in all

such cases, the money due shall, for the purpose of enabling the Company Liquidator to take out the

letters of administration or recover the money, be deemed to be due to the Company Liquidator

himself;

(l) to obtain any professional assistance from any person or appoint any professional, in discharge

of his duties, obligations and responsibilities and for protection of the assets of the company, appoint

an agent to do any business which the Company Liquidator is unable to do himself;

(m) to take all such actions, steps, or to sign, execute and verify any paper, deed, document,

application, petition, affidavit, bond or instrument as may be necessary,—

(i) for winding up of the company;

(ii) for distribution of assets;

(iii) in discharge of his duties and obligations and functions as Company Liquidator; and

(n) to apply to the Tribunal for such orders or directions as may be necessary for the winding up

of the company.

(2) The exercise of powers by the Company Liquidator under sub-section (1) shall be subject to the

overall control of the Tribunal.

(3) Notwithstanding the provisions of sub-section (1), the Company Liquidator shall perform such

other duties as the Tribunal may specify in this behalf.

291. Provision for professional assistance to Company Liquidator.— (1) The Company

Liquidator may, with the sanction of the Tribunal, appoint one or more chartered accountants or company

secretaries or cost accountants or legal practitioners or such other professionals on such terms and174

conditions, as may be necessary, to assist him in the performance of his duties and functions under this

Act.

(2) Any person appointed under this section shall disclose forthwith to the Tribunal in the prescribed

form any conflict of interest or lack of independence in respect of his appointment.

292. Exercise and control of Company Liquidator‘s powers.— (1) Subject to the provisions of this

Act, the Company Liquidator shall, in the administration of the assets of the company and the distribution

thereof among its creditors, have regard to any directions which may be given by the resolution of the

creditors or contributories at any general meeting or by the advisory committee.

(2) Any directions given by the creditors or contributories at any general meeting shall, in case of

conflict, be deemed to override any directions given by the advisory committee.

(3) The Company Liquidator—

(a) may summon meetings of the creditors or contributories, whenever he thinks fit, for the

purpose of ascertaining their wishes; and

(b) shall summon such meetings at such times, as the creditors or contributories, as the case may

be, may, by resolution, direct, or whenever requested in writing to do so by not less than one-tenth in

value of the creditors or contributories, as the case may be.

(4) Any person aggrieved by any act or decision of the Company Liquidator may apply to the

Tribunal, and the Tribunal may confirm, reverse or modify the act or decision complained of and make

such further order as it thinks just and proper in the circumstances.

293. Books to be kept by Company Liquidator.— (1) The Company Liquidator shall keep proper

books in such manner, as may be prescribed, in which he shall cause entries or minutes to be made of

proceedings at meetings and of such other matters as may be prescribed.

(2) Any creditor or contributory may, subject to the control of the Tribunal, inspect any such books,

personally or through his agent.

294. Audit of Company Liquidator‘s accounts.— (1) The Company Liquidator shall maintain

proper and regular books of account including accounts of receipts and payments made by him in such

form and manner as may be prescribed.

(2) The Company Liquidator shall, at such times as may be prescribed but not less than twice in each

year during his tenure of office, present to the Tribunal an account of the receipts and payments as such

liquidator in the prescribed form in duplicate, which shall be verified by a declaration in such form and

manner as may be prescribed.

(3) The Tribunal shall cause the accounts to be audited in such manner as it thinks fit, and for the

purpose of the audit, the Company Liquidator shall furnish to the Tribunal with such vouchers and

information as the Tribunal may require, and the Tribunal may, at any time, require the production of, and

inspect, any books of account kept by the Company Liquidator.

(4) When the accounts of the company have been audited, one copy thereof shall be filed by the

Company Liquidator with the Tribunal, and the other copy shall be delivered to the Registrar which shall

be open to inspection by any creditor, contributory or person interested.

(5) Where an account referred to in sub-section (4) relates to a Government company, the Company

Liquidator shall forward a copy thereof—

(a) to the Central Government, if that Government is a member of the Government company; or

(b) to any State Government, if that Government is a member of the Government company; or

(c) to the Central Government and any State Government, if both the Governments are members

of the Government company.175

(6) The Company Liquidator shall cause the accounts when audited, or a summary thereof, to be

printed, and shall send a printed copy of the accounts or summary thereof by post to every creditor and

every contributory:

Provided that the Tribunal may dispense with the compliance of the provisions of this sub-section in

any case it deems fit.

295. Payment of debts by contributory and extent of set-off.— (1) The Tribunal may, at any time

after passing of a winding up order, pass an order requiring any contributory for the time being on the list

of contributories to pay, in the manner directed by the order, any money due to the company, from him or

from the estate of the person whom he represents, exclusive of any money payable by him or the estate by

virtue of any call in pursuance of this Act.

