Paper 11(Capital Market Analysis & Corporate Laws) _Syllabus 2008
Supplementary on Notified Sections of Companies Act,2013 - for December 2014 CMA Examination

Supplementary on the Notified Sections of the Companies Act, 2013

Section - II

Introduction

The Companies Act, 2013 has been enacted to consolidate and amend the law relating to the companies. The changes in the existing company law (i.e., the Companies Act, 1956) was indispensable due to change in the national and international economic environment and for expansion and growth of our economy, the Parliament decided to replace the Companies Act, 1956 with a new legislation to meet the changed national and international economic environment and to further accelerate the expansion and growth of our economy. The new law (i.e., the Companies Act, 2013) is rule based legislation with 470 sections and seven schedules. The entire Act has been divided into 29 chapters. The Companies Act, 2013 aims to improve corporate governance, simplify regulations, strengthens the interests of minority investors and for the first time legislates the role of whistle-blowers. Thus, the enactment has made our corporate regulations more contemporary.

Unit 1 - Preliminary

1. Short title, extent, commencement and application [Section 1]

(1) This Act may be called the Companies Act, 2013.

(2) It extends to the whole of India.

(3) This section shall come into force at once and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

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

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

(b) insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 or the Insurance Regulatory and Development Authority Act, 1999;

(c) banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949;

(d) companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003;

(e) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act; and

such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf, subject to such exceptions, modifications or adaptation, as may be specified in the notification.

Point of Comparison in respect to new law

- This section 1 of the 2013 Act replaces sections 1, 616, 561 and 563 of the Companies Act, 1956.
- the Government has been vested with powers to enforce the different provisions of the Act at different points of time, which is unlike the 1956 Act.
- The proviso given in the 1956 Act, empowering the Central Government to apply the provisions of the Act to the State of Nagaland subject to the modifications, has been curtailed by the new law(2013 Act)
- New law under 2013 Act also prescribes the applicability of the Act to various companies/ Body corporate such as companies incorporated under this Act/previous company law, Insurance, Banking company etc.

2. Definitions given under the Companies Act, 2013 [Section 2]

The Companies Act, 2013 introduces around 33 new definitions. This section of the Companies Act, 2013 corresponds to section 2 of the Companies Act, 1956 and defines the various terms used in the Act.

(1) Abridged Prospectus - means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf.

Point of Comparison in respect to new law

- Under the 1956 Act the salient features of a prospectus were to be prescribed by the rules made by the Central Government. Whereas in the new Act of 2013, salient features of a prospectus are specified by the Securities and Exchange Board by making regulations.

(2) Alter or Alteration - includes the making of additions, omissions and substitutions.

Point of Comparison in respect to new law

- The new Act, 2013 specifically includes the word 'substitution' in the definition which was lacking in the definition given under 1956 Act.

(3) Appellate Tribunal - means the National Company Law Appellate Tribunal constituted under section 410.

The Definition is same as that contained in the 1956 Act.

(4) Articles - means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act.

The Definition is same as that contained in the 1956 Act.

(5) 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(JVC).

Whereas the term "Significant influence" used in the definition means control of at least 20% of total share capital, or of business decisions under an agreement.

This is a new definition inserted in the 2013 Act.

- The 1956 Act does not prescribe for any definition of the 'Associate', the relationship between the entities may be established either by way of establishment of holding-subsidiary relationship or by defining companies under same management. So this definition is added in the new law to limit all the shortcomings and provide a more rational and objective framework of associate relationship. Thus, specific definition of associate company is given in the 2013 Act to provide more governance in corporate transaction. The concept of associate has been inserted in the definition of related party for determining the related party transactions, Disclosure with its respect in the financial statements, Ascertaining independence of independent director and auditor during the appointment.

(6) Authorised capital or Nominal capital - means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company.

The 2013 Act, specifically defines the terminology. In 1956 Act, no particular definition was there.

(7) Banking company - means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949.

The Definition is modified. Instead of Banking Company Act, 1949 now the definition will be referred from the Banking Regulation Act, 1949.

(8) Board of Directors or Board - in relation to a company, means the collective body of the directors of the company.

The Definition is modified. It clarifies that Board constitutes a collective body of Director.

(9) Body Corporate or Corporation - includes a company incorporated outside India, but does not include –

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

(ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf

Point of Comparison in respect to new law

- New Act, 2013 not expressly exclude the corporation sole from the definition of body corporate whereas the law contained in the Act of 1956, clearly keep out the 'corporation sole' from the scope of the definition of body corporate.

(10) Book and paper and book or paper- "Book and paper" and "book or paper" include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form.

Point of Comparison in respect to new law

- As per law given in the 2013 Act, minutes and registers are also included in the definition. And also electronic form is allowed for maintaining Book and paper and book or paper.

(11) Branch Office - in relation to a company, means any establishment described as such by the company.

The definition given in the 2013 Act, has been simplified by saying that only establishment that has been described as such by the company shall be treated as a branch office. So it has been left on the company to designate any establishment of the company as branch office.

(12) Called up capital- "Called-up capital" means such part of the capital, which has been called for payment.

The 2013 Act, specifically defines the term which was absent in the 1956 Act.

(13) 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.

Point of Comparison in respect to new law

- The definition of charge in the new Act, 2013, has been elaborated and clearly explained. Whereas 1956 Act did not explain the meaning of charge but merely says that it includes a mortgage.

(14) Chartered Accountant - means a chartered accountant as defined in section 2(1)(b) of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under section 6(1) of that Act.

Point of Comparison in respect to new law

- The law of 1956 Act defines chartered accountant in whole time practice in India and not in full-time employment whereas new law defines chartered accountant as who holds a valid certificate of practice under the Chartered Accountants Act, 1949.

(15) Chief Executive Officer (CEO)- means an officer of a company, who has been designated as such by it.

(16) **Chief Financial Officer (CFO)-** means a person appointed as the Chief Financial Officer of a company.

New Act of 2013 defines and provides statutory recognition to CEO and CFO as Key Managerial Personnel.

(17) Company- means a company incorporated under this Act or under any previous company law.

The new Act, 2013 also permits for the incorporation of one person companies (OPCs) which the earlier Companies Acts (i.e., all the previous company law and the 1956 Act) did not.

(18) **Company limited by guarantee-** means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up.

Point of Comparison in respect to new law

- New Act, 2013 provides a separate definition of 'company limited by guarantee'. However the interpretation is same as that given in the sections 2(23) and 12(2)(b) of the 1956 Act.
- And also that 2013 Act is not restricted to only public/private company limited by guarantee but there can also be one person company (OPC) limited by guarantee.

(19) Company limited by shares- means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them.

Point of Comparison in respect to new law

- New Act, 2013 provides a separate definition of 'company limited by shares'. However the interpretation is same as that given in the sections 2(23) and 12(2)(a) of the 1956 Act.

(20) Company secretary or secretary - means a company secretary as defined in section 2(1)(c) of the Company Secretaries Act, 1980 who appointed by a company to perform the functions of a company secretary under this Act.

Point of Comparison in respect to new law

- The new Act, 2013 covers only a company secretary under the scope of the definition and omits 'any other individual' as prescribed in the 1956 Act, who are appointed to perform the duties which may be performed by a secretary and the other ministerial or administrative duties.

(21) Company secretary in practice- means a company secretary who is deemed to be in practice under sub-section (2) of section 2 of the Company Secretaries Act, 1980.

Point of Comparison in respect to new law

- The law of 1956 does not contain 'Company secretary in practice' rather it defines 'secretary in whole-time practice' and excludes full time employee.

(22) Contributory - means a person liable to contribute towards the assets of the company in the event of its being wound up.

A person who is holding fully paid-up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory under the Act whilst retaining rights of such a contributory.

Point of Comparison in respect to new law

- The law contained in 2013 Act contains an explanation clarifying that person holding fully paid-up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory under the Act even then they are retaining rights of such a contributory.

(23) Control- shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

The 2013 Act introduces this definition based on the same lines as defined under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011.

(24) Cost Accountant- means a cost accountant as defined in section 2(1)(b) of the Cost and Works Accountants Act, 1959.

This is a new definition introduced by the 2013 Act.

(25) Court- which means—

(i) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any district court or district courts subordinate to that High Court under sub-clause (ii)

(ii) the District Court, in cases where the Central Government has, by notification, empowered any district court to exercise all or any of the jurisdictions conferred upon the High Court, within the scope of its jurisdiction in respect of a company whose registered office is situate in the district

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

(iv) the Special Court established under section 435

(v) any Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law

Point of Comparison in respect to new law

- In the 2013 Act, the jurisdiction of the court have been more defined. Among with the other courts, law prescribes for special courts to deal with the offences and no concept of this special court was there in the 1956 Act.

(26) Debenture- includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not.

Definition is modified. It clarifies that only those instruments which evidence a debt will be treated as debenture.

(27) Depository- means a depository as defined in section 2(1)(e) of the Depositories Act, 1996.

There is no change in the definition.

(28) **Derivative-** means the derivative as defined in section 2(ac) of the Securities Contracts (Regulation) Act, 1956.

There is no change in the definition.

(29) Director - means a director appointed to the Board of a company.

Point of Comparison in respect to new law

- **Previously the director means a person** occupying the position of director but now the definition has been changed to director means a director appointed to the board of a company. Thereby the new law contained in the 2013 Act restricts the definition of director and does not include any person unlike the 1956 Act.

(30) Dividend- includes any interim dividend.

Definition is same as that contained in the 1956 Act.

(31) Document - includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form.

Point of Comparison in respect to new law

- As per the law given in the 2013 Act, the scope of the definition has been enlarged. The declaration and form are also included in the definition and other legal process has been deleted. Also electronic form allowed as Documents.

(32) 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.

- The law given under 2013 Act, covers the definition wider in scope. It covers option with respect to purchase or subscribe for the shares of the company, given to the directors (whole time as well as part-time), officers or employees of holding company or subsidiary company/companies.

(33) Expert- includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force.

Point of Comparison in respect to new law

- The definition of expert is not provided under the Companies Act, 1956

- The 2013 Act specifically covers company secretary and cost accountant within the purview of the definition of expert.

(34) Financial institution- includes a scheduled bank, and any other financial institution defined or notified under the Reserve Bank of India Act, 1934.

This is a newly inserted definition by the 2013 Act. This definition is not provided under the Companies Act, 1956.

(35) Financial statement - in relation to a company, includes—

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

(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;

(iii) cash flow statement for the financial year;

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

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

Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement.

- This definition is newly introduced by the 2013 Act. The cash flow statement has been made a compulsory part of the financial statement except in the case of the OPCs, dormant companies and small companies. The importance of the cash flow statement is emphasized in the context of entities which prepare accounts on accrual basis.

(36) Free reserves- means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend:

Provided that—

(i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or

(ii) any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value,

-shall not be treated as free reserves.

