

THE COMPANIES ACT, 2013

The review and redrafting of the Companies Act, 1956 was taken up by the Ministry of Corporate Affairs on the basis of a detailed consultative process. The Companies Act, 2013 was passed by Lok Sabha on the 18th of December 2012 and passed by the Rajya Sabha on 8th August 2013 and is all set to replace the 57 year old Companies Act, 1956. The Companies Act, 2013 received the assent of the president on 29th August, 2013 and was notified in the Gazette of India on 30th August, 2013.

In the Companies Act 2013, various new provisions have been included (which are not provided for in Companies Act, 1956) for better governance of the companies. Some of those new provisions are:

- Requirement to constitute Remuneration and Nomination Committee and Stakeholders
- Grievances Committee
- Granting of More powers to Audit Committee
- Specific section pertaining to duties of directors
- Mode of appointment of Independent Directors and their tenure
- Code of Conduct for Independent Directors
- Rotation of Auditors and restriction on Auditor's for providing non-audit services
- Enhancement of liability of Auditors
- Disclosure and approval of RPTs
- Mandatory Auditing Standards
- Enabling Shareholders Associations/Group of Shareholders for taking class action suits and reimbursement of the expenses out of Investor Education and Protection Fund

- Constitution of National Financial Reporting Authority, an independent body to take action against the Auditors in case of professional mis-conduct
- Requirement to spend on CSR activities

The introduction of this basket of measures offers immense opportunities for all professionals also. India has suffered many corporate frauds and scams in the recent years and the new law proposes to plug the loopholes, smoothen out the wrinkles and speed up the corporate laws reform process.

After discussing the provisions of the Companies Act 2013, the law making powers of the Parliament of India have been discussed in brief for more clarity on the subject.

The Background of Companies Act, 2013

The Companies Act, 1956 is all set to be replaced by the Companies Act 2013 which was passed by the Lok Sabha on 18th December 2012 and passed by the Rajya Sabha on 8th August 2013.

A brief background to the Introduction and status of the Companies Act 2013 is as under:

- Companies (Amendment) Bill, 2003 had been introduced by Ministry of Corporate Affairs (MCA) (then Department of Company Affairs) in the Rajya Sabha on 7.5.2003.
- Later on, a large number of changes were found to be necessary in the Bill. The Ministry of Corporate Affairs took up a comprehensive revision of the Companies Act, 1956 (the Act) in 2004.
- A ‘Concept Paper on new Company Law’ was placed on the website of the Ministry on 4th August, 2004. The inputs received were put to a detailed examination in the Ministry. The Government also constituted an Expert Committee on Company Law under the Chairmanship of Dr. J.J. Irani on 2nd

December 2004 to advise on new Companies Bill. The Committee submitted its report to the Government on 31st May 2005.

- Companies Bill 2008 was introduced by the Government in the Lok Sabha on October 23, 2008.
- Due to dissolution of the 14th Lok Sabha, the Companies Bill, 2008 lapsed. The Government decided to re-introduce the Companies Bill, 2008 as the Companies Bill, 2009, without any change except for the Bill year and the Republic year. The Ministry of Corporate Affairs had introduced the Companies Bill, 2009 in the Lok Sabha on August 3, 2009.
- The 2009 Bill was referred to the Parliamentary Standing Committee on Finance on 9th September, 2009 which gave its report on 31st August, 2010.
- The standing committee, headed by the then finance minister, Yashwant Sinha, had given its recommendations on the Companies Bill, 2009, which has since been withdrawn (The Companies Act of 2013 incorporates 162 recommendations made by the Standing Committee.)
- In view of numerous amendments to the Companies Bill, 2009 arising out of the recommendations of the Parliamentary Standing Committee on Finance and suggestions of the stakeholders, the Central Government withdrew the Companies Bill 2009 and introduced a fresh bill – The Companies Bill, 2011.
- The 2011 bill was introduced in Parliament on Wednesday, 14th December 2011.
- The Companies Bill, 2011 was referred to the Standing Committee on Finance on 5th January, 2012 after an objection was raised against it in Parliament.
- In the meanwhile, a corrigendum to the Companies Bill, 2011 had been issued that contained some changes of a substantive nature.
- The Standing Committee Report came on 26th June 2012.
- The Union Cabinet had issued a Press Release dated 04.10.2012 setting out amendments to the Companies Bill, which had been approved and the final draft of the Companies Bill, 2011 was prepared after considering the recommendations of the Parliamentary Standing Committee and taking the inputs from the finance and law ministries as well as the Planning Commission.

- Based on the Standing Committee's recommendations, the Bill was amended and introduced as the Companies Bill, 2012.
- The Lok Sabha on 18th December, 2012 gave its approval for the Companies Act 2013, paving the way for a new modern company law. The Companies Act 2013 was passed by a voice vote in Lok Sabha in a marathon late night sitting.
- Subsequently the Rajya Sabha passed the Act with amendments at its sitting held on the 8th August, 2013 and returned it to Lok Sabha on the 12th August, 2013.
- The motion that the amendments made by Rajya Sabha in the Act be agreed to, was moved in the Lok Sabha. The motion was adopted and the amendments were agreed to on 13th August, 2013 and the same was conveyed to the Rajya Sabha for its concurrence.
- The Companies Act, 2013 received the assent of the president on 29th August, 2013 and was notified in the Gazette of India on 30th August, 2013.
- Towards the proper implementation of the companies Act 2013, the first tranche of Draft Rules on 16 chapters have been placed on the website of the Ministry of Corporate Affairs (MCA) on 9th September, 2013 for inviting comments and objections/suggestions from the general public/stakeholders.
- The second tranche of draft rules on 9 chapters have also been placed on the website of the Ministry on 20th September, 2013 for inviting comments and objections/suggestions from the general public/stakeholders.
- The Ministry of corporate Affairs has also notified 98 sections for implementation of the provisions of the companies Act, 2013 on 12th September, 2013. Rest of the provisions will come into force on such date as the Central Government may appoint by notification in the Official Gazette.

Amendments to the Companies Act (as passed by the Lok Sabha)

ENACTING FORMULA

1. That at page 1, line 1, for the word "Sixty-third" the word "Sixty-fourth" be substituted.

SECTION 1

2. That at page 1, line 4, for the figure “2012” the figure “2013” be substituted.

SCHEDULE I

3. That at page 241, line 37, for the figure “2011”, the figure “2013” be substituted.

4. That at page 254, line 26, for the figure “2011”, the figure “2013” be substituted.

5. That at page 254, line 33, for the figure “2011”, the figure “2013” be substituted.

6. That at page 258, line 26, for the figure “2011”, the figure “2013” be substituted.

7. That at page 258, line 36, for the figure “2011”, the figure “2013” be substituted.

SCHEDULE III

8. That at page 265, line 13, for the figure “2011”, the figure “2013” be substituted.

SCHEDULE V

9. That at page 286, line 19, for the figure “2012”, the figure “2013” be substituted.

Notified sections of the Companies Act, 2013

Section	Description
2(1)	Abridged prospectus
2(3)	Alteration
2(4)	Appellate tribunal
2(5)	Articles
2(6)	Associate company
2(8)	Authorised capital
2(9)	Banking company
2(10)	Board of directors or board
2(11)	Body corporate or corporation
2(12)	Book and paper and book or paper
2(14)	Branch office
2(15)	Called-up capital
2(16)	Charge
2(17)	Chartered accountant
2(18)	Chief executive officer

2(19)	Chief financial officer
2(20)	Company
2(21)	Company limited by guarantee
2(22)	Company limited by shares
2(24)	Company secretary
2(25)	Company secretary in practice
2(26)	Contributory
2(27)	Control
2(28)	Cost accountant
2(29) except (iv)	Court (except sub clause iv which speaks about Special Court)
2(30)	Debenture
2(32)	Depository
2(33)	Derivative
2(34)	Director
2(35)	Dividend
2(36)	Document
2(37)	Employees' stock option
2(38)	Expert
2(39)	Financial institution
2(40)	Financial statement
2(43)	Free reserves
2(44)	Global depository receipt
2(45)	Government company
2(46)	Holding company
2(49)	Interested director
2(50)	Issued capital
2(51)	Key managerial personnel
2(52)	Listed company
2(53)	Manager

2(54)	Managing director
2(55)	Member
2(56)	Memorandum
2(57)	Net worth
2(58)	Notification
2(59)	Officer
2(60)	Officer who is in default
2(61)	Official liquidator
2(63)	Ordinary or special resolution
2(64)	Paid up share capital
2(65)	Postal ballot
2(66)	Prescribed
2(67) except (ix)	Previous company law (except sub clause (ix) relating to Registration of Companies (Sikkim) Act, 1961
2(68)	Private company
2(69)	Promoter
2(70)	Prospectus
2(71)	Public company
2(72)	Public financial institution
2(73)	Recognised stock exchange
2(74)	Register of companies
2(75)	Registrar
2(76)	Related party
2(77)	Relative
2(78)	Remuneration
2(79)	Schedule
2(80)	Scheduled bank
2(81)	Securities
2(82)	Securities and exchange board

2(84)	Share
2(86)	Subscribed capital
2(87) except proviso and explanation (d)	Subsidiary company or subsidiary (except the proviso and explanation (d))
2(88)	Sweat equity shares
2(89)	Total voting power
2(90)	Tribunal
2(91)	Turnover
2(92)	Unlimited company
2(93)	Voting right
2(94)	Whole time director
2(95)	Words & expression borrowed from SCRA, SEBI and Depositories Act
19	Subsidiary company not to hold shares in its holding company
21	Authentication of documents, proceedings and contracts
22	Execution of bill of exchange etc.
23 (except clause (b) of sub-section (1) and sub-section (2))	Public offer and Private Placement except Private Placement related sub Section 1(a) and 1(b)
24	Power of SEBI to regulate issue and transfer of securities etc.
25 (except sub-section (3))	Document containing offer of securities for sale to be deemed prospectus except sub section (3) dealing with matters to be stated in the prospectus)
29 to 32 (both inclusive)	Public offer of securities to be in dematerialized form; Advertisement of prospectus; Shelf prospectus; Red herring prospectus.