(2) The Tribunal, in making an order, under sub-section (1), may,—

(a) in the case of an unlimited company, allow to the contributory, by way of setoff, any money

due to him or to the estate which he represents, from the company, on any independent dealing or

contract with the company, but not any money due to him as a member of the company in respect of

any dividend or profit; and

(b) in the case of a limited company, allow to any director or manager whose liability is

unlimited, or to his estate, such set-off.

(3) In the case of any company, whether limited or unlimited, when all the creditors have been paid in

full, any money due on any account whatever to a contributory from the company may be allowed to him

by way of set-off against any subsequent call.

296. Power of Tribunal to make calls.— The Tribunal may, at any time after the passing of a

winding up order, and either before or after it has ascertained the sufficiency of the assets of the

company,—

(a) make calls on all or any of the contributories for the time being on the list of the

contributories, to the extent of their liability, for payment of any money which the Tribunal considers

necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of

winding up, and for the adjustment of the rights of the contributories among themselves; and

(b) make an order for payment of any calls so made.

297. Adjustment of rights of contributories.— The Tribunal shall adjust the rights of the

contributories among themselves and distribute any surplus among the persons entitled thereto.

298. Power to order costs.— The Tribunal may, in the event of the assets of a company being

insufficient to satisfy its liabilities, make an order for the payment out of the assets, of the costs, charges

and expenses incurred in the winding up, in such order of priority inter se as the Tribunal thinks just and

proper.

299. Power to summon persons suspected of having property of company, etc.— (1) The

Tribunal may, at any time after the appointment of a provisional liquidator or the passing of a winding up

order, summon before it any officer of the company or person known or suspected to have in his

possession any property or books or papers, of the company, or known or suspected to be indebted to the

company, or any person whom the Tribunal thinks to be capable of giving information concerning the

promotion, formation, trade, dealings, property, books or papers, or affairs of the company.

(2) The Tribunal may examine any officer or person so summoned on oath concerning the matters

aforesaid, either by word of mouth or on written interrogatories or on affidavit and may, in the first case,

reduce his answers to writing and require him to sign them.

(3) The Tribunal may require any officer or person so summoned to produce any books and papers

relating to the company in his custody or power, but, where he claims any lien on books or papers

produced by him, the production shall be without prejudice to such lien, and the Tribunal shall have

power to determine all questions relating to that lien.176

(4) The Tribunal may direct the liquidator to file before it a report in respect of debt or property of the

company in possession of other persons.

(5) If the Tribunal finds that—

(a) a person is indebted to the company, the Tribunal may order him to pay to the provisional

liquidator or, as the case may be, the liquidator at such time and in such manner as the Tribunal may

consider just, the amount in which he is indebted, or any part thereof, either in full discharge of the

whole amount or not, as the Tribunal thinks fit, with or without costs of the examination;

(b) a person is in possession of any property belonging to the company, the Tribunal may order

him to deliver to the provisional liquidator or, as the case may be, the liquidator, that property or any

part thereof, at such time, in such manner and on such terms as the Tribunal may consider just.

(6) If any officer or person so summoned fails to appear before the Tribunal at the time appointed

without a reasonable cause, the Tribunal may impose an appropriate cost.

(7) Every order made under sub-section (5) shall be executed in the same manner as decrees for the

payment of money or for the delivery of property under the Code of Civil Procedure, 1908 (5 of 1908).

(8) Any person making any payment or delivery in pursuance of an order made under sub-section (5)

shall by such payment or delivery be, unless otherwise directed by such order, discharged from all

liability whatsoever in respect of such debt or property.

300. Power to order examination of promoters, directors, etc.— (1) Where an order has been

made for the winding up of a company by the Tribunal, and the Company Liquidator has made a report to

the Tribunal under this Act, stating that in his opinion a fraud has been committed by any person in the

promotion, formation, business or conduct of affairs of the company since its formation, the Tribunal

may, after considering the report, direct that such person or officer shall attend before the Tribunal on a

day appointed by it for that purpose, and be examined as to the promotion or formation or the conduct of

the business of the company or as to his conduct and dealings as an officer thereof.

(2) The Company Liquidator shall take part in the examination, and for that purpose he or it may, if

specially authorised by the Tribunal in that behalf, employ such legal assistance as may be sanctioned by

the Tribunal.

(3) The person shall be examined on oath and shall answer all such questions as the Tribunal may put,

or allow to be put, to him.

(4) A person ordered to be examined under this section—

(a) shall, before his examination, be furnished at his own cost with a copy of the report of the

Company Liquidator; and

(b) may at his own cost employ chartered accountants or company secretaries or cost accountants

or legal practitioners entitled to appear before the Tribunal under section 432, who shall be at liberty

to put to him such questions as the Tribunal may consider just for the purpose of enabling him to

explain or qualify any answers given by him.

(5) If any such person applies to the Tribunal to be exculpated from any charges made or

suggested against him, it shall be the duty of the Company Liquidator to appear on the hearing of

such application and call the attention of the Tribunal to any matters which appear to the Company

Liquidator to be relevant.

