

COMPANIES ACT, 2013 AMENDMENTS FOR MAY 2019**Definitions:**

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

Explanation-

For the purpose of this clause,—

- (a) The expression "**significant influence**" means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement;
- (b) The expression "**joint venture**" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement; **[Companies Amendment Act, 2017]**

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

For meaning of "subsidiary company" refer the definition given in section 2(87) of the Companies Act, 2013.

Explanation.- **For the purposes of this clause, the expression "company" includes any body corporate; [Companies Amendment Act, 2017]**

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 **[Companies Amendment Act, 2017]**
 - (v) Such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and **[Companies Amendment Act, 2017]**
 - (vi) Such other officer as may be prescribed;
- However, till now no other officer has been prescribed.

Related party, with reference to a company, means—

- (i) a director or his relative;
- (ii) a key managerial personnel or his relative;
- (iii) a firm, in which a director, manager or his relative is a partner;
- (iv) a private company in which a director or manager or his relative is a member or director;
- (v) a public company in which a director or manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital;
- (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice,

directions or instructions given in a professional capacity;

(viii) **any-body corporate which is- [Private Company Exempt 5/6/15]**

- (A) A holding, subsidiary or an associate company of such company;
- (B) A subsidiary of a holding company to which it is also a subsidiary; or
- (C) An investing company or the venturer of the company;"

Explanation.—For the purpose of this clause, “the investing company or the venturer of a company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

[Companies Amendment Act, 2017]

(ix) such other person as may be prescribed;

As per Rule 3 given in the *Companies (Specification of Definitions Details) Rules, 2014*, for the purposes of sub-clause (ix) of clause (76) of section 2 of the Act, a director (other than an independent director) or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

Small company means a company, other than a public company,—

- (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than **10 crore rupees; and [Companies Amendment Act, 2017]**
- (ii) turnover of which as per its last profit and loss account **for the immediately preceding financial year** does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than **100 crore rupees: [Companies Amendment Act, 2017]**

Provided that nothing in this clause shall apply to—

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act;

6. 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— controls the composition of the Board of Directors; or exercises or controls more than one-half of the **Total Voting Power** either at its own or together with one or more of its subsidiary companies:

[Companies Amendment Act, 2017]

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.

**CHAPTER XXII - COMPANIES INCORPORATED OUTSIDE INDIA
APPLICATION OF ACT TO FOREIGN COMPANIES [SECTION 379]**

(1) Sections 380 to 386 (both inclusive) and sections 392 and 393 shall apply to all foreign companies:

Provided that the Central Government may, by Order published in the Official Gazette, exempt any class of foreign companies, specified in the Order, from any of the provisions of sections 380 to 386 and sections 392 and 393 and a copy of every such Order shall, as soon as may be after it is made, be laid before both Houses of Parliament. [Companies Amendment Act, 2017]

CHAPTER XXVII – NCLT & NCLAT**Qualification: (President/Member of NCLT [Section 409]**

SR.	PRESIDENT	JUDICIAL MEMBER	TECHNICAL MEMBER
1	Is/has been Judge of High Court \geq 5 years	Is/has been Judge of High Court (any period)	Has been Member of Indian Corporate Law Service /Indian Legal Service \geq 15 years. <i>(and has been holding the rank of Secretary or Additional Secretary to the Government of India.)</i> [Companies Amendment Act, 2017]
2		Is/has been District Judge at least 5 years	Is/has been Practicing Chartered Accountant at least 15 years
3		Has been Advocate of court, held a judicial office or as member of a tribunal at least 10 years	Is/has been Practicing Cost Accountant at least 15 years
4			Is/has been Practicing Company Secretary at least 15 years
5			is a person of proven ability, integrity and standing having special knowledge and professional experience of not less than 15 years in industrial finance, industrial management, industrial reconstruction, investment and accountancy. [Companies Amendment Act, 2017]
6			Presiding Officer of Labour Court/ Tribunal/ National Tribunal (under Industrial Disputes Act, 1947) at least 5 years

Qualification: (Chairman/Member of NCLAT) [Section 410 & 411]

NCLAT, constituting of a Chairperson and not exceeding eleven members for hearing appeals against the orders of the NCLT **or of the National Financial Reporting Authority [NFRA]. [Companies Amendment Act, 2017]**

[Section 412(2A)]: Where in a meeting of the Selection Committee, there is equality of votes on any matter, the Chairperson shall have a casting vote.
[Companies Amendment Act, 2017]

CHAPTER XXVIII - SPECIAL COURTS**APPLICATION OF CODE TO PROCEEDINGS BEFORE SPECIAL COURT [SEC 438]**

Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be **deemed to be a Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be**, and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor. [**Companies Amendment Act, 2017**]

TRANSITIONAL PROVISIONS [SECTION 440]

According to the section, any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be tried by a **Court of Session or the Court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be** exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973:

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code to transfer any case or class of cases taken cognizance by a **Court of Session or the Court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be** under this section.
[**Companies Amendment Act, 2017**]

CHAPTER XXIX - OFFENCES UNDER COMPANIES ACT, 2013.

Insertion of new section 446A.	After section 446 of the principal Act, the following sections shall be inserted, namely:—
Factors for determining level of punishment.	"446A. The court or the Special Court, while deciding the amount of fine or imprisonment under this Act, shall have due regard to the following factors, namely:— (a) size of the company; (b) nature of business carried on by the company; (c) injury to public interest; (d) nature of the default; and (e) repetition of the default.
Lesser penalties for One Person Companies or small companies.	446B. Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (5) of section 92, sub-section (2) of section 117 or sub-section (3) of section 137, such company and officer in default of such company shall be punishable with fine or imprisonment or fine and imprisonment, as the case may be, which shall not be more than one-half of the fine or imprisonment or fine and imprisonment, as the case may be, of the minimum or maximum fine or imprisonment or fine and imprisonment, as the case may be, specified in such sections."

PUNISHMENT FOR FRAUD [SECTION 447]

Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, **involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower** shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. **[Companies Amendment Act, 2017]**

Provided that the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to **20 lakh** rupees or with both. **[Companies Amendment Act, 2017]**

Explanation.—For the purposes of this section—

- (a) "fraud" in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

CHAPTER XI - APPOINTMENT AND QUALIFICATIONS OF DIRECTORS**SECTION 164 - DISQUALIFICATIONS FOR APPOINTMENT OF DIRECTOR. [PUBLIC & PRIVATE CO.]****(2) No person who is or has been a director of a company which—**

- (a) has not filed **financial statements or annual returns** for any continuous period of three financial years; or
- (b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared **and such failure to pay or redeem continues for one year or more.**

shall be eligible to be re-appointed as a director of that company or appointed in other Company for a period of five years from the date on which the said company fails to do so.

[Government Company Exempt 5.6.15]

"Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment."

[Companies Amendment Act, 2017]

Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification. **[Companies Amendment Act, 2017]**

SECTION 167 - VACATION OF OFFICE OF DIRECTOR - [PUBLIC & PVT CO.]