33 (except sub-section (3))	Issue of application forms for securities except sub section (3) dealing with penal provisions
34	Criminal liability for mis-statements in prospectus
35 (except clause (e) of sub-section (1))	Civil liability for mis-statements in prospectus
36 to 38 (both inclusive)	Punishment for fraudulently inducing persons to invest money; Action by affected persons; Punishment for personation for acquisition etc of securities
39 (except sub-section (4))	Allotment of securities by company
40 (except sub-section (6))	Securities to be dealt with in stock exchanges
44	Nature of shares and debentures
45	Numbering of shares
49 to 51 (both inclusive)	Calls on shares of same class to be made on uniform basis; Company to accept unpaid share capital, although not called up; Payment of dividend in proportion to amount paid-up
57 to 60 (both inclusive)	Punishment for personation of shareholder; Refusal of registration and appeal against refusal; Rectification of register of members; Publication of authorized, subscribed and paid up capital
65	Unlimited company to provide for reserve share capital on conversion into limited company
69	Transfer of certain sums to capital redemption reserve account
70 (except sub-section	Prohibition for buy-back in certain

(2))	circumstances
86	Punishment for contravention of provisions of Chapter VI – Registration of charges
91	Power to close register of members or debenture holder or other security holders
100 (except sub-section (6))	Calling of extraordinary general meeting except sub section (6) dealing with reimbursement of expenses
102	Statement to be annexed to notice
103	Quorum for meetings
104	Chairman of meetings
105 (except the 3 rd and 4 th proviso of sub-section (1) and sub-section (7))	Proxies
106	Restriction on voting rights
107	Voting by show of hands
111	Circulation of members' resolution
112	Representation of President and Governors in meetings
113 (except clause (b) of sub-section (1))	Representation of corporations at meeting of companies and of creditors except Clause (b) dealing with the power of corporate creditor to appoint a representative for attending creditors' meeting
114	Ordinary and special resolutions
116	Resolutions passed at adjourned meeting
127	Punishment for failure to distribute dividends
133	Central Government to prescribe accounting standards
161 (except sub-section	Appointment of additional director, alternate

(2))	director and nominee director except Sub-section (2) dealing with appointment of an alternate director)
162	Appointment of directors to be voted individually
163	Option to adopt principle of proportional representation for appointment of directors
176	Defects in appointment of directors not to invalidate actions taken
180 to 183	Restrictions on powers of Board; Company to contribute to bona fide and charitable funds, etc; Prohibitions and restrictions regarding political contributions; Power of boards and other persons to make contributions to national defence fund etc.
185	Loan to directors etc.
192	Restriction on non-cash transactions involving directors
194	Prohibition on forward dealing in securities of company by director of key managerial personnel
195	Prohibition on insider trading of securities
202	Compensation for loss of office of managing or whole-time director or manager
379	Application of Act to foreign companies
382 & 383	Display of name, etc, of foreign company; Service on foreign company
386 (except clause (a))	Interpretation
394	Annual reports on Government Companies
405	Power of Central Government to direct

	companies to furnish information or statistics
407 to 414	Definitions, constitutions of Tribunal / appellate tribunal, qualification/power and terms of office of President/ member etc.
439	Offence to be non-cognizable
443 to 453 (both inclusive)	Power of central government to appoint company prosecutor; Appeal against acquittal; Compensation for accusation without reasonable cause; Application of fines and punishment provisions
456 to 463 (both inclusive)	Protection of action taken in good faith; Non-disclosure of information in certain cases; Delegation by Central Government of its powers and functions; Power of Central Government or Tribunal to accord approval etc.; Condonation of delay in certain cases; Annual report by Central Government; Power to exempt class or classes of companies from provisions of the Act; Power of court to grant relief in certain cases
467 to 470 (both inclusive)	Power of Central government to amend schedules, to make rules for winding up, to make rules and to remove difficulties

SALIENT FEATURES OF THE COMPANIES ACT, 2013

The Companies Act 2013 contains 29 Chapters, 7 Schedules, 470 sections as against the Companies Act, 1956 which consists of 658 sections under 13 Parts and 15 schedules. In so far as section numbers are concerned more than 200 sections have been deleted from

the Companies Act, 1956. While this is on one side of it, number of provisions have been removed or discontinued or dispensed with in the existing but revised section/clause numbers. The sections to the Companies Act, 2013 have been categorized into Introduced, Amended sections for easy and quick reference.

Introduced

1. For the first time introduced the concept of One Person Company [Section 2(62)].
2. Expert [Section 2(38)]
3. Inclusive definition of Financial Statement [Section 2(40)]
4. Entrenchment Provisions in Articles of Association (Section 5)
5. Public Offer and Private Placement deals with issue of securities by a public and a private company (Section 23)
6. Class Action Suits (Section 37)
7. E-governance in all company processes (Section 120)
8. Corporate Social Responsibility - 2% of average net profits of the previous three years (Section 135)
9. Mandatory Internal Audit for prescribed classes of companies (Section 138)
10. Mandatory Rotation of auditors for listed companies and other prescribed classes of companies after 1 term of 5 consecutive years in case of individual auditor and after 2 terms of 5 consecutive years for audit firm (Section 139)
11. 5 year tenure for auditor appointed at AGM of company (other than Government Company/ Government controlled Company) instead of annual appointment/ re-appointment
12. Limited Liability Partnership eligible to be appointed as Auditor of Company (Section 141)
13. Auditor not to render certain services (Section 144)
14. Independent Directors [Section 149] 1/3rd of the total number of directors as independent directors - listed public companies
15. Inclusion of at least one woman director on board (Section 149)

16. 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.(Section149 (3))
17. Nomination and Remuneration committee [Section 178(1)]
18. Stakeholders relationship committee [Section 178(5)]
19. Key Managerial Personnel [Section 2(51) and Section 203] Key managerial personnel (KMP) to include Manager or Managing Director (MD) or Chief Executive Officer (CEO), Whole time director, Chief Financial Officer (CFO) and Company Secretary (CS).
20. Insider Trading of Securities Prohibited (Section 195)
21. Statutory Status to the Serious Fraud Investigation Office (SFIO) (Section 211)
22. Specific framework for Merger and Acquisitions of companies. Single forum for approval of mergers and acquisitions (Section 233)
23. Merger or Amalgamation of a Company with Foreign Company (Section 234)
24. Protection to minority shareholders, Class Action Suits for prevention of oppression and mismanagement [Section 245]
25. Registered Valuers (Section 247)
26. Interim administrators or Company administrators [Section 259]
27. Mediation and Conciliation Panel (Section 442)
28. Punishment for Fraud (Section 447)

Amended

1. 'Financial year' in relation to any company or body corporate, means the period ending on the 31st day of March every year (Section 2(41))
1. Limit on maximum number of members of private company increased to 200 from 50 (Section 2(68)(ii))
2. Matter to be stated in Prospectus (Section 26) – Unlike Companies Act, 1956
3. Allotment of Securities by Company (Section 39) – the scope has been widened from shares to 'Securities' defined under Section 2(81). According to Section

- 2(81) 'Securities' means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956
4. Further issues of share capital (Section 62) – No restriction on the nature of companies to which this section is applicable and for the purposes of further issue of capital such shares shall also be offer to employees under a scheme of employees stock option
 5. National Advisory Committee on Accounting Standards (NACAS) renamed as National Financial Reporting Authority (NFRA) and changes in responsibilities and powers (Section 132)
 6. Annual Ratification of Appointment of Auditors [Section 139 (1)]
 7. Mandatory Compliance with Auditing Standards (Section 143)
 8. Audit Committee [Section 177]
 9. Punishment for personation for acquisition etc. of securities (Section 38) – is punishable under Section 447 under punishment for fraud
 10. Automatic re-appointment of existing auditor (without resolution) at AGM where no auditor is appointed/ re-appointed at AGM. The Central Government's role to appoint a person to fill the vacancy has been removed.
 11. Under section 186 dealing with Loan and Investment by Company, except for the provision pertaining to making investment through not more than two layers of investment companies dealt with under sub clause 1, no other provision of Section 186 shall be applicable to a loan made, guarantee given or security provided by a banking company, insurance company, housing finance company in the ordinary course of business and to any acquisition made by a non banking finance company (NBFC) registered under Chapter IIIB of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities and to acquisition made by a company whose principal business is the acquisition of securities and to any acquisition of shares allotted in pursuance of clause (a) of sub section (1) of section 62.
 12. Purchase of Minority Shareholding (Section 236)
 13. Company Liquidators [Section 275]

14. Technical members of the National Company Law Tribunal or the Appellate Tribunal [Section 409(3)]
15. Relaxation of restriction limiting the number of persons in Association or Partnerships etc. at a time to a maximum of 100 [Section 464]
16. No ceiling on number of members/partners as to associations or partnerships formed by professionals regulated by special acts. [Section 464]

CONCEPTS AND AMENDMENTS IN THE COMPANIES ACT, 2013

General

- The Companies Act, 2013 applies to the whole of India and is also applicable to certain companies or bodies corporate governed by Special Acts
- Substantial part of the Companies Act, 2013 will be in form of rules, to be prescribed separately.
- The Government of India has the power to notify different provisions of the Act at different point of time.
- The maximum number of members, which a Private Company can have, is increased from 50, as provided in the Companies Act 1956 (and Companies Bill 2009), to 200 (except in case of One Person Company).
- The definition of Public Company provides that a private subsidiary of a public company shall be deemed to be a public company even though the subsidiary continues to be a private company in the Articles.
- The scope of “officer who is in default” has been broadened. The share transfer agents, registrars and merchant bankers to the issue or transfer related to issue of shares & Chief Financial Officer are also brought under its ambit. Directors who are aware of the default by way of participation in board meeting or receiving the minutes without objecting to the same will also be included in this category even if company has Managing Director /Whole Time Director / other Key Managerial Personnel.