(6) If the Tribunal, after considering any evidence given or hearing witnesses called by the

Company Liquidator, allows the application made under sub-section (5), the Tribunal may order

payment to the applicant of such costs as it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and

signed by, the person examined, a copy be supplied to him and may thereafter be used in evidence

against him, and shall be open to inspection by any creditor or contributory at all reasonable times.

(8) The Tribunal may, if it thinks fit, adjourn the examination from time to time.177

(9) An examination under this section may, if the Tribunal so directs, be held before any person

or authority authorised by the Tribunal.

(10) The powers of the Tribunal under this section as to the conduct of the examination, but not

as to costs, may be exercised by the person or authority before whom the examination is held in

pursuance of sub-section (9).

301. Arrest of person trying to leave India or abscond.— At any time either before or after

passing a winding up order, if the Tribunal is satisfied that a contributory or a person having property,

accounts or papers of the company in his possession is about to leave India or otherwise to abscond,

or is about to remove or conceal any of his property, for the purpose of evading payment of calls or of

avoiding examination respecting the affairs of the company, the Tribunal may cause—

(a) the contributory to be detained until such time as the Tribunal may order; and

(b) his books and papers and movable property to be seized and safely kept until such time as

the Tribunal may order.

302. Dissolution of company by Tribunal.— (1) When the affairs of a company have been

completely wound up, the Company Liquidator shall make an application to the Tribunal for dissolution

of such company.

(2) The Tribunal shall on an application filed by the Company Liquidator under sub-section (1) or

when the Tribunal is of the opinion that it is just and reasonable in the circumstances of the case that an

order for the dissolution of the company should be made, make an order that the company be dissolved

from the date of the order, and the company shall be dissolved accordingly.

(3) A copy of the order shall, within thirty days from the date thereof, be forwarded by the Company

Liquidator to the Registrar who shall record in the register relating to the company a minute of the

dissolution of the company.

(4) If the Company Liquidator makes a default in forwarding a copy of the order within the period

specified in sub-section (3), the Company Liquidator shall be punishable with fine which may extend to

five thousand rupees for every day during which the default continues.

303. Appeals from orders made before commencement of Act.— Nothing in this Chapter shall

affect the operation or enforcement of any order made by any Court in any proceedings for the winding

up of a company immediately before the commencement of this Act and an appeal against such order

shall be filed before such authority competent to hear such appeals before such commencement.

PART II.—Voluntary winding up

304. Circumstances in which company may be wound up voluntarily.— A company may be

wound up voluntarily,—

(a) if the company in general meeting passes a resolution requiring the company to be wound up

voluntarily as a result of the expiry of the period for its duration, if any, fixed by its articles or on the

occurrence of any event in respect of which the articles provide that the company should be

dissolved; or

(b) if the company passes a special resolution that the company be wound up voluntarily.

305. Declaration of solvency in case of proposal to wind up voluntarily.— (1) Where it is

proposed to wind up a company voluntarily, its director or directors, or in case the company has more

than two directors, the majority of its directors, shall, at a meeting of the Board, make a declaration

verified by an affidavit to the effect that they have made a full inquiry into the affairs of the company and

they have formed an opinion that the company has no debt or whether it will be able to pay its debts in

full from the proceeds of assets sold in voluntary winding up.178

(2) A declaration made under sub-section (1) shall have no effect for the purposes of this Act,

unless—

(a) it is made within five weeks immediately preceding the date of the passing of the resolution

for winding up the company and it is delivered to the Registrar for registration before that date;

(b) it contains a declaration that the company is not being wound up to defraud any person or

persons;

(c) it is accompanied by a copy of the report of the auditors of the company prepared in

accordance with the provisions of this Act, on the profit and loss account of the company for the

period commencing from the date up to which the last such account was prepared and ending with the

latest practicable date immediately before the making of the declaration and the balance sheet of the

company made out as on that date which would also contain a statement of the assets and liabilities of

the company on that date; and

(d) where there are any assets of the company, it is accompanied by a report of the valuation of

the assets of the company prepared by a registered valuer.

(3) Where the company is wound up in pursuance of a resolution passed within a period of five weeks

after the making of the declaration, but its debts are not paid or provided for in full, it shall be presumed,

until the contrary is shown, that the director or directors did not have reasonable grounds for his or their

opinion under sub-section (1).

(4) Any director of a company making a declaration under this section without having reasonable

grounds for the opinion that the company will be able to pay its debts in full from the proceeds of assets

sold in voluntary winding up shall be punishable with imprisonment for a term which shall not be less

than three years but which may extend to five years or with fine which shall not be less than fifty

thousand rupees but which may extend to three lakh rupees, or with both.

306. Meeting of creditors.— (1) The company shall along with the calling of meeting of the

company at which the resolution for the voluntary winding up is to be proposed, cause a meeting of its

creditors either on the same day or on the next day and shall cause a notice of such meeting to be sent by

registered post to the creditors with the notice of the meeting of the company under section 304.

(2) The Board of Directors of the company shall—

(a) cause to be presented a full statement of the position of the affairs of the company together

with a list of creditors of the company, if any, copy of declaration under section 305 and the estimated

amount of the claims before such meeting; and

(b) appoint one of the directors to preside at the meeting.