(1) The office of a director shall become vacant in case—

- (a) **he incurs any of the disqualifications specified in section 164;**

*Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.***[Companies Amendment Act, 2017]**

- (b) he absents himself from **all** the meetings of the BOD held during a **period of 12 months** with or without seeking leave of absence of the Board;
- (c) he acts in **contravention of the provisions of section 184** relating to entering into contracts or arrangements in which he is directly or indirectly interested;
- (d) he **fails to disclose his interest in any contract or arrangement** in which he is directly or indirectly interested, in contravention of the section 184;
- (e) he becomes **disqualified by an order of a court or the Tribunal;**
- (f) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months:

Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and f)—

- (i) for thirty days from the date of conviction or order of disqualification;
- (ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or
- (iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of.

[Companies Amendment Act, 2017]

(g) he is **removed** in pursuance of the provisions of this Act;

(h) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, **ceases to hold such office or other employment in that company.**

SECTION 168 - RESIGNATION OF DIRECTOR [PUBLIC & PRIVATE CO.]

(1) A director may resign from his office by giving a notice in writing [**Including EMAIL**] to the company and the Board shall on receipt of such notice take note of the same and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company:

Copy of resignation of director to be forwarded by him - RULES

Where a director resigns from his office, he **“may”** within a period of 30 days from the date of resignation, forward to the ROC **a copy of his resignation along with reasons for the resignation in Form DIR-11. [Companies Amendment Act, 2017]**

Notice of resignation of director.- The company shall within 30 days from the date of receipt of notice of resignation from a director, **intimate the ROC in Form DIR-12 and post the information on its website, if any.**

SECTION 169 - REMOVAL OF DIRECTORS. [PUBLIC & PRIVATE CO]

(1) **A company may, by ordinary resolution, remove a director**, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard:
Provided that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163.
Provided further that an independent director reappointed for the 2nd term by way of special resolution can only be removed by the company after obtaining a special resolution of members and giving him a reasonable opportunity of being heard.
[Companies Removal of Difficulty order: 21.02.18]

SECTION 165 - NUMBER OF DIRECTORSHIPS. [PUBLIC & PRIVATE CO.]

(1) **No person**, after the commencement of this Act, shall hold office as a director, **including any alternate directorship, in more than twenty companies at the same time :**
[N.A. to NPO]

Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

Explanation I- For reckoning the limit of public companies in which a person can be appointed as director, **directorship in private companies that are either holding or subsidiary company of a public company shall be included.**

Explanation II- For reckoning the limit of directorships of twenty companies, ***the directorship in a dormant company shall not be included***

[Companies Amendment Act, 2017]

Section 149 - Company to have Board of Directors. [Public & Private Co.]

- (1) Every company shall have a BOD **consisting of individuals as directors** & shall have—
- (a) a Minimum number of **3 directors in the case of a public company, 2 directors in the case of a private company, and 1 director in the case of a One Person Company**; and
 - (b) a **Maximum of 15 directors: [Government company 5.6.15 & NPO Exempt W.E.F.13.06.17]**

Provided that a company may appoint more than 15 directors after passing a special resolution: [Government company & NPO Exempt W.E.F.13.06.17]

- (2) Every company existing on or before the date of commencement of this Act shall within one year from such commencement comply with the requirements of the provisions.

- (3) Every company shall have at least one director who stays in India for a total period of not less than 182 days during the financial year:

Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated. **[Companies Amendment Act, 2017]**

SECTION 152 - APPOINTMENT OF DIRECTORS.**A. FIRST DIRECTORS U/S 152(1) [PUBLIC & PRIVATE CO.]**

- (1) Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed. And in case of a One Person Company an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section.
- (2) **Save as otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting.**
- (3) No person shall be appointed as a director of a company unless he has been allotted the DIN under section 154 or **any other number as may be prescribed under section 153. [Companies Amendment Act, 2017]**

INDEPENDENT DIRECTORS - [PUBLIC COMPANY ONLY] – [N.A. to NPO]

149(4) Every listed public company shall have at least 1/3 of the total number of directors as independent directors

Explanation.—For the purposes of this sub-section, any fraction contained in such one-third number shall be rounded off as one.

Number of independent directors.-

The following class or classes of companies shall have at least 2 Independent directors:

- (i) the Public Companies having **paid up share capital of 10 crore** rupees or more; or
- (ii) the Public Companies having **turnover of 100 crore** rupees or more; or
- (iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, **exceeding 50 crore** rupees:

Following Unlisted Public companies shall be Exempt: [W.E.F JULY 2017]

1. A Joint Venture Company.
2. A Wholly Owned Subsidiary Company
3. A Dormant Company.

DON'T FORGET:

1. Any intermittent vacancy of an independent director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later:
2. Where a company ceases to fulfill any of 3 conditions laid down in sub-rule (1) for 3 consecutive years, it shall not be required to comply with these provisions until such time as it meets any of such conditions;
3. Limits to be checked at the time of Appointment and Not during the pendency of Tenure.

Explanation. - The paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account:

(5) Every company existing on or before the date of commencement of this Act shall, **within 1 year from such commencement** or from the date of notification comply with the requirements of this provisions

(6) An independent director in relation to a company, means a director other than a MD or a WTD or a nominee director,—

- (a) who, in the opinion of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government, is a person of integrity and possesses relevant expertise and experience;
- (b) (i) who **is or was not a promoter of the company** or its holding, subsidiary or associate company;
- (ii) who **is not related to promoters or directors in the company**, its holding, subsidiary or associate company;
- (c) who **has or had No** pecuniary relationship, other than remuneration as such director or having transaction **not exceeding ten per cent.** of his total income or such amount as may be prescribed **with the company**, its holding, subsidiary or associate company, **[Companies Amendment Act, 2017]** **or their promoters, or directors**, during the 2 immediately preceding financial years or during the current financial year; **[Government Company Exempt 5.6.15]**
- (d) **none of whose relatives - [Companies Amendment Act, 2017]**
 - (i) **is holding any security of or interest** in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year:
Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;
 - (ii) **is indebted** to the company, its holding, subsidiary or associate company or their promoters, or directors, for 50 Lakhs during the two immediately preceding financial years or during the current financial year;
 - (iii) **has given a guarantee or provided any security** in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for 50 Lakhs during the two immediately preceding financial years or during the current financial year; **or**

- (iv) **has any other pecuniary transaction or relationship** with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);
- (e) **who, neither himself nor any of his relatives—**
- (i) **holds or has held the position of a KMP or is or has been employee of the company** or its holding, subsidiary or associate company in any of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed;
Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years. [Companies Amendment Act, 2017]
- (ii) **is or has been an employee or proprietor or a partner**, in any of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed, of—
- (A) **a firm of auditors or CS in practice or cost auditors of the company** or its holding, subsidiary or associate company; or
- (B) **any legal or a consulting firm that has or had any transaction with the company**, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;
- (iii) **holds together with his relatives 2% or more of the total voting power of the company**; or
- (iv) **is a CEO or director, by whatever name called, of any NPO that receives 25% or more of its receipts from the company**, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the company; or
- (f) who possesses such other qualifications as may be prescribed. – *Disclosure in BOD Report regarding his appropriate skills.*

ALTERNATE DIRECTOR 161(2) – [PUBLIC & PRIVATE CO.]