- Defaults of procedural nature to be penalized by levy of monetary penalties by adjudicating officers not below level of Registrar. Appeals against such orders will lie with designated higher authorities.

CHAPTER I – PRELIMINARY

DEFINITIONS

While close to 30 definitions have been introduced by the Companies Act, 2013 in addition to the definitions under Companies Act, 1956. Some of the important definitions in the Companies Act, 2013 are given hereunder.

1. **“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 purpose of this section, “significant influence” means control of at least twenty percent of total share capital, or of business decisions under an agreement. (Section 2(6))
2. **“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. (Section 2(7))
3. **“Chief Executive Officer”** means an officer of a company, who has been designated as such by it (Section 2(18))
4. **“Chief Financial Officer”** means a person appointed as the Chief Financial Officer of a company (Section 2(19))

5. **“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. (Section 2(37))
6. **“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; and
 - (iv) Any explanatory note attached 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. (Section 2(40))

7. **“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:
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 section;
(Section 2(41))
8. **“Global Depository Receipt (GDR)”** means any instrument in the form of a deposit receipt, by whatever name called created by a foreign depository outside Indian and authorized by a company making an issue of such depository receipts.
(Section 2(44))
9. **“Independent Director”** means an independent director referred to in sub-section (5) of section 149. (Section 2(47))
10. **“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

(iv) such other officer as may be prescribed; (Section 2(51))
11. **“One Person Company”** means a company which has only one person as a member. (Section 2(62))
12. **“Promoter”** means a person who-
- (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-clauses (b) and (c) shall apply to a person who is acting in a professional capacity; (Section 2(69))

13. **“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; (Section 2(76))

14. **“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 section 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; (Section 2(85))

15. **“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; (Section 2(91))

CHAPTER II - INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO (SECTIONS 3 TO 22)

I Types of Companies

A. One Person Company -

The concept of a “one-person company”, or OPC, has been introduced in the Act, and the intent is apparently to permit entrepreneurship of a single individual to obtain the benefit of a corporate form of organization.

According to Section 2(62) of the Companies Act, 2013 “**One Person Company**” means a company which has only one person as a member. It is a one shareholder corporate entity, where legal and financial liability is limited to the company only.

Some important features of the Act in this regard are:

- The One Person Company will be formed as a private limited company.
- “One Person Company” means a company which has only one person as a member (section 2(62))
- The words “One Person Company” shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved (Proviso to Section 12(3))

- One Person Company may be formed for any lawful purpose as a private Company with one member (Section 3(1)(c) of the Companies Act, 2013) and shall have a minimum of 1 director (Section 149(1)(a))
- The memorandum of a One Person Company has to prescribe the name of the person who in the event of death of the subscriber shall become the member of the company. (Section 4(1)(f) of the Companies Act, 2013)
- Annual return of a One Person Company should be signed by the Company Secretary, or where there is no Company Secretary, by one director of the company. (proviso to Section 92 (1))
- Provision of Annual General Meeting is not applicable for a One Person Company. (Section 96(1))
- Applicability of Chapter VII on Management and Administration - The provisions of section 98 and sections 100 to 111 (both inclusive) shall not apply to a One Person Company (Section 122(1))
- Financial Statement, Board's Report etc - The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the Chairman where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and Chief Executive Officer, if any, if he is a director in the company and by Chief Financial Officer and company secretary of the company, or, in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon (Section 134(1))
- Company to have Board of Directors - Every company shall have a Board of Directors consisting of individuals as directors and shall have 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 (Section 149(1)(a))
- Appointment of Directors - 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 (section 152(1))

- Meetings of Board - 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 (Section 173)
- Where One person Company enters into a contract with the sole member of the company who is also a director (excluding contracts entered into by the company in the ordinary course of business), the company should, unless the contract is in writing, ensure that the terms of the contract or offer are contained in the memorandum or are recorded in the minutes of the first Board meeting held after entering into the contract. The Company shall inform the Registrar about every such contract within 15days of the date of approval by the Board. (Section 193)

B. Small Company –

The concept of Small Company has also been introduced in the Companies Act, 2013.

According to (Section 2(85) of the Companies Act, 2013, “**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 section 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;

C. Classification of companies –

The Companies Act, 1956 broadly classifies the companies into private and public companies and provides for regulatory environment on the basis of such classification. However, with the growth of the economy and increase in the complexity of business operation, the forms of corporate organizations keep on changing. Classification of Companies can therefore take many shapes and a multiple classification of companies can be made.

- i) On the basis of size:
 - a. Small companies
 - b. Other companies
- ii) On the basis of number of members:
 - a. One person company
 - b. Private companies
 - c. Public companies
- iii) On the basis of control:
 - a. Holding companies

b. Subsidiary companies

c. Associate Company

iv) On the basis of liability

a. Limited

I) by Shares

II) by Guarantee (with or without share capital)

b. Unlimited

v) On the basis of manner of access to capital

a. Listed companies

b. Un-listed companies

vi) On the basis of nature of business

a. Companies with charitable objects etc. (Section 8 of the Companies Act 2013)

b. Dormant Company (Section 455 of the Companies Act 2013)

c. Companies incorporated outside India (Chapter XXII of the Companies Act 2013)

d. Government Companies (Chapter XXIII of the Companies Act 2013)

e. Nidhi Companies (Chapter XXVI of the Companies Act 2013)

D. Commencement of Business –

The provisions with regard to Certificate of Commencement of business have been dispensed with under the Companies Act, 2013. Only declaration and verification is required by the Public Company under the Companies Act, 2013.

II. Incorporation of company

- 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. (Section 5)
- The provisions for entrenchment 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.
- 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.
- The number of documents to be submitted for registration has been increased under the Companies Act, 2013 compared to the lesser number of documents to be submitted under the Companies Act, 1956.
- Section 7(1) of Companies Act, 2013 lists the documents and information for registration
- Documents to be filed at the time of incorporation should also contain name of first directors, their Director Identification Number (DIN), address etc, along with their consent and particulars of interest. (Section 7(1)(f) of Companies Act, 2013)

- The provision with regard to printing of Memorandum under Section 15 of the Companies Act, 1956 has been dispensed with under the Companies Act, 2013.
- 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 Chapter II of the Act. (Section 18(1))
- In the Memorandum of Association of the Company, there is no requirement as to bifurcation of the objects clause into main, ancillary and other objects. Only objects for which company is incorporated along with matters considered necessary for its furtherance shall be mentioned. The Company cannot provide for other object clause.
- Articles of Association of the Company may contain provision with respect to entrenchment. Entrenchment provisions provide a more restrictive procedure than passing a special resolution for altering certain provisions in the Articles.
- For commencement of business by public/private Company, following needs to be filed with the registrar of companies
 - o declaration by director in prescribed form providing that the subscribers have paid the value of shares agreed to be taken by them, and
 - o Confirmation that the company has filed a verification of its registered office, with the Registrar.
- 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 unless a special resolution is passed by the company and other requirements of advertisement and exit opportunity to dissenting shareholders is complied with, there was no such requirement under the Companies Act 1956

CHAPTER III - PROSPECTUS AND ALLOTMENT OF SECURITIES **(SECTIONS 23 TO 42)**

Part I – Public Offer

I. Prospectus and Allotment of Securities

- Issues of all types of securities are covered under Section 39 of the Companies Act, 2013 dealing with Allotment of Securities by Company, where as only shares and debentures were covered under section 69 and 75 of the Companies Act 1956. Section 2(81) of the Companies Act, 2013 defines Securities to mean securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956; Accordingly Sec 2(h) of the Securities Contracts (Regulation) Act, 1956 defines Securities “securities” to include—
 - (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
 - (ia) derivative;
 - (ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;]
 - (ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;]
 - (id) units or any other such instrument issued to the investors under any mutual fund scheme;]

(ii) Government securities;

(iia) such other instruments as may be declared by the Central Government to be securities; and

(iii) rights or interest in securities;

- Section 23 of the Companies Act, 2013 provides the manner in which
 - A public company may issue securities namely
 - To public through prospectus
 - Through private placement
 - Through rights issues or a bonus issue
 - A private company may issue securities
 - by way of rights issue or bonus issue
 - through private placement

All of the above in accordance with the provisions of this Act.

