BORROWINGS OF COMPANY

In order to run a business effectively/successfully, adequate amount of capital is necessary. In some cases capital arranged through internal resources i.e. by way of issuing equity share capital or using accumulated profit is not adequate and the organisation is resorted to external resources of arranging capital i.e. External Commercial borrowing (ECB), Debentures, Bank Loan, Public Fixed Deposits etc. Thus, borrowing is a mechanism used whereby the money is arranged through external resources with an implied or expressed intention of returning money.

Types of Borrowings

On the basis of period for which loans are taken the borrowings are categorized into:

A. **Long Terms Borrowings** - Funds borrowed for a period ranging for five years or more are termed as long-term borrowings. A long term borrowing is made for getting a new project financed or for making big capital investment etc. Generally Long term borrowing is made against charge on fixed assets of the company.

B. **Short Term Borrowings** - Funds needed to be borrowed for a short period say for a period up to one year or so are termed as short term borrowings. This is made to meet the working capital need of the company. Short term borrowing is generally made on hypothecation of stock and debtors.

C. **Medium Term Borrowings** - Where the funds to be borrowed are for a period ranging from two to five years, such borrowings are termed as medium term borrowings. The commercial banks normally finance purchase of land, machinery, vehicles etc.

DEBENTURES

When capital is required but not of a permanent nature, it may be obtained through long term loans and issue of debentures is the most common method adopted by companies.

The term debenture means acknowledgement of debt in writing. In the words of J. Lewis Borwn and L.R. Howard, "A debenture is a document given by a company in acknowledgement of a debt, undertaking to repay the stated sum on or before a certain date." The company in writing and under its seal that it owes a debt of a certain amount to a certain period repayable after certain number of years with interest at a certain rate per annum. According to Section 2(*30*) of Companies Act 2013 "debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not; It is evident from the definition that the term debentures covers both secured and unsecured debentures.

Types/Kinds of Debentures

Debentures are generally classified into different categories on the basis of: (1) convertibility of the instrument (2) Security of the Instrument, (3) Redemption ability (4) Registration of Instrument

1. **On the Basis of Convertibility**
   - **A. Non Convertible Debentures (NCD):** These instruments retain the debt character and cannot be converted into equity shares.
   - **B. Partly Convertible Debentures (PCD):** A part of these instruments are converted into Equity shares in the future at notice of the issuer. The issuer decides the ratio for conversion. This is normally decided at the time of subscription.
   - **C. Fully convertible Debentures (FCD):** These are fully convertible into Equity shares at the issuer's notice. The ratio of conversion is decided by the issuer. Upon conversion the investors enjoy the same status as ordinary shareholders of the company.
   - **D. Optionally Convertible Debentures (OCD):** The investor has the option to either convert these debentures into shares at price decided by the issuer/agreed upon at the time of issue.
2. **On the Basis of Security**
   - **A. Secured Debentures:** These instruments are secured by a charge on the fixed assets of the issuer company. So if the issuer fails on payment of either the principal or interest amount, his assets can be sold to repay the liability to the investors. Section 71(3) of the Companies Act, 2013 provides that secured debentures may be issued by a company subject to such terms and conditions as may be prescribed by the Central Government through rules.

B. Unsecured Debentures: These instrument are unsecured in the sense that if the issuer defaults on payment of the interest or principal amount, the investor has to be along with other unsecured creditors of the company, they are also said to be naked debentures.

3. On the Basis of Redeemability

A. Redeemable Debentures: It refers to the debentures which are issued with a condition that the debentures will be redeemed at a fixed date or upon demand, or after notice, or under a system of periodical drawings. Debentures are generally redeemable and on redemption these can be reissued or cancelled. The person who has been re-issued the debentures shall have the same rights and priorities as if the debentures had never been redeemed.

B. Perpetual or Irredeemable Debentures: A Debenture, in which no time is fixed for the company to pay back the money, is an irredeemable debenture. The debenture holder cannot demand payment as long as the company is a going concern and does not make default in making payment of the interest. But all debentures, whether redeemable or irredeemable become payable on the company going into liquidation. *However, after the commencement of the Companies Act, 2013, now a company cannot issue perpetual or irredeemable debentures.*

4. On the Basis of Registration

A. Registered Debentures: Registered debentures are made out in the name of a particular person, whose name appears on the debenture certificate and who is registered by the company as holder on the Register of debenture holders. Such debentures are transferable in the same manner as shares by means of a proper instrument of transfer duly stamped and executed and satisfying the other requirements specified in Section 56 of the Companies Act, 2013.

B. Bearer debentures: Bearer debentures on the other hand, are made out to bearer, and are negotiable instruments, and so transferable by mere delivery like share warrants. The person to whom a bearer debenture is transferred become a "holder in due course" and unless contrary is shown, is entitled to receive and recover the principal and the interest accrued thereon.

Distinction Between Debentures and Shares

S. No.	Debentures	Shares
1	Debentures constitute a loan.	Shares are part of the capital of a company.
2	Debenture holders are creditors.	Shareholders are members/owners of the company.
3	Debentures holder gets fixed interest which carries a priorities over dividend.	Shareholder gets dividends with a varying rate.
4	Debentures generally have a charge on the assets of the company.	Shares do not carry any such charge.
5	Debentures can be issued at a discount without restrictions.	Shares cannot be issued at a discount.
6	The rate of interest is fixed in the case of debentures.	Whereas on equity shares the dividend varies from year to year depending upon the profit of the company and the Board of directors decision to declare dividends or not.
7	Debentureholders do not have any voting right.	Shareholders enjoy voting right.
8	Interest on debenture is payable even if there are no profits i.e. even out of capital.	Dividend can be paid to shareholders only out of the profits of the company and not otherwise.
9	Interest paid on debenture is a business expenditure and allowable deduction from profits.	Dividend is not allowable deduction as business expenditure.
10	Return of allotment is not required for allotment of debentures.	Return of allotment in e-Form No. 2 is to be filed for allotment of shares.

DEBENTURE STOCK

A company, instead of issuing debentures, each in respect of separate and distinct debt, may raise one aggregate loan fund or composite stock known as 'debenture stock'. Accordingly, a debenture stock is a borrowed capital consolidated into one mass for the sake of convenience. Instead of each lender having a separate bond or mortgage, he has a certificate entitling him to a certain sum being a portion of one large loan. It is generally secured by a trust deed. As in the case of shares, a person may subscribe for, or transfer any amount even a fraction amount. Debenture stock is the indebtedness itself, and the debenture stock certificate furnishes evidence of the title or interest of the holder in the indebtedness. Debenture is the document which furnishes evidence of the debt. Debenture stock must be fully paid, while debenture may or may not be fully paid.

PROVISIONS OF COMPANIES ACT 2013- ISSUE OF DEBENTURES

Issue of Debentures to be approved by special resolution

Section 71 (1) states that a company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. The issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.

No debenture shall carry voting rights

Section 71 (2) states that no company shall issue any debentures carrying any voting rights.

Secured Debentures to comply with terms and conditions prescribed.

Section 71 (3) states that Secured debentures may be issued by a company subject to such terms and conditions as may be prescribed.

Rule 18(1) of Companies (Share Capital and Debentures) Rules, 2014 prescribes the following conditions

The company shall not issue secured debentures, unless it complies with the following conditions, namely:-

(a) An issue of secured debentures may be made, provided the date of its redemption shall not exceed ten years from the date of issue. A company engaged in the setting up of infrastructure projects may issue secured debentures for a period exceeding ten years but not exceeding thirty years;
(b) such an issue of debentures shall be secured by the creation of a charge, on the properties or assets of the company, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon;
(c) the company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than sixty days after the allotment of the debentures, execute a debenture trust deed to protect the interest of the debenture holders ; and
(d) the security for the debentures by way of a charge or mortgage shall be treated in favour of the debenture trustee on-
    (i) any specific movable property of the company (not being in the nature of pledge); or
    (ii) any specific immovable property wherever situate, or any interest therein.

Note: The date of Redemption of debenture shall not exceed 10 years from the date of issue. A company engaged in the setting up of infrastructure projects may issue secured debentures up to redemption period of thirty years.

Creation of debenture redemption reserve account

Section 71(*4*) states that when debentures are issued by a company under this section, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures.

Rule 18(7) of Companies (Share Capital and Debentures) Rules, 2014 prescribes the following conditions:

The company shall create a Debenture Redemption Reserve for the purpose of redemption of debentures, in accordance with the conditions given below-

(a) the Debenture Redemption Reserve shall be created out of the profits of the company available for payment of dividend;
(b) the company shall create Debenture Redemption Reserve equivalent to at least fifty percent of the amount raised through the debenture issue before debenture redemption commences.

(c) every company required to create Debenture Redemption Reserve shall on or before the 30th day of April in each year, invest or deposit, as the case may be, a sum which shall not be less than fifteen percent, of the amount of its debentures maturing during the year ending on the 31st day of March of the next year, in any one or more of the following methods, namely:-
   (i) in deposits with any scheduled bank, free from any charge or lien;
   (ii) in unencumbered securities of the Central Government or of any State Government;
   (iii) in unencumbered securities mentioned in sub-clauses (a) to (d) and (ee) of section 20 of the Indian Trusts Act, 1882;
   (iv) in unencumbered bonds issued by any other company which is notified under sub-clause (f) of section 20 of the Indian Trusts Act, 1882;
   (v) the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above: Provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below fifteen percent of the amount of the debentures maturing during the year ending on the 31st day of March of that year;
(d) in case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of non-convertible portion of debenture issue in accordance with this sub-rule.
(e) the amount credited to the Debenture Redemption Reserve shall not be utilised by the company except for the purpose of redemption of debentures.

Appointment of Debenture Trustees

A debenture trustee means a trustee of a trust deed for securing any issue of debentures of a body corporate. To act as debenture trustee, the entity should either be a scheduled bank carrying on commercial activity, a public financial institution, an insurance company, or a body corporate. The entity should be registered with SEBI to act as a debenture trustee.

All and sundry cannot be appointed as Debenture Trustees. A person holding beneficially shares in the issuer company or beneficially entitled to receive moneys from that company and has provided any guarantee in respect of principal debts secured by the debentures or interest thereon as specified in section 117B of the Act. SEBI (Debenture Trustee) Regulations, 1993 additionally prescribe that no person shall be entitled to act as Debenture Trustee unless he is either a scheduled bank carrying on commercial activity or a public financial institution within the meaning of section 4A of the Act or an insurance company or a body corporate. It is also necessary that such an entity should have capital adequacy of net worth of one crore of rupees and have been licensed by SEBI to act as a Debenture Trustee.

Section 71 (*5*) states that no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.

Rule 18(2) of Companies (Share Capital and Debentures) Rules, 2014 prescribes the following conditions

The company shall appoint debenture trustees under sub-section (5) of section 71, after complying with the following conditions, namely:-
(a) the names of the debenture trustees shall be stated in letter of offer inviting subscription for debentures and also in all the subsequent notices or other communications sent to the debenture holders;
(b) before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures;
(c) a person shall not be appointed as a debenture trustee, if he-
   (i) beneficially holds shares in the company;
   (ii) is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;
   (iii) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;

(iv) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
(v) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;
(vi) has any pecuniary relationship with the company amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
(vii) is relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel.

(d) the Board may fill any casual vacancy in the office of the trustee but while any such vacancy continues, the remaining trustee or trustees, if any, may act. When such vacancy is caused by the resignation of the debenture trustee, the vacancy shall only be filled with the written consent of the majority of the debenture holders.
(e) any debenture trustee may be removed from office before the expiry of his term only if it is approved by the holders of not less than three fourth in value of the debentures outstanding, at their meeting.

Duties of Debenture Trustees

Section 71(*6*) A debenture trustee shall take steps to protect the interests of the debenture holders and redress their grievances in accordance with such rules as may be prescribed.

Rule 18(3) of Companies (Share Capital and Debentures) Rules, 2014 prescribes the following conditions

It shall be the duty of every debenture trustee to-

(a) satisfy himself that the letter of offer does not contain any matter which is inconsistent with the terms of the issue of debentures or with the trust deed;
(b) satisfy himself that the covenants in the trust deed are not prejudicial to the interest of the debenture holders;
(c) call for periodical status or performance reports from the company;
(d) communicate promptly to the debenture holders defaults, if any, with regard to payment of interest or redemption of debentures and action taken by the trustee therefor;
(e) appoint a nominee director on the Board of the company in the event of-
(i) two consecutive defaults in payment of interest to the debenture holders; or
(ii) default in creation of security for debentures; or
(iii) default in redemption of debentures.
(f) ensure that the company does not commit any breach of the terms of issue of debentures or covenants of the trust deed and take such reasonable steps as may be necessary to remedy any such breach;
(g) inform the debenture holders immediately of any breach of the terms of issue of debentures or covenants of the trust deed;
(h) ensure the implementation of the conditions regarding creation of security for the debentures, if any, and debenture redemption reserve;
(i) ensure that the assets of the company issuing debentures and of the guarantors, if any, are sufficient to discharge the interest and principal amount at all times and that such assets are free from any other encumbrances except those which are specifically agreed to by the debenture holders;
(j) do such acts as are necessary in the event the security becomes enforceable;
(k) call for reports on the utilization of funds raised by the issue of debentures-
(l) take steps to convene a meeting of the holders of debentures as and when such meeting is required to be held;
(m) ensure that the debentures have been converted or redeemed in accordance with the terms of the issue of debentures;
(n) perform such acts as are necessary for the protection of the interest of the debenture holders and do all other acts as are necessary in order to resolve the grievances of the debenture holders.

DEFINITION OF A CHARGE

A charge is a security given for securing loans or debentures by way of a mortgage on the assets of the company. A company, like a natural person, can offer security for its borrowings. Normally, the

debentures and other borrowings of the company are secured by a charge on the assets of the company. Where property, both existing and future, is agreed to be made available as a security for the repayment of debt and creditors have a present right to have it made available, there is a charge created. The legal right of the creditor can only be enforced at some future date if certain conditions governing the loan are not met. The creditor gets no legal right either absolute or special to the property charged. He only gets the right to have the security made available / enforced by an order of the Court. According to Section 2(16) of the Act, "charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage. Charge also includes a lien and an equitable charge whether created by an instrument in writing or by the deposit of title deed).

Kinds of Charges

A charge on the property of the company as security for debts may be of the following kinds, namely:

1. Fixed or specific charge;
2. Floating charge.

1. Fixed or Specific Charge

A charge is called fixed or specific when it is created to cover assets which are ascertained and definite or are capable of being ascertained and defined, at the time of creating the charge e.g., land, building, or plant and machinery. A fixed charge, therefore, is a security in terms of certain specific property, and the company gives up its right to dispose off that property until the charge is satisfied. In other words, the company can deal with such property, subject to the charge so that the charge holder's interest in the property is not affected and the charge holder gets priority over all subsequent transferees except a *bona fide* transferee for consideration without notice of the earlier charge. In the winding-up of the company, a debenture holder secured by a specific charge will be placed in the highest ranking class of creditors.

2. Floating Charge

A floating charge, as a type of security, is peculiar to companies as borrowers. A floating charge is not attached to any definite property but covers property of a fluctuating type e.g., stock-in-trade and is thus necessarily equitable. A floating charge is a charge on a class of assets present and future which in the ordinary course of business is changing from time to time and leaves the company free to deal with the property as it sees fit until the holders of charge take steps to enforce their security. "The essence of a floating charge is that the security remains dormant until it is fixed or crystallised". But a floating security is not a future security. It is a present security, which presently affects all the assets of the company expressed to be included in it. On the other hand, it is not a specific security; the holder of such charge cannot affirm that the assets are specifically mortgaged to him. The assets are mortgaged in such a way that the mortgagor i.e. the company can deal with them without the concurrence of the mortgagee. The advantage of a floating charge is that the company may continue to deal in any way with the property which has been charged. The company may sell, mortgage or lease such property in the ordinary course of its business if it is authorised by its memorandum of association.

Registration of charge (Section 77):

To be done within 30 days of creation of such charge

PUBLIC DEPOSITS

Section 73 to 76 of the Companies Act (herein after called the Act) read with Rules made under Chapter V of the Companies Act, 2013(herein after called 'the Rules') regulate the invitation and acceptance of deposits. It prohibits acceptance of deposits except from the members through ordinary resolution or acceptance deposits by "eligible company'' being a public company, subject to conditions specified in the rules. (Eligible company is defined under the rules based on net worth and turnover).

The Act read with the Rules also deals with various aspects including prohibition of acceptance of deposits except from the members, subject to conditions, inclusive definition of deposit, eligible company, depositor etc., conditions for acceptance of deposits such as approval of shareholders in a general meeting, credit rating, provision of deposit insurance, trustees of deposit holders etc., In addition

the act protect the interest of depositor through Section 37 and 245(class action suit by requisite number of depositors)of the Act. In addition, the act provides for stringent penalty for any violations in complying with the provisions of this Act, in this regard.

What is a Deposit?

Section 2(31) of the Companies Act (herein after called the act) defines deposit as under "deposit" includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India;

Rule 2(1)(d) under Chapter V defines depositor as under 'Depositor' means-

(i) any member of the company who has made a deposit with the company in accordance with subsection (2) of section 73 of the Act, or

(ii) any person who has made a deposit with a public company in accordance with section 76 of the Act.

Who is an Eligible Company?