Point of Comparison in respect to new law

- As per the 1956 Act, the term 'free reserves' was interpreted differently for different purposes [Explanation to section 2(29A) and 372A]. Thus the 2013 Act replaces the multiple interpretations of free reserves by laying down one definition for all purposes.
- Definition has been modified and now those reserves out of which dividend can be distributed are treated as free reserves and not include share premium. And also the definitions say that the specific classes of reserves shall not be treated as free reserves.

(37) Global Depository Receipt- means any instrument in the form of a depository receipt, by whatever name called, created by a foreign depository outside India and authorised by a company making an issue of such depository receipts.

This is a newly inserted definition under the 2013 Act.

(38) Government company- means any company in which not less than fifty one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

There is no change in the definition.

(39) Holding company- in relation to one or more other companies, means a company of which such companies are subsidiary companies.

As per the 2013 Act, only 'company' can be a holding company. A body corporate other than 'company' cannot be regarded as 'holding company'.

The definition is same as that given under the Companies Act, 1956.

(40) Interested director- means a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company.

Point of Comparison in respect to new law

- Earlier in the 1956 Act, there was no definition of interested director but now in the new Act, a specific definition has been provided. The definition clarifies, when a director can be said to be indirectly interested in a contract/arrangement. Indirect interest means interested through any of its relatives/ firm, body corporate/other association of individuals in which he

/ any of his relatives is a partner, director or a member. The definition is very specific and exhaustive in nature.

(41) Issued capital- means such capital as the company issues from time to time for subscription.

The 2013 Act specifically defines the term.

(42) Key Managerial Personnel- in relation to a company, means—

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

(ii) the company secretary;

(iii) the whole-time director;

(iv) the Chief Financial Officer; and

(v) such other officer as may be prescribed.

This is a new insertion under the 2013 Act.

(43) Listed company- means a company which has any of its securities listed on any recognised stock exchange.

This definition is modified. The term 'public company' is replaced by the term 'company'.

(44) Manager- means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not.

No change in the definition.

(45) Managing Director - means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

Explanation.—For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management.

Point of Comparison in respect to new law

- The new law given in the 2013 Act does not require that a managing director of a company shall exercise his powers subject to the superintendence, control and direction of its Board of directors.

(46) Member - in relation to a company, means—

(i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;

(ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;

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

According to the 2013 Act, the inclusion of the term 'shares' in the definition under the point (iii) includes both i.e. equity as well as preference shares.

Point of Comparison in respect to new law

- The Act of 2013 omits the provision that bearer of a share warrant of the company is not a member as contained in the 1956 Act.

(47) Memorandum- means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act.

No change in the definition.

(48) Net worth - means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

Point of Comparison in respect to new law

- New Act, 2013 requires Aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off to be deducted from the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account for calculation of net worth. This was not prescribed in the 1956 Act.

(49) Notification- means a notification published in the Official Gazette and the expression "notify" shall be construed accordingly.

This is a new definition inserted by the 2013 Act.

(50) officer- includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act.

Point of Comparison in respect to new law

- In place of secretary, the term Key Managerial Personnel (KMP) has been used in the definition of officer given under the Act of 2013.

(51) Officer who is in default- for the purpose of any provision in this Act which enacts that an 'officer of the company who is in default' shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

(i) whole-time director;

(ii) key managerial personnel;

(iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

(iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

(v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;

(vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer.

Point of Comparison in respect to new law

- The expression 'Officer who is in default' is taken in wider sense in the new Act, 2013. The definition includes Key Managerial personnel as officer in default. Knowledge/consent would also be determining factor while determining whether a person is officer in default or not in the new Act. The share transfer agents, bankers, registrars and merchant bankers to the issue or transfer have also been made liable as officer in default, in respect of the issue or transfer of any shares of a company. Whereas the old law contained in the 1956 Act, did not make these third parties liable as officer in default.

(52) Official Liquidator- means an Official Liquidator appointed under section 359(1).

Point of Comparison in respect to new law

- This is a modified definition, which prescribes that now only whole time officers of Central Government can be appointed as official liquidators by the Central Government.

(53) Ordinary or special resolution- means an ordinary resolution, or as the case may be, special resolution referred to in section 114.

According to section 114, resolution shall be an ordinary resolution if the votes cast (by show of hands, electronically or on a poll or proxy by postal ballots) in favour are of the resolution exceeds the votes, if any, cast against the resolution by the members. A resolution shall be special when it is duly specified in the notice, calling the general meeting and votes cast in favour are three times the votes cast against the resolution.

Point of Comparison in respect to new law

- No difference in the definition, except that the new law of 2013 says that votes casted electronically and by postal ballots shall also be counted for the passing of the resolution.

(54) Paid up share capital or share capital paid-up- means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called.

Point of Comparison in respect to new law

- The 2013 Act more clarifies the definition. It says that "Any other amount received in respect of shares other than amount received as paid up in respect of shares issued and any amount credited as paid-up in respect of shares of the company, shall not be included in the amount credited as paid-up."

(55) Postal Ballot - means voting by post or through any electronic mode.

Point of Comparison in respect to new law

- New law also covers voting by post along with the electronic mode as given in the 1956 Act.

(56) Prescribed- means prescribed by rules made under this Act.

The 2013 Act, simplifies the definition and is made in general, rather than providing reference of any section of the Act.

(57) Previous company law - means any of the laws specified in—

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

(ii) the Indian Companies Act, 1866;

(iii) the Indian Companies Act, 1882;

(iv) the Indian Companies Act, 1913;

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

(vi) the Companies Act, 1956; and

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

(A) in the merged territories or in a Part B State (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereto of the Indian Companies Act, 1913; or

(B) in the State of Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956, in so far as banking, insurance and financial corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968, in so far as other corporations are concerned;

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

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

Point of Comparison in respect to new law

- The 2013 Act expands the scope by including the Companies Act, 1956 and the Registration of Companies (Sikkim) Act, 1961, under the definition of the previous company law.

(58) Private company- means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles —

(i) restricts the right to transfer its shares;

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

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

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

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

- shall not be included in the number of members; and

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

- Vide General Circular No.15/2013, the Ministry of Corporate Affairs clarifies with respect to the implementation of the following provision with a view to facilitate proper administration of the Companies Act, 2013 Act. The Circular states that Registrar of Companies may register those Memorandum and Articles of Association which have been received till 11.9.2013 as per the definition clause of the private company given under the Companies Act 1956 without referring to the definition of private company given under the Companies Act, 2013.

Point of Comparison in respect to new law

- The law contained in the 2013 Act, differs in the definition given of private company under the 1956 Act. Number of members has been increased from 50 to 200 and restriction to invite public to subscribe for shares or debentures has been extended to include all type of securities.
- Since, now company can only accept deposit from members, therefore restriction as to acceptance of deposit from person other than member, directors and their relatives has been dispensed with.

(59) Promoter- means a person—

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

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

(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.

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

Point of Comparison in respect to new law

- The definition of promoter has been specifically defined in the 2013 Act. This exhaustive definition is providing that who shall be considered as promoter and omits the persons from being called as promoters where he merely acts in professional capacity.

(60) prospectus- means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.

The definition of prospectus given under the 2013 Act, includes red herring prospectus and shelf prospectus along with the other forms of the prospectus.

(61) Public company- means a company which—

(a) is not a private company;

(b) has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed.

Provided that, a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.

Point of Comparison in respect to new law

The definition given under the 2013 Act is modified. It clearly provides that subsidiary of public company shall be deemed to be public company for the purpose of this Act even if subsidiary company continues to be a private company in its Articles.

(62) Public financial institution-means—

(i) the Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956;

(ii) the Infrastructure Development Finance Company Limited, referred in section 4A(1)(vi) of the Companies Act, 1956 so repealed under section 465 of this Act;

(iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;

(iv) institutions notified by the Central Government under section 4A(2) of the Companies Act, 1956 so repealed under section 465 of this Act;

(v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:

Provided that no institution shall be so notified unless—

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

(B) not less than fifty-one per cent of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments.

Point of Comparison in respect to new law

- As per the definition given in the 2013 Act, IDBI, IFCI & ICICI are no more public financial institution.
- The criteria for notification of any institution as public financial institutions(PFI) has been widened by saying that now Central Government has to consult with RBI for notifying such institution as PFI. It also provides that such an institutions have been established or constituted under Central/ State Act, or minimum of 51% of the paid-up share capital of such institution is held by one or more State Governments as well besides Central Government. Whereas under the 1956 Act, the Central Government notify the institution as PFI only if 51% /more paid up capital of institution is held by the Central Government.

(63) Recognized stock exchange- means a recognised stock exchange as defined in section 2(f) of the Securities Contracts (Regulation) Act, 1956.

Point of Comparison in respect to new law

- The new law of 2013 Act covers the definition as given under the Securities Contracts (Regulation) Act, 1956. Unlike the 1956 Act, the Central Government has no power under 2013 Act to notify stock exchange outside India as recognized stock exchange.

(64) Register of companies- means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act.

This is a new definition incorporated under the 2013 Act.

(65) Registrar- means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering companies and discharging various functions under this Act.

Point of Comparison in respect to new law

- The function assigned to the Registrar has been widened under the new Act of 2013. It now includes discharging of various functions along with registering companies.

(66) 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) anybody 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

- It's a new definition given under the 2013 Act. This term has been defined in order to know the manner in which contract or arrangements by a company with related

parties shall be made and disclosed.

- Related party is related with the conduct of related party transaction which corresponds with section 294, 294A, 297 and 314 of the 1956 Act.

(67) Relative - with reference to any person, means anyone who is related to another, if—

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

(ii) they are husband and wife; or

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

Point of Comparison in respect to new law

- The detailed list of relatives would be provided under the Rules to the Act. Unlike the 1956 Act, the list of relatives in Schedule IA has been omitted from 2013 Act.

(68) Remuneration - means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-tax Act, 1961.

Point of Comparison in respect to new law

- The 2013 Act provides a specific definition. Instead of detailing all expenses like 1956 Act, it says that, separate from money or its equivalent given or passed to any person for services rendered, along with the other facilities which are treated as perquisites under the Income Tax Act, 1961, will all form the part of remuneration.

(69) **Schedule-** means a Schedule annexed to this Act.

No difference in the definition. However, in the 2013 Act there are 7 schedules.

(70) Scheduled bank- means the scheduled bank as defined in section 2(e) of the Reserve Bank of India Act, 1934.

The definition is same as that given in the 1956 Act.

(71) Securities- means the securities as defined in section 2(h) of the Securities Contracts (Regulation) Act, 1956.

Point of Comparison in respect to new law

- Unlike 1956 Act, the definition of securities given in the 2013 Act, omits hybrid instruments.

(72) Securities and Exchange Board- means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992.

(73) Share- means a share in the share capital of a company and includes stock.

Point of Comparison in respect to new law

- The new law omits the line 'except where a distinction between stock and shares is expressed or implied'. Thus this makes clear that wherever the term share is used in the 2013 Act, it would include "stock' as well.

(74) Subscribed capital - means such part of the capital which is for the time being subscribed by the members of a company.

Specifically defined in the 2013 Act.