The Board of Directors of a company may, if so authorised by its articles or **[power derived from AOA]**

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 **or holding directorship in the same company**

[Companies Amendment Act, 2017]

to act as an alternate director for a director during his absence for a period of not less than three months from India:

CASUAL VACANCY DIRECTOR 161(4) [Public & Private Company]:

In the case of a public company, [Companies Amendment Act, 2017]

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 AOA **[power subject to AOA]**, be filled by the Board of Directors at a meeting of the Board

"which shall be subsequently approved by members in the immediate next general meeting" [Companies Amendment Act, 2017]

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.

SECTION 160 - RIGHT OF PERSONS OTHER THAN RETIRING DIRECTORS TO STAND FOR DIRECTORSHIP [PUBLIC COMPANY ONLY] [N.A. to NPO]**[PRIVATE COMPANY EXEMPT w.e.f 5-06-15]**

(1) A person who is not a retiring director *in terms of section 152* shall, subject to the provisions of this Act, **be eligible for appointment to the office of a director at any general meeting.**

if he, or some member intending to propose him as a director, has, not less than 14 days before the meeting, **left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director** or, as the case may be, the intention of such member to propose him as a candidate for that office, **along with the deposit of one lakh rupees [10000/- for NIDHI]** which shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets **more than 25%** of total valid votes cast either on show of hands or on poll on such resolution.

Provided that requirements of deposit of amount shall not apply in case of appointment of an independent director **or**

a director recommended by the Nomination and Remuneration Committee, if any, constituted under 178(1) **or**

a director recommended by the Board of Directors of the Company, in the case of a company not required to constitute Nomination and Remuneration Committee.

[Companies Amendment Act, 2017]

(2) The company shall inform its members of the candidature of a person for the office of director under sub-section (1)

Section 153 - Application for allotment of Director Identification Number.

Every individual intending to be appointed as director of a company shall make an application for allotment of Director Identification Number to the Central Government in such form and manner and along with such fees as may be prescribed.

Provided that the Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of this Act and in case any individual holds or acquires such identification number, the requirement of this section shall not apply or apply in such manner as may be prescribed.

[Companies Amendment Act, 2017]

CHAPTER XII - MEETINGS OF BOARD AND ITS POWERS**SECTION 173****Matters not to be dealt with in a meeting through video conferencing or other audio visual means.-**

The following matters shall not be dealt with in meeting held through video conferencing :

- (i) the approval of the annual financial statements;
- (ii) the approval of the Board's report;
- (iii) the approval of the prospectus;
- (iv) the Audit Committee Meetings for consideration of accounts; and
- (v) the approval relating to amalgamation, merger, demerger, acquisition & takeover.

Section 173(1) Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso. [Companies Amendment Act, 2017]

SECTION CONTINUES:**NOTICE OF BOARD MEETING**

- (3) A meeting of the Board shall be called by **giving not less than 7 days' notice** in writing to every director at his address registered with the company and such notice shall be sent by **hand delivery or by post or by electronic means**

Provided that a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least 1 independent director, if any, shall be present at the meeting:

Provided further that in case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

- (4) Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of 25000/-.

(5)

1. OPC,
2. small company
3. dormant company
4. and a Private Company which is a Start-**Up Company** [W.E.F. 13.06.17]
5. NPO

shall be deemed to have complied with the provisions of this section if at least 1 meeting of the BOD has been conducted **in each half of a calendar year** and the gap between the 2 meetings is not less than 90 days:

Provided that nothing contained in this sub-section and in section 174 shall apply to One Person Company in which there is only one director on its BOD.

SECTION 174 - QUORUM FOR MEETINGS OF BOARD.

- (1) The quorum for a meeting of the BOD of a company shall be **1/3 of its total strength or 2 directors**, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.

*Explanation.—*For the purposes of this section,—

- (i) **any fraction of a number shall be rounded off as one;**
- (ii) "total strength" shall not include directors whose places are vacant.

[In case of NPO, 8 members or 25% of total strength whichever is less. Not being less than 2.]

- (2) The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, **the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum**, or of summoning a general meeting of the company and for no other purpose.
- (3) Where at any time the **number of interested directors exceeds or is equal to 2/3 of the total strength of the BOD**, the number of directors who are not interested directors and present at the meeting, **being not less than two, shall be the quorum during such time.** [*Exception for Private Companies: Interested Directors Can Vote after disclosing their Interest. W.E.F. 13.06.17*]

Explanation.—For the purposes of this sub-section, "interested director" means a director within the meaning of sub-section (2) of section 184.

SECTION 180 - RESTRICTIONS ON POWERS OF BOARD.

[PRIVATE COMPANY EXEMPT w.e.f 5-06-15]

- (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 20% 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 20% or more of the value of the undertaking** as per the audited balance sheet of the preceding financial year;
- (b) to invest otherwise than 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 And securities premium**, apart from temporary loans obtained from the company's bankers in the ordinary course of business [**Companies Amendment Act, 2017**]

SECTION 177 - AUDIT COMMITTEE. [PUBLIC COMPANY ONLY]

The BOD of every listed Public companies and the following class or classes of companies shall constitute **an Audit Committee and a Nomination and Remuneration Committee of the Board-**

- (i) all public companies with a **paid up capital of 10 crore** rupees or more;
- (ii) all public companies having **turnover of 100 crore** rupees or more;
- (iii) all public companies, having in aggregate, **outstanding loans or borrowings or debentures or deposits exceeding 50 crore** rupees or more.

Explanation.-

The paid-up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, **as existing on the date of last audited Financial Statements** shall be taken into account for the purposes of this rule

- (2) The Audit Committee shall consist of a **minimum of three directors with independent directors forming a majority.** [N.A. to NPO]

Provided that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.

- (3) Every Audit Committee existing immediately before the commencement of this Act shall, within 1 year of such commencement, be reconstituted in accordance with sub-section (2).
- (4) Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall *inter alia*, include,—
 - (i) **the recommendation for remuneration of auditors of the company;**
 - (ii) review and monitor the auditor's independence and performance, and effectiveness of audit process;
 - (iii) **examination of the financial statement and the auditors' report thereon;**
 - (iv) approval or any subsequent modification of transactions of the company with related parties;

Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered, into by the company subject to such conditions as may be prescribed;

Provided further that in case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board:

Provided also that in case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it:

Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company. **[Companies Amendment act,2017]**

SECTION 184 - DISCLOSURE OF INTEREST BY DIRECTOR. [PUB & PVT CO.]