- Disgorgement provisions to deter personation for acquiring securities (Section 38)
- New enabling provisions for issue of GDR's - Companies may now issue Global Depository Receipt by passing a special resolution in its general meeting and subject to such conditions as may be prescribed.
- The content to be prescribed in the Prospectus has now been made more detailed.
- 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 (Section 27(1))
- 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 (Section 27(2))

- The Act provides provisions with respect to offer of sale by existing shareholders of the company.
- Any company specified by Securities and Exchange Board (SEBI) Regulations in this regard, may file a shelf prospectus (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) 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.
- A company proposing to make an offer of securities may issue a Red Herring prospectus (a prospectus which does not include complete particulars of the quantum or price of the securities included therein) prior to the issue of a prospectus.
- Provisions relating to Statement in lieu of Prospectus in the Companies Act 1956, omitted from the Companies Act 2013
- If it is proved that prospectus was issued with intent to defraud the applicants or any other person or for a fraudulent purpose, the directors, promoters, experts etc. shall be personally responsible without any limitation of liability for all or any of the losses / damage that may have been incurred by any person who subscribed to the securities on the basis of such prospectus (Section 35(3))
- Class Action Suits in case of misleading prospectus - A suit can be filed or any action can be taken by any person, group of persons or association of persons who have been affected by misleading statement or inclusion or omission of any matter in the prospectus. (Section 37 of Companies Act, 2013)

Part II – Private Placement

Offer or invitation for subscription of securities on private placement

- A Private company may issue securities only through private placement by complying with the provisions of Part II of Chapter III.
- Raising of capital by Private Placement basis – new provisions to ensure more transparency and accountability (Section 42)
- Section 42 lays down that an offer or invitation of securities through private placement may be made in the form and manner prescribed subject to compliance with the following conditions prescribed:
 - (a) the offer or invitation in a financial year, shall be made to such number of persons, excluding qualified institutional buyers, and on such conditions (including the maximum amount to be raised) as may be prescribed;
 - (b) the value of such offer or invitation shall be with an investment size of such amount as may be prescribed; and
 - (c) the company shall not issue any prospectus for such offer or invitation and such offer or invitation shall be made through a private placement offer letter
- Qualified Institutional Buyer (QIB) shall not be covered under the provisions related to Private Placement
- 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 provided in this regard by SEBI.(Explanation I to Section 42(2))
- Any company making any offer or invitation of securities under private placement has to allot the securities within 60 days of receipt of application money. (Section 42(6))

CHAPTER IV – SHARE CAPITAL AND DEBENTURES - (SECTIONS 43 -72)

Share Capital and Debentures

- Equity share capital has now been defined
- Equity share capital, with reference to any company limited by shares, means all share capital which is not preference share capital and 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—
 - 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
 - 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 [section 43].
- 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 Rs.10 crore whichever is higher. Stringent penalties have also been imposed for defaulting officers of the company [Section 46(5)]
- Where any depository has transferred shares with an intention to defraud a person, it shall be punishable under section 447 [Section 46(6)]
- Where dividends payable in respect of a class of preference shares are in arrears for a period of 2 years or more, such class of preference shareholders will have a right to vote on all resolutions placed before a meeting of the company. This voting right is irrespective whether the preference shares are cumulative or non-cumulative. (Section 47)

- If variation of rights by one class of shareholders affects the rights of any other class of shareholders, the consent of atleast 75% of such other class of shareholders shall also be obtained and provisions of Section 48 shall apply to such variation
- Security Premium Account may also be applied for the purchase of its own shares or other securities [Section 52(2)(e)]
- Company cannot issue shares at a discount other than as sweat equity shares (Section 53)
- As opposed to Companies Act, 1956, under the new Act, a company may issue preference shares redeemable after 20 years for such infrastructure projects as may be specified subject to redemption of specified % of preference shares on annual basis at the option of the preference shareholder. The term Infrastructure projects has been defined for the purpose of this section as the infrastructure projects specified in Schedule VI to the Act.
- The provisions related to further issue of capital will now be applicable to all types of Companies.
- Apart from existing shareholders, if the company having share capital at any time, proposes to increase its subscribed capital by the issue of further shares, such shares may also be offered to employees by way of Employee Stock Options subject to approval of shareholders by way of special resolution and subject to prescribed conditions.
- New enabling provisions for issue of Bonus Shares provide that a company may issue fully paid up bonus shares to its members, in any manner out of – i. Its free reserves; ii. The Security premium account or iii. The Capital Redemption Reserve Account. No issue of bonus shares shall be made by capitalizing reserves created by the revaluation of assets. Bonus shares shall not be issued in lieu of dividend.
- The securities or other interest of any member in a public company shall be freely transferable (Section 58(2). Provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.

- The provision on Further issue of share capital (hitherto covered under Section 81 is covered under Section 62 of the Companies Act, 2013) has been modified to remove restriction on the type of company issuing further share to whom this section is made applicable as is clear from clause 3 of the Section 62 and further the section also provides for issue of further capital to employees by way of ESOP in addition to the existing shareholders
- Section 66 deals with reduction of share capital. It mandates approval of National Company Law Tribunal (NCLT) for the same.
- No reduction of capital will be allowed if the company is in arrears for payment of deposits, accepted either before or after the commencement of this Act, or the interest payable thereon. (Section 66)
- No buyback upto a period of 1 year from the date of previous buyback whether approved by BoD or shareholders. (Proviso to Section 68 (2)(g)) .
- 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. (Where 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) (Chapter IV – Proviso to Section 70(1)(c))
- No company shall issue any Debentures carrying any voting rights (Section 71(2))
- Secured debentures to be issued only subject to prescribed terms and conditions (Section 71(3))
- Compulsory to 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 be utilized only for the purpose of redemption of debentures. (Section 71(4))
- Appointment of Debenture Trustee compulsory for public issue of debentures through prospectus to more than 500 persons. (Section 71(5))
- Special Resolution required to issue Debentures with a conversion option (Section 71)

CHAPTER V - ACCEPTANCE OF DEPOSITS BY COMPANIES (SECTIONS 73-

76)

I. Acceptance of Deposits by Companies

- **Prohibition on Acceptance of Deposits from Public** - 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 and to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf – (Section 73(1))
- On and after the commencement of the Companies Act 2013, only the following companies may invite, accept or renew deposits from the public – i. Banking companies; ii. Non Banking Financial Companies (NBFC); iii. notified companies; iv. public company having such net worth or turnover as may be prescribed as per audited balance sheet of the immediately preceding financial year
- A company other than those specified above, may invite, accept or renew deposits only from its members subject to fulfillment of the following conditions (Section 73):

1. Passing of resolution in a general meeting

2. Issue of circular to members showing the financial position of the company, the credit ratings obtained the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company etc.

3. Filing a copy of the circular with the registrar within 30 days before the date of issue of the circular.
4. An amount of not less than 15% of the deposits maturing during a financial year shall be deposited in deposit repayment reserve account.
5. Providing deposit insurance.
6. Certification by the company that it has not defaulted in the repayment of deposits.
7. Provision of security in respect of deposit and interest and creation of charge on company's properties and assets.

The penalty for failure to repay deposit has been made extremely stringent. The depositor may apply to Tribunal for an order directing the company to pay the sum due or loss or damage incurred by him as result of non-payment (Section 73).

CHAPTER VI - REGISTRATION OF CHARGES (SECTIONS – 77-87)

I. Registration of Charges

- The scope of the term “charge” has been enlarged. As per Section 2(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;
- The specific list of cases in which it was necessary to register the charge, as provided by in the Companies Act 1956 has been dispensed with. Now all types of charge created by the company on its property or assets or any of its undertakings would be required to be registered.
- Every company creating a charge within or outside India on its property or assets or any of its undertakings should register the particulars of the charge with the Registrar within thirty days of its creation. If the company fails to register the charge within the prescribed period, then the person in whose favour the charge is created can apply to the Registrar for registration of the charge along with the instrument created for the Charge. (Section 77)

CHAPTER VII - MANAGEMENT AND ADMINISTRATION (SECTIONS 88-122)

I. Management and Administration

- Annual return in such form as may be prescribed should form part of the Board's report. (Section 92(3))
- Return to be filed by listed company in the prescribed form with Registrar of Companies (ROC) in case promoter's stake changes. The return shall be filed with respect to change in the number of shares held by promoters and top ten shareholders of such company, within 15 days of such change. (Section 93)
- One Person Companies are not required to hold Annual General Meeting (AGM). All other companies are required to hold AGM in each calendar year within the prescribed time limits. (Section 96)
- The AGM has to be called during business hours i.e between 9:00am and 6:00pm.
- Annual General Meeting can be called on a "public holiday" but not on a "National Holiday". "National Holiday" means and includes a day declared as such by the Central Government. (Section 96(2))
- Increase in Quorum requirements for public companies having more than 1000 members. (Section 103)
- Voting through electronic means by members at meetings is permitted (Section 108)
- A company shall transact the items of business notified by the Central Government by means of postal ballot. It can also transact 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. This can be done by means of postal ballot instead of transacting such business at a general meeting. (Section 110)
- Resolutions requiring Special Notice – Presently there is no requirement as to members who give special notice to hold some minimum voting

power or shares. Section 115 introduces such a requirement by providing that the resolution requiring special notice has to be moved by such number of members holding not less than one per cent of total voting power or holding shares on which an aggregate sum of not less than one lakh rupees has been paid-up.

- Every listed public company should file a report on each annual general meeting with the Registrar of Companies within 30 days of the conclusion of the annual general meeting. (Section 121)
- Provisions relating to Statutory meeting and Statutory report dispensed with.