Rule 2(1)(e) of Rules made under Chapter V defines eligible company as under "Eligible company" means a public company as referred to in sub- section (1) of section 76, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies and where applicable, with the Reserve Bank of India before making any invitation to the Public for acceptance of Deposits; Provided that an eligible company, which is accepting deposits within the limits specified under clause (c) of sub section (1) of section 180, may accept deposits by means of an ordinary resolution; **"Trustee"** means the Trustee as defined in section 3 of the Indian Trusts Act, 1882.

Prohibition on Acceptance of Deposits from Public

Section 73(1) states that, no company shall invite, accept or renew deposits under this Act from the public except in a manner provided under Chapter V.

Exceptions

Proviso to Section 73(1) prohibition, does not apply to

- a banking company and
- non- banking financial company as defined in the Reserve Bank of India Act, 1934 and
- to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

CONDITIONS FOR ACCEPTANCE OF DEPOSITS FROM MEMBERS

Section 73(2) states that a company may, subject to

(i) the passing of a resolution in general meeting and

(ii) subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfilment of the following conditions, namely:—

  (a) issuance of a circular to its members including therein a statement showing the financia position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;

  (b) filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular;

  (c) depositing such sum which shall not be less than fifteen per cent. of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account;

(d) providing such deposit insurance in such manner and to such extent as may be prescribed;
(e) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and
(f) providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company. In case when a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as ''unsecured deposits'' and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.

Section 73(3) states that every deposit accepted by a company under sub-section (2) shall be repaid with interest in accordance with the terms and conditions of the agreement referred to in that sub-section.

Section 73(4) states that when a company fails to repay the deposit or part thereof or any interest thereon under sub-section (3), the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

Deposit Repayment Reserve
Section 73(5) states that the deposit repayment reserve account referred to in clause (c) of sub-section (2) shall not be used by the company for any purpose other than repayment of deposits.

RULES UNDER CHAPTER V
Rule 3 – Terms and conditions as to acceptance of deposits
Rule 3 under Chapter V states that on and from the commencement of these rules,—
No company under sub-section (2) of section 73 and no eligible company shall accept or renew any deposit, whether secured or unsecured, which is repayable on demand or upon receiving a notice, within a period of less than six months or more than thirty-six months from the date of acceptance or renewal of such deposit:
Exceptions to the Rule (3)
A company may, for the purpose of meeting any of its short-term requirements of funds, accept or renew such deposits for repayment earlier than six months from the date of deposit or renewal, as the case may be, subject to the condition that-
(a) such deposits shall not exceed ten per cent of the aggregate of the paid up share capital and free reserves of the company, and
(b) such deposits are repayable not earlier than three months from the date of such deposit or renewal thereof.
Joint Names
Deposits may be accepted in joint names not exceeding three, with or without any of the clauses, namely, "Jointly", "Either or Survivor", "First named or Survivor", "Anyone or Survivor", if the depositors desires so. [Rule 3(2)]
Rule 3(3) states that no company referred to in sub-section (2) of section 73 shall accept or renew any deposits if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits exceeds 25 per cent of the aggregate of the paid-up share capital and free reserves of the company.
Rule 3(4) states that no Eligible company shall accept or renew
(a) Any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds ten per cent of the aggregate of the paid-up share capital and free reserves of the company;
(b) Any other deposit, if the amount of such deposit together with the amount of such other deposits, other than the deposit referred to in (a), outstanding on the date of acceptance or renewal exceeds 25% aggregate of the paid-up share capital and free reserve of the company.
Rule 3(5) - deposits by Government Companies
No Government company eligible to accept deposits under section 76 shall accept or renew any deposit, if the amount of such deposits together with the amount of other deposits outstanding as on the date of

acceptance or renewal exceeds thirty five per cent. of the aggregate of its paid up share capital and free reserves of the company.

Rule 3(6) -Rate of interest of deposits/payment of brokerage

Rule 3(6) states that no company under sub-section (2) of section 73 or any Eligible company shall invite or accept or renew any deposits in any form, carrying a rate of interest or pay brokerage thereon at a rate exceeding the maximum rate of interest or brokerage prescribed by the Reserve Bank of India for acceptance of deposits by non-banking financial companies.

Who is Eligible to Receive Brokerage?

Only the person who is authorized, in writing, by a company to solicit deposits on its behalf and through whom deposits are actually procured will be entitled to the brokerage and payment of brokerage to any other person for procuring deposits shall be deemed to be in violation of these Rules. [Explanation to Rule 3(6)]

Rule 3(7) states that the company shall not reserve to itself either directly or indirectly a right to alter, to the prejudice or disadvantage of the depositor, any of the terms and conditions of the deposit, deposit trust deed and deposit insurance contract after circular or circular in the form of advertisement is issued and deposits are accepted.

Rule 4 – Form and Particulars of Advertisements/Circulars.

(1) Every company referred to in sub-section (2) of section 73 intending to invite deposit from its members shall issue a circular to all its members by registered post with acknowledgement due or speed post or by electronic mode in Form DPT-1. In addition to issue of such circular to all members in the manner specified above, the circular may be published in English language in an English newspaper and in vernacular language in a vernacular newspaper having wide circulation in the State in which the registered office of the company is situated.

(2) Every eligible company intending to invite deposits shall issue a circular in the form of an advertisement in Form DPT-1 for the purpose in English language in an English newspaper and in vernacular language in one vernacular newspaper having wide circulation in the State in which the registered office of the company is situated.

(3) Every company inviting deposits from the public shall upload a copy of the circular on its website, if any.

(4) No company shall issue or allow any other person to issue or cause to be issued on its behalf, any circular or a circular in the form of advertisement inviting deposits, unless such circular or circular in the form of advertisement is issued on the authority and in the name of the Board of directors of the company.

(5) No circular or a circular in the form of advertisement shall be issued by or on behalf of a company unless, not less than thirty days before the date of such issue, there has been delivered to the Registrar for registration a copy thereof signed by a majority of the directors of the company as constituted at the time the Board approved the circular or circular in the form of advertisement, or their agents, duly authorised by them in writing.

(6) A circular or circular in the form of advertisement issued shall be valid until the expiry of six months from the date of closure of the financial year in which it is issued or until the date on which the financial statement is laid before the company in annual general meeting or, where the annual general meeting for any year has not been held, the latest day on which that meeting should have been held in accordance with the provisions of the Act, whichever is earlier, and a fresh circular or circular in the form of advertisement shall be issued, in each succeeding financial year, for inviting deposits during that financial year.

For the purpose of this rule, the date of the issue of the newspaper in which the advertisement appears shall be taken as the date of issue of the advertisement and the effective date of issue of circular shall be the date of dispatch of the circular. [Explanation to the Rule 4(6)]

Rule 5 – Deposit Insurance

(1) Every company referred to in sub-section (2) of section 73 and every other eligible company inviting deposits shall enter into a contract for providing deposit insurance at least thirty days before the issue of circular or advertisement or at least thirty days before the date of renewal, as the case may be. For the purposes of this sub-rule, the amount as specified in the deposit insurance contract shall be deemed to be the amount in respect of both principal amount and interest due thereon.

(2) The deposit insurance contract shall specifically provide that in case the company defaults in repayment of principal amount and interest thereon, the depositor shall be entitled to the repayment of principal amount of deposits and the interest thereon by the insurer up to the aggregate monetary ceiling as specified in the contract. In the case of any deposit and interest not exceeding twenty thousand rupees, the deposit insurance contract shall provide for payment of the full amount of the deposit and interest and in the case of any deposit and the interest thereon in excess of twenty thousand rupees, the deposit insurance contract shall provide for payment of an amount not less than twenty thousand rupees for each depositor.

(3) The amount of insurance premium paid on the insurance of such deposits shall be borne by the company itself and shall not be recovered from the depositors by deducting the same from the principal amount or interest payable thereon.

(4) If any default is made by the company in complying with the terms and conditions of the deposit insurance contract which makes the insurance cover ineffective, the company shall either rectify the default immediately or enter into a fresh contract within thirty days and in case of non-compliance, the amount of deposits covered under the deposit insurance contract and interest payable thereon shall be repaid within the next fifteen days and if such a company does not repay the amount of deposits within said fifteen days it shall pay fifteen per cent. interest per annum for the period of delay and shall be treated as having defaulted and shall be liable to be punished in accordance with the provisions of the Act.

Rule 6 – Creation of Security

(1) For the purposes of providing security, every company referred to in sub-section (2) of section 73 and every eligible company inviting secured deposits shall provide for security by way of a charge on its assets as referred to in Schedule III of the Act excluding intangible assets of the company for the due repayment of the amount of deposit and interest thereon for an amount which shall not be less than the amount remaining unsecured by the deposit insurance. In the case of deposits which are secured by the charge on the assets referred to in Schedule III of the Act excluding intangible assets, the amount of such deposits and the interest payable thereon shall not exceed the market value of such assets as assessed by a registered valuer. For the purposes of this sub-rule it is clarified that the company shall ensure that the total value of the security either by way of deposit insurance or by way of charge or by both on company's assets shall not be less than the amount of deposits accepted and the interest payable thereon.

For the purposes of proviso to sub-clause (ix) of clause (c) of sub-rule (1) of rule 2 and this sub-rule, it is hereby clarified that pending notification of sub-section (1) of section 247 of the Act and finalisation of qualifications and experience of valuers, valuation of stocks, shares, debentures, securities etc. shall be conducted by an independent merchant banker who is registered with the Securities and Exchange Board of India or an independent chartered accountant in practice having a minimum experience of ten years.

(2) The security (not being in the nature of a pledge) for deposits as specified in sub-rule (1) shall be created in favour of a trustee for the depositors on:
   (a) specific movable property of the company, or
   (b) specific immovable property of the company wherever situated, or any interest therein.

Rule – 7 Appointment of Deposit Trustees

Consent of deposit trustees with respect to their appointment

No company under sub-section (2) of section 73 or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more deposit trustees for depositors for creating security for the deposits. A written consent shall be obtained from the deposit trustee(s) before their appointment and a statement shall appear in the circular or circular in the form of advertisement with reasonable prominence to the effect that the deposit trustee(s) have given their consent to the company to be so appointed.

Execution of deposit trust deed before issuing advertisement

The company shall execute a deposit trust deed in Form No. DPT-2 at least 7 days before issuing the circular or circular in the form of advertisement.

Certain persons not to be appointed as deposit trustees

No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the deposit holders, if the proposed trustee -

(a) is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;
(b) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
(c) has any material pecuniary relationship with the company;
(d) has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;
(e) is related to any person specified in clause (a) above.

Removal of deposit trustees

(4) No deposit trustee may be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors present at a meeting of the board. In case the company is required to appoint independent directors, at least one independent director shall be present in such meeting of the Board

Rule 8 – Duties of Deposit Trustees

It shall be the duty of every deposit trustee to

(1) ensure that the assets of the company on which charge is created together with the amount of deposit insurance are sufficient to cover the repayment of the principal amount of secured deposits outstanding and interest accrued thereon;
(2) satisfy himself that the circular or advertisement inviting deposits does not contain any information which is inconsistent with the terms of the deposit scheme or with the trust deed and is in compliance with the rules and provisions of the Act;
(3) ensure that the company does not commit any breach of covenants and provisions of the trust deed;
(4) take such reasonable steps as may be necessary to procure a remedy for any breach of covenants of the trust deed or the terms of invitation of deposits;
(5) take steps to call a meeting of the holders of depositors as and when such meeting is required to be held;
(6) supervise the implementation of the conditions regarding creation of security for deposits and the terms of deposit insurance;
(7) do such acts as are necessary in the event the security becomes enforceable;
(8) carry out such acts as are necessary for the protection of the interest of depositors and to resolve their grievances.

Rule 9- Meeting of Depositors through Deposit Trustee

The meeting of all the depositors shall be called by the deposit trustee on- (1) requisition in writing signed by at least one-tenth of the depositors in value for the time being outstanding; (2) the happening of any event, which constitutes a default or which in the opinion of the deposit trustee affects the interest of the depositors.

Rule 10 - Form of Application for Deposits

(i) On and from the commencement of these rules, no company shall accept, or renew any deposit, whether secured or unsecured, unless an application, in the form prescribed by the company, is submitted by the intending depositor for the acceptance of such deposit.
(ii) The application referred to in rule 10(i) shall contain a declaration by the intending depositor to the effect that the deposit is not being made out of any money borrowed by him from any other person.

Rule 11 - Nomination

A depositor may, at any time, make a nomination and the provisions of section 72 shall, as far as may be, apply to the nomination made under this Rule.

Rule 12 - Furnishing of Deposit Receipts to Depositors

Every company shall, on the acceptance or renewal of a deposit, furnish to the depositor or his agent a

deposit receipt for the amount received by the company, within a period of two weeks from the date of receipt of money or realization of cheques.

Deposit receipt referred to above shall be signed by an officer of the company duly authorized by the Board in this behalf and shall state the date of deposit, the name and address of the depositor, the amount received by the company as deposit, the rate and periodicity of interest payable thereon and the date on which the deposit is repayable.

Rule 13- Maintenance of Liquid Assets and Creation of Deposit Repayment Reserve Account

Every company referred to in sub-section (2) of section 73 and every eligible company shall on or before the 30th day of April of each year deposit the sum as specified in clause (c) of the said sub-section with any scheduled bank and the amount so deposited shall not be utilised for any purpose other than for the repayment of deposits. The amount remaining deposited shall not at any time fall below fifteen per cent of the amount of deposits maturing, until the end of the current financial year and the next financial year.

Rule 14 -Registers of Deposits

(1) Every company accepting deposits shall, from the date of such acceptance, keep at its registered office one or more separate registers for deposits accepted/renewed, in which there shall be entered separately in the case of each depositor the following particulars, namely:
(a) Name, address and PAN of the depositor/s; (b) Particulars of guardian, in case of a minor;
(c) Particulars of the nominee; (d) Deposit receipt number; (e) Date and amount of each deposit;
(f) Duration of the deposit and the date on which each deposit is repayable; (g) Rate of interest;
(h) Due date(s) for payment of interest; (i) Mandate and instructions for payment of interest and for non-deduction of tax at source, if any; (j) Date or dates on which payment of interest will be made;
(k) Details of deposit insurance including extent of deposit insurance;
(l) Particulars of other security/ charge created; (m) Any other particulars relating to the deposit;

(2) Entries in the register shall be made within seven days from the date of issuance of the deposit receipt and such entries shall be authenticated by a director or secretary of the company or by any other officer authorized by the Board for this purpose.

(3) The register or registers referred to in sub-rule (1) shall be preserved in good order for a period of not less than eight years from the financial year in which the latest entry is made in the register.

Rule 15 - General Provisions regarding Premature Repayment of Deposits.

When a company makes a repayment of deposits, on the request of the depositor, after the expiry of a period of six months from the date of such deposit but before the expiry of the period for which such deposit was accepted, the rate of interest payable on such deposit shall be reduced by one per cent. from the rate which the company would have paid had the deposit been accepted for the period for which such deposit had actually run and the company shall not pay interest at any rate higher than the rate so reduced. Nothing contained in this rule shall apply to the repayment of any deposit before the expiry of the period for which such deposit was accepted by the company, if such repayment is made solely for the purpose of—

(a) complying with the provisions of rule 3; or

(b) providing war risk or other related benefits to the personnel of the naval, military or air forces or to their families, on an application made by the associations or societies formed by such personnel, during the period of emergency declared under article 352 of the Constitution :

When a company referred to in under sub-section (2) of section 73 or any eligible company permits a depositor to renew his deposit, before the expiry of the period for which such deposit was accepted by the company, for availing of a higher rate of interest, the company shall pay interest to such depositor at the higher rate if such deposit is renewed in accordance with the other provisions of these rules and for a period longer than the unexpired period of the deposit. For the purposes of this rule, where the period for which the deposit had run contains any part of a year, then, if such part is less than six months, it shall be excluded and if such part is six months or more, it shall be reckoned as one year.

Rule 16 - Return of Deposits to be Filed with the Registrar.
Every company to which these rules apply, shall on or before the 30th day of June, of every year, file with the Registrar, a return in Form DPT-3 along with the fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and furnish the information contained therein as on the 31st day of March of that year duly audited by the auditor of the company.

Rule 17- Penal Rate of Interest.
Every company shall pay a penal rate of interest of eighteen per cent. per annum for the overdue period in case of deposits, whether secured or unsecured, matured and claimed but remaining unpaid.

Rule 18 - Power of Central Government to Decide Certain Questions.
If any question arises as to the applicability of these rules to a particular company, such question shall be decided by the Central Government in consultation with the Reserve Bank of India.

Rule 19 - Applicability of sections 73, 74 and 75 to Eligible Companies
Pursuant to provisions of sub-section (2) of section 76 of the Act, the provisions of sections 73, 74 and 75 shall, mutatis mutandis, apply to acceptance of deposits from public by eligible companies. For the purposes of this rule, it is hereby clarified that in case of a company which had accepted or invited public deposits under the relevant provisions of the Companies Act, 1956 and rules made under that Act (hereinafter known as "Earlier Deposits") and has been repaying such deposits and interest thereon in accordance with such provisions, the provisions of clause (b) of sub-section (1) of section 74 of the Act shall be deemed to have been complied with if the company complies with requirements under the Act and these rules and continues to repay such deposits and interest due thereon on due dates for the remaining period of such deposit in accordance with the terms and conditions and period of such Earlier Deposits and in compliance with the requirements under the Act and these rules. The fresh deposits by every eligible company shall have to be in accordance with the provisions of Chapter V of the Act and these rules; Without prejudice to above, in case of deposits accepted by an eligible company under section 76 of the Act, the provisions of sub- section (3) and (4) of section 73, provisions of sub-sections (2) and (3) of section 74 and provisions of section 75 shall be applicable irrespective of the fact that such deposits were not accepted by the company before the commencement of this Act.