- (1) Every director shall at the 1st meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, **disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding** [*Same disclosure for Independent Director*]
- (2) Every director of a company who is in any way, **whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—**
 - (a) **with a body corporate** in which such director or such director in association with any other director, **holds more than 2% shareholding of that body corporate**, or is a promoter, manager, Chief Executive Officer of that body corporate; or
 - (b) **with a firm or other entity** in which, such director is a partner, owner or member, as the case may be,

shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed **AND**

shall not participate in such meeting. [PRIVATE COMPANY EXEMPT w.e.f 5-06-15]

[Applicable for NPO only if transaction value > 100000/-]

Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested **after the contract or arrangement is entered into**, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

Disclosures by a director of his interest.- RULES

- (1) Every director shall disclose his concern or interest in any company or companies or bodies corporate (including shareholding interest), firms or other association of individuals, **by giving a notice in writing in Form MBP 1.**
- (2) It shall be the duty of the director giving notice of interest to cause it to be disclosed at the meeting held immediately after the date of the notice.
- (3) All notices shall be kept at the registered office and such notices shall be preserved for a period of 8 years from the end of the financial year to which it relates and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for the purpose.

SECTION CONTINUES:

- (3) A contract or arrangement entered into by the company **without disclosure or with participation by a director who is concerned or interested** in any way, directly or indirectly, in the contract or arrangement, **shall be voidable at the option of the company.**
- (4) If a director of the company contravenes the provisions of sub-section (1) or (2), **such director shall be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than Rs.50000/- but which may extend to 100000, or with both. [Companies Amendment Act,2017]**
- (5) Nothing in this section-
 - (a) shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company
 - (b) ***shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate.[Companies Amendment Act,2017]***

SECTION 185 - LOAN TO DIRECTORS, ETC. [PUBLIC & PRIVATE CO.]**[Companies Amendment Act,2017]**

- (1) **No company shall**, directly or indirectly,
advance any loan, including any loan represented by a book debt to, **or**
give any guarantee **or**
provide any security in connection with any loan taken by,-
(a) **any director of company**, or of a company which is its holding company or any partner or relative of any such director; or
(b) any firm in which any such director or relative is a partner.
- (2) **A company may advance any loan** including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that—
(a) **A special resolution** is passed by the company in general meeting:
Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and
(b) The loans are utilised by the borrowing company for its principal business activities.
Explanation.—For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means—
(a) Any private company of which any such director is a director or member;
(b) Anybody 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**
(c) Anybody 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.
- (3) **Nothing contained in sub-sections (1) and (2) 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 rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan; or
(c) any loan made by a **holding company to its wholly owned subsidiary company** or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or
(d) any guarantee given or security provided by a **holding company in respect of loan made by any bank or financial institution to its subsidiary company:**
Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities.
- (4) If any loan is advanced or a guarantee or security is given or provided or utilised in **contravention of the provisions of this section,—**
(i) 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;
(ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall

- not be less than five lakh rupees but which may extend to twenty-five lakh rupees; and
- (iii) 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. ’

EXEMPTIONS:

1. This Section Shall not apply to **Government company** in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before making any loan or giving any guarantee or providing any security under the section.
2. This section shall Not apply to a **Nidhi Company** who gives Loans to its Directors or his Relatives in their capacity as members and such transaction is disclosed in their Annual accounts.
3. Shall Not apply to such a **Private company** in which:
 - a. in whose share capital no other body corporate has invested any money.
 - b. if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees whichever is lower.; and
 - c. such a company has no default in repayment of such borrowings subsisting at the time of making transactions under this section.

SECTION 186 - LOAN AND INVESTMENT BY COMPANY. [PUBLIC & PVT CO.]

- (1) Without prejudice to the provisions contained in this Act, a company shall unless otherwise prescribed, **make investment through not more than 2 layers of investment companies:**
Provided that the provisions of this sub-section shall not affect,—
- (i) a company from acquiring **any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country;**
 - (ii) a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.

Limit on Maximum 2 Layers of Subsidiary Shall be Exempt for: [WEF 20/09/17]

1. Banking Company.
 2. NBFC.
 3. Insurance Company.
 4. Government Company u/s 2(45).
 5. Every other Company having more than 2 layers before the commencement of these Rules & have Filed a declaration with ROC for the Same.
- (2) **No company** shall directly or indirectly —
- (a) give **any loan** to any person **[Individual/Firm/AOP/BOI]** or other body corporate;
 - (b) give **any guarantee or provide security** in connection with a loan to any other body corporate or person; and
 - (c) acquire by way of subscription, purchase or otherwise, **the securities of any other body corporate,**

Exceeding 60% of its paid-up share capital, free reserves and securities premium account
or

100% of its free reserves and securities premium account, whichever is more.

Explanation.—For the purposes of this sub-section, the word "person" does not include any individual who is in the employment of the company.

[Companies Amendment Act,2017]

(3) Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under sub-section (2), **no** investment or loan shall be made or guarantee shall be given or security shall be provided **unless previously authorized by a special resolution passed in a general meeting:**

Provided that where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of this sub-section shall not apply:

Provided further that the company shall disclose the details of such loans or guarantee or security or acquisition in financial statement as provided in sub section (4) **[Companies Amendment Act, 2017]**

SECTION 188 - RELATED PARTY TRANSACTIONS. [PUBLIC & PRIVATE CO,] [Definition of RELATED PARTY u/s 2(76)]

APPROVALS:

- 1) ORDINARY RESOLUTION – BOD
- 2) ORDINARY RESOLUTION – SHARE HOLDERS
- 3) IN ALL TRANSACTIONS - AUDIT COMMITTEE APPROVAL **[If Applicable]**

- (1) **Except with the consent of the BOD** given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, **No company shall enter into any contract or arrangement with a related party** with respect to—
- (a) sale, purchase or supply of any goods or materials;
 - (b) selling or otherwise disposing of, or buying, property of any kind;
 - (c) leasing of property of any kind;
 - (d) availing or rendering of any services;
 - (e) appointment of any agent for purchase or sale of goods, materials, services or property;
 - (f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and **[Holding an Office or Place of Profit]**
 - (g) underwriting the subscription of any securities or derivatives thereof, of the company:

Contract or arrangement with a Related party - RULES

A company shall enter into any contract or arrangement with a related party subject to the following conditions, namely:-

- (1) The agenda of the Board meeting at which the resolution is proposed to be moved shall disclose-
 - (a) the name of the related party and nature of relationship;
 - (b) the nature, duration of the contract and particulars of the contract or arrangement;
 - (c) the material terms of the contract or arrangement including the value, if any;
 - (d) any advance paid or received for the contract or arrangement, if any;

- (e) the manner of determining the pricing and other commercial terms, both included as part of contract and not considered as part of the contract;
- (f) whether all factors relevant to the contract have been considered, if not, the details of factors not considered with the rationale for not considering those factors;
- and**
- (g) any other information relevant or important for the Board to take a decision on the proposed transaction.