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

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed. Explanation — For the purposes of this clause,—

(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in point (i) &(ii) is of another subsidiary company of the holding company;

(b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power at its discretion can appoint or remove all or a majority of the directors;

(c) the expression "company" includes any body corporate;

(d) "layer" in relation to a holding company means its subsidiary or subsidiaries;

- The Ministry vide General Circular No. 20 /2013 issued a clarification with regard to holding of shares or exercising power in a fiduciary capacity for determining the Holding and Subsidiary relationship under Section 2(87) of the Companies Act, 2013. The Ministry clarified that the shares held by a company or power exercisable by it in another company in a 'fiduciary capacity' shall not be counted for the purpose of determining the holding-subsidiary relationship in terms of the provision of section 2(87) of the Companies Act, 2013.

Point of Comparison in respect to new law

- Earlier this definition was not part of definition clause and were provided under the separate sections. The Act of 2013, restricts end number of subsidiaries which a holding company can have. It provides that such class or classes of the holding companies as may be prescribed shall not have the layers of subsidiaries beyond the prescribed numbers. The meaning of layer has also been provided in the definition.

(76) Sweat Equity shares - means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

No change in the definition.

(77) Total voting power - in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes.

No change in the definition.

(78) **Tribunal -**means the National Company Law Tribunal constituted under section 408.

The definition is same as that provided in the Companies Act, 1956.

(79) 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.

The definition is newly inserted under the Companies Act,2013.

(80) Unlimited company- means a company not having any limit on the liability of its members.

- The law contained in the 2013 Act provides a separate definition for the unlimited company though the interpretation is same as that contained the 1956 Act.
- The Act of 2013 provides that there can also be an OPC unlimited company along with the public/ private unlimited company.

(81) Voting rights -means the right of a member of a company to vote in any meeting of the company or by means of postal ballot.

This is a new definition given under the 2013 Act and not provided under the Companies Act, 1956.

(82) Whole time director - includes a director in the whole-time employment of the company.

Point of Comparison in respect to new law

- Separate definition has been provided under the Act of 2013. In the earlier Act of 1956, it was explained in the explanation to section 269.

(83) Meaning of certain words and expressions not defined in the Act- Words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 shall have the meanings respectively assigned to them in those Acts.

Point of Comparison in respect to new law

- The 2013 Act provides Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the Depositories Act, 1996 for understanding the meaning of certain words and expressions not defined in the Act whereas the 1956 Act provides the reference of only Depositories Act, 1996.

UNIT 2 – Prospectus and Allotment of Securities

1. Prospectus - Meaning and Role

The term prospectus can be understood in general as, a document containing statement of the property, business, undertaking for the formation and development of a company for which an appeal is made to the public to subscribe for shares. The term prospectus is however, defined in clause 2(70) of the Companies Act, 2013 which is explained in the definitional part of this supplementary.

Public offer and private placement [Section 23, except clause (b) of sub-section (1) and sub-section (2)]

Section 23 of the Companies Act, 2013 is related to the issue of securities by the public company and private company. The section prescribes the mode of issue of securities.

According to the section, a public company may issue securities in the following manner -

(a) to public through prospectus (herein referred to as "public offer"), or

(b) through private placement; or

(c) through a rights issue or a bonus issue, and

(d) in case of a listed company or a company which intends to get its securities listed, with the provisions of the Securities and Exchange Board of India Act, 1992 and the rules and regulations made there under.

Here term, "public offer" includes initial public offer (IPO) or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus.

Whereas a private company may issue securities —

(a) by way of rights issue or bonus issue; or

(b) through private placement.

Point of comparison with respect to new law-

- This is a new provision which seeks to provide the way in which a public company or a private company may issue securities.

2. Power of Securities and Exchange Board to regulate issue and transfer of securities, etc. (Section 24)

This section 24 of the Companies Act, 2013 seeks to provide that issue and transfer of securities etc of the listed companies / companies which intend to get their securities listed, shall be administered by SEBI and the Central Government, as required. The section says that-

(1) The provisions contained in this Chapter III (Prospectus and allotment), Chapter IV(share capital and debenture) and in section 127(Punishment for failure to distribute dividends) shall-

(a) where the provisions relate to- (i) issue and transfer of securities; and (ii) nonpayment of dividend, by listed companies or those companies which intend to get their securities listed on any recognized stock exchange in India, except as provided under this Act, be administered by the Securities and Exchange Board by making regulations in this behalf;

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

The sections further explains that all powers relating to all other matters with respect to prospectus, return of allotment, redemption of preference shares and any other matter specifically provided in this Act, shall be exercised by the Central Government, the Tribunal or the Registrar, as the case may be.

(2) The Securities and Exchange Board shall, in respect of matters specified above and the matters delegated to it under proviso of section 458(1) [provisions relating to the forward dealing and the Insider trading], exercise the powers conferred upon it by the Securities and Exchange Board of India Act, 1992.

- Whereas any difficulties have arisen regarding compliance with the provisions of section 24, section 58 and section 59 of the 2013 Act in so far as they relate to exercise of certain powers by the Tribunal during the period the Tribunal is duly constituted under the 2013 Act;

The Ministry of Corporate Affairs issued an order called as, the Companies (Removal of Difficulties) Order, 2013 on 20th September, 2013. By this order Ministry clarified that until a date is notified by the Central Government under section 434(1) of the Companies Act, 2013 for transfer of all matters, proceedings or cases to the Tribunal constituted under Chapter 28 of the Companies Act, 2013, till then, the Board of Company Law Administration shall exercise the powers of the Tribunal under sections 24, 58 and section 59 in pursuance of the second proviso to section 465(1) of the Companies Act, 2013.

Point of comparison with respect to new law-

- This section replaces Section 55A (Powers of Securities and Exchange Board of India) of the 1956 Act.
- The provisions of new law contained in 2013 Act, clearly shows that this provision shall also apply to chapter IV of the 2013 Act so far it relates to issue and transfer of securities by listed companies and companies which intend to get their securities listed (i.e. unlisted companies) on any recognised stock exchange in India, administered by the Securities and Exchange Board.

3. Document containing offer of securities for sale to be deemed prospectus [Section 25, except sub-section (3)]

(1) Where a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company; and all enactments and rules of law as to the contents of prospectus and as to liability in respect of mis-statements, in and omissions from, prospectus, or otherwise relating to prospectus, shall apply with the modifications specified in sub sections (3) and (4) and shall have effect accordingly, as if the securities had been offered to the public for subscription and as if persons accepting the offer in respect of any securities were subscribers for those securities, but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, securities was made with a view to the securities being offered for sale to the public if it is shown—

(a) that an offer of the securities or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

(b) that at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it.

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

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

(a) the net amount of the consideration received or to be received by the company in respect of the securities to which the offer relates; and

(b) the time and place at which the contract where under the said securities have been or are to be allotted may be inspected;

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

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document referred to in sub-section (1) is signed on behalf of the company or firm by two directors of the company or by not less than one-half of the partners in the firm, as the case may be.

Notes: -

This clause corresponds to section 64 of the Companies Act, 1956 and seeks to provide that any document by which the offer or sale of shares or debentures to the public is made shall for all purposes be treated as prospectus.

Modified

As per the Act, where a person making an offer to which this section relates is a Company or a firm, such offer shall be signed on behalf of the Company or firm by two Directors of the Company or by not less than one-half of the partners in the firm, as the case may be and not by their agent authorized in writing, as provided under the Companies Act, 1956.

4. Public offer of securities to be in dematerialized form [Section 29]

(1) Notwithstanding anything contained in any other provisions of this Act,—

(*a*) every company making public offer; and

(*b*) such other class or classes of public companies as may be prescribed,

shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

(2) Any company, other than a company mentioned in sub-section (*1*), may convert its securities into dematerialised form or issue its securities in physical form in accordance with the provisions of this Act or in dematerialised form in accordance with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

Notes: -

This clause corresponds to section 68B of the Companies Act, 1956 and seeks to provide that public company making public offer and such other class or classes of companies as may be prescribed, shall issue the securities only through dematerialized form. Other companies may issue securities in physical or in dematerialized form.

New

Every Company making public offer and such other class or classes of Public Companies as may be prescribed shall issue the securities only in dematerialized form by complying with the provisions of the Depositories Act, 1996 and the Regulations made thereunder.

Dropped

The requirement that only a Company making initial public offer of any security for a sum of ten crore rupee or more, shall require to issue securities in dematerialized form, has been dispensed with.

5. Advertisement of prospectus [Section 30]

Where an advertisement of any prospectus of a company is published in any manner, it shall be necessary to specify therein the contents of its memorandum as regards the objects, the liability of members and the amount of share capital of the company, and the names of the signatories to the memorandum and the number of shares subscribed for by them, and its capital structure.

Notes:-

This clause corresponds to section 66 of the Companies Act, 1956 and seeks to provide that where an advertisement of any prospectus of a company is published, it shall specify therein the contents of memorandum as regards to the objects, the liability of members and the amount of share capital, the names of the signatories and the number of shares subscribed by them and also its capital structure, etc.

New

Where an advertisement of any Prospectus of a Company is published in any manner, it shall be necessary to specify therein the contents of its Memorandum as regards the objects, the liability of members and the amount of share capital of the Company and the names of the signatories to the Memorandum and the number of shares subscribed for by them and its capital structure.

Dropped

The relaxation that where any Prospectus is published as news paper advertisement, then it shall not be required in the advertisement to specify the contents of the Memorandum or the signatories thereto or the number of shares subscribed for them, has been dispensed with.

6. Shelf prospectus [Section 31]

(1) Any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

(2) A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus:

Provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.

(3) Where an information memorandum is filed, every time an offer of securities is made under sub-section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

Explanation.—For the purposes of this section, the expression "shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

Notes:-

This clause corresponds to section 60A of the Companies Act, 1956 and seeks to provide that any class or classes of companies prescribed by the Securities and Exchange Board of India may file a shelf prospectus with the Registrar of companies at the stage of the first offer of securities for a period of one year. No further issue of prospectus is required in respect of a second or subsequent offer of securities included in such prospectus for a period of one year. Company shall also file information memorandum on new charges created, of any change in financial position with the Registrar of companies prior to the issue of a second or subsequent offer under shelf prospectus.

New

Before opening of any subsequent offer of securities under shelf prospectus, where a company or any other person has received applications for the allotment of securities along with advance payments of subscription under subsequent offer of securities, before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.

Modified

- As per the Act, the Companies who can file Shelf Prospectus, shall be prescribed by SEBI, as against the Companies Act, 1956, wherein only Public Financial Institutions, Public Sector Banks or Schedule Banks whose main object is financing were allowed to issue Shelf Prospectus.
- In information Memorandum to be filed at the time of subsequent offer of securities, apart from material facts relating to new charges created, changes in the financial position of the Company and other particulars as may be prescribed shall also be disclosed.

7. Red herring prospectus [Section 32]

(1) A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus. (2) A company proposing to issue a red herring prospectus under sub-section (1) shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer.

(2) A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.

(3) Upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.