Deposit Accepted Before the Commencement of the Act
Section 74(1) states that when, in respect of any deposit accepted by a company before the commencement of this Act, the amount of such deposit or part thereof or any interest due thereon remains unpaid on such commencement or becomes due at any time thereafter, the company shall—

(a) file, within a period of three months from such commencement or from the date on which such payments, are due, with the Registrar a statement of all the deposits accepted by the company and sums remaining unpaid on such amount with the interest payable thereon along with the arrangements made for such repayment, notwithstanding anything contained in any other law for the time being in force or under the terms and conditions subject to which the deposit was accepted or any scheme framed under any law; and
(b) repay within one year from such commencement or from the date on which such payments are due, whichever is earlier.

Rule 20 of the Companies (Acceptance of deposits) Rules, 2014 provides that for the purpose of clause (a) of Section 74(1), the statement shall be in Form DPT-4. Section 74(2) states that the tribunal may on an application made by the company, after considering the financial condition of the company, the amount of deposit or part thereof and the interest payable thereon and such other matters, allow further time as considered reasonable to the company to repay the deposit.
Section 74(3) states that if a company fails to repay the deposit or part thereof or any interest thereon within the time specified in sub-section (1) or such further time as may be allowed by the Tribunal under subsection (2), the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees and every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.

LOANS AND INVESTMENTS BY COMPANIES

The word 'Investments' in common parlance would include any property or right in which money or capital is invested. However, for the purpose of this study, the term 'Investments' is used in a limited sense to mean the investment of money in shares, stock, debentures, or other securities.

The power to invest the funds of the company is the prerogative of the Board of Directors. This power is derived by the Board under Section 179 of the Act. However, the Companies Act, 2013 contains provisions for restrictions on investments that a company can make and loans it can provide.

Provisions in respect of giving of loans, making investments, giving guarantee or providing security or acquiring securities of any other body corporate have been considerably modified by the Companies Act, 2013 by inserting Section 186. As of now, an overall limit of 60% of paid-up share capital plus free reserves and securities premium account or 100% of free reserves and securities premium account, whichever is more has been fixed.

LOANS AND INVESTMENTS BY COMPANIES (Section 186)

Not more than two layers of investment companies [Section 186(1)]

A company shall unless otherwise prescribed, make investment through not more than two layers of investment companies. [Sub-section (1) of section 186]

However, the aforesaid provisions 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. [Proviso to sub-section (1) of section 186]

Restriction on Providing Loans, Guarantees and Investment [Section 186(2)]

No Company shall, directly or indirectly:

(a) give any loan to any person or other body corporate;

(b) give any guarantee, or provide security, in connection with a loan to any other person 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 unless the same is previously authorised by a special resolution passed in a general meeting.

Loan/Investment to be made With the Approval of all the Directors at the Board Meeting [(Section 186(5))]

No loan or investment shall be made or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all directors present at the meeting.

Note: Every proposal for making loan to 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, shall be approved at the general meeting by way of special resolution. [Section 186(3)]

Disclosure in Financial Statements [Section 186(5)]

The company shall disclose to the members in the financial statement the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security.

Prior Approval of Financial Institution [Section 186(5)]

The company has to obtain prior approval of the public financial institution concerned where any term loan is subsisting. Section 185(5) provides that no investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it, is passed at a meeting of the Board

with the consent of all the directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained.

However, the prior approval of Public Financial Institution shall not be required where the aggregate of loans and investments so far made, the amounts for which guarantee or security so far provided to or in all other bodies corporate, alongwith the investments, loans, security or guarantee proposed to be made or given does not exceed the limit of 60% specified above and there is no default in repayment of loan installments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution. [Proviso Section 186(5)]

Prior approval by Special Resolution
Section 186(3) read with Rule 13 states that

(1) 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 section 186 no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting.
Explanation.- For the purpose of this sub-rule, it is clarified that it would sufficient compliance if such special resolution is passed within one year from the date of notification of this section.

(2) A resolution passed at a general meeting in terms of sub-section (3) of section 186 to give any loan or guarantee or investment or providing any security or the acquisition under sub section (2) of section 186 shall specify the total amount up to which the Board of Directors are authorised to give such loan or guarantee, to provide such security or make such acquisition:
Provided, that the company shall disclose to the members in the financial statement the full particulars in accordance with the provision of sub-section (4) of section 186.

Rule 11 of Companies (Meetings of Board and its Powers) Rules, 2014 states that when 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 sub-section (3) of section 186 shall not apply.

Loans and Investments by Intermediaries etc. (Section 186(6)
No company, which is registered under section 12 of the Securities and Exchange Board of India Act, 1992 and covered under such class or classes of companies as may be prescribed, shall take inter-corporate loan or deposits exceeding the prescribed limit and such company shall furnish in its financial statement the details of the loan or deposits.

Pursuant to the above provisions no stock broker, sub-broker, share transfer agent, banker to issue, Registrar to an issue, Merchant Baker, underwriter, portfolio manager, investment advisor or any intermediary associated with capital market and which is registered under section 12 of the SEBI Act, shall make loans or investments or give guarantees or provide security in excess of the limits specified above. [Rule 11(3)]

Rate of Interest [(Section 186(7)]
Loan given under this section shall carry the rate of interest not lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.

Default subsists with respect to Repayment of Deposits [(Section 186(8)]
No company, which is in default in repayment of any deposits accepted before or after the commencement of the Companies Act, 2013 or in payment of interest thereon, shall give any loan or give any guarantee, or provide any security or make an acquisition till such default is subsisting. This prohibition will operate in respect of any default made under Section 73 to 76 and the Rules made thereunder and not only on the default of repayment of deposit or payment of interest thereon.

INVESTMENTS TO BE HELD IN COMPANY'S OWN NAME

According to Sub-section (1) of Section 187, all investments made or held by a company in any property, security or other asset shall be made and held by it in its own name.

The requirement that the investment made by the company must be held in its own name is confined to only those investments which are made by it on its own behalf and not on behalf of someone else. In a case where the company is a trustee, the investment is supposed to be made on behalf of the beneficiaries of the trust and not on its own behalf. Therefore, the investments by the company as a trustee and held in the name of the beneficiaries is allowed.

DEBT-EQUITY RATIO OR DEBT TO EQUITY RATIO

Debt to equity ratio is a long term solvency ratio that indicates the soundness of long-term financial policies of the company. It shows the relation between the portion of assets provided by the the stockholders and the portion of assets provided by creditors. It is calculated by dividing total liabilities by stockholder's equity.

Debt to equity ratio is also known as "external-internal equity ratio". The Debt-to-Equity ratio (D/E) indicates the proportion of the company's assets that are being financed through debt.

Calculation

In a general sense, the ratio is simply debt divided by equity. However, what is classified as debt can differ depending on the interpretation used. Thus, the ratio can take on a number of forms including:

- Debt / Shareholder Equity
- Long-term Debt / Shareholder Equity
- Total Liabilities /Shareholder Equity

The most widely used ratio is Total Liabilities / Shareholder Equity

Formula:

$$\text{Debt to equity ratio} = \frac{\text{Total liabilities}}{\text{Stockholder's equity}}$$

The numerator consists of the total of current and long term liabilities and the denominator consists of the total stockholders' equity including preferred stock (that is, equity share capital + preference share capital + reserves and surplus – accumulated losses).

Example:

ABC company has applied for a loan. The lender of the loan requests you to compute the debt to equity ratio as a part of the long-term solvency test of the company. The "Liabilities and Stockholders' Equity" section of the balance sheet of ABC company is given below:

Liabilities and Stockholders' Equity	
Current liabilities:	
Accounts payable	2,900
Accrued payables	450
Short-term notes payable	150
Total current liabilities	3,500
Long-term liabilities:	
6% Bonds payable	3,750
Total liabilities	7,250
Stockholders' equity:	
Preferred stock, Rs.100, 6%	1,000
Common stock, Rs.12 par	3,000

Additional paid-in capital	500
Total paid in capital	4,500
Retained earnings	4,000
Total stockholders' equity	8,500
Total liabilities and stockholders equity	15,750

Compute debt to equity ratio of ABC company.

Solution:

$$\text{Debt to equity ratio} = \frac{\text{Total liabilities}}{\text{Stockholder's equity}}$$

$$= 7{,}250 / 8{,}500$$

$$= 0.85$$

The debt to equity ratio of ABC company is 0.85 or 0.85 : 1. It means the creditors of ABC company provide 85 cents of assets for each Rs.1 of assets provided by stockholders.

Significance and interpretation:

A ratio of 1 or 1 : 1 means that creditors and stockholders equally contribute to the assets of the business. A less than 1 ratio indicates that the portion of assets provided by stockholders is greater than the portion of assets provided by creditors and a greater than 1 ratio indicates that the portion of assets provided by creditors is greater than the portion of assets provided by stockholders.

Creditors usually like a low debt to equity ratio because a low ratio (less than 1) is the indication of greater protection to their money. But stockholders like to get benefit from the funds provided by the creditors therefore they would like a high debt to equity ratio.

Debt equity ratio vary from industry to industry. Different norms have been developed for different industries. A ratio that is ideal for one industry may be worrisome for another industry. A ratio of 1 : 1 is normally considered satisfactory for most of the companies.

Significance of Debt Equity Ratio

- Debt-to-equity ratio measure of a company's ability to repay its obligations. When examining the health of a company, it is critical to pay attention to the debt/equity ratio. If the ratio is increasing, the company is being financed by creditors rather than from its own financial sources which may be a dangerous trend. Lenders and investors usually prefer low debt-to-equity ratios because their interests are better protected in the event of a business decline.
- A high debt/equity ratio generally means that a company has been aggressive in financing its growth with debt. This can result in volatile earnings as a result of the additional interest expense.
- If a lot of debt is used to finance increased operations, the company could potentially generate more earnings than it would have without this outside financing. If this were to increase earnings by a greater amount than the debt cost (interest), then the shareholders benefit as more earnings are being spread among the same amount of shareholders. However, the cost of this debt financing may outweigh the return that the company generates on the debt through investment and business activities and become too much for the company to handle. This can lead to bankruptcy, which would leave shareholders with nothing.
- Optimal debt-to-equity ratio is considered to be about 1, i.e. liabilities = equity, but the ratio is very industry specific because it depends on the proportion of current and non-current assets. The more non-current the assets (as in the capital-intensive industries), the more equity is required to finance these long term investments.

MEMBERSHIP IN A COMPANY

WHO ARE MEMBERS?

A company is composed of members, though it has its own separate legal entity. The members of a company are the persons who, for the time being, constitute the company, as a corporate entity. In the case of a company limited by shares, the shareholders are the members. The terms "members" and "shareholders" are usually used interchangeably, being synonymous, as there can be no membership except through the medium of shareholding. Thus, generally speaking every shareholder is a member and every member is a shareholder. However, there may be exceptions to this statement, e.g., a person may be a holder of share(s) by transfer but will not become its member until the transfer is registered in the books of the company in his favour and his name is entered in the register of members. Similarly, a member who has transferred his shares, though he does not hold any shares yet he continues to be member of the company until the transfer is registered and his name is removed from the register of members maintained by the company under Section 88 of the Companies Act, 2013.

Definition of 'Member'

According to Section 2(55) of the Companies Act, 2013:

(1) The subscribers to the memorandum of a company who shall be deemed to have agreed to become members of the company, and on its registration, shall be entered as members in its register of members;
(2) Every other person who agrees in writing to become a member of a company and whose name is entered in its register of members shall, be a member of the company;
(3) Every person holding shares of a company and whose name is entered as a beneficial owner in the records of a depository shall be deemed to be a member of the concerned company.

Accordingly, there are two important elements which must be present before a person can acquire membership of a company viz., (i) agreement to become a member; and (ii) entry of the name of the person so agreeing, in the register of members of the company. Both these conditions are cumulative.

The person desirous of becoming a member of a company must have the legal capacity of entering into an agreement in accordance with the provisions of the Indian Contract Act, 1972. Section 11 of the Indian Contract Act lays down that every person is competent to contract who:-

(i) is of the age of majority according to the law to which he is subject.
(ii) is of sound mind.
(iii) is not disqualified from contracting by any law to which he is subject.

MODES OF ACQUIRING MEMBERSHIP

As per Section 2(55) of the Companies Act, 2013, a person may acquire the membership of a company:

(a) Subscribers to the Memorandum

In the case of a subscriber, no application or allotment is necessary to become a member. By virtue of his subscribing to the memorandum, he is deemed to have agreed to become a member and he becomes *ipso facto* member on the incorporation of the company and is liable for the shares he has subscribed.

A subscriber to the memorandum cannot rescind the contract for the purchase of shares even on the ground of fraud by the promoters. *In Re. Metal Constituents Co., (1902) 1.Ch. 707.*

In accordance with the provisions of Section 10(2) of the Companies Act, 2013, all monies payable by any member to the company under the memorandum or articles shall be debt due from him to the company.

Further, a subscriber to the memorandum must pay for his shares in cash even if the promoters have promised him the shares for services rendered in connection with the promotion of the company.

Again, he must take the shares directly from the company, and not through transfer from other member(s). When a person signs a memorandum for any number of shares he becomes absolutely bound to take those shares and no delay will relieve him from that liability unless he fulfills the obligation. His

liability remains right up to the time when the company goes into liquidation and he is bound to bring the money for which he is liable to pay to the creditors of the company.

(b) Agreement in Writing

(i) By an application and allotment

A person who applies for shares becomes a member when shares are allotted to him, a notice of allotment is issued to him and his name is entered on the register of members. The general law of contract applies to this transaction. There is an offer to take shares and acceptance of this offer when the shares are allotted. An application for shares may be absolute or conditional. If it is absolute, an allotment and its notice to the applicant will be sufficient acceptance. On the other hand, if the offer is conditional, the allotment must be made according to be condition as contained in the application. If there is conditional application and unconditional allotment, there is no contract.

(ii) By transfer of shares

Shares in a company are movable property as provided in Section 44 of the Companies Act, 2013 and are transferable in the manner as provided in the articles of the company and as provided in Section 56 of the Companies Act, 2013. A person can become a member by acquiring shares from an existing member and by having the transfer of shares registered in the books of the company, i.e. by getting his name entered in the register of members of the company.

(iii) By transmission of shares

A person may become a member of a company by operation of law i.e. if he succeeds to the estate of a deceased member. Membership by this method is a legal consequence. On the death of a member, his executor or the person who is entitled under the law to succeed to his estate, gets the right to have the shares transmitted and registered in his name in the company's register of members. No instrument of transfer is necessary in this case. If the legal representative of deceased member desires to be registered as a member in place of the deceased member, the company shall do so or in the alternative he may request the company to transfer the shares in the name of another person of his choice. The Official Assignee or Official Receiver is likewise entitled to be a member in place of the shareholder, who has been adjudged insolvent.

(iv) By acquiescence or estoppels

A person is deemed to be a member of a company if he allows his name, without sufficient cause, to be on the register of members of the company or otherwise holds himself out or allows himself to be held out as a member. In such a case, he is estopped from denying his membership. He can, however, escape his liability by taking prompt action for having his name removed from the register of members on permissible grounds.

(c) Holding Shares as Beneficial Owner in the Records of Depository

Every person holding shares of the company and whose name is entered as a beneficial owner in the records of the depository shall be deemed to be a member of the concerned company.

RIGHTS AND PRIVILEGES OF MEMBERS

Individual Rights

Members of a company enjoy certain rights in their individual capacity, which they can enforce individually. These rights are contractual rights and cannot be taken away except with the written consent of the member concerned. These rights can be categorised as under:

(1) Right to receive copies of the following documents from the company:
   (i) Abridged financial statement and auditor's report in the case of a listed company (Section 136).
   (ii) Report of the Cost Auditor, if so directed by the Government.
   (iii) Notices of the general meetings of the company (Sections 101-102).

(2) Right to inspect statutory registers/returns and get copies thereof without payment on any fee or on payment of prescribed fee.

   The members have been given right to inspect the following registers etc.:
   (i) Debenture trust deed (Section 71);
   (ii) Register of Charges and instrument of charges (Section 85 & 87);
   (iii) Copies of contract of employment with Managing or Whole-time directors);

(iv) Shareholders' Minutes Book (Section 119);
(v) Register of Contracts, Companies and Firms in which directors are interested (Section 189);
(vi) Register of directors and key managerial personnel and their shareholding (Section 170);

(3) Right to attend meetings of the shareholders and exercise voting rights at these meetings either personally or through proxy (Sections 96, 100, 105 and 107).