(2) Where any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement-

(3) For the purposes of first proviso to sub-section (1) of section 188, except with the prior approval of the company by a [resolution], a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into, -

(a) as contracts or arrangements with respect to clauses (a) to (e) of sub-section (1) of section 188, with criteria as mention below-

(i) sale, purchase or supply of any goods or material, directly or through appointment of agent, ³[amounting to ten percent or more] of the turnover of the company or **rupees one hundred crore**, whichever is lower, as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188;

(ii) selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, ³[amounting to ten percent or more] of net worth of the company or **rupees one hundred crore**, whichever is lower, as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;

(iii) leasing of property any kind ⁴[amounting to ten percent or more] of the net worth of company or ³[ten per cent or more of turnover] of the company or **one hundred crore**, whichever is lower, as mentioned in clause (c) of sub-section (1) of section 188;

(iv) availing or rendering of any services, directly or through appointment of agent, ³[amounting to ten percent or more] of the turnover of the company or **rupees fifty crore**, whichever is lower as mentioned in clause (d) and clause (e) respectively of sub-section (1) of section 188:

Explanation.- It is hereby clarified that the limits specified in sub-clause (i) to (iv) shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year.

(b) is for appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration **exceeding two and a half lakh rupees** as mentioned in clause (f) of sub-section (1) of section 188.

(c) is for remuneration for underwriting the subscription of any securities or derivatives thereof, of the company **exceeding one percent of the net worth** as as mentioned in clause (g) of sub-section (1) of section 188.

Explanation.-

(1) The turnover or net worth referred in the above sub-rules shall be computed on the basis of the audited financial statement of the preceding financial year.

(2) In case of wholly owned subsidiary, the ²[resolution] is passed by the holding company shall be sufficient for the purpose of entering into the transaction between the wholly owned subsidiary and the holding company.

(3) The explanatory statement to be annexed to the notice of a general meeting convened pursuant to section 101 shall contain the following particulars, namely:-

(a) name of the related party;

(b) name of the director or key managerial personnel who is related, if any;

(c) nature of relationship;

(d) nature, material terms, monetary value and particulars of the contract or arrangements;

(e) any other information relevant or important for the members to take a decision on the proposed resolution.

Provided that In case of WOS, the resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between WOS and holding company.

Provided further that no member of the company shall vote on such ORDINARY resolution, to approve any contract or arrangement which may be entered into by the company, **if such member is a related party:**

[PRIVATE COMPANY EXEMPT w.e.f 5-06-15]

First & Second Proviso Shall not apply to —

(a) a Government company in respect of contracts or arrangements entered into by it with any other Government company;

(b) a Government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before entering into such contract or arrangement.

Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business **other than transactions which are not on an arm's length basis.**

Provided also that the requirement of passing the resolution under first proviso shall not be applicable for transactions entered into between a holding company and its WOS whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval. **[COMPANIES AMENDMENT ACT, 2015]**

Provided also that nothing contained in the second proviso shall apply to a company in which ninety per cent. or more members, in number, are relatives of promoters or are related parties. **[Companies Amendment Act, 2017]**

Explanation- In this sub-section,—

(a) the expression "office or place of profit" means any office or place—

(i) where such office or place is held by a director, if the director holding it receives from the company anything by way of **remuneration over and above the remuneration to which he is entitled as director**, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

(ii) **where such office or place is held by :**

- an individual other than a director or
- by any firm,
- private company or
- other body corporate,

If they receive from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

- (b) the expression "**arm's length transaction**" means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

SECTION CONTINUES:

- (2) Every contract or arrangement entered into under sub-section (1) shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement
- (3) Where any contract or arrangement is entered into by a director or any other employee, **without obtaining the consent** of the Board or approval by a Resolution in the general meeting under sub-section (1)

and if it is not ratified by the Board or by the shareholders at a meeting within 3 months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the Board or, as the case may be, of the shareholders. [Companies Amendment Act,2017]
and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

- (4) Without prejudice to anything contained in sub-section (3), it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement.

**CHAPTER XIII - APPOINTMENT AND REMUNERATION OF
MANAGERIAL PERSONNEL****Section 196 - Appointment of managing director, whole-time director or manager.**

- (1) No company shall appoint or employ at the same time a MD and a Manager.
- (2) No company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding five years at a time: **Provided that** no re-appointment shall be made earlier than 1 year before the expiry of his term. **[Government Company Exempt 5.6.15]**

DIQUALIFICATION & GROUNDS FOR VACATION

- (3) No company shall appoint or continue the employment of any person as MD, WTD or manager who —
 - (a) is below the age of 21 years or has attained the age of seventy years: **Provided that** appointment of a person who has attained the age of 70 years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person; **Provided further that** where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made: **[Companies Amendment Act, 2017]**
 - (b) is an undischarged insolvent or has at any time been adjudged as an insolvent;
 - (c) has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or
 - (d) has at any time been convicted by a court of an offence and sentenced for a period of more than *six months*.

**SECTION 197 - OVERALL MAXIMUM MANAGERIAL REMUNERATION AND
MANAGERIAL REMUNERATION IN CASE OF ABSENCE OR INADEQUACY OF
PROFITS. [PUBLIC COMPANY ONLY] [Government Company Exempt 5.6.15]**

- (1) The total managerial remuneration payable by a public company, to its directors, including MD and WTD, and its manager in respect of any financial year shall not exceed 11% of the net profits of that company for that financial year computed in the manner laid down in section 198

Except that Remuneration of the directors shall not be deducted from the gross profits:

A) OVERALL REMUNERATION

Provided that the company in general meeting may, with the approval of the CG, authorise the payment of remuneration exceeding **11% of the net profits of the company**, subject to the provisions of Schedule V:

[Companies Amendment Act, 2017]

B) INDIVIDUAL LIMITS OF REMUNERATION

Provided further that, except with the approval of the company in general meeting by a special resolution. [Companies Amendment Act,2017]

- (i) the remuneration payable to any **1 MD or WTD or manager shall not exceed 5% of the net profits** of the company and if there is more than one such director **remuneration shall not exceed 10% of the net profits** to all such directors and manager taken together;
- (ii) the remuneration payable to directors who are neither MD or WTD shall not exceed,—
 - (A) **1% of the net profits of the company**, if there is a MD, WTD or manager;
 - (B) **3% of the net profits in any other case.**

Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting. [Companies Amendment Act,2017]

(2) The percentages aforesaid shall be exclusive of any SITTING FEES

C) SITTING FEES.- RULES – ONLY NON EXECUTIVE DIRECTORS

A company may pay a sitting fee to a director for attending meetings of the Board or committees thereof, such sum as may be decided by the Board of directors thereof which shall not exceed 1 lakh rupees per meeting of the Board or committee thereof.

Provided that for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other directors.