Explanation.—For the purposes of this section, the expression "red herring prospectus" means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

Notes:-

This clause corresponds to section 60B of the Companies Act, 1956 and seeks to provide for issue of red-herring prospectus prior to issue of a prospectus. A company proposing to issue a red herring prospectus shall file it with Registrar at least three days prior to the opening of the subscription list and the offer. Upon closing of the offer of securities, the details of information to be filed with the Registrar and Securities and Exchange Board of India.

Dropped

- Requirement of individually intimating the variations, if any, between Red Herring Prospectus and the Prospectus to the persons invited to subscribe to the issue of securities, has been dispensed with.
- Requirement of giving opportunity to persons who have given advance subscription money before the date of issue without having known the variation between the Red Herring Prospectus and Prospectus, to withdraw their application, has been dispensed with.

8. Issue of application forms for securities [Section 33, except sub-section (3)]

(1) No form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an abridged prospectus:

Provided that nothing in this sub-section shall apply if it is shown that the form of application was issued—

(a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to such securities; or

(b) in relation to securities which were not offered to the public.

(2) A copy of the prospectus shall, on a request being made by any person before the closing of the subscription list and the offer, be furnished to him.

(3) If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.

Notes:-

This clause corresponds to sub-section (3) of section 56 of the Companies Act, 1956 and seeks to provide that every form of application issued for purchase of any securities of a company shall

be accompanied by an abridged prospectus. If a company makes any default the company shall be punishable with fine.

Modified

- The scope of the section has been widened, requiring for form of application for all type of securities along with shares or debentures.
- In case of default, penalty has been increased and now if a Company makes default under this provision, it shall be liable to a penalty of fifty thousand rupees for each default.
- Under the Act, instead of Information Memorandum, each application for securities shall be accompanied by abridged Prospectus.

9. Criminal liability for Mis-statements in prospectus [Section 34]

Where a prospectus, issued, circulated or distributed under this Chapter, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorizes the issue of such prospectus shall be liable under section 447:

Provided that nothing in this section shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.

Notes:-

This clause corresponds to section 63 of the Companies Act, 1956 and provides for criminal liability for mis-statements in prospectus. The person who authorises the issue of such prospectus shall be punishable for fraud.

Modified

- Under the provisions of Act, in addition to penal provision for untrue statement in Prospectus, now, in case of Prospectus containing statements which are misleading in form or context or where any inclusion or omission of any matter is likely to mislead, the persons who have authorized the issue of the said Prospectus shall also be criminally liable.
- Further the punishment has been increased and in case of default, the person responsible, shall be liable for punishment for fraud under section 447 and will be subject to stringent penalties.

10. Civil liability for Mis-statements in prospectus [Section 35]

(1) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who—

(a) is a director of the company at the time of the issue of the prospectus;

(b) has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time;

(c) is a promoter of the company;

(d) has authorised the issue of the prospectus; and

(e) is an expert referred to in sub-section (5) of section 26,

shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage.

(2) No person shall be liable under sub-section (1), if he proves—

(a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

(3) Notwithstanding anything contained in this section, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in subsection (1) shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

Notes:-

This clause corresponds to section 62 of the Companies Act, 1956 and seeks to provide that in case any person subscribes for securities on the basis of misleading statements or inclusion or omission of any matter in the prospectus resulting in any loss or damage, the person who has

authorised the issue of such prospectus or a director, promoter, whosoever is liable, shall have to compensate every person who has sustained such loss or damage.

New

Under the Act, in addition to criminal liability, now civil liability will arise in cases of Prospectus issued for all types of securities and not only shares and debentures.

Now apart from untrue statement, civil liability will also arise in case inclusion or omission of any matter which is misleading.

Civil liability is also been extended to experts.

Where the Prospectus has been issued with an intention to defraud or for fraudulent purpose, every person who is liable under this section, shall be personally responsible without any limitation for the losses or damages incurred by any person who has subscribed to the securities on the basis of such Prospectus.

Dropped

- The exception that a person will not be liable for any civil liability in case, after the issue of the Prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein withdraw his consent to the Prospectus and gave reasonable public notice of the withdrawal and of the reason therefor, has been dispensed with.
- The general exception given to experts under the Companies Act, 1956 from civil liability has also been withdrawn.
- The definition of the term "promoters" is also excluded from this section.

11. Action by affected persons [section 37]

A suit may be filed or any other action may be taken under section 34 or section 35 or section 36 by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus.

Notes: -

This is a new clause which seeks to provide that a suit may be filed or any other action may be taken by any person, group of persons or any association of persons who have been affected by any misleading statement or the inclusion or omission of any matter in the prospectus.

New

Now any person (including group or association) who is affected by any misleading statement or any inclusion or omission of any matter in the Prospectus, can file a suit or take

any action, under section 34 i.e. criminal liability for misstatement in Prospectus or section 35 i.e. civil liability for misstatement in Prospectus or section 36 i.e. punishment for fraudulently including persons to invest money. "

12. Allotment of securities by company [Section 39, except sub-section (4)]

(1) No allotment of any securities of a company offered to the public for subscription shall be made unless the amount stated in the prospectus as the minimum amount has been subscribed and the sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument.

(2) The amount payable on application on every security shall not be less than five per cent. of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board by making regulations in this behalf.

(3) If the stated minimum amount has not been subscribed and the sum payable on application is not received within a period of thirty days from the date of issue of the prospectus, or such other period as may be specified by the Securities and Exchange Board, the amount received under sub-section (1) shall be returned within such time and manner as may be prescribed.

(4) Whenever a company having a share capital makes any allotment of securities, it shall file with the Registrar a return of allotment in such manner as may be prescribed.

(5) In case of any default under sub-section (3) or sub-section (4), the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

Notes: -

This clause corresponds to section 69 of the Companies Act, 1956 prohibiting allotment of securities where the minimum amount has not been subscribed, the amount is to be refunded to all the applicants within a given time frame. This clause further provides that whenever a company having a share capital makes any allotment of securities, it shall file return of allotment with the registrar. In case of any default under sub-clause (3) and (4) the company and its officers who are in default shall be liable to fine.

Modified

- The scope of section has been widened from shares to all types of securities.
- Now apart from shares, Return of allotment is required to be filed for all types of

securities.

- The amount payable on application on every security has been modified. Now the amount payable shall not be less than 5% of the nominal amount of the security or such other per cent or amount as may be specified by the Securities and Exchange Board of India by making regulations in this behalf.
- Further as against the period of 120 days as provided under Companies Act, 1956, the amount of minimum subscription shall be received within 30 days or such other period as may be prescribed by SEBI. Under the Companies Act, 1956, there was no reference to SEBI.
- In case of non receipt of minimum subscription, the earlier stipulated period of 120/ 130 days under the Companies Act, 1956 has now been deleted. Instead, under the Act Rules will be prescribed with regard to this period during which money should be received or during which refunds have to be made, in case of non- receipt.
- In case of default in intimating the allotment of shares to Registrar of Companies, the punishment has been increased and in case of default, the officer in default shall now be liable to penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees.

13. Securities to be dealt with in stock exchanges [Section 40, except sub-section (6)]

(1) Every company making public offer shall, before making such offer, make an Securities to application to one or more recognised stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.

(2) Where a prospectus states that an application under sub-section (1) has been made, such prospectus shall also state the name or names of the stock exchange in which the securities shall be dealt with.

(3) All monies received on application from the public for subscription to the securities shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—

(a) for adjustment against allotment of securities where the securities have been permitted to be dealt with in the stock exchange or stock exchanges specified in the prospectus; or

(b) for the repayment of monies within the time specified by the Securities and Exchange Board, received from applicants in pursuance of the prospectus, where the company is for any other reason unable to allot securities.

(4) Any condition purporting to require or bind any applicant for securities to waive compliance with any of the requirements of this section shall be void.

(5) If a default is made in complying with the provisions of this section, the company shall be punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

(6) A company may pay commission to any person in connection with the subscription to its securities subject to such conditions as may be prescribed.

Notes: -

This clause corresponds to section 73 of the Companies Act, 1956 and seeks to provide that prospectus has to mention the name of the stock exchange where the securities are to be dealt with. Any allotment without permission of the stock exchange shall be void. All moneys received on application from the public for subscription to the securities shall be kept in a separate bank account. In case of default, the company and every officer of the company who is in default shall be punishable with fine or with imprisonment or with both. A company may pay commission to any person in connection with the subscription to its securities.

Modified

- The scope of section has been widened from shares & debentures to all types of securities.
- A Company may pay commission to any person in connection with subscription of its securities subject to prescribed conditions.
- The punishment has been increased and now in case of default of provisions of this section, the Company shall be punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh rupees and every officer of the Company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees or with both.
- Under the Companies Act, 1956, where the permission has not been applied or, such permission having been applied for, has not been granted as aforesaid, the Company shall forthwith repay without interest all moneys received from applicants in pursuance of the Prospectus, and, if any such money is not repaid within eight days after the Company becomes liable to repay it, the Company and every Director of the Company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having

regard to the length of the period of delay in making the repayment of such money. Now the period within which the money to refunded shall be prescribed by SEBI and the section doesn't provide for any interest in case of delay in payment of refund, after the time prescribed by SEBI.

Dropped

- The Act doesn't clarify that in case where the Stock Exchange refused to grant permission for dealing in the Company's shares, whether the allotment made will be void or not, when an appeal against the aforesaid order of Stock Exchange is filed by the Company.
- The section doesn't prescribe the minimum time within which the permission for listing shall be granted by the stock exchange to which an application has been made and whether or not the Prospectus is field with them will be void, whenever such permission is not granted.

Unit 3 – Share Capital and Debentures

1. Nature of shares or debentures [Section 44]

The shares or debentures or other interest of any member in a company shall be movable property transferable in the manner provided by the articles of the company.

Notes: -

This clause corresponds to section 82 of the Companies Act, 1956 and seeks to provide that the shares and debentures are movable property transferable in a manner provided in the articles of a company.

No Change

2. Numbering of shares [Section 45]

Every share in a company having a share capital shall be distinguished by its distinctive number:

Provided that nothing in this section shall apply to a share held by a person whose name is entered as holder of beneficial interest in such share in the records of a depository.

Notes:-

This clause corresponds to section 83 of the Companies Act, 1956 and seeks to provide that every share in a company having a share capital shall be distinguished by its distinctive number. This clause does not apply to shares held with the depository.

Modified The Act specifically provides that with respect to shares held by a person whose name is entered as holder of beneficial interest in such share in the records of depository, the requirement of numbering of shares doesn't apply.

3. Calls on shares of same class to be made on uniform basis [Section 49]

Where any calls for further share capital are made on the shares of a class, such calls shall be made on a uniform basis on all shares falling under that class.

Explanation.— For the purposes of this section, shares of the same nominal value on which different amounts have been paid-up shall not be deemed to fall under the same class.

Notes:-

This clause corresponds to section 91 of the Companies Act, 1956 and seeks to provide that where any calls for further share capital are made on the shares of a class, such calls shall be made on a uniform basis on all shares falling under that class.