(3) Where two-thirds in value of creditors of the company are of the opinion that—

(a) it is in the interest of all parties that the company be wound up voluntarily, the company shall

be wound up voluntarily; or

(b) the company may not be able to pay for its debts in full from the proceeds of assets sold in

voluntary winding up and pass a resolution that it shall be in the interest of all parties if the company

is wound up by the Tribunal in accordance with the provisions of Part I of this Chapter, the company

shall within fourteen days thereafter file an application before the Tribunal.

(4) The notice of any resolution passed at a meeting of creditors in pursuance of this section shall be

given by the company to the Registrar within ten days of the passing thereof.

(5) If a company contravenes the provisions of this section, the company shall be punishable with fine

which shall not be less than fifty thousand rupees but which may extend to two lakh rupees and the

director of the company who is in default shall be punishable with imprisonment for a term which may

extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend

to two lakh rupees, or with both.179

307. Publication of resolution to wind up voluntarily.— (1) Where a company has passed a

resolution for voluntary winding up and a resolution under sub-section (3) of section 306 is passed, it

shall within fourteen days of the passing of the resolution give notice of the resolution by advertisement

in the Official Gazette and also in a newspaper which is in circulation in the district where the registered

office or the principal office of the company is situate.

(2) If a company contravenes the provisions of sub-section (1), the company and every officer of the

company who is in default shall be punishable with fine which may extend to five thousand rupees for

every day during which such default continues.

308. Commencement of voluntary winding up.— A voluntary winding up shall be deemed to

commence on the date of passing of the resolution for voluntary winding up under section 304.

309. Effect of voluntary winding up.— In the case of a voluntary winding up, the company shall

from the commencement of the winding up cease to carry on its business except as far as required for the

beneficial winding up of its business:

Provided that the corporate state and corporate powers of the company shall continue until it is

dissolved.

310. Appointment of Company Liquidator.— (1) The company in its general meeting, where a

resolution of voluntary winding up is passed, shall appoint a Company Liquidator from the panel

prepared by the Central Government for the purpose of winding up its affairs and distributing the assets of

the company and recommend the fee to be paid to the Company Liquidator.

(2) Where the creditors have passed a resolution for winding up the company under sub-section (3) of

section 306, the appointment of the Company Liquidator under this section shall be effective only after it

is approved by the majority of creditors in value of the company:

Provided that where such creditors do not approve the appointment of such Company Liquidator,

creditors shall appoint another Company Liquidator.

(3) The creditors while approving the appointment of Company Liquidator appointed by the company

or appointing the Company Liquidator of their own choice, as the case may be, pass suitable resolution

with regard to the fee of the Company Liquidator.

(4) On appointment as Company Liquidator, such liquidator shall file a declaration in the prescribed

form within seven days of the date of appointment disclosing conflict of interest or lack of independence

in respect of his appointment, if any, with the company and the creditors and such obligation shall

continue throughout the term of his or its appointment.

311. Power to remove and fill vacancy of Company Liquidator.— (1) A Company Liquidator

appointed under section 310 may be removed by the company where his appointment has been made by

the company and, by the creditors, where the appointment is approved or made by such creditors.

(2) Where a Company Liquidator is sought to be removed under this section, he shall be given a

notice in writing stating the grounds of removal from his office by the company or the creditors, as the

case may be.

(3) Where three-fourth members of the company or three-fourth of creditors in value, as the case may

be, after consideration of the reply, if any, filed by the Company Liquidator, in their meeting decide to

remove the Company Liquidator, he shall vacate his office.

(4) If a vacancy occurs by death, resignation, removal or otherwise in the office of any Company

Liquidator appointed under section 310, the company or the creditors, as the case may be, fill the vacancy

in the manner specified in that section.

312. Notice of appointment of Company Liquidator to be given to Registrar.— (1) The company

shall give notice to the Registrar of the appointment of a Company Liquidator along with the name and

particulars of the Company Liquidator, of every vacancy occurring in the office of Company Liquidator,

and of the name of the Company Liquidator appointed to fill every such vacancy within ten days of such

appointment or the occurrence of such vacancy.180

(2) If a company contravenes the provisions of sub-section (1), the company and every officer of the

company who is in default shall be punishable with fine which may extend to five hundred rupees for

every day during which such default continues.

313. Cesser of Board‘s powers on appointment of Company Liquidator.— On the appointment of

a Company Liquidator, all the powers of the Board of Directors and of the managing or whole-time

directors and manager, if any, shall cease, except for the purpose of giving notice of such appointment of

the Company Liquidator to the Registrar.

314. Powers and duties of Company Liquidator in voluntary winding up.— (1) The Company

Liquidator shall perform such functions and discharge such duties as may be determined from time to

time by the company or the creditors, as the case may be.

(2) The Company Liquidator shall settle the list of contributories, which shall be prima facie evidence

of the liability of the persons named therein to be contributories.