(4) Other rights: Over and above the rights enumerated at Item Nos. 1 to 3 above, the members have the following rights:
(i) To transfer shares (Sections 44 and 56 and Articles of Association of the company).
(ii) To resist and safeguard against increase in his liability without his written consent.
(iii) To receive dividend when declared.
(iv) To have rights shares (Section 62).
(v) To appoint directors (Section 152).
(vi) To share the surplus assets on winding up (Section 320).
(vii) Right of dissentient shareholders to apply to Tribunal (Section 48).
(viii) Right to be exercised collectively by passing a special resolution and intimating the same to the Central Government for investigation of the affairs of the company (Section 210).
(ix) Right to make application collectively to the Tribunal for relief in cases of oppression and mismanagement (Sections 241).
(x) Right to file class action suits before the Tribunal (Section 245)
(xi) Right of Nomination. (Section 72)
(xii) Right to file a suit or take any other action in case of any misleading statement or the inclusion or omission of any matter in the prospectus. (Section 37)

Collective Membership Rights

Members of a company have certain rights which can be exercised by members collectively by means of democratic process, i.e. by majority of members usually unless otherwise prescribed. This involves the principle of submission by all members to the will of the majority, provided that the will is exercised in accordance with the law and the Memorandum and Articles of Association of the company. Thus, the shareholders in majority determine the policy of the company and exercise control over the management of the company.

However, if and when the majority becomes oppressive or is accused of mismanagement of the affairs of the company, Section 241* read with section 244***** confers right, to not less than one hundred members of a company or not less than one-tenth of the total number of its members whichever is less or any member or members holding not less than one-tenth of the issued share capital of the company (but they must have paid all calls and others sums due on their shares) and in the case of a company not having a share capital, not less than one-fifth of the total number of its members, to apply to Board under Section 241 for relief in cases of oppression or for relief in cases of mismanagement respectively.

Section 100 of the Companies Act, 2013 confers on members, holding not less than one-tenth of the paid-up share capital of a company, right to make a requisition to the Board of directors to call an extraordinary general meeting of the company. The section also confers on members having not less than one-tenth of the total voting power in a company not having a share capital, to make a requisition to the Board to call an extraordinary general meeting of the company. If the Board of directors of the company does not, within twenty-one days from the date of the deposit of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of those matters on a day not later than forty-five days from the date of deposit of the requisition, the meeting may be called and held by the requisitionists themselves within a period of 3 months from the date of the requisition.

***** Yet to be notified.

Voting Rights of Members

The right of attending shareholders' meetings and voting thereat is the most important right of a member of a company, as shareholders' meetings play a very important role in the company's life. Directors are appointed by the shareholders, who direct the affairs of the company, formulate short-term plans and

long-term policies of the company, appoint management personnel to constitute organisation to implement their plans and policies in order to achieve the objects of the company.

In view of the importance of the general meetings of a company, the Companies Act has not left the members to the will of the directors to call general meetings. If the members feel that the affairs of the company are not being properly managed by the directors and the directors are avoiding to call a general meeting of the company, Section 100 of the Companies Act confers right on members specified therein to deposit a requisition setting out the matters for the consideration of which the meeting is to be called and if the Board of directors does not proceed within twenty-one days of the requisition to call a meeting within forty-five days of the requisition, the requisitionists may themselves call the meeting.

Section 47 provides that every member of a company limited by shares ad holding equity share capital therein, shall have right to vote on every resolution placed before the company and his voting right on a poll shall be in proportion to his share in the paid up equity share capital of the company.

Section 43 of the Companies Act, 2013 provides that a company limited by shares shall be entitled to issue (i) equity share capital with voting rights or (ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed by the Central Government.

Preference shareholders ordinarily vote only on matters directly affecting the rights attached to preference share capital and on any resolution for winding up of the company or for the repayment or reduction of the equity or preference share capital. The voting right of a preference shareholder on poll shall be in proportion to his share in the paid-up preference share capital of the company.

Shareholders' Pre-emptive Rights with regard to further issue of share capital (Right Shares)
To preserve the shareholders' proportionate dividend, liquidation and voting rights, pre-emptive rights are often recognised, but their existence and scope can be effected by provisions in the articles. However, Section 62 of the Companies Act, 2013 secures shareholders' pre-emptive rights with regard to the further issue of share capital by the company. The Section lays down:
"Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the condition that unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person and the notice of offer shall contain a statement of this right [Sub-clause (a)].

TRANSFERABILITY- A BRIEF ON PROVISIONS OF COMPANIES ACT 2013

- One of the most important characteristics of a company is that its shares are transferable.
- Section 44 of the Companies Act, 2013 states that the shares or debentures or other interest of any
- member in a company shall be movable property, transferable in the manner provided by the articles of the company.
- As per section 58(2), the securities or other interest of any member in a public company shall be freely transferable.
- Proviso to section 58(2) provides that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.
- In terms of Section 2(68), a private company is required to restrict the right to transfer its shares by its articles.
- Section 56 of the companies act deals with transfer and transmission of securities.

Transfer or Transmission of Securities
Free transferability of securities
As per section 58(2), the securities or other interest of any member in a public company shall be freely transferable. The Board of directors of a Company or the concerned depository has no discretion to

refuse or withhold transfer of any security. The transfer has to be effected by the company/depository automatically and immediately.

However, proviso to section 58(2) provides that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract. It is now be possible to contractually agree on terms such as right of first refusal, right of first offer, tag along, call option, put option, etc in the shareholder agreements/ investment agreements, in the case of a public company as well. These terms would now be binding on the investors. Therefore, private arrangements or contracts between two or more persons would be enforceable contracts.

Instruments of transfer to be presented to the company

As per Section 56(1) of the Companies Act, 2013, a company, shall not register a transfer of securities of, the company, unless a proper instrument of transfer duly stamped, dated and executed by or on behalf of the transferor and the transferee has been delivered to the company by the transferor or transferee within a period of sixty days from the date of execution along with the certificate relating to the securities, or if no such certificate is in existence, then along with the related letter of allotment of securities.

However, nothing in section 56(1) shall prejudice any power of the company to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted. (Section 56(2).

TRANSFER OF SHARES TO A MINOR

In India, a minor is not competent to enter into any contract, as under Section 11 of the Indian Contract Act, 1872, a person who has attained the age of majority is only competent to contract. Since a minor cannot enter into a contract or agreement except through a guardian, and since as per Section 153, no notice can be taken of the fact that the guardian holds a share in trust for a minor, it follows that his name cannot be entered in the Register of Members and therefore, he cannot become a member of a company. There is, however, no objection in law to the guardian of a minor entering into a contract on behalf of a minor, by virtue of the statutory right conferred on the guardian of a minor under Section 8 read with Section 4 to 6 of the Hindu Minority and Guardianship Act, 1956. Since Section 56 of the Companies Act, 2013 enables execution of transfer deed by or on behalf of the transferor or the transferee, the transfer deed can be executed by a minor through his natural guardian as transferee, and the contract so entered into by a minor through his natural guardian is a binding and valid contract under Section 8 of the Hindu Minority and Guardianship Act, 1956.

The articles of association of a company cannot impose a blanket ban prohibiting transfer of shares in favour of a minor, as such a restriction is unreasonable and not sustainable. Section 44 of the Companies Act, 2013 provides that shares in a company are movable property and are transferable in the manner provided by the Articles. The expression 'in the manner provided by the articles of association of the company' can only be interpreted to mean the procedure to be adopted for transfer and impose restrictions, which are meaningful and reasonable. In case, the restriction imposed on transfer to a minor is accepted, it would mean that the shares of a deceased member can never be inherited by the legal heir who might be a minor. This would lead to a highly unjust situation and cannot be accepted as tenable. Accordingly, if the shares can be transmitted in favour of a minor, there is no reason why the shares which are fully paid-up and in respect of which no financial liability devolves on the minor are to be held as not transferable merely because of the ban imposed in the articles of association.

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TRANSFER OF SHARES TO PARTNERSHIP FIRM

A firm is not a person and as such is not entitled to apply for membership. The Department of Company Affairs (Now, Ministry of Corporate Affairs) has in its Circular No. 4/72 dated 9.2.1972 stated that a firm not being a person cannot be registered as a member of a company except where the company is licensed under Section 25 (Corresponds to section 8 of the Companies Act, 2013).

TRANSFER OF SECURITIES TO A BODY CORPORATE

An incorporated body being a legal person can acquire securities in its own name. Where a company is a transferee, the following documents are required to be submitted to the company:

(a) A certified true copy of the Board resolution and/or power of attorney authorizing the signatory of the instrument of transfer to execute the instruments;
(b) A certified true copy of a Board resolution passed under Section 179(3)(e) of the Companies Act; and
(c) A certified true copy of Memorandum and Articles of Association of a company.

TRANSMISSION OF SECURITIES

Transmission of securities has not been defined by the Companies Act. 'Transmission by operation of law' is not a transfer. It refers to those cases where a person acquires an interest in property by operation of any provision of law, such as by right of inheritance or succession or by reason of the insolvency or lunacy of the holder of securities or by purchase in a Court-sale. Thus, transmission of securities takes place when the registered holder of securities dies or is adjudicated as an insolvent, or if the holder of securities is a company, it goes into liquidation.

Because a deceased person cannot own anything, the ownership of all his property passes, after his death, to those who legally represent him. Similarly, when a person is declared insolvent, his entire property vests in the Official Assignee or Official Receiver. Upon the death of a sole registered holder of securities, so far as the company is concerned, the legal representatives of the deceased holder of securities are the only persons having title to the securities unless securities-holder had appointed a nominee, in which case he would be entitled to the exclusion of all others.

Secretarial Standard SS-6 on transmission of shares and debentures by ICSI provides for the procedure to be followed for transmission. Section 56(1) of the Companies Act, 2013 states that the transfer of securities must be effected by a proper instrument of transfer and that a provision in the articles of an automatic transfer of securities of a deceased securities-holder is illegal and void. Such transfer does not amount to transmission which takes place by operation of law. Section 56(2) of the Act provides that nothing in the sub-section(1) shall prejudice the powers of the company to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted. It follows that, for such transmission, instrument of transfer is not required, and, merely an application addressed to the company by the legal representative is sufficient.

DISTINCTION BETWEEN TRANSFER AND TRANSMISSION

S.No.	***Transfer of Securties***	***Transmission of securities***
1	Transfer takes place by a voluntary act of the transferor.	Transmission is the result of the operation of law.
2	An instrument of transfer is required in case of transfer.	No instrument of transfer is required in case of transmission.
3	Transfer is a normal course of transferring property	Transmission takes place on death or insolvency of a holder of securities
4	Transfer of securities is generally made for some consideration.	Transmission of securities is generally made without any consideration.
5	Stamp duty is payable on transfer of securities by a holder of securities.	No stamp duty is payable on transmission of securities

MANAGEMENT OF COMPANY

INTRODUCTION

With all the strapping of a legal person, a company is unlike a living human being. It has no physical existence. It has no eyes to see, no ears to hear, no hands to sign and execute documents, no brain to think and no nerves to communicate among its various limbs. In order to enable a company to live and to achieve its objects as enshrined in the objects clause of its Memorandum of Association, it has necessarily to depend upon some agency, known as Board of directors.

The Board of directors of a company is a nucleus, selected according to the procedure prescribed in the Act and the Articles of Association. Members of the Board of directors are known as directors, who unless especially authorised by the Board of directors of the Company, do not possess any power of management of the affairs of the company. Acting collectively as a Board of directors, they can exercise all the powers of the company except those, which are prescribed by the Act to be specifically exercised by the company in general meeting.

The directors of a company are its eyes, ears, brain, hands, nerves and other essential limbs, upon whose efficient functioning depends the success of the company. The directors formulate policies and establish organisational set up for implementing those policies and to achieve the objectives as contained in the Memorandum, muster resources for achieving the company objectives and control, guide, direct and manage the affairs of the company.

Minimum/Maximum Number of Directors in a Company- Section 149(1)

Section 149(1) of the Companies Act, 2013 requires that every company shall have a minimum number of 3 directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company. A company can appoint maximum 15 fifteen directors. A company may appoint more than fifteen directors after passing a special resolution in general meeting and approval of Central Government is not required.

A period of one year has been provided to enable the companies existing on or before the commencement of Companies Act, 2013 to comply with this requirement.

Minimum number of directors

- Public Company - 3 Directors
- Private Company - 2 Directors
- One Person Company(OPC) - 1 Director

Maximum Number of Director is 15, which can be increased by passing a special Resolution.

Number of Directorships- Section 165

Maximum number of directorships, including any alternate directorship a person can hold is 20. It has come with a rider that number of directorships in public companies/ private companies that are either holding or subsidiary company of a public company shall be limited to 10. Further the members of a company may restrict abovementioned limit by passing a special resolution.

Any person holding office as director in more than 20 or 10 companies as the case may be before the commencement of this Act shall, within a period of one year from such commencement, have to choose companies where he wishes to continue/resign as director. There after he shall intimate about his choice to concerned companies as well as concerned Registrar.

Such person shall not act as director in more than the specified number of companies after despatching the resignation or after the expiry of one year from the commencement of this Act, whichever is earlier.

If a person accepts an appointment as a director in contravention of above mentioned provisions, he shall be punishable with fine which shall not be less than Rs. 5,000 but which may extend to Rs. 25,000 for every day after the first day during which the contravention continues.

- Maximum limit on total number of directorship has been fixed at 20 companies and the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.
- The members of a company may, by special resolution , specify any lesser number of companies in which a director of the company may act as director.

Woman Director

Second Proviso to section 149 provides that such class or classes of companies as may be prescribed in Companies (Appointment and Qualification of Directors) Rules, 2014, shall have at least one woman director.

Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014, prescribes the following class of companies shall appoint at least one woman director-

(i) every listed company;

(ii) every other public company having :-

(a) paid–up share capital of one hundred crore rupees or more; or

(b) turnover of three hundred crore rupees or more .

A company, which has been incorporated under the Act and is covered under provisions of second proviso to sub-section (1) of section 149 shall comply with such provisions within a period of six months from the date of its incorporation:

However any intermittent vacancy of a woman 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.

Explanation.- For the purposes of this rule, it is hereby clarified that the paid up share capital or turnover, as the case may be, as on the last date of latest audited financial statements shall be taken into account.

INDEPENDENT DIRECTORS

Companies Act 2013 mandates appointment of independent directors by listed companies and other class of companies. It also prescribes other apsects such as maximum tenure of independent directors, separate meeting of independent directors, tenure, their qualifications, liability, appointment, remuneration and other aspect.

Definition of Independent Director

Section 149(6) gives the definition of Independent Director, in relation to a company, means a director other than a managing director or a whole time director or a nominee director,-

(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;
(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

(c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year.

(d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(e) who, neither himself nor any of his relatives—
(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—
   (A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
   (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;
(iii) holds together with his relatives two per cent. or more of the total voting power of the company; or
(iv) is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or

(f) who possesses such other qualifications as may be prescribed.

Section 149(4) provides that every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies

Rule 4 0f Companies (Appointment and Qualification of Directors) rules 2014, provides that the following class or classes of companies shall have at least two directors as independent directors -
(i) the Public Companies having paid up share capital of ten crore rupees or more; or
(ii) the Public Companies having turnover of one hundred crore rupees or more; or
(iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees.

Note: Nominee Directors are not Independent Directors

Qualification of independent Directors
Rule 5 of Companies(Appointment and Qualification of Directors) Rules,2014 made under Chapter XII provides that an independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.

Explanation.—For the purposes of this section, "nominee director" means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests.

Director elected by Small Shareholders- Section 151
According to section 151 of the Act every listed company may have one director elected by such small shareholders. For the purpose of this section, "small shareholder" means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.
Terms & Conditions for Small Shareholders' Director
Rule 7, Companies (Appointment and Qualifications of Directors) Rules, 2014 laid down the following terms and conditions for appointment of small shareholder's director, which are as under:
(i) A listed company, may upon notice of not less than 1000 or one-tenth of the total number of small shareholders, whichever is lower, have a small shareholders' director elected by the small shareholders. A listed company may suo moto opt to have a director representing small shareholders.
(ii) The small shareholders intending to propose a person as a candidate for the post of small shareholder's director shall leave a signed notice of their intention with the company at least 14 days before the meeting specifying the their details and proposed director's details. The details include name, address, shares held and folio number etc. If the proposer does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice.

(iii) The notice shall be accompanied by a statement signed by the proposed director for the post of small shareholders' director stating
   (a) his Director Identification Number;
   (b) that he is not disqualified to become a director under the Act; and
   (c) his consent to act as a director of the company.

(iv) If proposed director is qualified u/s 149 (6) for appointment as an independent director and has given declaration for his independence u/s 149 (7) then such director shall be considered as an independent director.

(v) The director's tenure as small shareholders' director shall not exceed a period of 3 consecutive years and he shall not be liable to retire by rotation. Further he shall not be eligible for reappointment after the expiry of his tenure.

(vi) If the person is not eligible for appointment according to section 164, then he can't be appointed as small shareholder's director.

(vii) Small shareholders' director shall vacate the office if -
   (a) he ceases to be a small shareholder, on and from the date of cessation;
   (b) he incurs any of the disqualifications specified in section 164;
   (c) the office of the director becomes vacant in pursuance of section 167;
   (d) he ceases to meet the criteria of independence as provided section 149 (6).

(viii) Simultaneously he shall not hold the office of small shareholders' director in more than two companies. If second company is in competitive business or is in conflict with business of the first company the he shall not be appointed in second company.

(ix) He shall directly or indirectly not be appointed or associated in any other capacity with the company for a period of 3 years from the date of cessation as a small shareholder's director.

APPOINTMENT OF DIRECTORS – Section 152

First Director

The first directors of most of the companies are named in their articles. If they are not so named in the articles of a company, then subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed. In the case of a One Person Company, an individual being a member shall be deemed to be its first director until the director(s) are duly appointed by the member in accordance with the provisions of Section 152.