No Change

4. Company to accept unpaid share capital, although not called up [Section 50]

(1) A company may, if so authorised by its articles, accept from any member, the whole or a part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up.

(2) A member of the company limited by shares shall not be entitled to any voting rights in respect of the amount paid by him under sub-section (1) until that amount has been called up.

Notes:-

This clause corresponds to section 92 of the Companies Act, 1956 and seeks to provide that a company can accept from any member the whole or a part of the amount remaining unpaid on any shares without being called up and he will not be entitled to any voting rights on the amount paid by him unless amount has been called up.

No Change

5. Payment of dividend in proportion to amount paid-up [Section 51]

A company may, if so authorised by its articles, pay dividends in proportion to the amount paid-up on each share.

Notes: -

This clause corresponds to section 93 of the Companies Act, 1956 and seeks to provide that a company, if authorised by its articles, pay dividends in proportion to the amount paid up on each share.

No Change

6. Refusal of registration and appeal against refusal [Section 58]

(1) If a private company limited by shares refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any securities or interest of a member in the company, it shall within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

(2) Without prejudice to sub-section (1), the securities or other interest of any member in a public company shall be freely transferable:

Provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.

(3) The transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

(4) If a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.

(5) The Tribunal, while dealing with an appeal made under sub-section (3) or subsection (4), may, after hearing the parties, either dismiss the appeal, or by order—

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or

(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

(6) If a person contravenes the order of the Tribunal under this section, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Notes: -

This clause corresponds to sub-sections (1) and (2) of section 111 of the Companies Act, 1956 and seeks to provide for that if a company without sufficient cause refuses to register the transfer of shares, appeal against such refusal shall lie to the Tribunal. It is also provided that the securities of a public company, etc., are freely transferable subject to the provisions that any contract or arrangement between two or more persons shall be enforceable as contract.

New

- The scope of the section has been widened and now its covers all securities and not only shares and debentures.
- In case a Public Company refuses to register transfer of securities and no intimation has been received for the refusal, than an appeal to Tribunal can be made within 3 months from the date on which instrument for transfer or intimation for transmission was delivered to the company.
- The section clearly provides that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.

Modified

- The period within which Private Company has to intimate refusal to register the transfer has been reduced from 2 months to 30 days, from the date of which instrument of transfer or intimation for transmission was received.
- In case Public Company refuses to register transfer of shares, then it shall intimate the said refusal within 30 days instead of 2 months as provided under the Companies Act, 1956, from the date of which instrument of transfer or intimation for transmission was received.
- The power of making the appeal in case of refusal of transfer has now been limited for the Transferee only, contrary to the Companies Act, 1956 wherein it was extended to the transferor or the transferee or the person who give intimation for the transmission by operation of law as the case may be.
- In case of Private Company, the time period of making the appeal to the Tribunal after receiving the notice of the refusal of such transfer has been reduced from 2 months to 30 days. In case where no notice has received, the appeal should be filed within 60 days from the date on which instrument of transfer or transmission as the case may be was delivered to the Company, contrary to the provisions of the Companies Act, 1956 wherein a period of 4 months was provided.
- In case of Public Company the time period of making the appeal to the Tribunal

after receiving the notice of the refusal of such transfer is also streamlined from 2 months to 60 days. In case where no notice has been received, the appeal should be filed within 90 days from the date on which instrument of transfer or transmission as the case may be was delivered to the Company, wherein in case of the Companies Act, 1956 no period was provided.

- The penalty in case of contravention of the order of the Tribunal has been increased. Any person who commits default shall be punishable with imprisonment for a term which shall not be less than one lakh rupees but which may extend to five lakh rupees.
- The penalty in case of contravention of the order of the Tribunal is also made Non-Compoundable which was earlier Compoundable under the Companies Act, 1956.

Dropped

- The section doesn't provide for the situation wherein during the pendency of application with Tribunal under this section, any further transfer of shares would have entitled the holder to exercise the voting rights unless the same has been suspended by the Tribunal.
- Power of the Tribunal to pass interim orders, including any orders as to injunction or stay and incidental or consequential orders regarding payment of dividend or the allotment of bonus or right shares hasn't been specifically provided for.

7. Rectification of register of members [Section 59]

(1) If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, omitted therefrom, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal, or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register.

(2) The Tribunal may, after hearing the parties to the appeal under sub-section (1) by order, either dismiss the appeal or direct that the transfer or transmission shall be registered by the company within a period of ten days of the receipt of the order or direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved.

(3) The provisions of this section shall not restrict the right of a holder of securities, to transfer such

securities and any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.

(4) Where the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 or this Act or any other law for the time being in force, the Tribunal may, on an application made by the depository, company, depository participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to set right the contravention and rectify its register or records concerned.

(5) If any default is made in complying with the order of the Tribunal under this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

Notes: -

This clause corresponds to section 111A of the Companies Act, 1956 and seeks to provide that if the name of any person has been entered in or has been omitted from the register of members without sufficient cause, the member or the person aggrieved may appeal to the Tribunal or to a competent court outside India in respect of foreign members or debenture holders. The Tribunal may either dismiss the appeal or direct for rectification of register, transfer or transmission. The Tribunal may also direct to pay damages to the aggrieved party. The clause also provides for the provisions of this clause shall not restrict the right of a holder of shares or debentures, to transfer such shares or debentures and any person acquiring such shares or debentures shall be entitled for voting rights unless suspended by the Tribunal. The Tribunal may direct any company or a depository to set right any contravention and rectify register. The clause further provides that if any default is made in complying with the order of the Tribunal, the company and every officer who is in default shall be punishable.

New

- The scope of the section has been widened and now its covers all securities and not only shares and debentures.
- For the purpose of the rectification of register of foreign members or foreign debenture holders it is provided that appeal by the aggrieved party may be made to the competent court outside India, as approved by Central Government.

Modified

- In case default is made in complying with the orders of the Tribunal, then the punishment provided has been increased. As per the new provision the company shall be punishable with fine which shall not be less than one lakh rupees but which

may extend to five lakh rupees and every officer of the Company who is in default shall be punishable with an imprisonment for a term which may extend to 1 year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

- Further wherein the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 or this Act or any other law for the time being in force, no time period has been prescribed for making an application to Tribunal by the depository, Company, depository participant, the holder of the securities or the Securities and Exchange Board of India, whereas under the Companies Act, 1956 a time period of 2 months was prescribed.

Dropped

The power of the Tribunal to decide the questions related to title of any person, who is party to any application made under this section has been dispensed with.

8. Unlimited company to provide for reserve share capital on conversion into limited company [Section 65]

An unlimited company having a share capital may, by a resolution for registration as a limited company under this Act, do either or both of the following things, namely—

(a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;

(b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

Notes:-

This clause corresponds to section 32 of the Companies Act, 1956 and seeks to provide that an unlimited company having a share capital may be converted as a limited company by increasing the nominal amount of each share. This clause further provides that the company can not call unpaid portion of share capital except in the event of winding up.

No Change

9. Transfer of certain sums to capital redemption reserve account [Section 69]

(1) Where a company purchases its own shares out of free reserves or securities premium account, a sum equal to the nominal value of the shares so purchased shall be transferred to the capital redemption reserve account and details of such transfer shall be disclosed in the balance sheet.

(2) The capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

Notes:-

This clause corresponds to section 77AA of the Companies Act, 1956 and seeks to provide that in case of buy-back of shares out of free reserves, a sum equal to the nominal value of the shares so purchased shall be transferred to capital redemption reserve account. The said account may be applied in paying up unissued shares of the company to be issued to the company as fully paid bonus shares."

No Change

10. Prohibition for buy-back in certain circumstances [Section 70, except sub-section (2)]

(1) No company shall directly or indirectly purchase its own shares or other specified securities –
   (a) through any subsidiary company including its own subsidiary companies;
   (b) through any investment company or group of investment companies; or
   (c) if a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company:

   Provided that the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

(2) No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the provisions of sections 92, 123, 127 and section 129.

Notes: -

This clause corresponds to section 77B of the Companies Act, 1956 and seeks to prohibit buy-back through any subsidiary company, through any investment company or through such company which has defaulted in making repayment of deposits, interest thereon, redemption of debentures, payment of dividend, etc.

Modified

- Now a Company can make buyback even if it had at any time defaulted in repayment of deposit or interest payable 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 bank, provided that the default must have been remedied and a period of 3 years must have lapsed after such default ceased to subsist.
- In addition to the default related to filing of Annual Return (Section 159), Failure to distribute dividend within 30 days (Section 207), Form and Content of Balance Sheet and Profit and Loss (Section 211) as provided under the Companies Act, 1956, under the Act, a Company will not be able to directly or indirectly, purchase its own shares or other specified securities, in case it has defaulted the provisions related to Declaration of Dividend.

Unit 4 – Management and Administration

1. Power to close register of members or debenture-holders or other security holders [Section 91]

(1) A company may close the register of members or the register of debenture-holders or the register of other security holders for any period or periods not exceeding in the aggregate forty-five days in each year, but not exceeding thirty days at any one time, subject to giving of previous notice of at least seven days or such lesser period as may be specified by Securities and Exchange Board for listed companies or the companies which intend to get their securities listed, in such manner as may be prescribed.

(2) If the register of members or of debenture-holders or of other security holders is closed without giving the notice as provided in sub-section (1), or after giving shorter notice than that so provided, or for a continuous or an aggregate period in excess of the limits specified in that sub-section, the company and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for every day subject to a maximum of one lakh rupees during which the register is kept closed.

Notes: -

This clause corresponds to section 154 of the Companies Act, 1956 and seeks to provide that a company may close the register of members, debenture holders and other security holders by giving minimum seven days notice or such lesser period as may be specified by SEBI. If default is made in complying with the provisions of this clause the company and every officer of the company shall be punishable with fine.

New

- In the Act, the provision of closure of the Registers of other Security Holders is also introduced.

Modified

- As per the Act, a listed Company or the Company which intends to get its securities listed close the Register of members or the Register of debenture holders or the Register of other security, subject to giving of previous notice of at least 7 days or such lesser period as may be specified by Securities and Exchange Board of India.
- The manner in which the intimation of book closure shall be required to be given will be prescribed by way of Rules in the Act as against the requirement of advertisement which was prescribed under the Companies Act, 1956.
- The quantum of punishment in case of contravention of provisions related to closure of register of members and other securities has been restricted to a limit as opposed to the Companies Act, 1956, where penalty is based on every day for which the default continues without any limit. In case of default the Company and every officer of the Company who is in default shall be liable to a punishment of five thousand rupees for every day during which the register is kept closed but not exceeding one lakh rupees.

2. Calling of extraordinary general meeting [Section 100, except sub-section (6)]

(1) The Board may, whenever it deems fit, call an extraordinary general meeting of the company.

(2) The Board shall, at the requisition made by,—

(a) in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting;

(b) in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote, call an extraordinary general meeting of the company within the period specified in subsection (4).

(3) The requisition made under sub-section (2) shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.

(4) If the Board does not, within twenty-one days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than forty-five days from the date of receipt of such requisition, the meeting may be called and held by the requisitonists themselves within a period of three months from the date of the requisition.