CHAPTER VIII - DECLARATION AND PAYMENT OF DIVIDEND (SECTIONS 123-127)

I. Declaration and payment of Dividend

- No dividend shall be declared or paid by a company from its reserves other than free reserves (Third Proviso to Section 123(1))
- The Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the Profit and Loss Account and out of profits of the financial year in which such interim dividend is sought to be declared. (Section 123(3))
- In case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.
- **No Compulsory Transfer of Profits to Reserves.** Before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it **MAY** consider appropriate to the reserves of the company (Chapter VIII – proviso to Section 123 (1) (b)). Hence compulsory transfer of profits to reserves is done away with.
- Where a dividend has been declared by a company but has not been paid or claimed within thirty days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account (Section 124(1))
- The amounts in the Unpaid Dividend Account of companies which have remained unclaimed and unpaid for a period of 7 years from the date they became due for

payment shall be transferred by a company to the Investor Education and Protection Fund.

- Unpaid dividend can be claimed any time and the time limit of seven years will not apply.

CHAPTER IX - ACCOUNTS OF COMPANIES (SECTIONS 128-138)

I. Accounts of Companies

- The Act permits the maintenance of books of accounts and other books and papers in electronic mode (Second Proviso to Section 128(1))
- Every Company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting:
 - a. Books of Accounts and other relevant books and papers to be kept at Registered office on accrual & double entry basis
 - b. In case if books are maintained at any other place in India as decided by Board of Directors, company shall intimate it to Registrar of Companies within 7 days.
 - c. Books can be kept at any other place outside India, only if duly maintained in compliance with the conditions as prescribed.
 - d. Preserve books for 8 years (with additional provision giving rights to Central Government to extend such period where an investigation has been ordered in respect of the company under Chapter XIV, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit)
- Where an investigation has been ordered in respect of the company under Chapter XIV, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit. (Proviso to Section 128(5))
- If the company has one or more subsidiaries, then along with financial statement, consolidated financial statement of the company and all its subsidiaries will be prepared in the same form and manner as its own and shall also be laid before the

Annual General Meeting. Subsidiary shall for the purpose of this requirement include associate company and joint venture. The provisions of this Act applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, apply to the consolidated financial statements also.

- Reopening of Accounts on Court's or Tribunal's Order - A company shall not re-open its books of account and not recast its financial statements, unless an order in this regard is made by a court of competent jurisdiction or the Tribunal. The accounts so revised or re-cast shall be final. (Section 130)
- Voluntary Revision of Financial Statements or Board's Report may be made with Tribunal's consent (Section 131)
- Constitution of National Financial Reporting Authority - The National Advisory Committee on Accounting Standards (NACAS as introduced by the Companies Bill 2009) has been renamed National Financial Reporting Authority (NFRA) and unlike NACAS it is not merely an advisory body.
- The mandate of the NFRA is to:

(i) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;

(ii) monitor and enforce the compliance with accounting and auditing standards recommended by it in such manner as may be prescribed;

(iii) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of services and such other related matters as may be prescribed; and

(iv) perform such other functions as may be prescribed.

- Functioning of NFRA

The National Financial Reporting Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings in such manner as may be prescribed.

The Central Government may appoint a secretary and such other employees as it may consider necessary for the efficient performance of functions by the National Financial Reporting Authority under this Act and the terms and conditions of service of the secretary and employees shall be such as may be prescribed. The head office of the National Financial Reporting Authority shall be at New Delhi and the National Financial Reporting Authority may, meet at such other places in India as it deems fit.

The National Financial Reporting Authority shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as the Central Government may, in consultation with the Comptroller and Auditor-General of India prescribe.

The accounts of the National Financial Reporting Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and such accounts as certified by the Comptroller and Auditor-General of India together with the audit report thereon shall be forwarded annually to the Central Government by the National Financial Reporting Authority.

The National Financial Reporting Authority shall prepare in such form and at such time for each financial year as may be prescribed its annual report giving a full account of its activities during the financial year and forward a copy thereof to the Central Government and the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament.

- The Report of the Board of Directors

Additional Disclosure - The Board of Director's report for every company except for One Person Company, shall have various types of additional information (Section 134)

Section 134(1) has stipulated the following new disclosures in Board of Director's Report:

1. number of meetings of the Board
 2. a statement on declaration given by independent directors
 3. company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters
 4. explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the company secretary in his secretarial audit report
 5. particulars of loans, guarantees or investments
 6. particulars of contracts or arrangements with related parties
 7. a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company
 8. the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year
 9. in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors
 10. such other matters as may be prescribed.
- The Directors' responsibility statement in case of listed company shall also include additional declarations related to internal financial controls and compliance systems (Section 134(5))

The additional declarations are given in Section 134(5)(e) and 134(5)(f) as follows:

”(e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively;

Explanation.—For the purposes of this section, the term “internal financial controls” means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company’s policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

(f) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.”

- Corporate Social Responsibility (CSR) Obligations introduced - Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. 2% of average net profits of the previous three years will have to be spent on corporate social responsibility activities with disclosure to shareholders about the policy adopted in the process, giving reasons on failure of implementation (Section 135)
- Compulsory Internal Audit for certain prescribed companies (Section 138)

CHAPTER X - AUDIT AND AUDITORS (SECTIONS 139-148)

I. Audit and Auditors

- Subject to the provisions of Chapter X of the Act, 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. (Section 139)
- The Act provides for compulsory rotation of individual auditors and of audit firm. 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.(Section 139(2)). Also, enabling provisions for members to resolve rotation of audit partners and his team are provided in the Act.
- Members of the company may resolve to rotate auditing partner and his team at specific interval
- Companies existing on or before the commencement of this Act are required to comply with the provisions of rotation of auditors within a period of 3 years from the commencement of this Act
- 5-years tenure for auditors appointed at Annual General Meetings (AGMs) of companies (other than Government Companies/ Government Controlled Companies) instead of annual appointment/ re-appointment
- Appointment of First Auditors for Five Years shall be subject to ratification by members at every Annual General Meeting
- Automatic reappointment of existing auditor (without passing any resolution) at AGM where no auditor is appointed/ reappointed at AGM.

- Limited Liability Partnerships may be appointed as Auditors (Section 141)
- Auditing Standards to be made mandatory (Section 143)
- 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. (Section 143).
- The limit in respect of maximum number of companies in which a person may be appointed as auditor has been proposed as 20 companies. In case of Firm, limit is made applicable to each partner.
- The Central Government may prescribe 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 shall also be included in the books of account kept by that class of companies
- The Central Government may direct that the audit of cost records of class of companies 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
- The audit shall be conducted by a Cost Accountant who shall be appointed by the Board on such remuneration as may be determined by the members in such manner as may be prescribed

CHAPTER XI - APPOINTMENT AND QUALIFICATIONS OF DIRECTORS

(SECTIONS 149 – 172)

I. Appointment and Qualifications of Directors

- In prescribed class or classes of companies, there should be atleast 1 woman director. (Second Proviso to Section 149(1))
- Every Company to have atleast one director who has stayed in India for one hundred and eighty-two days or more in the previous calendar year. (Section 149)
- A company can have a maximum number of 15 directors. However, a company may appoint more than 15 directors by passing a special resolution. No Central Government approval required.
- Every listed public company shall have at least one-third of the total number of directors as independent directors and Central Government may prescribe the minimum number of independent directors in case of any class or classes of public company. (Section 149(4))
- An independent director shall not be entitled to any remuneration, other than sitting fee, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.
- The provisions in respect of the tenure and liability of the Independent director have been provided.
- The Code for Independent Directors provided in a Schedule IV to the Act. The Schedule to the Act provides the following in respect of an Independent Director
 - Professional Conduct
 - Role & Functions
 - Duties
 - Manner of Appointment
 - Removal & Resignation
 - Separate meetings
 - Evaluation mechanism

- A databank of Independent directors proposed to be maintained by a body/institute notified by the Central Government to facilitate appointment of Independent directors.
- A person cannot become directors in more than 20 companies instead of 15 as provided in the Companies Act 1956 and out of this 20, he cannot be director of more than 10 public companies. 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. 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.
- Duties of the directors towards the company specified (Section 166)
- 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. 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. (Section 168)

II. Provisions pertaining to Independent Directors

- Every listed public company shall have at least one-third of the total number of directors as independent directors and Central Government may prescribe the minimum number of independent directors in case of any class or classes of public company. (Section 149(4))
- Every Company existing on or before the commencement of the Companies Act 2013 shall comply with the requirement relating to independent directors within 1 year of such commencement.

- 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 (5) of Section 149.
- The company and independent directors shall abide by the provisions specified in Schedule IV.
- Subject to the provisions of section 198, an independent director shall not be entitled to any remuneration, other than a 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.
- A databank of Independent directors proposed to be maintained by a body/ institute notified by the Central Government to facilitate appointment of Independent directors.
- The provisions in respect of the tenure and liability of the Independent director have been provided as follows
 - No independent director shall hold office for a term exceeding an aggregate of five consecutive years on the Board of a company, but shall be eligible for reappointment (section 149 (10))
 - He shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.
 - 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.
 - Notwithstanding anything contained in the 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.