General provisions relating to appointment of directors

1. Except as provided in the Act, every director shall be appointed by the company in general meeting.
2. Director Identification Number is compulsory for appointment of director of a company.
3. Every person proposed to be appointed as a director shall furnish his Director Identification Number and a declaration that he is not disqualified to become a director under the Act.
4. A person appointed as a director shall on or before the appointment give his consent to hold the office of director in physical form DIR-2 i.e. Consent to act as a director of a company. Company shall file Form DIR-12 (particulars of appointment of directors and KMP along with the form DIR-2 as an attachment within 30 days of the appointment of a director, necessary fee. {Rule8}
5. Articles of the Company may provide the provisions relating to retirement of the all directors. If there is no provision in the article, then not less than two-thirds of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement by rotation and eligible to be reappointed at annual general meeting. Further independent directors shall not be included for the computation of total number of directors. At the annual general meeting of a public company one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to onethird, shall retire from office. The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment.

At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto. If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a

national holiday, till the next succeeding day which is not a holiday, at the same time and place. If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless—

(i) a resolution for the re-appointment of such director has been put to the meeting and lost;
(ii) the retiring director has expressed his unwillingness to be so re-appointed;
(iii) he is not qualified or is disqualified for appointment;
(iv) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or
(v) section 162 i.e. appointment of directors to be voted individually is applicable to the case.

Punishment - Section 159

If any individual or director of a company, contravenes any of the provisions of section 152,155 and 156 such individual or director of the company shall be punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to Rs. 50,000 and where the contravention is a continuing one, with a further fine which may extend to Rs. 500 for every day after the first day during which the contravention continues.

Appointment of Additional Director- Section 161 (1)

The board of directors can appoint additional directors, if such power is conferred on them by the articles of association. Such additional directors hold office only upto the date of next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier. A person who fails to get appointed as a director in a general meeting cannot be appointed as Additional Director.

Appointment of Alternate Director- Section 161 (2)

Section 161(2) of the Act allowed the followings:

(i) The Board of Directors of a company must be authorised by its articles or by a resolution passed by the company in general meeting for appointment of alternate director.
(ii) The person in whose place the Alternate Director is being appointed should be absent for a period of not less than 3 months from India.
(iii) The person to be appointed as the Alternate Director shall be the person other than the person holding any alternate directorship for any other Director in the Company.
(iv) If it is proposed to appoint an Alternate Director to an Independent Director, it must be ensured that the proposed appointee also satisfies the criteria for Independent Directors.
(v) An alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India.
(vi) If the term of office of the original director is determined before he so returns to India, any provision for the automatic re- appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

Appointment of Directors by Nomination Section 161(3)

This new sub-section now provides for appointment of Nominee Directors. It states that subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government Company.

Appointment of Directors in causal vacancy- Section 161 (4)

If any vacancy is caused by death or resignation of a director appointed by the shareholders in General meeting, before expiry of his term, the Board of directors can appoint a director to fill up such vacancy. The appointed director shall hold office only up to the term of the director in whose place he is appointed.

Appointment of directors to be voted individually- Section 162(1)
A single resolution shall not be moved for the appointment of two or more persons as directors of the company unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.

A resolution moved in contravention of aforesaid provision shall be void, whether or not any objection was taken when it was moved. A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as a motion for his appointment.

Proportional representation for appointment of directors- Section 163
The articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a company in accordance with the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise and such appointments may be made once in every three years and casual vacancies of such directors shall be filled as provided in subsection (4) of section 161.

Right of persons other than retiring directors to stand for directorship- Section 160
A person who is not a retiring director shall be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of one lakh rupees or such higher amount as may be prescribed which shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than 25% of total valid votes cast either on show of hands or on poll on such resolution.

DIRECTOR IDENTIFICATION NUMBER (DIN)
Procedure for application for allotment of DIN - Section 153 & Rule 9
(1) Every individual, who is to be appointed as director of a company shall make an application electronically in Form DIR-3 (Application for allotment of Director Identification Number) to the Central Government for the allotment of a Director Identification Number (DIN).
(2) The Central Government shall provide an electronic system to facilitate submission of application for the allotment of DIN through the portal on the website of the Ministry of Corporate Affairs.
(3)
   (a) The applicant shall download Form DIR-3 from the portal, fill in the required particulars and attaching photograph; proof of identity; proof of residence; and verification by the applicant in Form DIR-4, specimen signature duly verified and sign the form digitally.
   (b) Form DIR-3 shall be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate and shall be verified digitally by -:
      (i) a chartered accountant in practice or a company secretary in practice or a cost accountant in practice; or
      (ii) a company secretary in full time employment of the company or by the managing director or director of the company in which the applicant is to be appointed a director;

Procedure for Allotment of DIN- Section 154 and Rule 10
The Central Government shall, within one month from the receipt of the application under section 153, allot a Director Identification Number to an applicant in such manner as mentioned below:
(1) On the submission of the Form DIR-3 on the portal and payment of the requisite amount of fees through online mode the provisional DIN shall be generated by the system automatically which shall not be utilized till the DIN is confirmed by the Central Government.
(2) After generation of the provisional DIN, the Central Government shall process the application. It may approve or reject the application and communicate the same to the applicant within a period of one month from the receipt of application. The such communication may be sent by post or electronically or in any other mode.

(3) If the Central Government, on examination, finds such application to be defective or incomplete in any respect, it shall give intimation of such defect or incompleteness, by placing it on the website and by email to the applicant who has filed such application, directing the applicant to rectify such defects or incompleteness by resubmitting the application within a period of fifteen days of such placing on the website and email:
Provided that Central Government shall-
(a) reject the application and direct the applicant to file fresh application with complete and correct information, where the defect has been rectified partially or the information given is still found to be defective;
(b) treat and label such application as invalid in the electronic record in case the defects are not removed within the given time; and
(c) Inform the applicant either by way of letter by post or electronically or in any other mode.
(4) In case of rejection or invalidation of application, the provisional DIN so allotted by the system shall get lapsed automatically and the fee so paid with the application shall neither be refunded nor adjusted with any other application.
(5) All Director Identification Numbers allotted to individual(s) by the Central Government before the commencement of these rules shall be deemed to have been allotted to them under these rules.
(6) The Director Identification Number so allotted under these rules is valid for the life-time of the applicant and shall not be allotted to any other person.

General Provisions regarding DIN

According to Section 155, No individual shall apply for/obtain/ possess another Director Identification Number who has already been allotted a Director Identification Number under section 154. Section 156 stipulated that Every existing director shall intimate his DIN to the company or all companies wherein he is a director within 1 month of the receipt of DIN from the Central Government. Section 157 (1) of the Act stipulated that every company shall, within fifteen days of the receipt of intimation under section 156, furnish the DIN of all its directors to the Registrar/authorised office by the Central Government. every such intimation shall be furnished in such form and manner as may be prescribed.

If a company fails to furnish Director Identification Number under section 157 (1), before the expiry of the 270 days period from the date by which it should have been furnished with additional fee, the company shall be punishable with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 1,00,000 and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 1,00,000.

Section 158 specified that every person or company shall mention the DIN in return, information or particulars as required to be furnished under this act, in case such return etc relate to the director or contain any reference of any director.

DISTRIBUTION OF POWERS OF A COMPANY

The directors shall exercise their powers bona fide and in interest of the company. The directors while exercising their powers do not act as agents for the majority or even all the members and so the members cannot by resolution passed by a majority or even unanimously supercede the director's powers, or instruct them how they shall exercise their powers. This sovereignty of the directors within the limits of the powers conferred on them by the articles, and within limit laid down by the Act was clearly expressed by *Greer L.J. in John Shaw & Sons (Salford) Ltd.v.Shaw*(1935) 2 K.B. 113 in the following words:

"A company is an entity distinct alike from its shareholders and its directors. Some of its powers may, according to its articles, be exercised by directors, certain other powers may be reserved for the shareholders in general meeting. The powers of management are vested in the directors. They and they alone can exercise these powers. The only way in which the general body of the shareholders can control the exercise of the powers vested by the articles, in the directors, is by altering the articles, or if opportunity arises under the articles, by refusing to re-elect the directors whose action they disapprove. They cannot themselves usurp the powers which by the articles are vested in the directors any more than the directors can usurp the powers vested by the articles in the general body of shareholders".

KEY MANAGERIAL PERSONNEL

The executive management of a company is responsible for the day to day management of a company. The companies Act, 2013 has used the term key management personnel to define the executive management. The key management personnel are the point of first contact between the company and its stakeholders. While the Board of Directors are responsible for providing the oversight, it is the key management personnel who are responsible for not just laying down the strategies as well as its implementation. Chapter XIII of the Companies Act, 2013 read with Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 deal with the legal and procedural aspects of appointment of Key Managerial Personnel including Managing Director, Whole-time Director or Manager, managerial remuneration, secretarial audit etc.

Meaning of Key Managerial Personnel

The Companies Act, 2013 has for the first time recognized the concept of Key Managerial Personnel. As per section 2(51) "key managerial personnel", in relation to a company, means—

(i) the Chief Executive Officer or the managing director or the manager;
(ii) the company secretary;
(iii) the whole-time director;
(iv) the Chief Financial Officer; and
(v) such other officer as may be prescribed.

(i) Managing Director

Section 2(54) of the Companies Act, 2013, defines 'managing director'. It stipulates that a "managing director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called. The explanation to section 2(54) excludes administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, from the substantial powers of management.

(ii) Whole Time Director

Section 2 (94) of the Companies Act, 2013 defines "whole-time director" as a director in the whole-time employment of the company.

(iii) Manager

Section 2(53) of the Companies Act, 2013 defines "manager" as an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not.

(iv) Chief Executive Officer and Chief Financial Officer

Section 2(18)/(19) of the Companies Act, 2013 defined "Chief Executive Officer"/ "Chief Financial Officer" as an officer of a company, who has been designated as such by it;

(v) Company Secretary

Section 2(24) of the Companies Act, 2013 defines "company secretary " or "secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act;

APPOINTMENT OF MANAGING DIRECTOR, WHOLE-TIME DIRECTOR OR MANAGER

Section 196 of the Companies Act, 2013 provides that no company shall appoint or employ at the same time a Managing Director and a Manager. Further, a company shall not appoint or reappoint any person as its Managing Director, Whole Time Director or manager for a term exceeding five years at a time and no reappointment shall be made earlier than one year before the expiry of his term.

No company shall appoint or employ at the same time a Managing Director or a Manager.

Section 196(4) of the Companies Act, 2013 provides that subject to the provisions of section 197 and Schedule V, a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in Schedule V. Approval of the Central Government is not necessary if the appointment is made in accordance with the conditions specified in Schedule V to the Act.

Appointment of Managing/whole time Director require Board/general meeting approval.
Therefore, the appointment of a managing director or whole-time director or manager and the terms and conditions of such appointment and remuneration payable thereon must be first approved by the Board of directors at a meeting and then by an ordinary resolution passed at a general meeting of the company.

Notice convening Board and General Meeting to contain particulars of appointment
A notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any.

Rule 3 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014
A company shall file a return of appointment of a Managing Director, Whole Time Director or Manager, Chief Executive Officer (CEO), Company Secretary and Chief Financial Officer (CFO) within sixty days *of the appointment,* with the Registrar in Form No. MR.1 along with such fee as may be specified for this purpose.

Section 196(5) provides that subject to the provisions of this Act, where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid.

Appointment with the Approval of Central Government
In case the provisions of Schedule V of the Companies Act, 2013 are not fulfilled by company, an application seeking approval to the appointment of a managing director (Whole-time director or manager) shall be made to the Central Government, in e-Form No. MR.2.

As per section 200, the Central Government or a company may, while according its approval under section 196, to any appointment of a managing director, whole-time director or manager, the Central Government or the company shall have regard to—
(a) the financial position of the company;
(b) the remuneration or commission drawn by the 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.

As per Rule 6 for the purposes of item (e) of section 200, the Central Government or the company shall have regard to the following matters while granting approval to the appointment of managing director under section 196:
(1) Financial and operating performance of the company during the three preceding financial years.
(2) Relationship between remuneration and performance.
(3) The principle of proportionality of remuneration within the company, ideally by a rating methodology which compares the remuneration of directors to that of other executive directors on the board and employees or executives of the company.
(4) Whether remuneration policy for directors differs from remuneration policy for other employees and if so, an explanation for the difference.
(5) The securities held by the director, including options and details of the shares pledged as at the end of the preceding financial year.

Reappointment of Managing Director

Under sections 196 and 203 of the Companies Act, 2013, appointment includes reappointment. Reappointment of a managing director of a company must be taken for consideration before the expiry of his term of office. If the reappointment of the managing director is approved and if it is not in accordance with the conditions specified in Schedule V then the approval of the Central Government must be obtained for such reappointment. Rest of the provisions for reappointment of a managing director are same as in the case of appointment of a managing director.

Appointment of Key Managerial Personnel

Section 203 of the Companies Act, 2013 read with Rule 8 mandates the appointment of Key Managerial Personnel and makes it obligatory for a listed company and every other public company having a paid-up share capital of rupees ten crores or more, to appoint following whole-time key managerial personnel:

(i) Managing Director, or Chief Executive Officer or Manager and in their absence, a whole-time director;
(ii) Company Secretary; **and**
(iii) Chief Financial Officer:

Rule 8 and 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

Rule 8. Appointment of Key Managerial Personnel.-

Every listed company and every other public company having a paid-up share capital of tencrore rupees or more shall have whole-time key managerial personnel. Rule 8A Appointment of Company Secretaries in companies not covered under rule 8.—A company other than a company covered under rule 8 which has a paid up share capital of five crore rupees or more shall have a whole-time company secretary.

Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

An individual shall not be appointed or reappointed as the chairperson of the company, as well as the managing director or Chief Executive Officer of the company at the same time unless the articles of such a company provide otherwise; or the company does not carry multiple businesses. However, such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government are exempted from the above.

A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. However, he can hold such other directorship with the permission of the Board. A whole-time key managerial personnel holding office in more than one company at the same time, shall, within a period of six months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel.

A company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India. If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

Functions of Company Secretary

According to Section 205 the functions of the company secretary shall include,—

(a) to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;

(b) to ensure that the company complies with the applicable secretarial standards;
(c) to discharge such other duties as may be prescribed.
Explanation.—For the purpose of this section, the expression "secretarial standards" means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government.

For the purposes of clause (c) of sub-section (1) of section 205, the Central Government has prescribed that the duties of Company Secretary shall also include-
(1) to provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;
(2) to facilitate the convening of meetings and attend Board, committee and general meetings, and maintain the minutes of these meetings;
(3) to obtain approvals from the Board, general meetings, the Government and such other authorities as required under the provisions of the Act;
(4) to represent before various regulators, Tribunal and other authorities under the Act in connection with discharge of various functions under the Act;
(5) to assist the Board in the conduct of the affairs of the company;
(6) to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and
(7) to discharge such other duties as may be assigned by the Board from time to time;
(8) such other duties as have been prescribed under the Act and Rules.
Section 205(2) provides that provisions contained in section 204 and section 205 shall not affect the duties and functions of the Board of Directors, chairperson of the company, managing director or whole-time director under this Act, or any other law for the time being in force.

MANAGERIAL REMUNERATION
Just as profits drive business, incentives drive the managers of business. Not surprisingly then, in a fiercely competitive corporate environment, managerial remuneration is an important piece in the management puzzle. While it is important to incentivize the workforce performing the challenging role of managing companies, it is equally important not to go overboard with the perks and the pay. In India, to keep a check on unnecessary profit squandering by companies and, at the same time, to ensure adequate and reasonable compensation to managerial personnel, the law intervenes to do the balancing act.

Remuneration to Managerial Personnel
Overall managerial remuneration
Section 197 of the Companies Act, 2013 prescribed the maximum ceiling for payment of managerial remuneration by a public company to its managing director whole-time director and manager which shall not exceed 11% of the net profit of the company in that financial year computed in accordance with section 198 except that the remuneration of the directors shall not be deducted from the gross profits.

Further, the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding 11% of the net profits of the company, subject to the provisions of Schedule V. The net profits for the purposes of this section shall be computed in the manner referred to in section 198.

Remuneration to Managing Director/whole time Director/Manager
The remuneration payble to any one managing director or whole- time director or manager shall not exceed 5% of the net profits of the company and if there are more than one such director remuneration shall not exceed 10% of the net profits to all such directors and manager taken together.

Remuneration to other directors
Except with the approval of the company in general meeting, the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—

_ 1% of the net profits of the company, if there is a managing or whole-time director or manager;
_ 3% of the net profits in any other case.

Remuneration payable to exclusive of sitting fees
The percentages aforesaid shall be exclusive of any fees payable to directors for attending the meeting of the board/committees or for such other purposes as decided by the board.

Remunertion by a Company having no Profit or Inadequate Profit
If, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including managing or whole time director or manager, any remuneration exclusive of any fees payable to directors except in accordance with the provisions of Schedule V and if it is not able to comply with Schedule V, with the previous approval of the Central Government.

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 and if such conditions are not being complied, the approval of the Central Government had been obtained.

Remuneration to Directors in other Capacity [Section 197(4)]
The remuneration payable to the directors including managing or whole-time director or manager shall be inclusive of the remuneration payable for the services rendered by him in any other capacity except the following:
(a) the services rendered are of a professional nature; and
(b) in the opinion of the Nomination and Remuneration Committee (if applicable) or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

Sitting Fees to Directors for Attending the Meetings [Section 197(5)]
A director may receive remuneration by way of fee for attending the Board/Committee meetings or for any other purpose as may be decided by the Board. Provided that the amount of such fees shall not exceed the amount as may be prescribed.