(5) A meeting under sub-section (4) by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board.

(6) Any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (4) shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting.

Notes: -

This clause corresponds to section 169 of the Companies Act, 1956 and seeks to provide that the Board may call an extraordinary general meeting on its own and shall call such meeting in case of company having share capital on a request from such number of members holding not less than one-tenth of paid-up capital of the company. In case of company not having a share capital, such number of members having not less than one-tenth of the total voting power of all the members may call an extraordinary general meeting. In case the Board does not call the meeting within twenty-one days, requisitionists may call the meeting. This clause further provides that any reasonable expenses incurred by the requisitionists shall be reimbursed.

Modified

As against the Companies Act, 1956 wherein the power to call Extra Ordinary General Meeting by Board was conferred through Article 48 of table A of the Companies Act, 1956, the said power now has been provided under the Act in the section itself.

Dropped

- Under the Act, the provision that Extra Ordinary General Meeting called by requisition of members, if held within 3 months of deposit of requisition, can be adjourned to a date, which is after the expiry of period of 3 months, has been dispensed with.
- The section doesn't provides whether in case of joint holders, the requisition shall be signed by one or some of them only, shall have the same effect as signed by all or not.

3. Statement to be annexed to notice [Section 102]

(1) A statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:—

(a) the nature of concern or interest, financial or otherwise, if any, in respect of each items of—

(i) every director and the manager, if any;

(ii) every other key managerial personnel; and

(iii) relatives of the persons mentioned in sub-clauses (i) and (ii);

(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

(2) For the purposes of sub-section (1),—

(a) in the case of an annual general meeting, all business to be transacted thereat shall be deemed special, other than—

(i) the consideration of financial statements and the reports of the Board of Directors and auditors;

(ii) the declaration of any dividend;

(iii) the appointment of directors in place of those retiring;

(iv) the appointment of, and the fixing of the remuneration of, the auditors; and

(b) in the case of any other meeting, all business shall be deemed to be special:

Provided that where any item of special business to be transacted at a meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every promoter, director, manager, if any, and of every other key managerial personnel of the first mentioned company shall, if the extent of such shareholding is not less than two per cent. of the paid-up share capital of that company, also be set out in the statement.

(3) Where any item of business refers to any document, which is to be considered at the meeting, the time and place where such document can be inspected shall be specified in the statement under sub-section (1).

(4) Where as a result of the non-disclosure or insufficient disclosure in any statement referred to in sub-section (1), being made by a promoter, director, manager, if any, or other key managerial personnel, any benefit which accrues to such promoter, director, manager or other key managerial personnel or their relatives, either directly or indirectly, the promoter, director, manager or other key managerial personnel, as the case may be, shall hold such benefit in trust for the company, and shall, without prejudice to any other action being taken against him under this Act or under any other law for the time being in force, be liable to compensate the company to the extent of the benefit received by him.

(5) If any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel who is in default shall be punishable with fine which may extend to fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is more.

Notes: -

This clause corresponds to section 173 of the Companies Act, 1956 and seeks to provide that a statement setting out all the material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting. This clause further provides for the business that shall be deemed to be special. In case of non-disclosure or insufficient disclosure in any statement made by promoter, director, manager or other key managerial personnel which results into any benefit for themselves or their relatives, shall have to be compensated. Penal provision has been provided for any default in compliance.

New

- As per the Act, when any special business is to be transacted in any general meeting, the explanatory statement thereof should specify the nature of concern or interest, financial or otherwise, if any, in respect of each of the following persons-

  i. every Director and the Manager, if any;

  ii. every other key Managerial Personnel; and

  iii. relatives of the persons mentioned in sub-clauses (i) and(ii); and any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

- Further it is provided that in case of any non disclosure or insufficient disclosure in the explanatory statement resulting in the accrual of any benefit or profit to such Promoter, Director, Manager or any Key Managerial Personnel then such person shall hold such benefit in trust for the Company and shall be liable to compensate the Company to the extent of such profit or benefit.

Modified

- In case the special business is to be transacted in the general meeting which effects any other Company then the explanatory statement shall also specify the % of shareholding of the Promoters, Directors, Managers and Key Managerial Personnel in cases such % is not less than 2% of the paid up share capital of that other Company, as against 20% provided under the Companies Act, 1956.
- In case of any default in sending an explanatory statement or in providing the disclosure therein, every Promoter, Director, Manager or other key Managerial Personnel who is in default shall be punishable with the fine which may extend to fifty thousand rupees or five times the amount of benefit accruing to the Director, Manager or other key Managerial Personnel or any of his relatives, whichever is more.

4. Quorum for meeting [Section 103]

(1) Unless the articles of the company provide for a larger number,—

(a) in case of a public company,—

(i) five members personally present if the number of members as on the date of meeting is not more than one thousand;

(ii) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand;

(iii) thirty members personally present if the number of members as on the date of the meeting exceeds five thousand;

(b) in the case of a private company, two members personally present, shall be the quorum for a meeting of the company.

(2) If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company—

(a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or

(b) the meeting, if called by requisitionists under section 100, shall stand cancelled:

Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give not less than three days notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

(3) If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

Notes:-

This clause corresponds to section 174 of the Companies Act, 1956 and seeks to provide that unless the articles of the company provide for a larger number, in case of a public company the quorum shall depend on number of members as on the date of a meeting. In case such number is not more than one thousand, then quorum shall be five members personally present. If such number is more than one thousand but upto five thousand, then quorum shall be fifteen members personally present. If such number exceeds five thousand, then thirty members personally present shall be the quorum. In case of a private company, two members personally present shall be the quorum for a meeting. This clause further provides that if the quorum is not present within half-an-hour, the meeting shall stand adjourned for the next week at the same time and place or such other time and place as decided by the Board. However, the meeting called by requisitionist shall stand cancelled in the absence of quorum. In case of adjournment or of change of day, time and place of meeting, the company shall give not less than three days' notice to the members. Where quorum is not present in the adjourned meeting also, the members present shall be the quorum.

New

Further, where the general meeting is adjourned for lack of quorum, then in case of an adjourned meeting or of a change of day, time or place of meeting of the adjourned meeting, the Company shall give not less than 3 days notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated

Modified

- Under the Act, the requirement of quorum for general meeting in case of Public Company has been changed and now quorum shall be considered as following:

  i. 5 members personally present if the number of members as on the date of meeting is not more than 1000.

  ii. 15 members personally present if the number of members as on the date of meeting is more than one thousand but up to 5000.

  iii. 30 members personally present if the number of members as on the date of the meeting exceeds 5000.

5. Chairman of meeting [Section 104]

(1) Unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the Chairman thereof on a show of hands.

(2) If a poll is demanded on the election of the Chairman, it shall be taken forthwith in accordance with the provisions of this Act and the Chairman elected on a show of hands under sub-section (1) shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of the poll, and such other person shall be the Chairman for the rest of the meeting.

Notes:-

This clause corresponds to section 175 of the Companies Act, 1956 and seeks to provide that members shall elect one among themselves to be the chairman by show of hands. The clause further provides that if a poll is demanded on the election of the Chairman, the Chairman elected by show of hands shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of poll.

No Changes

6. Proxies [Section 105]

(1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf:

Provided that a proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll:

Provided further that, unless the articles of a company otherwise provide, this subsection shall not apply in the case of a company not having a share capital:

Provided also that the Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy:

Provided also that a person appointed as proxy shall act on behalf of such member or number of members not exceeding fifty and such number of shares as may be prescribed.

(2) In every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member.

(3) If default is made in complying with sub-section (2), every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees.

(4) Any provision contained in the articles of a company which specifies or requires a longer period than forty-eight hours before a meeting of the company, for depositing with the company or any other person any instrument appointing a proxy or any other document necessary to show the validity or otherwise relating to the appointment of a proxy in order that the appointment may be effective at such meeting, shall have effect as if a period of forty-eight hours had been specified in or required by such provision for such deposit.

(5) If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to one lakh rupees:

Provided that an officer shall not be punishable under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(6) The instrument appointing a proxy shall—

(a) be in writing; and

(b) be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.

(7) An instrument appointing a proxy, if in the form as may be prescribed, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company.

(8) Every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

Notes:-

This clause corresponds to section 176 of the Companies Act, 1956 and seeks to provide that a member who is entitled to attend and vote can appoint another person as a proxy to attend and vote at the meeting on his behalf. However, proxy shall not have the right to speak at a meeting and shall not be entitled to vote except on poll. The members of prescribed class of companies shall not be entitled to appoint proxy. A person appointed as proxy shall act on behalf of prescribed number of members not exceeding fifty and prescribed number of shares. The clause also provides for the manner of appointing proxy.

New

- Under the Act, the Central Government is now vested with the powers to prescribe a class or classes of Companies whose members shall not be entitled to appoint another person as a proxy.
- It is further provided under the Act that one person cannot represent as proxy for more than 50 members.

Modified

The penalty in case where any officer of the Company knowingly sends invitations on behalf of the Company to appoint as proxy a person or one of a number of persons specified in the invitations, has been increased and in such case, every officer of the Company who knowingly issues the invitations as aforesaid or willfully authorizes or permits their issue shall be punishable with fine which may extend to one lakh rupees instead of ten thousand rupees

as provided under the Companies Act, 1956.

Dropped

- The provisions under the Companies Act, 1956 whereby a Company can allow under its Articles, voting by proxy on show of hands has been dispensed with.
- The provision that a member of a Private Limited Company cannot appoint more than one proxy to attend on the same occasion, has also been dispensed with.

7. Voting by show of hands [Section 107]

(1) At any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 109 or the voting is carried out electronically, be decided on a show of hands.

(2) A declaration by the Chairman of the meeting of the passing of a resolution or otherwise by show of hands under sub-section (1) and an entry to that effect in the books containing the minutes of the meeting of the company shall be conclusive evidence of the fact of passing of such resolution or otherwise.

Notes:-

This clause corresponds to sections 177 and 178 of the Companies Act, 1956 and seeks to provide that at general meeting, a resolution put to vote shall, unless a poll is demanded or the voting is carried out electronically, be decided on a show of hands. A declaration by the Chairman and an entry in the minutes book is conclusive evidence that resolution is passed.

No Change

8. Representation of corporations at meeting of companies and of creditors [Section 113, except clause (b) of sub-section (1)]

(1) A body corporate, whether a company within the meaning of this Act or not, may, —

(a) if it is a member of a company within the meaning of this Act, by resolution of its Board of Directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the company, or at any meeting of any class of members of the company;

(b) if it is a creditor, including a holder of debentures, of a company within the meaning

of this Act, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised by resolution under sub-section (1) shall be entitled to exercise the same rights and powers, including the right to vote by proxy and by postal ballot, on behalf of the body corporate which he represents as that body could exercise if it were an individual member, creditor or holder of debentures of the company.