- 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.
- The appointment of independent director shall be approved by the company in general meeting 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.(Section 150(2))
- Only an independent director can be appointed as alternate director to an independent director [first proviso to Section 161(2)].
- The Code for Independent Directors is provided in Schedule IV to the Companies Act, 2013. The Company and Independent Directors have to comply with the provisions of the Code of Conduct specified in Schedule IV to the Companies Act 2013.
- The Audit committee shall consist of a minimum of three directors with independent directors forming a majority (Section 177(2))

III. List of Duties of Directors (Section 166)

- A director of a company shall act in accordance with the articles of the company.
- 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.
- A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

- 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.
- 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 under sub-section (7), he shall be liable to pay an amount equal to that gain to the company.
- A director of a company shall not assign his office and any assignment so made shall be void.
- 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

CHAPTER XII - MEETINGS OF BOARD AND ITS POWERS (SECTIONS 173 – 195)

I. Meetings of Board

- Not more than 120 days gap between two Board Meetings (Section 173)
- Director can participate in the Board meeting 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. 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 (Section 173)
- A notice of not less than seven days in writing is required to call a board meeting and notice of meeting to all directors shall be given, whether he is in India or outside India by hand delivery or by post or by electronic means. 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. 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. (Section 173)
- Audit Committee - Every Listed Company and such other company as may be prescribed shall form Audit Committee. The Audit Committee shall comprise of minimum 3 directors Independent Directors forming a majority and majority of members of committee including its Chairperson shall be person with ability to read and understand financial statement. (Section 177)
- Nomination and Remuneration Committee - Every listed company and prescribed class or classes of companies, 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. (Section 178(1))

- Stakeholders Relationship Committee - Every 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. (Section 178(5))
- The limits for political contribution by company increased from 5% as provided in the Companies Act 1956. to 7.5%. of the average net profits of the Company during the three immediately preceding financial years. (Section 182)
- Restriction on Loan to Directors etc – Applicable to both Public and Private company - Section 185 begins with “Save as otherwise provided in this Act, NO COMPANY SHALL”. This clarifies that the given restrictions is applicable to both Public and Private companies unlike the existing Companies Act, 1956 where it is applicable only to Public Companies (Section 295 (2) exempting Private Company which is not a subsidiary of a public company)
- Exemption – from the applicability of restriction on Loan to Directors etc (proviso to Section 185(1))

(a) The giving of any loan to a MD 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.

- A company shall unless otherwise prescribed, make investment through not more than two layers of investment companies. This statement 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.

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. (Section 186)

- **Related Party Transaction – Section 188 - The scope of the Section 188 dealing with Related Party Transaction have been widened. 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:

- In order to enter into the above transactions Approval is Required (Section 188)
 - Consent of the BoD given by a resolution
 - Prior Approval by the Company – in cases where the paid-up capital of the company or transaction amount exceeds the prescribed limit
- **Related Parties** – Section 2(76) “related party”, with reference to a company, means—
 - a director or his relative;
 - a key managerial personnel or his relative;
 - a firm, in which a director, manager or his relative is a partner;
 - a private company in which a director or manager is a member or director;
 - a public company in which a director or manager is a director or holds long with his relatives, more than two per cent. of its paid-up share capital;
 - 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;
 - 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;
 - any company which is—
 - a holding, subsidiary or an associate company of such company; or
 - a subsidiary of a holding company to which it is also a subsidiary;
 - such other person as may be prescribed:

(More coverage when compared to Companies Act, 1956)
- **Exemption from application of Section 188(1) – According to 3rd proviso to 188(1)** 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.

- Restrictions on non-cash transactions by directors - 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 subsection shall also be required to be obtained by passing a resolution in general meeting of the holding company.

The notice for approval of the resolution by the company or holding company in general meeting shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer. (Section 192)

- 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 the 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. This provision shall not apply to contracts entered into by the company in the ordinary course of its business. (Section 193)
- Prohibition on Forward Dealings in securities of company by Director or Key Managerial Personnel (Section 194)
- Prohibition on Insider Trading of Securities (Section 195). The definition of price sensitive information has also been included.

CHAPTER XIII - APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL (SECTIONS 196 – 205)

I. Appointment and Remuneration of Managerial Personnel

- Provisions relating to limits on remuneration provided in the existing Act being included in the Act. Maximum limit of 11% (of net profits) being retained.
- For companies with no profits or inadequate profits remuneration shall be payable in accordance with new Schedule of Remuneration (Schedule V) and in case a company is not able to comply with such Schedule, approval of Central Government would be necessary.
- As per Section II of Part II of Schedule V - Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding the higher of the limits under (A) and (B) given below:—

(A) Where the effective capital is	Limit of yearly remuneration payable shall not exceed (Rupees)
Negative or less than 5 crores	30 lakhs
5 crores and above but less than 100 crores	42 lakhs
100 crores and above but less than 250 crores	60lakhs
250 crores and above	60 lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores

(B) In case of a managerial person who was not a shareholder, employee or a director of the company at any time during the two years prior to his appointment as a managerial person – 2.5% of the current relevant profit.

Provided that the above limits shall be doubled if the resolution passed by the shareholders is a special resolution

- Independent Directors not to get Stock Options but may get payment of fee and profit linked commission subject to limits specified in the Act/rules. Central Government to prescribe amount of fees under the rules
- The premium paid on any insurance taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, shall not be treated as part of the remuneration payable to any such personnel.
- Every company belonging to such class or description of companies as may be prescribed shall have Managing Director, or Chief Executive Officer or Manager and in their absence, a whole-time director and Company Secretary (Section 203)
- The Act provides for provision related to secretarial audit in certain prescribed companies. (Section 204). The Secretarial Audit Compliance Report from Company Secretary to be attached to Board's Report in certain prescribed companies
- The Act prescribes the functions of the Company Secretary. (Section 205)
- Independent Directors not to get stock option but may get payment of fee and profit linked commission subject to limits specified in the Act/rules. Central Government to prescribe amount of fees under the rules (Section 197(7)).

CHAPTER XIV - INSPECTION, INQUIRY AND INVESTIGATION (SECTIONS 206-229)

I. Inspection, Inquiry and Investigation

- Statutory Status to Serious Fraud Investigation Office (SFIO) proposed (Section 211)
- The Tribunal can freeze the assets for a period not exceeding three years, on an inquiry and investigation of a company, if transfer or disposal of funds, properties or assets is likely to take place which is pre-judicial to the interest of the company. (Section 221)
- The provisions of inspection, inquiry or investigation as applicable to Indian companies shall apply mutatis mutandis to foreign companies also. (Section 228)

CHAPTER XV - COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS (SECTIONS 230-240)

I. Compromises, Arrangements And Amalgamations

- **Introduction of Postal Ballot for Approval - Section 230 (6)**

Approval by majority representing 3/4th in the value of creditors or members or class thereof present and voting in person or by proxy or by **postal ballot**

- **Valuation Report to Shareholders/Creditors –(Section 230 (3)) -**

Valuation report to be given to Shareholder/Creditors along with notice convening meeting. Under Companies Act, 1956 there is no requirement to given valuation report

- **Objection to Compromise, Arrangement and Amalgamation - Section 230(4)**

Any objection to the compromise or arrangement shall be made only by

- persons holding >10% of the shareholding or
- having outstanding debt amounting to > 5% of the total outstanding debt

as per the latest audited financial statement.

- **Buy Back – Scheme of Compromise or Arrangement – Section 230(10)**

No compromise or arrangement in respect of any buy-back of securities under this section shall be sanctioned by the Tribunal unless such buy-back is in accordance with the provisions of section 68.

- **Take Over Offer - Section 230(11)**

Any compromise or arrangement may include takeover offer made in such manner as may be prescribed. Provided, that in case of listed companies, takeover offer shall be as per the regulations framed by the Securities and Exchange Board. e

- **Transfer of Listed Company with Unlisted Company – Section 232(3)(h)**

Where the transferor company is a listed company and the transferee company is an unlisted company,—

(A) the transferee company shall remain an unlisted company until it becomes a listed company;

(B) if shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal

Under the Companies Act, 1956 there is no specific provision on this

- **Expediting Merger Process – Section 233 (1) –**

A scheme of merger or amalgamation may be entered into between two or more small companies or between a holding company and its wholly-owned subsidiary company or such other class or classes of companies as may be prescribed, subject to the following, namely

- i. Approval of the ROC
- ii. Approval of Official Liquidator

- iii. Members or class of members holding atleast 90% of the total number of shares
- iv. Majority of creditors or class of creditors representing 9/10th in value

- **Merger or Amalgamation of an Indian Company with a Foreign Company – Section 234**

A foreign company, may with the prior approval of the Reserve Bank of India, merge into a company registered under this Act or vice versa and the terms and conditions of the scheme of merger may provide, among other things, for the payment of consideration to the shareholders of the merging company in cash, or in Depository Receipts, or partly in cash and partly in Depository Receipts, as the case may be, as per the scheme to be drawn up for the purpose. **Section 234(2).** Explanation.—For the purposes of sub-section (2), the expression “foreign company” means any company or body corporate incorporated outside India whether having a place of business in India or not.

No such provision under the Companies Act, 1956

- **Purchase of minority shareholding – Section 236**

- i. In the event of an acquirer, or a person acting in concert with such acquirer, becoming registered holder of ninety per cent. or more of the issued equity share capital of a company, or in the event of any person or group of persons becoming ninety per cent. Majority or holding ninety per cent. of the issued equity share capital of a company, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, such acquirer, person or group of persons, as the case may be, shall notify the company of their intention to buy the remaining equity shares

- ii. The acquirer, person or group of persons shall offer to the minority shareholders of the company for buying the equity shares held by such shareholders **at a price determined on the basis of valuation by a registered valuer** in accordance with such rules as may be prescribed.