(3) The Company Liquidator shall call general meetings of the company for the purpose of obtaining

the sanction of the company by ordinary or special resolution, as the case may require, or for any other

purpose he may consider necessary.

(4) The Company Liquidator shall maintain regular and proper books of account in such form and in

such manner as may be prescribed and the members and creditors and any officer authorised by the

Central Government may inspect such books of account.

(5) The Company Liquidator shall prepare quarterly statement of accounts in such form and manner

as may be prescribed and file such statement of accounts duly audited within thirty days from the close of

each quarter with the Registrar, failing which the Company Liquidator shall be punishable with fine

which may extend to five thousand rupees for every day during which the failure continues.

(6) The Company Liquidator shall pay the debts of the company and shall adjust the rights of the

contributories among themselves.

(7) The Company Liquidator shall observe due care and diligence in the discharge of his duties.

(8) If the Company Liquidator fails to comply with the provisions of this section except sub-section

(5) he shall be punishable with fine which may extend to ten lakh rupees.

315. Appointment of committees.— Where there are no creditors of a company, such company in its

general meeting and, where a meeting of creditors is held under section 306, such creditors, as the case

may be, may appoint such committees as considered appropriate to supervise the voluntary liquidation

and assist the Company Liquidator in discharging his or its functions.

316. Company Liquidator to submit report on progress of winding up.— (1) The Company

Liquidator shall report quarterly on the progress of winding up of the company in such form and in such

manner as may be prescribed to the members and creditors and shall also call a meeting of the members

and the creditors as and when necessary but at least one meeting each of creditors and members in every

quarter and apprise them of the progress of the winding up of the company in such form and in such

manner as may be prescribed.

(2) If the Company Liquidator fails to comply with the provisions of sub-section (1), he shall be

punishable, in respect of each such failure, with fine which may extend to ten lakh rupees.

317. Report of Company Liquidator to Tribunal for examination of persons.— (1) Where the

Company Liquidator is of the opinion that a fraud has been committed by any person in respect of the

company, he shall immediately make a report to the Tribunal and the Tribunal shall, without prejudice to

the process of winding up, order for investigation under section 210 and on consideration of the report of

such investigation, the Tribunal may pass such order and give such directions under this Chapter as it may

consider necessary including the direction that such person shall attend before the Tribunal on a day

appointed by it for that purpose and be examined as to the promotion or formation or the conduct of the

business of the company or as to his conduct and dealings as officer thereof or otherwise.181

(2) The provisions of section 300 shall mutatis mutandis apply in relation to any examination directed

under sub-section (1).

318. Final meeting and dissolution of company.— (1) As soon as the affairs of a company are fully

wound up, the Company Liquidator shall prepare a report of the winding up showing that the property

and assets of the company have been disposed of and its debt fully discharged or discharged to the

satisfaction of the creditors and thereafter call a general meeting of the company for the purpose of laying

the final winding up accounts before it and giving any explanation therefor.

(2) The meeting referred to in sub-section (1) shall be called by the Company Liquidator in such form

and manner as may be prescribed.

(3) If the majority of the members of the company after considering the report of the Company

Liquidator are satisfied that the company shall be wound up, they may pass a resolution for its

dissolution.

(4) Within two weeks after the meeting, the Company Liquidator shall—

(a) send to the Registrar—

(i) a copy of the final winding up accounts of the company and shall make a return in respect

of each meeting and of the date thereof; and

(ii) copies of the resolutions passed in the meetings; and

(b) file an application along with his report under sub-section (1) in such manner as may be

prescribed along with the books and papers of the company relating to the winding up, before the

Tribunal for passing an order of dissolution of the company.

(5) If the Tribunal is satisfied, after considering the report of the Company Liquidator that the process

of winding up has been just and fair, the Tribunal shall pass an order dissolving the company within sixty

days of the receipt of the application under sub-section (4).

(6) The Company Liquidator shall file a copy of the order under sub-section (5) with the Registrar

within thirty days.

(7) The Registrar, on receiving the copy of the order passed by the Tribunal under subsection (5),

shall forthwith publish a notice in the Official Gazette that the company is dissolved.

(8) If the Company Liquidator fails to comply with the provisions of this section, he shall be

punishable with fine which may extend to one lakh rupees.

319. Power of Company Liquidator to accept shares, etc., as consideration for sale of property

of company.— (1) Where a company (the transferor company) is proposed to be, or is in the course of

being, wound up voluntarily and the whole or any part of its business or property is proposed to be

transferred or sold to another company (the transferee company), the Company Liquidator of the

transferor company may, with the sanction of a special resolution of the company conferring on him

either a general authority or an authority in respect of any particular arrangement,—

(a) receive, by way of compensation wholly or in part for the transfer or sale of shares, policies,

or other like interest in the transferee company, for distribution among the members of the transferor

company; or

(b) enter into any other arrangement whereby the members of the transferor company may, in lieu

of receiving cash, shares, policies or other like interest or in addition thereto, participate in the profits

of, or receive any other benefit from, the transferee company:

Provided that no such arrangement shall be entered into without the consent of the secured creditors.