D) REMUNERATION IN CASE OF LOSS

(3) If, in any financial year, a company has no profits or its profits are inadequate, the company shall Not pay to its **directors, including any MD or WTD or manager**, by way of remuneration **any sum Excluding Sitting FEES except in accordance with the provisions of Schedule V.** [Companies Amendment Act,2017]

E) REMUNERATION FOR PROFESSIONAL SERVICES – [read with Sec 188]

(4) The remuneration payable to the directors of a company, including any managing or whole-time director or manager, shall be determined, in accordance with and subject to the provisions of this section, either by the articles of the company, or by a resolution or, if the articles so require, **by a special resolution, passed by the company in general meeting** and the remuneration payable to a director determined aforesaid shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity:

Provided that any remuneration for services rendered by any such director in other capacity shall not be so included if—

- (a) the services rendered are of a professional nature; and
- (b) in the opinion of the Nomination and Remuneration Committee, if the company is covered under 178, or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

(5) A director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board:

Provided that the amount of such fees shall not exceed the amount as may be prescribed:

Provided further that different fees for different classes of companies and fees in respect of independent director may be such as may be prescribed.

F) MODE OF PAYMENT OF REMUNERATION

(6) A director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company.

(7) OMIT [Amendment Ordinance 2018]

(8) The net profits for the purposes of this section shall be computed in the manner referred to in section 198.

G) EXCESS REMUNERATION

(9) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, **he shall refund such sums to the company, within two years** or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company **[Companies Amendment Act, 2017]**

(10) The company shall not waive the recovery of any sum refundable to it unless approved by the company by special resolution within two years from the date the sum becomes refundable. [Companies Amendment Act, 2017]

Provided that *where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver. [Companies Amendment Act, 2017]*

(11) In cases where Schedule V is applicable on grounds of no profits or inadequate profits, any provision relating to the remuneration of any director which purports to increase or has the effect of increasing the amount thereof, **shall not have any effect unless such increase is in accordance with the conditions specified in that Schedule. [Companies Amendment Act, 2017]**

(12) Every listed company shall disclose in the Board's report, the ratio of the remuneration of each director to the median employee's remuneration and such other details as may be prescribed.

(13) Where any insurance is taken by a company on behalf of its MD, WTD, CEO, CFO or CS for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, **the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel:**

Provided that if such person is proved to be guilty, the premium paid on such insurance shall be treated as part of the remuneration.

(14) Subject to the provisions of this section, any director who is in receipt of any commission from the company and who is a managing or whole-time director of the company shall not be disqualified from receiving any remuneration or commission from any holding company or subsidiary company of such company subject to its disclosure by the company in the Board's report.

(15) If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees.
[Amendment Ordinance 2018]

(16) **The auditor of the company shall**, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed.
[Companies Amendment Act, 2017]

(17) **On and from the commencement of the Companies (Amendment) Act, 2017**, any application made to the Central Government under the provisions of this section [as it stood before such commencement], which is pending with that Government shall abate, and the

company shall, within one year of such commencement, obtain the approval in accordance with the provisions of this section, as so amended. **[Companies Amendment Act, 2017]**

Section 200 - Central Government or company to fix limit with regard to remuneration.

Notwithstanding anything contained in this Chapter, ~~the CG or~~ a company may, while according its approval under section 196, to any appointment or to any remuneration under section 197 in respect of cases where the company has inadequate or no profits, **[Companies Amendment Act,2017]** fix the remuneration within the limits specified in this Act, at such amount or percentage of profits of the company, as it may deem fit and while fixing the remuneration, ~~the CG or~~ the company shall have regard to—

- (a) the financial position of the company;
- (b) the remuneration or commission drawn by individual concerned in any other capacity;
- (c) the remuneration or commission drawn by him from any other company;
- (d) professional qualifications and experience of the individual concerned;
- (e) such other matters as may be prescribed.

Section 201 - Forms of, and procedure in relation to, certain applications.

- (1) Every application made to the Central Government under **Section 196r** shall be in such form as may be prescribed. **[Companies Amendment Act,2017]**
- (2) (a) Before any application is made by a company to the CG under **Section 196**, there shall be issued by or on behalf of the company a general notice to the members thereof, indicating the nature of the application proposed to be made. **[Companies Amendment Act,2017]**
- (b) Such notice shall be published **at least once in a newspaper in the principal language of the district** in which the registered office of the company is situate and circulating in that district, **and at least once in English in an English newspaper** circulating in that district.
- (c) The copies of the notices, together with a certificate by the company as to the due publication thereof, shall be attached to the application.

CHAPTER XIV - INSPECTION, INQUIRY AND INVESTIGATION**INVESTIGATION OF OWNERSHIP OF COMPANY (SECTION 216)**

- (1) **Where it appears to the Central Government** that there is a reason so to do, it may appoint one or more inspectors to investigate and report on matters relating to the company, and its membership for the purpose of determining the true persons—
 - (a) who are or have been financially interested in the success or failure, whether real or apparent, of the company; or
 - (b) who are or have been able to control or to materially influence the policy of the company, **or [Companies Amendment Act, 2017]**
 - (c) who have or had beneficial interest in shares of a company or who are or have been beneficial owners or significant beneficial owner of a company. **[Companies Amendment Act, 2017]**
- (2) **Without prejudice to its powers under sub-section (1)**, the Central Government shall appoint one or more inspectors under that sub-section, if the Tribunal, in the course of any proceeding before it, directs by an order that the affairs of the company ought to be investigated as regards the membership of the company and other matters relating to the company, for purposes specified in sub-section (1).
- (3) While appointing an inspector under sub-section (1), the Central Government may define the scope of the investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular, may limit the investigation to matters connected with particular shares or debentures.
- (4) Subject to the terms of appointment of an inspector, his powers shall extend to the investigation of any circumstances suggesting the existence of any arrangement or understanding which, though not legally binding, is or was observed or is likely to be observed in practice and which is relevant for the purposes of his investigation.

**CHAPTER XVII
REGISTERED VALUER****1. SECTION 247**

- (1) Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.
- (2) The valuer appointed under sub-section (1) shall,—
- make an impartial, true and fair valuation of any assets which may be required to be valued;
 - exercise due diligence while performing the functions as valuer;
 - make the valuation in accordance with such rules as may be prescribed; and
 - not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time **during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him.** [Companies Amendment Act, 2017]
- (3) If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees:

Provided that if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

- (4) Where a valuer has been convicted under sub-section (3), he shall be liable to—
- refund the remuneration received by him to the company; and
 - pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

Notification of the *Companies (Registered Valuers and Valuation) Rules, 2017* vide Notification G.S.R 1316(E) dated 18th October, 2017

In exercise of the powers conferred by section 247, the Central Government hereby enforced the *Companies (Registered Valuers and Valuation) Rules, 2017*.