No provision under the Companies Act, 1956

CHAPTER XVI - PREVENTION OF OPPRESSION AND MISMANAGEMENT
(SECTIONS 241- 246)

I. Prevention Of Oppression And Mismanagement

- Application to National Company Law Tribunal (NCLT) for relief in cases of oppression etc. Application can also be made for relief in cases of past acts of oppression. (Section 241)
- Class Action Suits (Section 245) – Such specified number of member or members, depositor or depositors or any class of them, as the case may be, 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. The order passed by the Tribunal shall be binding on the company and all its members and depositors. This Provision is not applicable to Banking Companies.
- Class Action Suits against 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. (Section 245(1)(g)(ii))
- 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. Section 245(2)
- Members or depositors can claim damages or compensation or demand any other suitable action from or against 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, wrongful act or conduct or any likely act or conduct on his part (Section 245(1)(g)(iii))

CHAPTER XVII - REGISTERED VALUERS (SECTION 247)

I. Registered Valuers

- Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company. (Section 247)
- The valuer appointed shall,—
 - (a) make an impartial, true and fair valuation of any assets which may be required to be valued;
 - (b) exercise due diligence while performing the functions as valuer;
 - (c) make the valuation in accordance with such rules as may be prescribed; and
 - (d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during or after the valuation of assets.
- If a valuer contravenes the provisions of Section 247 or the rules made thereunder, the valuer shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees. If the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

- Where a valuer has been convicted as above, he shall be liable to—
 - (i) refund the remuneration received by him to the company; and
 - (ii) pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

- **Reference made in various Sections to the Act**
 - Section 62 – Further Issue of Share Capital
 - Section 236 – Purchase of Minority Shareholding
 - Section 281 – Submission of report by Company Liquidator
 - Section 305 – Declaration of solvency in case of proposal to wind up voluntarily.
 - Section 319 – Power of Company Liquidator to accept shares etc., as consideration for sale of property of company

**CHAPTER XVIII - REMOVAL OF NAMES OF COMPANIES FROM THE
REGISTER OF COMPANIES (SECTIONS 248 -252)**

- Where the Registrar has reasonable cause to believe that
 - (a) a company has failed to commence its business within one year of its incorporation;
 - (b) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay within a period of one hundred and eighty days from the date of incorporation of a company and a declaration under sub-section (1) of section 11 to this effect has not been filed within one hundred and eighty days of its incorporation; or
 - (c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455,

A notice shall be sent to the company and all the directors of the company, conveying his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice. (Section 248 (1))

- At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved. (Section 248(5))
- Restrictions on making application under section 248 in certain situations. (Section 249)
- Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to

have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company (Section 250)

- Where it is found that an application by a company under sub-section (2) of section 248 has been made with the object of evading the liabilities of the company or with the intention to deceive the creditors or to defraud any other persons, the persons in charge of the management of the company shall, notwithstanding that the company has been notified as dissolved—

(a) be jointly and severally liable to any person or persons who had incurred loss or damage as a result of the company being notified as dissolved; and

(b) be punishable for fraud in the manner as provided in section 447.

Without prejudice to the above, the Registrar may also recommend prosecution of the persons responsible for the filing of an application under sub-section (2) of section 248. (Section 251)

CHAPTER XIX - REVIVAL AND REHABILITATION OF SICK COMPANIES
(SECTIONS 253 – 269)

I. Revival and Rehabilitation of Sick Companies

- The manner of declaring a company sick and process of its revival and rehabilitation has been completely rationalized
- The coverage of Sick Industrial Companies Act 1985 is limited to only Industrial Companies while Chapter XIX of the Act covers revival and rehabilitation of all companies irrespective of which sector they are in.
- Any company and not only industrial company can be declared as sick company.
- Secured creditors representing 50% or more of the debt of the company and whose debt the company has failed to pay within 30 days of service notice, can apply to Tribunal for declaring the company as sick or the company who fails to repay the debt of secured creditor representing 50% or more of debt, may also apply to Tribunal for declaring itself sick. (Section 253)
- The entire rehabilitation and liquidation process has been made time bound (Section 254).
- If revival scheme is not approved by the creditors, the Tribunal shall order for winding up of the company (Section 258).
- The criteria of erosion of 50% of the networth for declaring the company as sick has been dispensed with. The sickness of company will be determined on the basis of whether the company is able to pay its debts.
 - Interim administrator can be appointed by the Tribunal for management of the company from a databank maintained by the Central Government or any institute or agency authorised by the Central Government in a manner as may be prescribed consisting of the names of company secretaries, chartered accountants, cost accountants and such other professionals as may, by notification, be specified by the Central Government. (Section 259)
 - Powers and duties of company administrator. (Section 260)

- Scheme of revival and rehabilitation should be prepared by the company administrator. (Section 261)
- If the Scheme is not approved by the creditors of the company in the manner specified, then the Tribunal can order winding up of the company upon submission of report by the company administrator. (Section 265)
- The Rehabilitation and Revival Fund as provided in the Companies (Second Amendment) Act, 2002 is to be replaced by Rehabilitation and Insolvency Fund with voluntary contributions linked to entitlements to draw money in a situation of insolvency. (Section 269).

CHAPTER XX - WINDING UP (SECTION 270)

PART I— WINDING UP BY THE TRIBUNAL (SECTIONS 271 – 303)

- The Tribunal may appoint Provisional Liquidator of the company till the making of a winding up order (Section 273).
- 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 by the Central Government. (Section 275)
- 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 (Section 275)
- The jurisdiction of the Tribunal with regard to winding up. (Section 280)
- 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 specified particulars (Section 281)
- 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 (Section 288)
- The Company Liquidator may, with the sanction of the Tribunal, appoint one or more professionals including Company Secretaries to assist him in the performance of his duties and functions under the Act (Section 291)

PART II.—VOLUNTARY WINDING UP (SECTIONS 304 – 323)

**PART III.—PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP
(SECTIONS 324 – 358)**

PART IV.—OFFICIAL LIQUIDATORS (SECTIONS 359 – 365)

- Apart from company liquidators, provision has been made for appointment of Official Liquidators. (Section 359)
- Where the company to be wound up (i) has assets of book value not exceeding one crore rupees; and (ii) belongs to such class or classes of companies as may be prescribed, the Central Government may order it to be wound up by summary procedure provided under Part IV of Chapter XX.

CHAPTER XXI

PART I.—COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT (366 – 374)

- Companies that are capable of being registered under Section 366 of the Companies Act, 2013 include any partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law for the time being in force which applies for registration under this Part.(Section 366)
- Obligation of Companies registering under this part. Every company which is seeking registration under this Part shall,—

(a) Ensure that secured creditors of the company, prior to its registration under this Part, have either consented to or have given their no objection to company's registration under this Part;

(b) publish in a newspaper, advertisement one in English and one in vernacular language in such form as may be prescribed giving notice about registration under this Part, seeking objections and address them suitably;

(c) file an affidavit, duly notarised, from all the members or partners to provide that in the event of registration under this Part, necessary documents or papers shall be submitted to the registering or other authority with which the company was earlier registered, for its dissolution as partnership firm, limited liability partnership, cooperative society, society or any other business entity, as the case may be.

(d) comply with such other conditions as may be prescribed. (Section 374)

PART II.—WINDING UP OF UNREGISTERED COMPANIES (SECTIONS 375 – 378)

- Any unregistered company may be wound up under this Act, in such manner as may be prescribed, and all the provisions of this Act, with respect to winding up shall apply to an unregistered company
- No unregistered company shall be wound up under this Act voluntarily.
- An unregistered company may be wound up under the following circumstances, namely:—
 - (a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
 - (b) if the company is unable to pay its debts;
 - (c) if the Tribunal is of opinion that it is just and equitable that the company should be wound up. (Section 375)
- Unregistered Company for the purpose of this Part, shall include any partnership firm, limited liability partnership or society or co-operative society, association or company consisting of more than seven members at the time when the petition for winding up the partnership firm, limited liability partnership or society or co-operative society, association or company, as the case may be, is presented before the Tribunal. (Section 375(4))

CHAPTER XXII - COMPANIES INCORPORATED OUTSIDE INDIA (379 – 393)

I. Companies incorporated outside India

- Where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of Chapter XXII and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India. (Section 379)
- The Central Government may make rules for the offer of Indian Depository Receipts, requirement of disclosures in prospectus or letter of offer issued in connection with Indian Depository Receipts, the manner in which the Indian Depository Receipts should be dealt with in a depository mode and by custodian and underwriters and the manner of sale, transfer or transmission of Indian Depository Receipts, by a company incorporated or to be incorporated outside India, and whether or not it has established or will or will not establish a place of business in India. (Section 390)

CHAPTER XXIII - GOVERNMENT COMPANIES (394 – 395)

I. Government Companies

- **Introduction of Chapter XXIII exclusively for Government Companies – Sections 394 & 395**
- Where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that company to be—
 - (a) prepared within three months of its annual general meeting before which the comments given by the Comptroller and Auditor-General of India and the audit report is placed under the proviso to sub-section (6) of section 143; and
 - (b) as soon as may be after such preparation, laid before both Houses of Parliament together with a copy of the audit report and comments upon or supplement to the audit report, made by the Comptroller and Auditor-General of India. **(Section 394(1))**
- Where the Central Government is not a member of a Government company, every State Government which is a member of that company, or where only one State Government is a member of the company, that State Government shall cause an annual report on the working and affairs of the company to be—
 - (a) prepared within the time specified in sub-section (1) of section 394; and
 - (b) as soon as may be after such preparation, laid before the House or both Houses of the State Legislature together with a copy of the audit report and comments upon or supplement to the audit report referred to in sub-section (1) of that section **(Section 395(1))**
- Corresponding sections of the Companies Act, 1956 Sections 617 & 619A.