Notes:-

This clause corresponds to sections 187 of the Companies Act, 1956 and seeks to provide that where a body corporate is a member or a creditor including a holder of debentures of the company and it authorizes any person as its representative at any meeting of the company or any class of members of the company or at any meeting of creditors of the company, such representative shall be entitled to exercise the same rights and powers including right to vote by proxy and by postal ballot on behalf of the body corporate which he represents.

No Change

9. Ordinary and special resolutions [Section 114]

(1) A resolution shall be an ordinary resolution if the notice required under this Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote, if any, of the Chairman, by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any, cast against the resolution by members, so entitled and voting.

(2) A resolution shall be a special resolution when—

(a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;

(b) the notice required under this Act has been duly given; and

(c) the votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

Notes:-

This clause corresponds to sections 189 of the Companies Act, 1956 and seeks to provide that a resolution shall be an ordinary resolution if the votes cast in favour of the resolution exceeds the votes, if any, cast against the resolution by the members. A resolution shall be special when it is duly specified in the notice, calling the general meeting and votes cast in favour is three times the votes cast against the resolution.

No Change

10. Resolutions passed at adjourned meeting [Section 116]

Where a resolution is passed at an adjourned meeting of—

(a) a company; or

(b) the holders of any class of shares in a company; or

(c) the Board of Directors of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Notes:-

This clause corresponding to section 191 of Companies Act, 1956 and seeks to provide that where a resolution is passed at an adjourned meeting, the resolution shall be treated as passed on the day it was actually passed and not on any earlier date.

No Change

Unit 5 – Declaration and Payment of Dividend

1. Punishment for failure to distribute dividends [Section 127]

Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent. per annum during the period for which such default continues:

Provided that no offence under this section shall be deemed to have been committed:—

(a) where the dividend could not be paid by reason of the operation of any law;

(b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him;

(c) where there is a dispute regarding the right to receive the dividend;

(d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or

(e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

Notes: -

This clause corresponds to section 207 of the Companies Act, 1956 and seeks to provide that where the dividend has been declared but has not been paid or the warrants have not been posted within thirty days of declaration, every director who is knowingly party to the default shall be punishable with imprisonment up to two years and with fine and the company shall be liable to pay interest of eighteen per cent. per annum thereon.

New

- Now no offence shall be deemed to be made under section requiring payment of dividend within 30 days, where a shareholder has given the directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him.

Modified

- In case of provisions of punishment for failure to distribute dividends within thirty days, the imprisonment has been reduced. Now in case of default, any Director, knowingly party, to the said default, shall be liable to imprisonment, which may extend to 2 years instead of 3 years as provided under Companies Act, 1956.

Unit 6- Accounts of Companies

1. Central Government to prescribe accounting standards [Section 133]

The Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.

Notes: -

This clause corresponds to section 211(3C) of the Companies Act, 1956 and it seeks to provide that the Central Government may, after consultation with the National Financial Reporting Authority, prescribe the accounting standards as recommended by the Institute of Chartered Accountants of India for adoption by companies.

New

- Now the Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.
- In respect of accounting standards the role of National Financial Reporting Authority is limited to advise the Central Government or examine the accounting standards prescribed by Institute of Chartered Accountants of India.

Unit 7 – Appointment and Qualification of Directors

1. Appointment of additional director, alternate director and nominee director [Section 161, except sub-section (2)]

(1) The articles of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time who shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

(2) The Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company, to act as an alternate director for a director during his absence for a period of not less than three months from India:

Provided that no person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act:

Provided further that an alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India:

Provided also that if the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

(3) Subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company.

(4) In the case of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board:

Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

Notes: -

This clause corresponds to sections 260, 262 and 313 of the Companies Act, 1956 and contains some new provisions. The Board if authorised by articles may appoint any person, other than a

person who fails to get appointed as a director in a general meeting, as an additional director at any time. The clause further seeks to provide that the Board may, if so authorised by its articles or by a resolution passed by the company, appoint a person, to act as an alternate director for a director during his absence for a period of not less than three months from India. The clause also seeks to provide that only a person, who is qualified to be appointed as an independent director, shall be eligible to be appointed as an alternate director in place of an independent director. The clause provides that an alternate director shall not hold office larger than permissible and shall vacate the office if and when the director in whose place he has been appointed returns to India. The clause further provides that in the case of a public company or a private company which is a subsidiary of a public company, the casual vacancy may be filled by the Board of Directors at a meeting of the Board. The clause also provides that any person so appointed shall hold office up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

New

- A person, who fails to get appointed as a Director in a general meeting, cannot be appointed as an Additional Director.
- An Alternate Director to an Independent Director should also satisfy the criteria for Independent Directors.
- The section now provides for Nominee Directors. It provides that subject to Articles, Board can appoint director nominated by any institution in pursuance of any law or agreement as a Nominee Director.
- The person to be appointed as the Alternate Director shall be the person other than person holding any alternate directorship for any other Director in the Company. However, a Director of the Company may act in dual capacity that is for himself and as an Alternate Director for any other Director of the Company.

Modified

- The section now provides that Alternate Director can only be appointed in case a Director leaves India for a period of not less than 3 months contrary to the Companies Act, 1956 where it was provided that Alternate Director can be appointed in place of Director, who is absent from the state for more than 3 months, in which board meeting generally held.
- Now the section clearly provides that Additional Director will hold office till next Annual General Meeting or the last date on which such meeting should have held in accordance with law. Under the Companies Act, 1956, only date of next Annual General Meeting was provided.
- In case of contravention of the provisions of this Act, the punishment has been increased. In case of default, the Company and every Director or employee who is responsible for such contravention shall be punishable with fine which shall not be less than fifty thousand but which may extend to five lakh rupees.

2. Appointment of directors to be voted individually [Section 162]

(1) At a general meeting of a company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.

(2) A resolution moved in contravention of sub-section (1) shall be void, whether or not any objection was taken when it was moved.

(3) A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as a motion for his appointment.

Notes: -

This clause corresponds to section 263 of the Companies Act, 1956 and seeks to provide that at a general meeting of a company, a motion for the appointment of two or more persons as directors by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.

Modified

- Now the provisions related to appointment of Director to be voted individually shall be applicable to all the Companies including the Private Companies.
- In case there is contravention of provision related to appointment of Directors to be voted individually, the punishment has been increased. In case of default, the Company and every Director or employee who is responsible for such contravention shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.
- In case the appointment become void because of the default under this section, the provision for the automatic re-appointment of Directors retiring by rotation shall apply.

3. Option to adopt principle of proportional representation for appointment of directors [Section 163]

Notwithstanding anything contained in this Act, the articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a company in accordance with the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise and such appointments may be made once in every three years and casual vacancies of such directors shall be filled as provided in sub-section (4) of section 161.

Notes: -

This clause corresponds to section 265 of the Companies Act, 1956 and seeks to provide that the articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors in accordance with the principle of proportional representation.

New

Articles of Private Company may now provide for appointment of Directors by way of proportional representation.

Unit 8 – Meeting of Board and its Powers

1. Defects in appointment of directors not to invalidate actions taken [Section 176]

No act done by a person as a director shall be deemed to be invalid, notwithstanding that it was subsequently noticed that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles of the company:

Provided that nothing in this section shall be deemed to give validity to any act done by the director after his appointment has been noticed by the company to be invalid or to have terminated.

Notes: -

This clause corresponds to section 290 of the Companies Act, 1956 and seeks to provide that any act done by a person as a director shall not be invalid if it is subsequently discovered that his appointment was invalid. The clause further provides that nothing shall be given validity to any act done by the director after his appointment has been noticed by the company to be invalid or to have terminated.

No Change

2. Restrictions on powers of Board [Section 180]

(1) The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely:—

(a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.

Explanation.—For the purposes of this clause,—

(i) "undertaking" shall mean an undertaking in which the investment of the company exceeds twenty per cent. of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates twenty per cent. of the total income of the company during the previous financial year;

(ii) the expression "substantially the whole of the undertaking" in any financial year shall mean twenty per cent. or more of the value of the undertaking as per the audited balance sheet of the preceding financial year;

(b) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;

(c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business:

Provided that the acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of monies by the banking company within the meaning of this clause.

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

(d) to remit, or give time for the repayment of, any debt due from a director.

(2) Every special resolution passed by the company in general meeting in relation to the exercise of the powers referred to in clause (c) of sub-section (1) shall specify the total amount up to which monies may be borrowed by the Board of Directors.

(3) Nothing contained in clause (a) of sub-section (1) shall affect—

(a) the title of a buyer or other person who buys or takes on lease any property, investment or undertaking as is referred to in that clause, in good faith; or

(b) the sale or lease of any property of the company where the ordinary business of the company consists of, or comprises, such selling or leasing.

(4) Any special resolution passed by the company consenting to the transaction as is referred to in clause (a) of sub-section (1) may stipulate such conditions as may be specified in such resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transactions:

Provided that this sub-section shall not be deemed to authorise the company to effect any reduction in its capital except in accordance with the provisions contained in this Act.

(5) No debt incurred by the company in excess of the limit imposed by clause (c) of sub-section (1) shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause had been exceeded.

Notes: -

This clause corresponds to section 293 of the Companies Act, 1956 and seeks to provide for the powers of the Board of Directors of a company to be exercised only with the consent of the company by a special resolution.

Modified

- The certain powers which under section 293 of the Companies Act, 1956 can be exercised by Board with the approval of general meeting only, are now applicable to all the Companies instead of only Public Company & its Subsidiary.
- The section now specifically provides the definition of word 'undertaking' and 'substantially the whole undertaking'.
- The certain powers which under Section 293 of the Companies Act, 1956 can be exercised by Board with the approval of general meeting only are now to be approved by passing a special resolution instead of ordinary resolution as provided in the aforesaid Act.
- Now the approval of general meeting is only required when the Board wants to invest otherwise in trust securities, the compensation received by it as a result or Merger and Amalgamations only and not on compulsory acquisition of any undertaking or property or premises, as provided under the Companies Act, 1956.
- The power to contribute to charitable and other funds as donation in any financial year for an amount in excess of five per cent of its average net profits for the three immediately preceding financial years is now outside the preview of this section, and is included separately in the next section.

3. Company to contribute to bona fide and charitable funds, etc. [Section 181]

The Board of Directors of a company may contribute to bona fide charitable and other funds:

Provided that prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceed five per cent. of its average net profits for the three immediately preceding financial years.

Notes: -

This clause corresponds to section 293(1)(e) of the Companies Act, 1956. It seeks to provide that the Board of Directors of the company may contribute to bona fide charitable and other funds. It requires prior permission of company in general meeting if such contribution exceeds certain limits specified in the clause.

Modified

A separate section has been provided to deal with the powers of the Board to contribute to charitable and other funds.

4. Prohibitions and restrictions regarding political contributions [Section 182]

(1) Notwithstanding anything contained in any other provision of this Act, a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party:

Provided that the amount referred to in sub-section (1) or, as the case may be, the aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half per cent. of its average net profits during the three immediately preceding financial years:

Provided further that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.