COMPANIES (REGISTERED VALUERS AND VALUATION) RULES, 2017**3. Eligibility for registered valuers****(1) A person shall be eligible to be a registered valuer if he-**

- (a) Is a valuer member of a registered valuers organisation;
Explanation.- For the purposes of this clause, "a valuer member" is a member of a registered valuers organisation who possesses the requisite educational qualifications and experience for being registered as a valuer;
- (b) Is recommended by the registered valuers organisation of which he is a valuer member for registration as a valuer;

(c) Has passed the valuation examination under rule 5 within three years preceding the date of making an application for registration under rule 6;

(d) Possesses the qualifications and experience as specified in rule 4;

(e) Is not a minor;

(f) Has not been declared to be of unsound mind;

(g) Is not an undischarged bankrupt, or has not applied to be adjudicated as a bankrupt;

(h) Is a person resident in India;

Explanation.- For the purposes of these rules 'person resident in India' shall have the same meaning as defined in clause (v) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999) as far as it is applicable to an individual;

(i) Has not been convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be registered;

(j) Has not been levied a penalty under section 271J of Income-tax Act, 1961 (43 of 1961) and time limit for filing appeal before Commissioner of Income-tax (Appeals) or Income-tax Appellate Tribunal, as the case may be has expired, or such penalty has been confirmed by Income-tax Appellate Tribunal, and five years have not elapsed after levy of such penalty; and

(k) Is a fit and proper person:

Explanation.- For determining whether an individual is a fit and proper person under these rules, the authority may take account of any relevant consideration, including but not limited to the following criteria-

- (i) Integrity, reputation and character,
- (ii) Absence of convictions and restraint orders, and
- (iii) Competence and financial solvency.

(2) No partnership entity or company shall be eligible to be a registered valuer if-

(a) It has been set up for objects other than for rendering professional or financial services, including valuation services and that in the case of a company, it is not a subsidiary, joint venture or associate of another company or body corporate;

(b) It is undergoing an insolvency resolution or is an undischarged bankrupt;

(c) All the partners or directors, as the case may be, are not ineligible under clauses (c), (d), (e), (g), (h), (i), (j) and (k) of sub-rule (1);

(d) Three or all the partners or directors, whichever is lower, of the partnership entity or company, as the case may be, are not registered valuers; or

(e) None of its partners or directors, as the case may be, is a registered valuer for the asset class, for the valuation of which it seeks to be a registered valuer.

4. Qualifications and experience

An individual shall have the following qualifications and experience to be eligible for registration under rule 3, namely:-

(a) post-graduate degree or post-graduate diploma, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least three years of experience in the specified discipline thereafter; or

(b) a Bachelor's degree or equivalent, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least five years of experience in the specified discipline thereafter; or

(c) membership of a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession with at least three years' experience after such membership and having qualification mentioned at clause (a) or (b).

Explanation-I- For the purposes of this clause the 'specified discipline' shall mean the specific discipline which is relevant for valuation of an asset class for which the registration as a valuer or recognition as a registered valuers organisation is sought under these rules.

Explanation-II.- Qualifying education and experience and examination or training for various asset classes, is given in an indicative manner in Annexure-IV of these rules.

6. Application for certificate of registration

(1) An individual eligible for registration as a registered valuer under rule 3 may make an application to the authority in Form-A of Annexure-II along with a non- refundable application fee of five thousand rupees in favour of the authority.

(2) A partnership entity or company eligible for registration as a registered valuer under rule 3 may make an application to the authority in Form-B of Annexure- II along with a non- refundable application fee of ten thousand rupees in favour of the authority.

(3) The authority shall examine the application, and may grant twenty one days to the applicant to remove the deficiencies, if any, in the application.

(4) The authority may require the applicant to submit additional documents or clarification within twenty- one days.

(5) The authority may require the applicant to appear, within twenty one days, before the authority in person, or through its authorised representative for explanation or clarifications required for processing the application.

(6) If the authority is satisfied, after such scrutiny, inspection or inquiry as it deems necessary, that the applicant is eligible under these rules, it may grant a certificate of registration to the applicant to carry on the activities of a registered valuer for the relevant asset class or classes in Form-C of the Annexure-II within sixty days of receipt of the application, excluding the time given by the authority for presenting additional documents, information or clarification, or appearing in person, as the case may be.

(7) If, after considering an application made under this rule, the authority is of the prima facie opinion that the registration ought not be granted, it shall communicate the reasons for forming such an opinion within forty-five days of receipt of the application, excluding the time given by it for removing the deficiencies, presenting additional documents or clarifications, or appearing in person, as the case may be.

(8) The applicant shall submit an explanation as to why his/its application should be accepted within fifteen days of the receipt of the communication under sub- rule (7), to enable the authority to form a final opinion.

(9) After considering the explanation, if any, given by the applicant under sub-rule (8), the authority shall either -

- (a) accept the application and grant the certificate of registration; or
- (b) reject the application by an order, giving reasons thereof.

(10) The authority shall communicate its decision to the applicant within thirty days of receipt of explanation.

7. Conditions of Registration

The registration granted under rule 6 shall be subject to the conditions that the valuer shall -

- (a) at all times possess the eligibility and qualification and experience criteria as specified under rule 3 and rule 4;
- (b) at all times comply with the provisions of the Act, these rules and the Bye-laws or internal regulations, as the case may be, of the respective registered valuers organisation;
- (c) in his capacity as a registered valuer, not conduct valuation of the assets or class(es) of assets other than for which he/it has been registered by the authority;
- (d) take prior permission of the authority for shifting his/ its membership from one registered valuers organisation to another;
- (e) take adequate steps for redressal of grievances;
- (f) maintain records of each assignment undertaken by him for at least three years from the completion of such assignment;
- (g) comply with the Code of Conduct of the registered valuers organisation of which he is a member;
- (h) in case a partnership entity or company is the registered valuer, allow only the partner or director who is a registered valuer for the asset class(es) that is being valued to sign and act on behalf of it;
- (i) in case a partnership entity or company is the registered valuer, it shall disclose to the company concerned, the extent of capital employed or contributed in the partnership entity or the company by the partner or director, as the case may be, who would sign and act in respect of relevant valuation assignment for the company;
- (j) in case a partnership entity is the registered valuer, be liable jointly and severally along with the partner who signs and acts in respect of a valuation assignment on behalf of the partnership entity;
- (k) in case a company is the registered valuer, be liable along with director who signs and acts in respect of a valuation assignment on behalf of the company;
- (l) in case a partnership entity or company is the registered valuer, immediately inform the authority on the removal of a partner or director, as the case may be, who is a registered valuer along with detailed reasons for such removal; and
- (m) comply with such other conditions as may be imposed by the authority.

8. Conduct of Valuation

(1) The registered valuer shall, while conducting a valuation, comply with the valuation standards as notified or modified under rule 18:

Provided that until the valuation standards are notified or modified by the Central Government, a valuer shall make valuations as per-

- (a) internationally accepted valuation standards;
- (b) valuation standards adopted by any registered valuers organisation.

(2) The registered valuer may obtain inputs for his valuation report or get a separate valuation for an asset class conducted from another registered valuer, in which case he shall

fully disclose the details of the inputs and the particulars etc. of the other registered valuer in his report and the liabilities against the resultant valuation, irrespective of the nature of inputs or valuation by the other registered valuer, shall remain of the first mentioned registered valuer.