(2) Any transfer, sale or other arrangement in pursuance of this section shall be binding on the

members of the transferor company.

(3) Any member of the transferor company who did not vote in favour of the special resolution and

expresses his dissent therefrom in writing addressed to the Company Liquidator, and left at the registered182

office of the company within seven days after the passing of the resolution, may require the liquidator

either—

(a) to abstain from carrying the resolution into effect; or

(b) to purchase his interest at a price to be determined by agreement or the registered valuer.

(4) If the Company Liquidator elects to purchase the member‘s interest, the purchase money, raised

by him in such manner as may be determined by a special resolution, shall be paid before the company is

dissolved.

320. Distribution of property of company.— Subject to the provisions of this Act as to overriding

preferential payments under section 326, the assets of a company shall, on its winding up, be applied in

satisfaction of its liabilities paripassu and, subject to such application, shall, unless the articles otherwise

provide, be distributed among the members according to their rights and interests in the company.

321. Arrangement when binding on company and creditors.— (1) Any arrangement other than the

arrangement referred to in section 319 entered into between the company which is about to be, or is in the

course of being wound up and its creditors shall be binding on the company and on the creditors if it is

sanctioned by a special resolution of the company and acceded to by the creditors who hold three-fourths

in value of the total amount due to all the creditors of the company.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement,

apply to the Tribunal and the Tribunal may thereupon amend, vary, confirm or set aside the arrangement.

322. Power to apply to Tribunal to have questions determined, etc.— (1) The Company

Liquidator or any contributory or creditor may apply to the Tribunal—

(a) to determine any question arising in the course of the winding up of a company; or

(b) to exercise as respects the enforcing of calls, the staying of proceedings or any other matter,

all or any of the powers which the Tribunal might exercise if the company were being wound up by

the Tribunal.

(2) The Company Liquidator or any creditor or contributory may apply to the Tribunal for an order

setting aside any attachment, distress or execution put into force against the estate or effects of the

company after the commencement of the winding up.

(3) The Tribunal, if satisfied on an application under sub-section (1) or sub-section (2) that the

determination of the question or the required exercise of power or the order applied for will be just and

fair, may allow the application on such terms and conditions as it thinks fit or may make such other order

on the application as it thinks fit.

(4) A copy of an order staying the proceedings in the winding up, made under this section, shall

forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall

make a minute of the order in his books relating to the company.

323. Costs of voluntary winding up.— All costs, charges and expenses properly incurred in the

winding up, including the fee of the Company Liquidator, shall, subject to the rights of secured creditors,

if any, be payable out of the assets of the company in priority to all other claims.

PART III.—Provisions applicable to every mode of winding up

324. Debts of all descriptions to be admitted to proof.— In every winding up (subject, in the case

of insolvent companies, to the application in accordance with the provisions of this Act or of the law of

insolvency), all debts payable on a contingency, and all claims against the company, present or future,

certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the

company, a just estimate being made, so far as possible, of the value of such debts or claims as may be

subject to any contingency, or may sound only in damages, or for some other reason may not bear a

certain value.183

325. Application of insolvency rules in winding up of insolvent companies.— (1) In the winding

up of an insolvent company, the same rules shall prevail and be observed with regard to—

(a) debts provable;

(b) the valuation of annuities and future and contingent liabilities; and

(c) the respective rights of secured and unsecured creditors,

as are in force for the time being under the law of insolvency with respect to the estates of persons

adjudged insolvent:

Provided that the security of every secured creditor shall be deemed to be subject to a paripassu

charge in favour of the workmen to the extent of the workmen‘s portion therein, and, where a secured

creditor, instead of relinquishing his security and proving his debts, opts to realise his security,—

(i) the liquidator shall be entitled to represent the workmen and enforce such charge;

(ii) any amount realised by the liquidator by way of enforcement of such charge shall be applied

rateably for the discharge of workmen‘s dues; and

(iii) so much of the debts due to such secured creditor as could not be realised by him or the

amount of the workmen‘s portion in his security, whichever is less, shallrankparipassu with the

workmen‘s dues for the purposes of section 326.

(2) All persons under sub-section (1) shall be entitled to prove and receive dividends out of the assets

of the company under winding up, and make such claims against the company as they respectively are

entitled to make by virtue of this section:

Provided that if a secured creditor, instead of relinquishing his security and proving his debts,

proceeds to realise his security, he shall be liable to pay his portion of the expenses incurred by the

liquidator, including a provisional liquidator, if any, for the preservation of the security before its

realisation by the secured creditor.

Explanation.—For the purposes of this sub-section, the portion of expenses incurred by the liquidator

for the preservation of a security which the secured creditor shall be liable to pay shall be the whole of the

expenses less an amount which bears to such expenses the same proportion as the workmen‘s portion in

relation to the security bears to the value of the security.