The Central Government through rules prescribed that the amount of sitting fees payable to a director for attending meetings of the Board or committees thereof may be such as may be decided by the Board of directors or the Remuneration Committee thereof which shall not exceed the sum of rupees 1 lakh per meeting of the Board or committee thereof. The Board may decide different sitting fee payable to independent and non-independent directors other than whole-time directors.

Monthly Remuneration to Director or Manager
Permissible forms of Remuneration
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 or partly by one way and partly by the other. [Section 197 (6)]
Independent directors are not entitled to stock options
An independent director shall not be entitled to any stock option and may receive remuneration by way of fees, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members. [Section 197 (7)]
Commission or remuneration from holding or subsidiary company
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. [Section 197 (14)]

Remuneration Drawn in Excess of Prescribed Limit

If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company. [Section 197(9)] The company shall not waive the recovery of any sum refundable to it under sub-section 9 mentioned above, unless permitted by the Central Government. [Section 197 (10)]

Insurance Premium not part of Remuneration

Where any insurance is taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel. However, if such person is proved to be guilty, the premium paid on such insurance shall be treated as part of the remuneration. [Section 197(13)]

Managerial Remuneration under Schedule V (Part II)

Section I : Remuneration by Companies having Profits

A company having profits in a financial year may pay remuneration to its managerial persons in accordance with Section 197.

Section II: Remuneration by Companies having no profits or inadequate profits without Central Government approval

Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it, may, without Central Government approval, pay remuneration to the managerial person not exceeding the higher of the limits under (A) and (B) below:

(A):

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

If a special resolution is passed by the shareholders, the above limits shall be doubled

Expalanation:- It is hereby clarified that for a period less than oneyear, the limits shall be pro-rated.

(B):

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

If a special resolution is passed by the shareholders, this limit shall be doubled.

The Schedule V (Part II) also prescribes certain conditions and additional disclosures to be made in the explanatory statement to the notice of the general meeting, where remuneration is required to be paid in accordance with Schedule V.

Remuration in Special Circumstances (Section III)

Section III of Schedule V provides special circumstances under which companies having no profit or inadequate profit can pay remuneration to its managerial personnel in excess of amout provided in Section II of Schedule V above, without Central Government's approval.

Calculation of Net Profit for the purpose of Managerial Remuneration (Section 198)

Section 198 of the Companies Act, 2013 lays down the manner of calculations of net profits of a company any financial year for purposes of Section 197. Sub- Section (2) specifies the sums for which credit shall be given and sub-section (3) specifies the sums for which credit shall not be given while calculating the net profit. Similarly, sub-section (4)/(5) specifies the sums which shall be deducted/not deducted while calculating the net profit.

Central Government or Company to Fix Remuneration Limit (Section 200)

In respect of cases where the company has inadequate or no profits, the Central Government or a company may fix the remuneration within the limits specified in the Act. While doing so, the Central Government or the company shall have regard to—

(a) the financial position of the company;
(b) the remuneration or commission drawn by the 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;
(d) such other matters as may be prescribed.

As per Rule 13.4 for the purpose of item (e) of section 200, the Central Government or the company shall have regard to the following matters while granting approval:

(1) Financial and operating performance of the company during the three preceding financial years.
(2) Relationship between remuneration and performance.
(3) The principle of proportionality of remuneration within the company, ideally by a rating methodology which compares the remuneration of directors to that of other executive directors on the board and employees or executives of the company.
(4) Whether remuneration policy for directors differs from remuneration policy for other employees and if so, an explanation for the difference.
(5) The securities held by the director, including options and details of the shares pledged as at the end of the preceding financial year.

MEETINGS OF THE BOARD : SECTION 173

Section 173 of the Act deals with Meetings of the Board and Section 174 deals with quorum.

1. The Act provides that the first Board meeting should be held within thirty days of the date of incorporation.
2. In addition to the first meeting to be held within thirty days of the date of incorporation, there shall be minimum of four Board meetings every year and not more one hundred and twenty days shall intervene between two consecutive Board meetings.
3. In case of One Person Company (OPC), small company and dormant company, at least one Board meeting should be conducted in each half of the calendar year and the gap between two meetings should not be less than Ninety days.

Notice of Board Meetings

1. The Act requires that not less than seven days' notice in writing shall be given to every director at the registered address as available with the company. The notice can be given by hand delivery or by post or by electronic means.
2. In case the Board meeting is called at shorter notice, at least one independent director shall be present at the meeting. If he is not present, then decision of the meeting shall be circulated to all directors and it shall be final only after ratification of decision by at least one Independent Director.

Matters not to be dealt with in Meeting through Video Conferencing or other Audio-Visual Means

Rule 4 prescribe restriction on following matters which shall not be dealt with in any meeting held through video conferencing or other audio visual means:

(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 of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Quorum for Board Meetings : Section 174

One third of total strength or two directors, whichever is higher, shall be the quorum for a meeting. If due to resignations or removal of director(s), the number of directors of the company is reduced below the quorum as fixed by the Articles of Association of the company, then, the continuing Directors may act for the purpose of increasing the number of Directors to that required for the quorum or for summoning a general meeting of the Company. It shall not act for any other purpose.

For the purpose of determining the quorum, the participation by a director through Video Conferencing or other audio-visual means shall also be counted. If at any time the number of interested directors exceeds or is equal to two-thirds of the total strength of the Board of directors, the number of directors who are not interested and present at the meeting, being not less than two shall be the quorum during such time.

The meeting shall be adjourned due to want of quorum, unless the articles provide shall be held to the same day at the same time and place in the next week or if the day is National Holiday, the next working day at the same time and place. It can thus be observed that the provisions of the Companies Act, 2013 relating to board meetings have been made more realistic and in line with the current expectations of the corporate sector.

Power of Board: Section 179

Section 179 of the Act deals with the powers of the board; all powers to do such acts and things for which the company is authorised is vested with board of directors. But the board can act or do the things for which powers are vested with them and not with general meeting.

The following (section 179(3) and Rule 8) powers of the Board of directors shall be exercised only by means of resolutions passed at meetings of the Board, namely :-

(1) to make calls on shareholders in respect of money unpaid on their shares;
(2) to authorise buy-back of securities under section 68;
(3) to issue securities, including debentures, whether in or outside India;
(4) to borrow monies;
(5) to invest the funds of the company;
(6) to grant loans or give guarantee or provide security in respect of loans;
(7) to approve financial statement and the Board's report;
(8) to diversify the business of the company;
(9) to approve amalgamation, merger or reconstruction;
(10) to take over a company or acquire a controlling or substantial stake in another company;
(11) to make political contributions;
(12) to appoint or remove key managerial personnel (KMP);
(13) to take note of appointment(s) or removal(s) of one level below the Key Management Personnel;
(14) to appoint internal auditors and secretarial auditor;
(15) to take note of the disclosure of director 's interest and shareholding;
(16) to buy, sell investments held by the company (other than trade investments), constituting five percent or more of the paid–up share capital and free reserves of the investee company;
(17) to invite or accept or renew public deposits and related matters;
(18) to review or change the terms and conditions of public deposit;
(19) to approve quarterly, half yearly and annual financial statements or financial results as the case may be.

The Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in (4) to (6) above on such conditions as it may specify. The banking company is not covered under the purview of this section. The company may impose restriction and conditions on the powers of the Board.

SECTION 180 : Restriction on Powers of Board

The board can exercise the following powers only with the consent of the company by 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.
(b) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;

(c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company 's bankers in the ordinary course of business;
(d) to remit, or give time for the repayment of, any debt due from a director.

The special resolution relating to borrowing money exceeding paid up capital and free reserves specify the total amount up to which the money may be borrowed by Board.

The title of buyer or the person who takes on lease any property, investment or undertaking on good faith cannot be affected and also in case if such sale or lease covered in the ordinary business of such company.

The resolution may also stipulate the conditions of such sale and lease, but this doesn't authorise the company to reduce its capital except the provisions contained in this Act.

The debt incurred by the company exceeding the paid up capital and free reserves is not valid and effectual, unless the lender proves that the loan was advanced on good faith and also having no knowledge of limit imposed had been exceeded.

GENERAL MEETINGS

A meeting may be generally defined as a gathering or assembly or getting together of a number of persons for transacting any lawful business. There must be atleast two persons to constitute a meeting. Therefore, one shareholder usually cannot constitute a company meeting even if he holds proxies for other shareholders. However, in certain exceptional circumstances, even one person may constitute a meeting.

It is to be noted that every gathering or assembly does not constitute a meeting. Company meetings must be convened and held in perfect compliance with the various provisions of the Companies Act, 2013 and the rules framed thereunder.

MEMBERS' MEETINGS

A company is required to hold meetings of the members to take approval of certain business items, as prescribed in the Act. The meetings to be held for seeking approval to ordinary business and special business are called annual general meeting and extraordinary general meeting. In certain cases, a company may have to hold a meeting of the members of a particular class of members.

ANNUAL GENERAL MEETING (Section 96)

Annual general meeting (AGM) is an important annual event where members get an opportunity to discuss the activities of the company. Section 96 provides that every company, other than a one person company is required to hold an annual general meeting every year. Following are the key provisions regarding the holding of an annual general meeting:

Holding of annual general meeting

1. Annual general meeting should be held once every year.
2. First annual general meeting of the company should be held within 9 months from the closing of the first financial year. Hence it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.
3. Subsequent annual general meeting of the company should be held within 6 months from the closing of the financial year.
4. The gap between two annual general meetings should not exceed 15 months.

Extension of validity period of AGM

In case, it is not possible for a company to hold an annual general meeting within the prescribed time, the Registrar may, for any special reason, extend the time within which any annual general meeting

shall be held. Such extension can be for a period not exceeding 3 months. No such extension of time can be granted by the Registrar for the holding of the first annual general meeting.

Time and place for holding an annual general meeting
An annual general meeting can be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday. It should be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate. The Central Government is empowered to exempt any company from these provisions, subject to such conditions as it may impose. "National Holiday " for this purpose means and includes a day declared as National Holiday by the Central Government.

Default in holding the annual general meeting
Section 99 provides that if any default is made in complying or holding a meeting of the company, the company and every officer of the company who is in default shall be punishable with fine which may extend to 1 lakh and in case of continuing default, with a further fine which may extend to Rs. 5,000/- for each day during which such default continues.

If any default is made in holding the annual general meeting of a company, any member of the company may make an application to the Tribunal to call or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient. Such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

Business to be transacted at annual general meeting:
Sub-section (2) of Section 102 provides that all other businesses transacted at an Annual General Meeting except the following are special business:
(i) the consideration of financial statements and the reports of the Board of Directors and auditors;
(ii) the declaration of any dividend;
(iii) the appointment of directors in place of those retiring;
(iv) the appointment of, and the fixing of the remuneration of, the auditors.
In case of any other Meeting all business shall be deemed to be special.

EXTRA ORDINARY GENERAL MEETING (Section 10)
All general meetings other than annual general meetings are called extraordinary general meetings. All businesses items can be transacted at the extraordinary general meetings are special business. Following are the key provisions, provided in section 100, regarding calling and holding of an extraordinary general meeting:

(I) By Board [Section 100 (1)]
The Board may, whenever it deems fit, call an extraordinary general meeting of the company.

(II) By Board on requisition [Section 100 (2)]
The Board must call an extraordinary general meeting on receipt of the requisition from the following number of members:

(a) in the case of a company having a share capital: members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting;
(b) in the case of a company not having a share capital: members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote

The requisition should set out the matters to be considered at the proposed meeting and the same should be signed by the requisitionists and sent to the registered office of the company. The Board must, within 21 days from the date of receipt of a valid requisition, proceed to call a meeting on a day not later than 45 days from the date of receipt of such requisition.

(III) By requisitionists [Section 100(4)]

If the Board does not within 21 days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than 45 days from the date of receipt of such requisition, the meeting may be called and held by the requisitonists themselves. However in such case, the meeting should be held within a period of 3 months from the date of the requisition. Reasonable expenses incurred by the requisitionists in calling such a meeting shall be reimbursed by the company to the requisitionists. The company in turn recover such expenses from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting. [Section 100(6) In case, the quorum is not present within half-an-hour from the time appointed for holding a meeting called by requisitionists, the meeting shall stand cancelled. [Section 103(2)(b)]

Rules 17 provides as under with regard to calling of extraordinary general meeting by requisitionists:

- The members may requisition convening of an extraordinary general meeting in accordance with sub- section (4) of section 100, by providing such requisition in writing or through electronic mode at least clear twenty- one days prior to the proposed date of such extraordinary general meeting.
- The notice shall specify the place, date, day and hour of the meeting and shall contain the business to be transacted at the meeting. The requistionists should convene meeting at Registered office or in the same city or town where Registered office is situated and such meeting should be convened on working day.
- If the resolution is to be proposed as a special resolution, the notice shall be given as required by sub-section (2) of section 114.
- The notice shall be signed by all the requistionists or by a requistionists duly authorised in writing by all other requistionists on their behalf or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition.
- No explanatory statement as required under section 102 need be annexed to the notice of an extraordinary general meeting convened by the requistionists and the requistionists may disclose the reasons for the resolution(s) which they propose to move at the meeting.
- The notice of the meeting shall be given to those members whose names appear in the Register of members of the company within three days on which the requistionists deposit with the Company a valid requisition for calling an extraordinary general meeting.
- Where the meeting is not convened, the requistionists shall have a right to receive list of members together with their registered address and number of shares held and the company concerned is bound to give a list of members together with their registered address made as on twenty first day from the date of receipt of valid requisition together with such changes, if any, before the expiry of the forty- five days from the date of receipt of a valid requisition.
- The notice of the meeting shall be given by speed post or registered post or through electronic mode . Any accidental omission to give notice to, or the non-receipt of such notice by, any member shall not invalidate the proceedings of the meeting.

(IV) By Tribunal [Section 98 (not yet enforced)]

Section 98 provides that if for any reason it is impracticable to call a meeting of a company or to hold or conduct the meeting of the company, the Tribunal may, either suo motu or on the application of any director or member of the company who would be entitled to vote at the meeting: order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company. Such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting. Meeting held pursuant to such order shall be deemed to be a meeting of the company duly called, held and conducted.

Notice of Meeting (Section 101)

A general meeting of a company may be called by giving not less than 21 clear days' notice either in writing or through electronic mode. Notice through electronic mode shall be given in such manner as may be prescribed.

Short notice
A general meeting may be called after giving a shorter notice also if consent is given in writing or by electronic mode by not less than 95% of the members entitled to vote at such meeting.

Contents of Notice
Place of meeting (Section 96)
The notice should state the place where the general meeting is scheduled to be held. In case of an annual general meeting, the place of the meeting has to be either the registered office of the company or some other place within the city, town or village in which the registered office of the company is situated. Explanation to Rule 17(2) of Companies (Management and Administration) Rules 2014 states that for the purpose of this sub rule it is hereby clarified that requisitionists should convene meeting at Registered Office or in the same city or town where the Registered Office is situated and such meeting should be convened on working day.
Day of meeting (Section 96)
The day and date of the meeting should be clearly stated in the notice. In case of an annual general meeting, the day should be one that is not a National Holiday. An extraordinary general meeting can however be held on any day.
Time of meeting (Section 96)
Exact time of holding the meeting should be given in the notice. An annual general meeting can be called during business hours only, that is, between 9 a.m. and 6 p.m. There is no need to follow such timings in case of an extraordinary general meeting.
Agenda (Section 102)
A statement of the business to be transacted at the general meeting should be given in the notice. In case, the meeting is to transact a special business, a explanatory statement should be attached about such item.
Proxy clause with reasonable prominence [Section 105(2)]
Every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, should carry with reasonable prominence, a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member.

Persons entitled to receive Notice
In terms of Section 101(3), notice of every meeting of the company must be given to:
(a) every member of the company, legal representative of any deceased member or the assignee of an insolvent member;
(b) the auditor or auditors of the company; and
(c) every director of the company.
Any accidental omission to give notice to, or the non-receipt of such notice by, any member or other person who is entitled to such notice for any meeting shall not invalidate the proceedings of the meeting.

Statement to be Annexed to Notice (Section 102)
In case of special business items to be transacted at a general meeting, a statement setting out the following
material facts, shall be annexed to the notice calling the meeting:
(I) (a) the nature of concern or interest, financial or otherwise, if any, in respect of each item of:
− every director and the manager, if any;
− every other key managerial personnel; and relatives of the persons mentioned above.
(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.
Where any item of special business to be transacted at a meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every promoter, director, manager, if any, and of every other key managerial personnel of the first mentioned company shall, if the extent of such shareholding is not less than 2% of the paid- up share capital of that company, also be set out in the statement.

(II) Where any item of business refers to any document, which is to be considered at the meeting, the time and place where such document can be inspected.

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

Quorum for Meetings

Quorum refers to the minimum number of members required to constitute a valid meeting. Following are the minimum numbers provided in section 103, for various categories of companies. However the Articles of Association of the company may provide for a higher number.

(a) *Public company*:

- 5 members personally present if the number of members as on the date of meeting is not more than 1000;
- 15 members personally present if the number of members as on the date of meeting is more than 1000 but up to 5000;
- 30 members personally present if the number of members as on the date of the meeting exceeds 5000.

(b) *Private company:* 2 members personally present, shall be the quorum for a meeting of the company.