(3) The valuer shall, in his report, state the following:-

- (a) background information of the asset being valued;
- (b) purpose of valuation and appointing authority;
- (c) identity of the valuer and any other experts involved in the valuation;
- (d) disclosure of valuer interest or conflict, if any;
- (e) date of appointment, valuation date and date of report;
- (f) inspections and/or investigations undertaken;
- (g) nature and sources of the information used or relied upon;
- (h) procedures adopted in carrying out the valuation and valuation standards followed;
- (i) restrictions on use of the report, if any;
- (j) major factors that were taken into account during the valuation;
- (k) conclusion; and
- (l) caveats, limitations and disclaimers to the extent they explain or elucidate the limitations faced by valuer, which shall not be for the purpose of limiting his responsibility for the valuation report.

9. Temporary surrender

(1) A registered valuer may temporarily surrender his registration certificate in accordance with the bye-laws or regulations, as the case may be, of the registered valuers organisation and on such surrender, the valuer shall inform the authority for taking such information on record.

(2) A registered valuers organisation shall inform the authority if any valuer member has temporarily surrendered his/its membership or revived his/ its membership after temporary surrender, not later than seven days from approval of the application for temporary surrender or revival, as the case may be.

(3) Every registered valuers organisation shall place, on its website, in a searchable format, the names and other details of its valuers members who have surrendered or revived their memberships.

10. Functions of a Valuer

A valuer shall conduct valuation required under the Act as per these rules and he may conduct valuation as per these rules if required under any other law or by any other regulatory authority.

12. Eligibility for registered valuers organisations

(1) An organisation that meets requirements under sub-rule (2) may be recognised as a registered valuers organisation for valuation of a specific asset class or asset classes if -

- (i) it has been registered under section 25 of the Companies Act, 1956 (1 of 1956) or section 8 of the Companies Act, 2013 (18 of 2013) with the sole object of dealing with matters relating to regulation of valuers of an asset class or asset classes and has in its bye laws the requirements specified in Annexure-III;

- (ii) a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession;

Provided that, subject to sub-rule (3), the following organisations may also be recognised as a registered valuers organisation for valuation of a specific asset class or asset classes, namely:-

- (a) an organisation registered as a society under the Societies Registration Act, 1860 (21 of 1860) or any relevant state law, or;

- (b) an organisation set up as a trust governed by the Indian Trust Act, 1882 (2 of 1882).

- (2) The organisation referred to in sub-rule (1) shall be recognised if it –
- (a) conducts educational courses in valuation, in accordance with the syllabus determined by the authority, under rule 5, for individuals who may be its valuers members, and delivered in class room or through distance education modules and which includes practical training;
 - (b) grants membership or certificate of practice to individuals, who possess the qualifications and experience as specified in rule 4, in respect of valuation of asset class for which it is recognised as a registered valuers organisation ;
 - (c) conducts training for the individual members before a COP is issued to them;
 - (d) lays down and enforces a code of conduct for valuers who are its members, which includes all the provisions specified in Annexure-I;
 - (e) provides for continuing education of individuals who are its members;
 - (f) monitors and reviews the functioning, including quality of service, of valuers who are its members; and
 - (g) has a mechanism to address grievances and conduct disciplinary proceedings against valuers who are its members.

(3) A registered valuers organisation, being an entity under proviso to sub-rule (1), shall convert into or register itself as a company under section 8 of the Companies Act, 2013, and include in its bye laws the requirements specified in Annexure- III, within one year from the date of commencement of these rules.

14. Conditions of Recognition

The recognition granted under rule 13 shall be subject to the conditions that the registered valuers organisation shall-

- (a) at all times continue to satisfy the eligibility requirements specified under rule 12;
- (b) maintain a register of members who are registered valuers, which shall be publicly available;
- (c) admits only individuals who possess the educational qualifications and experience requirements, in accordance with rule 4 and as specified in its recognition certificate, as members;
- (d) make such reports to the authority as may be required by it;
- (e) comply with any directions, including with regard to course to be conducted by valuation organisation under clause (a) of sub-rule (2) of rule 12, issued by the authority;
- (f) be converted or registered as company under section 8 of the Act, with governance structure and bye laws specified in Annexure-III, within a period of two year from the date of commencement of these rules if it is an organisation referred to in proviso to sub-rule (1) of rule 12;
- (g) shall have the governance structure and incorporate in its bye laws the requirements specified in Annexure-III within one year of commencement of these rules if it is an organisation referred to in clause (i) of sub-rule (1) of rule 12 and existing on the date of commencement of these rules;
- (h) display on its website, the status and specified details of every registered valuer being its valuer members including action under rule 17 being taken against him; and
- (i) comply with such other conditions as maybe specified by authority.

15. Cancellation or suspension of certificate of registration or recognition

The authority may cancel or suspend the registration of a valuer or recognition of a registered valuers organisation for violation of the provisions of the Act, any other law allowing him to perform valuation, these rules or any condition of registration or recognition, as the case may be in the manner specified in rule 17.

16. Complaint against a registered valuer or registered valuers organisation

A complaint may be filed against a registered valuer or registered valuers organisation before the authority in person or by post or courier along with a non-refundable fees of

rupees one thousand in favour of the authority and the authority shall examine the complaint and take such necessary action as it deems fit:

Provided that in case of a complaint against a registered valuer, who is a partner of a partnership entity or director of a company, the authority may refer the complaint to the relevant registered valuers organisation and such organisation shall handle the complaint in accordance with its bye laws.

18. Valuation Standards

The Central Government shall notify and may modify (from time to time) the valuation standards on the recommendations of the Committee set up under rule 19.

19. Committee to advise on valuation matters

(1) The Central Government may constitute a Committee to be known as "Committee to advise on valuation matters" to make recommendations on formulation and laying down of valuation standards and policies for compliance by companies and registered valuers.

(2) The Committee shall comprise of-

- (a) a Chairperson who shall be a person of eminence and well versed in: valuation, accountancy, finance, business administration, business law, corporate law, economics;
- (b) one member nominated by the MCA;
- (c) one member nominated by the IBBI;
- (d) one member nominated by the Legislative Department;
- (e) **upto four** members nominated by Central Government representing authorities which are allowing valuations by registered valuers;
- (f) **upto four** members who are representatives of registered valuers organisations, nominated by Central Government.
- (g) **upto two** members to represent industry and other stakeholder nominated by the Central Government in consultation with the authority;
- (h) Presidents of, the ICAI, ICSI, the Institute of Cost Accountants of India as ex-officio members.

(3) The Chairperson and Members of the Committee shall have a tenure of three years and they shall not have more than two tenures.

20. Punishment for contravention: Without prejudice to any other liabilities where a person contravenes any of the provision of these rules he shall be punishable in accordance with sub-section (3) of section 469 of the Act.

21. Punishment for false statement

If in any report, certificate or other document required by, or for, the purposes of any of the provisions of the Act or the rules made thereunder or these rules, any person makes a statement,—

- (a) which is false in any material particulars, knowing it to be false; or
- (b) which omits any material fact, knowing it to be material, he shall be liable under section 448 of the Act.