(3) For the purposes of this section, section 326 and section 327,—

(a) ―workmen‘‘, in relation to a company, means the employees of the company, being workmen

within the meaning of clause (s) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947);

(b) ―workmen‘s dues‘‘, in relation to a company, means the aggregate of the following sums due

from the company to its workmen, namely:—

(i) all wages or salary including wages payable for time or piece work and salary earned

wholly or in part by way of commission of any workman in respect of services rendered to the

company and any compensation payable to any workman under any of the provisions of the

Industrial Disputes Act, 1947 (14 of 1947);

(ii) all accrued holiday remuneration becoming payable to any workman or, in the case of his

death, to any other person in his right on the termination of his employment before or by the

effect of the winding up order or resolution;

(iii) unless the company is being wound up voluntarily merely for the purposes of

reconstruction or amalgamation with another company or unless the company has, at the

commencement of the winding up, under such a contract with insurers as is mentioned in section

14 of the Workmen‘s Compensation Act, 1923 (8 of 1923), rights capable of being transferred to

and vested in the workmen, all amount due in respect of any compensation or liability for

compensation under the said Act in respect of the death or disablement of any workman of the

company;184

(iv) all sums due to any workman from the provident fund, the pension fund, the gratuity fund

or any other fund for the welfare of the workmen, maintained by the company;

(c) ―workmen‘s portion‘‘, in relation to the security of any secured creditor of a company, means

the amount which bears to the value of the security the same proportion as the amount of the

workmen‘s dues bears to the aggregate of the amount of workmen‘s dues and the amount of the debts

due to the secured creditors.

Illustration

The value of the security of a secured creditor of a company is Rs. 1,00,000. The total amount of the

workmen‘s dues is Rs. 1,00,000. The amount of the debts due from the company to its secured creditors is

Rs. 3,00,000. The aggregate of the amount of workmen‘s dues and the amount of debts due to secured

creditors is Rs. 4,00,000. The workmen‘s portion of the security is, therefore, one-fourth of the value of

the security, that is Rs. 25,000.

326. Overriding preferential payments.— (1) Notwithstanding anything contained in this Act or

any other law for the time being in force, in the winding up of a company,—

(a) workmen‘s dues; and

(b) debts due to secured creditors to the extent such debts rank under clause (iii) of the proviso to

sub-section (1) of section 325 paripassu with such dues,

shall be paid in priority to all other debts:

Provided that in case of the winding up of a company, the sums towards wages or salary referred to in

sub-clause (i) of clause (b) of sub-section (3) of section 325, which are payable for a period of two years

preceding the winding up order or such other period as may be prescribed, shall be paid in priority to all

other debts (including debts due to secured creditors), within a period of thirty days of sale of assets and

shall be subject to such charge over the security of secured creditors as may be prescribed.

(2) The debts payable under the proviso to sub-section (1) shall be paid in full before any payment is

made to secured creditors and thereafter debts payable under that sub-section shall be paid in full, unless

the assets are insufficient to meet them, in which case they shall abate in equal proportions.

327. Preferential payments.— (1) In a winding up, subject to the provisions of section 326, there

shall be paid in priority to all other debts,—

(a) all revenues, taxes, cesses and rates due from the company to the Central Government or a

State Government or to a local authority at the relevant date, and having become due and payable

within the twelve months immediately before that date;

(b) all wages or salary including wages payable for time or piece work and salary earned wholly

or in part by way of commission of any employee in respect of services rendered to the company and

due for a period not exceeding four months within the twelve months immediately before the relevant

date, subject to the condition that the amount payable under this clause to any workman shall not

exceed such amount as may be notified;

(c) all accrued holiday remuneration becoming payable to any employee, or in the case of his

death, to any other person claiming under him, on the termination of his employment before, or by the

winding up order, or, as the case may be, the dissolution of the company;

(d) unless the company is being wound up voluntarily merely for the purposes of reconstruction

or amalgamation with another company, all amount due in respect of contributions payable during the

period of twelve months immediately before the relevant date by the company as the employer of

persons under the Employees‘ State Insurance Act, 1948 (34 of 1948) or any other law for the time

being in force;

(e) unless the company has, at the commencement of winding up, under such a contract with any

insurer as is mentioned in section 14 of the Workmen‘s Compensation Act, 1923 (8 of 1923), rights

capable of being transferred to and vested in the workmen, all amount due in respect of any185

compensation or liability for compensation under the said Act in respect of the death or disablement

of any employee of the company:

Provided that where any compensation under the said Act is a weekly payment, the amount

payable under this clause shall be taken to be the amount of the lump sum for which such weekly

payment could, if redeemable, be redeemed, if the employer has made an application under that Act;

(f) all sums due to any employee from the provident fund, the pension fund, the gratuity fund or

any other fund for the welfare of the employees, maintained by the company; and

(g) the expenses of any investigation held in pursuance of sections 213 and 216, in so far as they

are payable by the company.