(2) Without prejudice to the generality of the provisions of sub-section (1),—

(a) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to affect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;

(b) the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed,—

(i) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and

(ii) where such publication is not by or on behalf of, but for the advantage of a political party, to be a contribution for a political purpose.

(3) Every company shall disclose in its profit and loss account any amount or amounts contributed

by it to any political party during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party to which such amount has been contributed.

(4) If a company makes any contribution in contravention of the provisions of this section, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.

Explanation.—For the purposes of this section, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951.

Notes: -

This clause corresponds to section 293A of the Companies Act, 1956. It seeks to provide the manner and limits up to which a company shall be able to contribute the amount to any political party or to any person for a political purpose. The clause further provides the manner in which every company shall disclose in its profit and loss account any amount so contributed by it during any financial year. This clause further provides penal provision in case company contravens the provision.

Modified

- The punishment for contravention of provision related to political contribution has been increased, wherein in case of default, the Company shall be punishable with fine which may extend to 5 times the amount so contributed and every officer who is in default shall be punishable with imprisonment for a term which may extend to 6 months and with fine which may extend to 5 times the amount so contributed.
- The limits for political contribution by Company has been changed. Now instead of 5% as provided under the Companies Act, 1956, contribution shall not exceed 7.5% of the average net profits of the Company during the three immediately preceding financial years.

Dropped

Contribution to any person for political purpose is not allowed.

5. Power of Board and other persons to make contributions to National Defense fund, etc. [Section 183]

(1) The Board of Directors of any company or any person or authority exercising the powers of the Board of Directors of a company, or of the company in general meeting, may,

notwithstanding anything contained in sections 180, 181 and section 182 or any other provision of this Act or in the memorandum, articles or any other instrument relating to the company, contribute such amount as it thinks fit to the National Defense Fund or any other Fund approved by the Central Government for the purpose of national defense.

(2) Every company shall disclose in its profits and loss account the total amount or amounts contributed by it to the Fund referred to in sub-section (1) during the financial year to which the amount relates.

Notes: -

This clause corresponds to section 293B of the Companies Act, 1956. It seeks to provide any person or authority authorized by Board of Directors or by general meeting may contribute such amount as it thinks fit to National Defense Fund for the purpose of national defense. Every company shall disclose the amount so contributed in its profits and loss account.

No Change

6. Loan to directors, etc. [Section 185]

(1) Save as otherwise provided in this Act, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person:

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

(a) the giving of any loan to a managing or whole-time director—

(i) as a part of the conditions of service extended by the company to all its employees; or

(ii) pursuant to any scheme approved by the members by a special resolution; or

(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.

Explanation.— For the purposes of this section, the expression "to any other person in whom director is interested" means—

(a) any director of the lending company, or of a company which is its holding

company or any partner or relative of any such director;

(b) any firm in which any such director or relative is a partner;

(c) any private company of which any such director is a director or member;

(d) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or

(e) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

(2) If any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of sub-section (1), the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.

Notes: -

This clause corresponds to section 295 of the Companies Act, 1956 and seeks to provide the circumstances and manner in which a company shall advance any loan to any of its directors or to any other person in whom he is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person. The clause also defines the expression 'to any other person in whom director is interested'. The clause also provides for penal provision for the company and for the director to whom the loans is advanced in case of contravention of sub-clause (1).

New

- No company, whether public or private can give any loan (including loan represented by book debt) or provide any security or guarantee in connection with a loan to a Director or any other person in whom he is interested, except as provided below.
- Company can give loan to Managing Director/ Whole Time Director without approval of shareholders where the loan is given as a part of the condition of service extended by the Company to all its employees or where loan is approved by way of passing the special resolution.
- Any Company whose business in ordinary course is to provide loan or guarantee or securities for due repayment of such loan, can provide loan or guarantee or security to

its Director provided interest on loan is not less than bank rate declared by Reserve Bank of India.

- In case of contravention of provisions related to loan to Directors, only the Company and Director or person to whom the loan is given or guarantee or security provided shall be liable for punishment and not all other person, who are knowingly party to the default.
- The Punishment for contravention of provisions related to loan to Directors has been increased. In case of default, the Company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to rupees twenty five lakhs, and the Director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to 6 months or with fine which shall not be less than five lakh rupees but which may extend to twenty five lakh rupees, or with both.
- Now the Company will also be punishable in case of contravention of this section.

Dropped

- The requirement of permission of central government for giving loan to Director as required under the Companies Act, 1956 has been dispensed with.
- The exemption given to loan granted, guarantee or security provided by any Holding Company to its Subsidiary or the exemptions granted to Private Company has been dispensed with.

7. Restriction on non-cash transactions involving directors [Section 192]

(1) No company shall enter into an arrangement by which—

(a) a director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or

(b) the company acquires or is to acquire assets for consideration other than cash, from such director or person so connected,

unless prior approval for such arrangement is accorded by a resolution of the company in general meeting and if the director or connected person is a director of its holding company, approval under this sub-section shall also be required to be obtained by passing a resolution in general meeting of the holding company.

(2) The notice for approval of the resolution by the company or holding company in general meeting under sub-section (1) shall include the particulars of the arrangement along with the

value of the assets involved in such arrangement duly calculated by a registered valuer.

(3) Any arrangement entered into by a company or its holding company in contravention of the provisions of this section shall be voidable at the instance of the company unless—

(a) the restitution of any money or other consideration which is the subject-matter of the arrangement is no longer possible and the company has been indemnified by any other person for any loss or damage caused to it; or

(b) any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.

Notes: -

This is a new clause and seeks to provide for the manner in respect of regulation of arrangements between a company and its directors in respect of acquisition of assets for consideration other than cash. The clause provides that such arrangements shall require prior approval by a resolution in general meeting and if the director or connected person is a director of its holding company, approval is required to be obtained by passing a resolution in general meeting of the holding company. The clause also provides the circumstances when an arrangement entered into by a company or its holding company in contravention of the provisions is voidable at the instance of the company.

New

- A Company shall not enter into any arrangement by which a Director of the Company or of its Holding Company or any person connected with him can acquire assets for the consideration other than cash from the Company & vice versa without the approval of Company in general meeting.
- Where the Director or connected person is a director of its holding Company, then resolution from Holding Company will also be required.
- The expression person connected with a Director has not been defined under the Act.
- The notice for approval in general meeting under this section in both the Company and its Holding Company, shall include particulars of the arrangement along with the value of asset duly calculated by Registered Valuer.

8. Prohibition on forward dealings in securities of company by director or key managerial personnel [Section 194]

(1) No director of a company or any of its key managerial personnel shall buy in the company, or in its holding, subsidiary or associate company—

(a) a right to call for delivery or a right to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures; or

(b) a right, as he may elect, to call for delivery or to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures.

(2) If a director or any key managerial personnel of the company contravenes the provisions of sub-section (1), such director or key managerial personnel shall be punishable with imprisonment for a term which may extend to two years or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

(3) Where a director or other key managerial personnel acquires any securities in contravention of sub-section (1), he shall, subject to the provisions contained in sub-section (2), be liable to surrender the same to the company and the company shall not register the securities so acquired in his name in the register, and if they are in dematerialised form, it shall inform the depository not to record such acquisition and such securities, in both the cases, shall continue to remain in the names of the transferors.

Explanation.— For the purposes of this section, ''relevant shares'' and ''relevant debentures'' mean shares and debentures of the company in which the concerned person is a whole-time director or other key managerial personnel or shares and debentures of its holding and subsidiary companies.

Notes: -

This is a new clause and seeks to prohibit whole-time director or any of its key managerial personnel from buying certain kinds of future contracts in relation to securities of the company. It has also provided for punishment for contravention of the requirement this clause and further provides that where whole-time director or key managerial personnel acquires any securities in contravention of this clause he shall, surrender such securities and the company shall not register the same in his name in the register and if they are in dematerialised form, it shall inform the depository not to record such acquisition.

New

- The Act provides for provisions for prohibition on forward dealings in securities of Company by Key Managerial Personnel.
- No Director of a Company or any of its key Managerial Personnel shall buy in the Company, or in its Holding, Subsidiary or Associate Company —
  i. a right to call for delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures,

ii. a right to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures, or

iii. a right, as he may elect, to call for delivery at a specified price and within a specified time, or to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures.

- Where a Director or any key Managerial personnel contravenes the provisions of this section, he shall be punishable with imprisonment for a term which may extend to five years or with fine which shall not be less than one lakh rupees but which may extend to rupees five lakhs, or with both.
- Where a Director or other key Managerial Personnel acquires any securities in contravention of this section, he shall without prejudice to any punishment which may be imposed under this section, be liable to surrender the same to the Company and the Company shall not register the securities so acquired in his name in the register, and if they are in dematerialised form, it shall inform the depository not to record such acquisition and such securities in both the cases, shall continue to remain in the name of depository.
- The term relevant shares and relevant debentures mean shares and debentures of the Company in which the concerned person is a Whole-Time Director or other key Managerial person or shares and debentures of its Holding and Subsidiary Companies.

9. Prohibition on insider trading of securities [Section 195]

(1) No person including any director or key managerial personnel of a company shall enter into insider trading:

Provided that nothing contained in this sub-section shall apply to any communication required in the ordinary course of business or profession or employment or under any law.

Explanation.— For the purposes of this section,—

(a) "insider trading" means—

(i) an act of subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities by any director or key managerial personnel or any other officer of a company either as principal or agent if such director or key managerial personnel or any other officer of the company is reasonably expected to have access to any non-public price sensitive information in respect of securities of company; or

(ii) an act of counselling about procuring or communicating directly or indirectly any non-public price-sensitive information to any person;

(b) "price-sensitive information" means any information which relates, directly or indirectly, to a company and which if published is likely to materially affect the price of securities of the company.

(2) If any person contravenes the provisions of this section, he shall be punishable with imprisonment for a term which may extend to five years or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher, or with both.

Notes: -

This is a new clause and seeks to prohibit directors or key managerial person of the company to deal in securities of a company, or counsel, procure or communicate, directly or indirectly, about any non-public price-sensitive information to any person. This clause further provided for penal provision in case of contravention.

New

- The Act provides provisions for prohibiting insider trading in the Company.
- No person including the Director or Key Managerial Personnel shall enter into following act of insider trading:
  i. an act of subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities by any director or key Managerial Personnel or any other officer of a Company either as principal or agent if such Director or key Managerial Personnel or any other officer of the Company is reasonably expected to have access to any non-public price sensitive information in respect of securities of the Company, or
  ii. an act of counseling about, procuring or communicating directly or indirectly any non-public price sensitive information to any person.
- If any Director or key Managerial Personnel contravenes the provisions related to insider trading, then he shall be punishable with imprisonment for a term which may extend to five years or with fine which shall not be less than five lakh rupees but which may extend to Two Crore fifty lakh rupees, or 3 times the amount of profit made out of insider trading, whichever is higher or with both.
- "Price-sensitive information" means any information which relates, directly or indirectly, to a company and which if published is likely to materially affect the price of securities of the Company.
- Provisions related to insider trading shall not be applicable to any communication in the ordinary course of business.