Absence of quorum

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

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

(b) the meeting, if called by requisitionists, shall stand cancelled.

Adjourned meeting

In case of an adjourned meeting or of a change of day, time or place of meeting, the company shall give not less than 3 days notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated. If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

Chairman of Meetings (Section 104)

Unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the Chairman thereof on a show of hands. If a poll is demanded on the election of the Chairman, it shall be taken forthwith in accordance with the provisions of this Act and the Chairman elected on a show of hands shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of the poll, and such other person shall be the Chairman for the rest of the meeting.

Proxies (Section 105)

Appointment of a proxy is an important right of a member of the company. The Act contains elaborate provisions regarding exercise of this right by a member. Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.

Every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, should carry with reasonable prominence, a statement that a member

entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member. Hence a company not having a share capital can abstain from complying with this provision by incorporating necessary clause in its articles of association.

A proxy shall not have the right to speak at the meeting. A proxy shall be entitled to vote only on a poll.

A member of a company registered under section 8 shall not be entitled to appoint any other person as his proxy unless such other person is also a member of such company.

A person appointed as proxy shall not act as proxy on behalf of more than fifty members and members holding in the aggregate more than ten percent of the total share capital of the company carrying voting rights.

The instrument appointing the proxy must be deposited with the company, 48 hours before the meeting. Any provision contained in the articles, requiring a longer period than 48 hours shall have effect as if a period of 48 hours had been specified.

Every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, is entitled to inspect the proxies lodged with the company, if at least 3 days notice is given to the company.

Such inspection can be taken during the period beginning 24 hours before the time fixed for the commencement of the meeting, during the business hours of the company, and ending with the conclusion of the meeting.

Restriction on Voting Rights (Section 106)
A member shall not exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid or on which company has exercised any right or lien. No member can be prohibited from exercising his voting right on any other ground.

Voting by Show of Hands (Section 107)
At any general meeting, a resolution put to the vote of the meeting shall in the first instance be decided on a show of hands. A declaration by the Chairman of the meeting of the passing of a resolution or otherwise, by show of hands shall be conclusive evidence of the fact of passing of such resolution or otherwise, unless a poll is demanded before or immediately on declaration by Chairman.

Voting through Electronic Means (Section 108)
Every listed company or a company having five hundred or more shareholders may provide to its members facility to exercise their right to vote at general meetings by electronic means. a member may exercise his right to vote at any general meeting by electronic means and company may pass any resolution by electronic voting system.

It may be noted that 'voting by electronic means' or 'electronic voting system' means a 'secured system' based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, such that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate 'cyber security'.

Resolutions – Ordinary and Special Resolutions
Section 114 provides with regard to Ordinary and Special Resolution
Ordinary Resolution
A resolution shall be an ordinary resolution if the notice has been duly given and it is required to be passed by the votes cast, in favour of the resolution, including the casting vote, if any, of the Chairman, exceed the votes, if any, cast against the resolution.
Special Resolution

A resolution shall be a special resolution when:

(a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
(b) the notice required under this Act has been duly given; and
(c) the votes cast in favour of the resolution, are required to be not less than 3 times the number of the votes, if any, cast against the resolution.

Resolutions requiring Special Notice

Section 115 provides that where, by any provision contained in this Act or in the articles of a company, special notice is required of any resolution, notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of total voting power or holding shares on which such aggregate sum not exceeding Rs.5,00,000/- as may be prescribed has been paid-up and the company shall give its members notice of the resolution in the following manner as prescribed in Rules.

Procedure for special notice:

- A special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than five lakh rupees has been paid up on the date of the notice.
- Such notice shall be sent by members to the company not earlier than three months but at least 14 days before the date of the meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.
- The company shall immediately after receipt of the notice, give its members notice of the resolution at least seven days before the meeting, exclusive of the day of dispatch of notice and day of the meeting , in the same manner as it gives notice of any general meetings.
- Where it is not practicable to give the notice in the same manner as it gives notice of any general meetings, the notice shall be published in English language in English newspaper and in vernacular language in a vernacular newspaper, both having wide circulation in the State where the registered office of the Company is situated. Such notice shall also be posted on the website, if any, of the Company. Such notice shall be published at least seven days before the meeting, exclusive of the day of publication of the notice and day of the meeting.

Resolutions passed at Adjourned Meeting

As per Section 116 where a resolution is passed at an adjourned meeting of a company; or the holders of any class of shares in a company; or the Board of Directors, the resolution shall be treated as passed on the day it was actually passed and not on any earlier date.

Resolutions and Agreements to be filed with the Registrar

Section 117 provides that a copy of every resolution and an agreement in respect of matters specified therein together with a explanatory statement shall be filed in Form No. MGT.14 with the Registrar within thirty days of its passing. The Registrar shall register the same and in case of any default, a company and every officer who is in default including the liquidator shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Resolutions and agreements to be filed with the Registrar are as under:

(a) special resolutions;
(b) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special.

STATUTORY BOOKS AND REGISTERS

STATUTORY BOOKS/REGISTERS

The Companies Act, 2013 lays down that every company incorporated under this Act must maintain and keep at its registered office certain books, registers and copies of certain returns, documents etc. and to give certain notices, file certain returns, forms, reports, documents etc. with the Registrar of Companies within certain specified time limits and with the prescribed filing fees. These books are known as Statutory Books. Some of the statutory registers are required to be kept open by the company for inspection by directors, members, creditors of the company and by other persons. The company is also required to allow extracts to be taken from certain documents, registers, returns etc. and furnish copies of certain documents on demand by a member or by any other person on payment of specified fees.

Every company incorporated under the Act is required to keep at its registered office, *inter alia*, the following statutory books and registers –

- Register of securities bought back. (Section 68 and Rule 17(12) of companies (Share Capital and Debenture) Rules, 2014
- Register of deposits. [Section 73 and Rule 14 Companies (Acceptance of Deposits) Rules, 2014
- Register of charges. (Section 85 and Rule 7 of Companies (Registration of Charges) Rules 2014)
- Register of members (section 88(1) and Rule 3(1) of Companies(Management and Administration) Rules 2014
- Index of members. [Sections 88(2) and the Rule 6 of Companies (Management and Administration) Rules, 2014]
- Register of debenture holders [section 88 (1)]
- Index of debenture holders. (Section 88 (2))
- Register and index of beneficial owners. (Section 88 (3))
- "Foreign register" containing the names and particulars of the members, debentureholders, other security holders or beneficial owners residing outside India.(Section 88 (4))
- Register of Renewed and Duplicate Share Certificates. [Rule 6 of the Companies (Share Capital and Debenture) Rules, 2014]
- Register of sweat equity shares [Section 54 and Rule 8 (14) of Companies (Share Capital and Debenture) Rules, 2014]
- Annual Return (Section 92) and Rule 11 of The Companies (Management and Administration) Rules 2014
- Register of Postal Ballot [Section 110 and Rule 22 of the Companies (Management and Administration) Rules, 2014]
- Books containing minutes of general meeting and of Board and of committees of Directors. [Section 118]
- Books of accounts. [Section 128]
- Register of Directors/ Key Managerial Personnel. [(Section 170 (1)]
- Register of investments in securities not held in company's name. [Section 18 and Rule 14 of Companies (Meetings of Board and its Powers) Rules, 2014]
- Register of loans, guarantees given and security provided or making acquisition of securities (Section 186(9) and Rule 12 Companies Meetings of Boards and its Powers Rules 2014)
- Register of contracts with companies/firms in which directors are interested. [Section 189(5) and Rule 16 of Companies (Meetings of Boards and its Powers) Rules, 2014]

REGISTER U/S 88

Section 88 of the Companies Act, 2013 lays down:

(1) Every company shall keep and maintain the following registers in such form and in such manner as may be prescribed, namely:—
   (a) register of members indicating separately for each class of equity and preference shares held by each member residing in or outside India;

(b) register of debenture-holders; and
(c) register of any other security holders.

(2) Every register maintained under sub-section (1) shall include an index of the names included therein.

(3) The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be the corresponding register and index for the purposes of this Act.

(4) Foreign register.

(5) If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2), the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day, after the first during which the failure continues."

I Register of Members

Every company limited by shares shall, from the date of its registration, keep and maintain a register of its members in one or more books in in Form No. MGT.1. [Rules 3(1) of Companies (Management and Administration) Rules, 2014 Rule 3(2).

In case of existing companies, registered under the Companies Act, 1956, particulars shall be compiled within six months from the date of commencement of these rules. Further, in the case of a company not having share capital, the register of members shall contain the following particulars in respect of each member -

(a) name of the member; address (registered office address in case the member is a body corporate); e-mail address; Permanent Account Number or CIN; Unique Identification Number, if any; Father's/Mother's/Spouse's name; Occupation; Status; Nationality; in case member is a minor, name of the guardian and the date of birth of the member; name and address of nominee;
(b) date of becoming member;
(c) date of cessation;
(d) amount of guarantee, if any;
(e) any other interest if any; and
(f) instructions, if any, given by the member with regard to sending of notices etc.

In the case of existing companies, registered under the Companies Act, 1956, particulars shall be compiled within six months from the date of commencement of these rules.

Maintenance of the Register of Members etc. [Rule 5]

Every company shall maintain the Registers of members, Register of debenture holders or any other security holders in the following manner:-

(1) Entries in the registers maintained under section 88 shall be made within seven days after the Board of Directors or its duly constituted committee approves the allotment or transfer of shares, debentures or any other securities, as the case may be.

(2) The registers shall be maintained at the registered office of the company unless a special resolution is passed in a general meeting authorising the keeping of the register at any other place within the city, town or village in which the registered office is situated or any other place in India in which more than one-tenth of the total members entered in the register of members reside.

(3) Consequent upon any forfeiture, buy-back, reduction, subdivision, consolidation or cancellation of shares, issue of sweat equity shares, transmission of shares, shares issued under any scheme of arrangements, mergers, reconstitution or employees stock option scheme or any of such scheme provided under this Act or by issue of duplicate or new share certificates or new debenture or other security certificates, entry shall be made within seven days after approval by the Board or committee, in the register of members or in the respective registers, as the case may be.

(4) If any change occurs in the status of a member or debenture holder or any other security holder whether due to death or insolvency or change of name or due to transfer to Investor Education

Protection Fund or due to any other reason, entries thereof explaining the change shall be made in the respective register.

(5) If any rectification is made in the register maintained under section 88 by the company pursuant to any order passed by the competent authority under the Act, the necessary reference of such order shall be indicated in the respective register.

(6) If any order is passed by any judicial or revenue authority or by Security and Exchange Board of India (SEBI) or Tribunal attaching the shares, debentures or other securities and giving directions for remittance of dividend or interest, the necessary reference of such order shall be indicated in the respective register.

(7) In case of companies whose securities are listed on a stock exchange in or outside India, the particulars of any pledge, charge, lien or hypothecation created by the promoters in respect of any securities of the company held by the promoter including the names of pledgee/pawnee and any revocation therein shall be entered in the register within fifteen days from such an event.

(8) If promoters of any listed company, which has formed a joint venture company with another company have pledged or hypothecated or created charge or lien in respect of any security of the listed company in connection with such joint venture company, the particulars of such pledge, hypothecation, charge and lien shall be entered in the register members of the listed company within fifteen days from such an event.

Index of Names to be included in Register [Rule 6]

Every register maintained under sub-section (1) of section 88 shall include an index of the names entered in the respective registers. The index shall, in respect of each folio, contain sufficient indication to enable the entries relating to that folio in the register to be readily found. The company shall make the necessary entries in the index simultaneously with the allotment or transfer of any security in such Register. The maintenance of index is not necessary in case the number of members is less than fifty. [Proviso to Rule 6(1)]

Closure of Register of Members etc.

In terms of Section 91, a company may close its Register of members or Register of Debenture holders or Register of other security holders for a period not exceeding forty five days in a year. However, the Register can not be closed for more than thirty days at any one time. A company closing the register of members or the register of debenture holders or the register of other security holders shall give at least seven days previous notice or such lesser period and in such manner, as may be specified by Securities and Exchange Board, if such company is a listed company or companies intends to get its securities listed. The notice shall be by advertisement at least once in a vernacular newspaper in the principal vernacular language of the district and having a wide circulation in the place where the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district and having wide circulation in the place where the registered office of the company is situated and publish the notice on the website as may be notified by the Central Government and on the website, if any, of the Company as provided in the Rules.

II Register of Investments of company to be held in its own name (Section 187)

(*1*) All investments made or held by a company in any property, security or other asset shall be made and held by it in its own name:

Provided that the company may hold any shares in its subsidiary company in the name of any nominee or nominees of the company, if it is necessary to do so, to ensure that the number of members of the subsidiary company is not reduced below the statutory limit.

(*2*) Nothing in this section shall be deemed to prevent a company—

(*a*) from depositing with a bank, being the bankers of the company, any shares or securities for the collection of any dividend or interest payable thereon; or

(*b*) from depositing with, or transferring to, or holding in the name of, the State Bank of India or a scheduled bank, being the bankers of the company, shares or securities, in order to facilitate the transfer thereof:

Provided that if within a period of six months from the date on which the shares or securities are transferred by the company to, or are first held by the company in the name of, the State

Bank of India or a scheduled bank as aforesaid, no transfer of such shares or securities takes place, the company shall, as soon as practicable after the expiry of that period, have the shares or securities re-transferred to it from the State Bank of India or the scheduled bank or, as the case may be, again hold the shares or securities in its own name; or

(*c*) from depositing with, or transferring to, any person any shares or securities, by way of security for the repayment of any loan advanced to the company or the performance of any obligation undertaken by it;

(*d*) from holding investments in the name of a depository when such investments are in the form of securities held by the company as a beneficial owner.

(*3*) Where in pursuance of clause (*d*) of sub-section (*2*), any shares or securities in which investments have been made by a company are not held by it in its own name, the company shall maintain a register which shall contain such particulars as may be prescribed and such register shall be open to inspection by any member or debenture-holder of the company without any charge during business hours subject to such reasonable restrictions as the company may by its articles or in general meeting impose.

(*4*) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

According to sub-section (3) of section 187 where in pursuance of clause (d) of sub-section (2), any shares or securities in which investments have been made by a company are not held by it in its own name, the company shall maintain a register which shall contain such particulars as may be prescribed and such register shall be open to inspection by any member or debenture-holder of the company without any charge during business hours subject to such reasonable restrictions as the company may by its articles or in general meeting impose.

Therefore, a company is only required to maintain a register for securities not held in the name of the company, when the investments are held in the name of a depository. Accordingly, when any shares or securities in which investments have been made by a company are not held by it in its own name as a beneficial owner when such investments are held in the name of a depository pursuant to Section 187(2)(d), the company shall forthwith enter in a register maintained by it for the purpose, the prescribed particulars.

III Register of Charges [Section 85; Rule 7 of Companies (Registration of Charges Rules 2014)]

Section 85 provides that every company shall keep at its registered office a register of charges in Form No. CHG.7 which shall include therein all charges and floating charges affecting any property or assets of the company or any of its undertakings, indicating in each case such particulars as may be prescribed. The entries in the register of charges maintained by the company shall be made forthwith after the creation, modification or satisfaction of charge, as the case may be. Such register of charges shall contain the particulars of all the charges registered with the Registrar on any of the property, assets or undertaking of the company and the particulars of any property acquired subject to a charge as well as particulars of any modification of a charge and satisfaction of charge. All the entries in the register shall be authenticated by a director or the secretary of the company or any other person authorised by the Board for the purpose. The register of charges shall be preserved permanently and the instrument creating a charge or modification thereon shall be preserved for a period of eight years from the date of satisfaction of charge by the company. A copy of the instrument creating the charge shall also be kept at the registered office of the company along with the register of charges.

Company's Register of Charges

Section 85 read with rule 10 provides that every company shall keep at its registered office a register of charges in Form No. CHG.7 which shall include therein all charges and floating charges affecting any property or assets of the company or any of its undertakings, indicating in each case such particulars as may be prescribed.

The entries in the register of charges maintained by the company shall be made forthwith after the creation, modification or satisfaction of charge, as the case may be.

Such register of charges shall contain the particulars of all the charges registered with the Registrar on any of the property, assets or undertaking of the company and the particulars of any property acquired subject to a charge as well as particulars of any modification of a charge and satisfaction of charge. All the entries in the register shall be authenticated by a director or the secretary of the company or any other person authorised by the Board for the purpose.

The register of charges shall be preserved permanently and the instrument creating a charge or modification thereon shall be preserved for a period of eight years from the date of satisfaction of charge by the company. A copy of the instrument creating the charge shall also be kept at the registered office of the company along with the register of charges.

Inspection of Charges: The register of charges and instrument of charges shall be kept open for inspection during business hours by members, creditors or any other person subject to reasonable restriction as the company by its article impose. The register of charges and the instrument of charges kept by the company shall be open for inspection- (a) by any member or creditor of the company without fees; (b) by any other person on payment of fee. Liquidator or any other creditor take into account the unregistered charges.

Section 77(3) states that not withstanding anything contained in any other law for the time being in force, no charge created by a company shall be taking into account by the liquidator or nay other creditor unless it is duly registered under Sub-section (1) of Section 77 and a certificate of registration of such charge is given by the Registrar.

IV. Register of Debenture Holders or any other Security Holders

Every company which issues or allots debentures or any other security shall maintain a separate register of debenture holders or security holders, as the case may be, for each type of debentures or other securities in one or more books in Form No. MGT.2.