(2) Where any payment has been made to any employee of a company on account of wages or salary

or accrued holiday remuneration, himself or, in the case of his death, to any other person claiming through

him, out of money advanced by some person for that purpose, the person by whom the money was

advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid-up

to the amount by which the sum in respect of which the employee or other person in his right would have

been entitled to priority in the winding up has been reduced by reason of the payment having been made.

(3) The debts enumerated in this section shall—

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet

them, in which case they shall abate in equal proportions; and

(b) so far as the assets of the company available for payment to general creditors are insufficient

to meet them, have priority over the claims of holders of debentures under any floating charge created

by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(4) Subject to the retention of such sums as may be necessary for the costs and expenses of the

winding up, the debts under this section shall be discharged forthwith so far as the assets are sufficient to

meet them, and in the case of the debts to which priority is given under clause (d) of sub-section (1),

formal proof thereof shall not be required except in so far as may be otherwise prescribed.

(5) In the event of a landlord or other person distraining or having distrained on any goods or effects

of the company within three months immediately before the date of a winding up order, the debts to

which priority is given under this section shall be a first charge on the goods or effects so distrained on or

the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall

have the same rights of priority as the person to whom the payment is made.

(6) Any remuneration in respect of a period of holiday or of absence from work on medical grounds

through sickness or other good cause shall be deemed to be wages in respect of services rendered to the

company during that period.

Explanation.—For the purposes of this section,—

(a) the expression ―accrued holiday remuneration‖ includes, in relation to any person, all sums

which, by virtue either of his contract of employment or of any enactment including any order made

or direction given thereunder, are payable on account of the remuneration which would, in the

ordinary course, have become payable to him in respect of a period of holiday, had his employment

with the company continued until he became entitled to be allowed the holiday;

(b) the expression ―employee‖ does not include a workman; and

(c) the expression ―relevant date‖ means—

(i) in the case of a company being wound up by the Tribunal, the date of appointment or first

appointment of a provisional liquidator, or if no such appointment was made, the date of the

winding up order, unless, in either case, the company had commenced to be wound up voluntarily

before that date; and186

(ii) in any other case, the date of the passing of the resolution for the voluntary winding up of

the company.

328. Fraudulent preference.— (1) Where a company has given preference to a person who is one of

the creditors of the company or a surety or guarantor for any of the debts or other liabilities of the

company, and the company does anything or suffers anything done which has the effect of putting that

person into a position which, in the event of the company going into liquidation, will be better than the

position he would have been in if that thing had not been done prior to six months of making winding up

application, the Tribunal, if satisfied that, such transaction is a fraudulent preference may order as it may

think fit for restoring the position to what it would have been if the company had not given that

preference.

(2) If the Tribunal is satisfied that there is a preference transfer of property, movable or immovable,

or any delivery of goods, payment, execution made, taken or done by or against a company within six

months before making winding up application, the Tribunal may order as it may think fit and may declare

such transaction invalid and restore the position.

329. Transfers not in good faith to be void.— Any transfer of property, movable or immovable, or

any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course

of its business or in favour of a purchaser or encumbrance in good faith and for valuable consideration, if

made within a period of one year before the presentation of a petition for winding up by the Tribunal or

the passing of a resolution for voluntary winding up of the company, shall be void against the Company

Liquidator.

330. Certain transfers to be void.— Any transfer or assignment by a company of all its properties or

assets to trustees for the benefit of all its creditors shall be void.

331. Liabilities and rights of certain persons fraudulently preferred.— (1) Where a company is

being wound up and anything made, taken or done after the commencement of this Act is invalid under

section 328 as a fraudulent preference of a person interested in property mortgaged or charged to secure

the company‘s debt, then, without prejudice to any rights or liabilities arising, apart from this provision,

the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had

undertaken to be personally liable as a surety for the debt, to the extent of the mortgage or charge on the

property or the value of his interest, whichever is less.

(2) The value of the interest of the person preferred under sub-section (1) shall be determined as at the

date of the transaction constituting the fraudulent preference, as if the interest were free of all

encumbrances other than those to which the mortgage or charge for the debt of the company was then

subject.

(3) On an application made to the Tribunal with respect to any payment on the ground that the

payment was a fraudulent preference of a surety or guarantor, the Tribunal shall have jurisdiction to

determine any questions with respect to the payment arising between the person to whom the payment

was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not

necessary so to do for the purposes of the winding up, and for that purpose, may give leave to bring in the

surety or guarantor as a third party as in the case of a suit for the recovery of the sum paid.

(4) The provisions of sub-section (3) shall apply mutatis mutandis in relation to transactions other

than payment of money.

332. Effect of floating charge.— Where a company is being wound up, a floating charge on the

undertaking or property of the company created within the twelve months immediately preceding the

commencement of the winding up, shall, unless it is proved that the company immediately after the

creation of the charge was solvent, be invalid, except for the amount of any cash paid to the company at

the time of, or subsequent to the creation of, and in consideration for, the charge, together with interest on

that amount at the rate of five per cent. per annum or such other rate as may be notified by the Central

Government in this behalf.