CHAPTER XXIV - REGISTRATION OFFICES AND FEES (SECTION 396 – 404)

- The Central Government shall, by notification, establish such number of offices at such places specifying their jurisdiction for the purposes of exercising such powers and discharging such functions as are conferred on the Central Government by or under this Act or under the rules made there under and for the purposes of registration of companies under this Act (Section 396 (1))
- The Central Government may appoint such Registrars, Additional, Joint, Deputy and Assistant Registrars as it considers necessary for the registration of companies and discharge of various functions under this Act (Section 396 (2))

CHAPTER XXV - COMPANIES TO FURNISH INFORMATION OR STATISTICS (SECTION 405)

Companies to Furnish Information or Statistics

The Central Government may, by order, require companies generally, or any class of companies, or any company, to furnish such information or statistics with regard to their or its constitution or working, and within such time, as may be specified in the order (Section 405)

CHAPTER XXVI – NIDHIS (SECTION 406)

I. Nidhis

Power to modify Act in its Application to Nidhis - “Nidhi” means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies (**Chapter XXVI - Section 406 (1)**)

The Central Government may, by notification, direct that any of the provisions of this Act shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified in that notification, to any *Nidhi* or *Nidhis* of any class or description as may be specified in that notification.

CHAPTER XXVII - NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL (SECTIONS 407 – 434)

I. National Company Law Tribunal and Appellate Tribunal

- The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, a Tribunal to be known as the National Company Law Tribunal consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force. **(Section 408)**
- The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, an Appellate Tribunal to be known as the National Company Law Appellate Tribunal consisting of a chairperson and such number of Judicial and Technical Members, not exceeding eleven, as the Central Government may deem fit, to be appointed by it by notification, for hearing appeals against the orders of the Tribunal. **(Section 410)**
- **Expeditious Disposal by Tribunal and Appellate Tribunal – Section 422**

Every application or petition presented before the Tribunal and every appeal filed before the Appellate Tribunal shall be dealt with and disposed of by it as expeditiously as possible and every endeavour shall be made by the Tribunal or the Appellate Tribunal, as the case may be, for the disposal

of such application or petition or appeal within three months from the date of its presentation before the Tribunal or the filing of the appeal before the Appellate Tribunal.

CHAPTER XXVIII - SPECIAL COURTS (435 – 446)

I. Special Courts

- Special Courts to deal with offences under the Act (Chapter XXVIII consisting of Sections 435 to 446)
- The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary. A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working (**Section 435**)
- Mediation and Conciliation Panel (Section 442) – Mediation and Conciliation Panel proposed to be created and maintained for facilitating mediation and conciliation between parties during any proceeding under the Act before the Central Government or Tribunal.

CHAPTER XXIX – MISCELLANEOUS (SECTIONS 447 – 470)

Other provisions

- Punishment for Fraud (Section 447) - “fraud” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its

shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

- Dormant company (Section 455) - Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.
- Relaxation of restriction limiting the number of persons in Association or Partnerships etc. at a time to a maximum of 100 with no ceiling as to associations or partnerships formed by professionals regulated by special acts.

SCHEDULES TO THE COMPANIES ACT, 2013

1. SCHEDULE I – (Sections 4 & 5)

- **TABLE A – MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES**
- **TABLE B - MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL**
- **TABLE C - MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL**
- **TABLE D - MEMORANDUM OF ASSOCIATION OF AN UNLIMITED COMPANY AND NOT HAVING SHARE CAPITAL**
- **TABLE E - MEMORANDUM OF ASSOCIATION OF AN UNLIMITED COMPANY AND HAVING SHARE CAPITAL**
- **TABLE F - ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY SHARES**
- **TABLE G - ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL**

- **TABLE H** - ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT HAVING SHARE CAPITAL
 - **TABLE I** - ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY AND HAVING A SHARE CAPITAL
 - **TABLE J** - ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY AND NOT HAVING SHARE CAPITAL
2. **SCHEDULE II - (Section 123) - USEFUL LIVES TO COMPUTE DEPRECIATION**
 3. **SCHEDULE III - (Section 129) - GENERAL INSTRUCTIONS FOR PREPARATION OF BALANCE SHEET AND STATEMENT OF PROFIT AND LOSS OF A COMPANY**
 4. **SCHEDULE IV –(Section 149(7)) CODE FOR INDEPENDENT DIRECTORS**
 5. **SCHEDULE V - (Sections 196 and 197) - PART I** CONDITIONS TO BE FULFILLED FOR THE APPOINTMENT OF A MANAGING OR WHOLE-TIME DIRECTOR OR A MANAGER WITHOUT THE APPROVAL OF THE CENTRAL GOVERNMENT & **PART II** REMUNERATION
 6. **SCHEDULE VI - (SECTIONS 55 AND 186) - THE TERM** “INFRASTRUCTURAL PROJECTS” OR “INFRASTRUCTURAL FACILITIES” INCLUDES CERTAIN PROJECT AND ACTIVITIES
 7. **SCHEDULE VII – SECTION 135 - ACTIVITIES WHICH MAY BE INCLUDED BY COMPANIES IN THEIR CORPORATE SOCIAL RESPONSIBILITY POLICIES**

Few of the SCHEDULES reproduced for your reference:

SCHEDULE IV - CODE FOR INDEPENDENT DIRECTORS

The Code is a guide to professional conduct for independent directors. Adherence to these standards by independent directors and fulfillment of their responsibilities in a professional and faithful manner will promote confidence of the investment community, particularly minority shareholders, regulators and companies in the institution of independent directors.

I. Guidelines of professional conduct:

An independent director shall:

- (1) uphold ethical standards of integrity and probity;
- (2) act objectively and constructively while exercising his duties;
- (3) exercise his responsibilities in a *bona fide* manner in the interest of the company;
- (4) devote sufficient time and attention to his professional obligations for informed and balanced decision making;
- (5) not allow any extraneous considerations that will vitiate his exercise of objective independent judgment in the paramount interest of the company as a whole, while concurring in or dissenting from the collective judgment of the Board in its decision making;
- (6) not abuse his position to the detriment of the company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person;
- (7) refrain from any action that would lead to loss of his independence;
- (8) where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly;
- (9) assist the company in implementing the best corporate governance practices.

II. Role and functions:

The independent directors shall:

- (1) help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;
- (2) bring an objective view in the evaluation of the performance of board and management;
- (3) scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;
- (4) satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible;
- (5) safeguard the interests of all stakeholders, particularly the minority shareholders;
- (6) balance the conflicting interest of the stakeholders;
- (7) determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management;
- (8) moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest.

III. Duties :

The independent directors shall—

- (1) undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;
- (2) seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;
- (3) strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;
- (4) participate constructively and actively in the committees of the Board in which they are chairpersons or members;
- (5) strive to attend the general meetings of the company;

- (6) where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting;
- (7) keep themselves well informed about the company and the external environment in which it operates;
- (8) not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;
- (9) pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and also ensure themselves that the same are in the interest of the company;
- (10) ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;
- (11) report concerns about unethical behavior, actual or suspected fraud or violation of the company's code of conduct or ethics policy;
- (12) acting within his authority, assist in protecting the legitimate interests of the company, shareholders and its employees;
- (13) not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.

IV. Manner of appointment:

- (1) Appointment process of independent directors shall be independent of the company management; while selecting independent directors the Board shall ensure that there is appropriate balance of skills, experience and knowledge in the Board so as to enable the Board to discharge its functions and duties effectively.
- (2) The appointment of independent director(s) of the company shall be approved at the meeting of the shareholders.
- (3) The explanatory statement attached to the notice of the meeting for approving the appointment of independent director shall include a statement that in the opinion of the Board, the independent director proposed to be appointed fulfils the conditions specified

in the Act and the rules made thereunder and that the proposed director is independent of the management.

(4) The appointment of independent directors shall be formalised through a letter of appointment, which shall set out :

- (a) the term of appointment;
 - (b) the expectation of the Board from the appointed director; the Board-level committee(s) in which the director is expected to serve and its tasks;
 - (c) the fiduciary duties that come with such an appointment along with accompanying liabilities;
 - (d) provision for Directors and Officers (D and O) insurance, if any;
 - (e) the Code of Business Ethics that the company expects its directors and employees to follow;
 - (f) the list of actions that a director should not do while functioning as such in the company; and
 - (g) the remuneration, mentioning periodic fees, reimbursement of expenses for participation in the Boards and other meetings and profit related commission, if any.
- (5) The terms and conditions of appointment of independent directors shall be open for inspection at the registered office of the company by any member during normal business hours.
- (6) The terms and conditions of appointment of independent directors shall also be posted on the company's website.

V. Reappointment:

The re-appointment of independent director shall be on the basis of report of performance evaluation.

VI. Resignation or removal:

(1) The resignation or removal of an independent director shall be in the same manner as is provided in sections 168 and 169 of the Act.

(2) An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within a period of not more than one

hundred and eighty days from the date of such resignation or removal, as the case may be.

(3) Where the company fulfils the requirement of independent directors in its Board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director shall not apply.

VII. Separate meetings:

(1) The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management;

(2) All the independent directors of the company shall strive to be present at such meeting;

(3) The meeting shall:

(a) review the performance of non-independent directors and the Board as a whole;

(b) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;

(c) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

VIII. Evaluation mechanism:

(1) The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated.

(2) On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

**SCHEDULE VII – SECTION 135 - ACTIVITIES WHICH MAY BE INCLUDED
BY COMPANIES IN THEIR CORPORATE SOCIAL RESPONSIBILITY
POLICIES**

Activities relating to:—

- (i) eradicating extreme hunger and poverty;
- (ii) promotion of education;
- (iii) promoting gender equality and empowering women;
- (iv) reducing child mortality and improving maternal health;
- (v) combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases;
- (vi) ensuring environmental sustainability;
- (vii) employment enhancing vocational skills;
- (viii) social business projects;
- (ix) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and
- (x) such other matters as may be prescribed.