Section 88(1)(b) of the Companies Act, 2013 requires every company to keep a register of debentureholders. The register of debenture-holders shall also include an index of the names included therein. The register shall be in the form prescribed by the Central Government and contain the prescribed particulars. Further the Central Government may prescribe separate registers for each type of debentures. The register can be closed by the company after giving at least 7 days previous notice by advertisement for a period not exceeding 45 days in a year but not exceeding 30 days at a time. However, the Securities and Exchange Board may prescribe lesser notice period for listed companies or companies which intend to get their securities listed in the prescribed manner. As per section 94(2), the register and its indices, except when they are closed under the provisions of the Act is open to inspection by the members and debenture holders, other security holder or beneficial owner during business hours without payment of any fees and by any other person on payment of nominal charges.

- **Register of contracts with companies/firms in which directors are interested [Section 189(5) Rule 16 of Companies (Meetings of Boards and its Powers) Rules, 2014]**

Every company is required to keep one or more registers in Form MBP 4 giving separately the particulars of all contracts or arrangements and shall enter therein the particulars of (Rule 16(1))-

(a) company or companies or bodies corporate, firms or other association of individuals, in which any director has any concern or interest as mentioned in sub-section (1) of section 184. But the particulars of the company or companies or bodies corporate in which a director himself together with any other director holds two percent or less of the paid-up share capital would not be required to be entered in the register.

(b) contracts or arrangements with a body corporate or firm or other entity as mentioned under subsection (2) of section 184, in which any director is, directly or indirectly, concerned or interested; and
(c) contracts or arrangements with a related party with respect to transactions to which section 188 applies;

The entries in the register shall be made at once, whenever there is a cause to make entry, in chronological order and shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose. (Rule 16(2)) Such register shall be kept at the registered office of the company and the register shall be preserved permanently 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. (Rule 16(3)) Such register or registers are required to be placed before the next meeting of the Board and signed by all the directors present at the meeting.

Every director within thirty days of his appointment or relinquishment is required to disclose his concern or interest in other associations, which are required to be included in the register. The register be kept at the registered office of the company and also open for inspection during business hours. The company shall provide extracts from such register to a member of the company on his request, within seven days from the date on which such request is made upon the payment of such fee as may be specified in the articles of the company but not exceeding ten rupees per page. (Rule 16(4))

Penalty

Every director who fails to comply is liable to a penalty of Rs. 25000.

VII Register of Directors' Shareholding

Section 170 of Companies Act, 2013 deals with Register of directors and key managerial personnel and their shareholding.

(1) Every company shall keep at its registered office a register containing such particulars of its directors and key managerial personnel as may be prescribed, which shall include the details of securities held by each of them in the company or its holding, subsidiary, subsidiary of company's holding company or associate companies.
(2) A return containing such particulars and documents as may be prescribed, of the directors and the key managerial personnel shall be filed with the Registrar within thirty days from the appointment of every director and key managerial personnel, as the case may be, and within thirty days of any change taking place.

VII REGISTER OF LOANS MADE, GUARANTEES GIVEN, SECURITIES PROVIDED AND INVESTMENTS MADE

Sub-section (9) of section 186 provides that every company giving loan or giving a guarantee or providing security or making an acquisition under this section shall keep a register which shall contain such particulars and shall be maintained in such manner as may be prescribed.

Rule 12 states that

(1) Every company giving loan or giving guarantee or providing security or making an acquisition of securities shall, from the date of its incorporation, maintain a register in Form MBP 2 and enter therein separately, the particulars of loans and guarantees given, securities provided and acquisitions made as aforesaid.
(2) The entries in the register shall be made chronologically in respect of each such transaction within seven days of making such loan or giving guarantee or providing security or making acquisition.
(3) The register shall be kept at the registered office of the company and the register shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any other person authorised by the Board for the purpose.
(4) The entries in the register (either manual or electronic) shall be authenticated by the company secretary of the company or by any other person authorised by the Board for the purpose.
(5) For the purpose of sub-rule (4), the register can be maintained either manually or in electronic mode.

(6) The extracts from the register maintained under sub-section (9) of section 186 may be furnished to any member of the company on payment of such fee as may be prescribed in the Articles of the company which shall not exceed ten rupees for each page.

Inspection of Register

Sub-section (*10*) of section 186 provides that the register referred to in sub-section (*9*) shall be kept at the registered office of the company and —

(a) shall be open to inspection at such office; and
(b) extracts may be taken therefrom by any member, and copies thereof may be furnished to any member of the company on payment of such fees as may be prescribed.

Offence and Penalty

If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees. [Section 186(3)]

VIII Books Containing Minutes of General Meeting and of Board and of committees of Directors [Section 118]

Section 118 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of share holders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned.

In case of meeting of Board of Directors or of a committee of Board, the minutes shall contain name of the directors present and also name of dissenting director or a director who has not concurred the resolution.

The chairman shall exercise his absolute discretion in respect of inclusion or non-inclusion of the matters which is regarded as defamatory of any person, irrelevant or detrimental to company's interest in the minutes. Minutes kept shall be evidence of the proceedings recorded in a meeting.

As per section 118(10) every company shall observe Secretarial Standards with respect to General and Board Meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980, and approved as such by the Central Government.

Rule 25 contains provisions with regards to minutes of meetings. A distinct minute book shall be maintained for each type of meeting namely:

(i) general meetings of the members;
(ii) meetings of the creditors;
(iii) meetings of the Board; and
(iv) meetings of the committees of the Board.

It may be noted that resolutions passed by postal ballot shall be recorded in the minute book of general meetings as if it has been deemed to be passed in the general meeting. In no case the minutes of proceedings of a meeting or a resolution passed by postal ballot shall be pasted to any such book.

In case of every resolution passed by postal ballot, a brief report on the postal ballot conducted including the resolution proposed, the result of the voting thereon and the summary of the scrutinizer's report shall be entered in the minutes book of general meetings along with the date of such entry within thirty days from the date of passing of resolution. Minutes of proceedings of each meeting shall be entered in the books maintained for that purpose along with the date of such entry within thirty days of the conclusion of the meeting. Each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by:

- in the case of minutes of proceedings of a meeting of the Board or of a committee thereof, by the chairman of the said meeting or the chairman of the next succeeding meeting;
- in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose;
- in case of every resolution passed by postal ballot, by the chairman of the Board within the aforesaid period of thirty days or in the event of there being no chairman of the Board or the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

Minute books of general meetings shall be kept at the registered office of the company. Minutes of the Board and committee meetings shall be kept at the registered Office or at such other place as may be approved by the Board.

Minutes books shall be preserved permanently and kept in the custody of the company secretary of the company or any director duly authorized by the Board for the purpose and shall be kept in the registered office or such place as the members may decide by passing special resolution pursuant to requirement of section 88 read with section 94 of the Act.

Inspection by directors

As provided in Section 128(3), any director can inspect the books of accounts and other books and papers of the company during business hours. The expression "Books and Papers" has been defined in section 2(12) which includes accounts, deeds, vouchers, writings and documents. The company is, therefore, required to make available the aforesaid books and papers for inspection by any directors. Such inspection may be done by any type of director- nominee, independent, promoter or whole time.

The proviso to sub-section 3 provides that a director of the Company can inspect the books of accounts of the subsidiary, only on authorisation by way of the resolution of Board of Directors.

Where any other financial information maintained outside the country is required by a director, the director shall furnish a request to the company setting out the full details of the financial information sought and the period for which such information is sought (Rule 4(2)). The said information shall be provided to director within 15 days of receipt of request (Rule 4(3)).

The director can seek the information only individually and not by or through his attorney holder or agent or representative (Rule 4(4)).

The right to inspect books of accounts and other books and papers under this section has been provided to the directors only.

Inspection of Minute book of General Meeting

In terms of Section 119, the minute's book of general meetings shall be kept at the registered office of a company and shall be open for inspection to members during business hours without any charge subject to such restrictions as the company may impose. A member shall be entitled for a copy of any minutes subject to payment of fees as may be specified in the Articles of Association of the company, but not exceeding a sum of ten rupees for each page or part of any page. The copy should be made available to him within seven days of his making request.

Any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, with a copy of any minutes of any general meeting, on payment of such sum as may be specified in the articles of the company but not exceeding a sum of ten rupees for each page or part of any page. A member who has made a request for provision of soft copy in respect of minutes of any previous general meetings held during a period of immediately preceding three financial years shall be entitled to be furnished, with the same free of cost.

Where the company refuses inspection or fails to furnish a copy of minutes within specified time, the Tribunal is empowered to direct immediate inspection or sending a copy of minutes in the matter and the company and every officer of the company shall be punishable with fine.

Period for which books to be preserved

The books of accounts, together with vouchers relevant to any entry in such books, are required to be preserved in good order by the company for a period of not less than eight years immediately preceding the relevant financial year. In case of a company incorporated less than eight years before the financial year, the books of accounts for the entire period preceding the financial year together with the vouchers shall be so preserved. The provisions of Income Tax Act shall also be complied with in this regard. As per proviso to sub-section 5, where an investigation has been ordered in respect of a company under Chapter XIV of the Act related to inspection, inquiry or investigation, the Central Government may direct that the books of account may be kept for such period longer than 8 years, as it may deem fit and give directions to that effect.

Persons responsible to maintain books

The person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts etc. shall be: (sub-section 6)

(i) Managing Director,
(ii) Whole-Time Director, in charge of finance
(iii) Chief Financial Officer
(iv) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

Penalty

In case the aforementioned persons referred to in sub-section (6) (i.e. MD, WTD, CFO etc.) fail to take reasonable steps to secure compliance of this section and thus, contravene such provisions, they shall in respect of each offence, be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or both.

IX Attendance Register

To be maintained for Board Meetings and General Meetings
Must contain Date of meeting, names of those present and signatures.

CORPORATE ACCOUNTABILITY – ACCOUNTS AND AUDIT

ACCOUNTS OF COMPANIES

The shareholders provide capital to the company for running the business. They are in a way, the owners of the company. But, all of them cannot take part in managing the affairs of the company as their number is usually much more. But they have every right to know as to how their money has been dealt with by the directors in a particular period. This is why perhaps compulsory disclosure through annual information to the shareholders by the directors about the working and financial position of the company enables them to exercise a more intelligent and purposeful control over the affairs of the company. For preparation of annual accounts the maintenance of proper books of account is a must. Section 128 of the Companies Act, 2013 contains the provisions for books of account etc. to be kept by company.

Requirement of Keeping Books of Account (Section 128)

Maintenance of books of account would mean records maintained by the company to record the specified financial transaction. It has been specifically provided that every company shall keep proper books of account. This section specifies the main features of proper books of account as under –

(i) The company must keep the books of account with respect to items specified in clauses (i) to (iv) of sub-section 2(13) of the Companies Act, 2013 hereinafter referred as Act, which defines "books of account".

(ii) The books of account must show all money received and expended, sales and purchases of goods and the assets and liabilities of the company.

(iii) The books of account must be kept on accrual basis and according to the double entry system of accounting.

(iv) The books of account must give a true and fair view of the state of the affairs of the company or its branches. "books of account" as defined in Section 2(13) includes records maintained in respect of—

  (a) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
  (b) all sales and purchases of goods and services by the company;
  (c) the assets and liabilities of the company; and
  (d) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section.

Section 129: Financial Statement

Financial Statement is defined under Section 2 (40), to include -

(a) Balance Sheet
(b) Profit and Loss account or Income and Expenditure account
(c) Cash flow Statement
(d) Statement of change in equity, if applicable
(e) any explanatory notes annexed to or forming part of financial statements, giving information
(f) required to be given and allowed to be given in the form of notes.

However, the financial statement with respect to one person company, small company and dormant company, may not include the cash flow statement.

Financial statements should be prepared for financial year and shall be in form as per Schedule III.

True and Fair view

- As per provisions of sub-sections (1) and (2), every financial statement of the company must give true and fair view of the state of affairs of the company at the end of financial year. True and Fair view in respect of financial statement means- financial statements and items contained should comply with accounting standards notified under section 133;
- financial statement shall be in form or forms as provided for different class or classes of companies in Schedule III; in case of any insurance or banking company or any company engaged in the generation or supply of electricity or to any other class of company for which a form of financial

statement has been specified in or under the Act governing such class of company, not treated to be disclosing

- a true and fair view of the state of affairs of the company, merely by the reason of the fact that they do not disclose –
  - in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938, or the Insurance Regulatory and Development Authority Act, 1999;
  - in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949;
  - in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 2003;
  - in the case of a company governed by any other law for the time being in force, any matters which are not required to be disclosed by that law.

Persons responsible for compliance

The persons responsible to take all reasonable steps to secure compliance by the company with the requirement of Section 129 are (sub-section 7)-

(a) Managing Director
(b) Whole-Time Director
(c) CFO
(d) Other person of a company charged by the Board with the duty of complying with requirements of section 129.

Where any of the aforementioned officers are absent, all the directors shall be responsible and punishable.

Penalty

In case persons referred to in sub-section (7) fail to take reasonable steps to secure compliance or contravene provisions of this section, they shall in respect of each offence be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.

Form of Financial Statements (Schedule III)

The financial statements shall be in the form or forms as may be provided for different class or classes of companies. Schedule III contains general instructions for preparation of balance sheet and statement of profit and loss account.

SECTION 134: FINANCIAL STATEMENT, BOARD'S REPORT ETC.

Section 134 deals with financial statements as well as board's report. The Board's Report shall be prepared based on the stand alone financial statements of the company and the report shall contain a separate section wherein a report on the performance and financial position of each of the subsidiaries, associates and joint venture companies included in the consolidated financial statement is presented and approved by the Board of directors before they are signed and submitted to auditors for their report.

The auditor's report is to be attached to every financial statement. A report by the Board of directors containing details on the matters specified, including director's responsibility statement, shall be attached to every financial statement laid before company. The Board's report and every annexure has to be duly signed. A signed copy of every financial statement shall be circulated, issued or published along with all notes or documents, the auditor's report and Board's report. The clause also provides for penal provisions for the company and every officer of the company, in case of any contravention.

Requirements as to financial statements

- Financial statement of the company including consolidated financial statements, if applicable, should be approved by the Board of Directors, before such statements are signed.
- Financial statement should be signed on behalf of the board by atleast
  - chairperson of company, duly authorised board, or

- two directors of whom one should be the managing director, and
- chief executive officer, if he is director, chief financial officer and company secretary, if any in the company

- One person company's financial statements shall be signed by only one director.
- Such sign is required for submission of financial statements to the auditor for his report.
- Auditors report is required to be attached to every financial statement.
- Board report shall be attached to the statements laid before the company in general meeting.

The details of prescriptions under Companies Act regarding Board's Report including disclosures are dealt in lesson 23.

Penal provisions

Any contravention of provisions of Section 134 is punishable to the following extent –

(a) company is punishable with fine of not less than rupees fifty thousand but which may extend upto rupees twenty five lakhs, and
(b) every officer in default is punishable with –
  (i) imprisonment upto a term of three years, or
  (ii) monetary fine from fifty thousand rupees to rupees five lakh, or
  (iii) both (i) and (ii) above

BOARD'S REPORT

The Board of Directors of a company must strive to maximize wealth while adhering to good corporate governance principles and practices. The efficacy of the Board of Directors is not determined simply by gauging whether it fulfills its legal requirements but, more importantly, by its philosophy and the manner in which it translates the understanding of its responsibilities for the benefit of the stakeholders of the company.

The Board's Report is an important means of communication by the Board of Directors, serving to inform the stakeholders about the performance and prospects of the company, relevant changes in management, capital structure, major policies, recommendations as to the distribution of profits, future programmes of expansion, modernization and diversification, capitalization of reserves, further issue of capital, etc.

The matters to be included in the Board's Report have been specified in Section 134(3) of the Companies Act, 2013. Apart from this, Sections 67[proviso to sub section (3)], 177(8) &(10), proviso178(4), 188(2), 197(12) & (14), and 204(1) of the Companies Act, 2013 and some Rules of 2014 also contain provisions in relation to the Board's Report. The Board's Report of Companies whose shares are listed on a stock exchange must include additional information as specified in the Listing Agreement. Further, the Reserve Bank of India Act, 1934, the Securities and Exchange Board of India Act, 1992 and the regulations, rules, directions, guidelines, circulars, etc. issued thereunder, necessitate certain additional disclosures to be made in the Board's Report. ICSI issued Secretarial Standard 10, which seeks to lay down practices pertaining to the preparation and presentation of the Board's Report.

The Directors' Responsibility Statement

Section 134(5) referred to in clause (*c*) section 134(*3*) shall state that—

(a) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
(b) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
(c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
(d) the directors had prepared the annual accounts on a going concern basis; and

(e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.
Explanation to clause(e) defines the term "internal financial controls as the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;
(f) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

AUDIT REPORT

Section 143 (2) prescribed that auditor shall make a report to the members of the company on the accounts examined by him and on every financial statement which is required to be laid in the general meeting of the company. The Audit report should take into consideration the provisions of this Act, the Accounting and Auditing standards and matters which are required under this Act or rules made thereunder or under any order made u/s 143(11).

The Audit report should state that to the best of his information and knowledge, the said accounts and financial statements give a true and fair view of the state of the company's affair as at the end of the financial year and the profit or loss and the cash flow for the year and such other matters as may be prescribed.

Section 143 (3) laid down that auditor's report shall also state other details which are as under:
(a) whether he has sought and obtained all the information and explanations which were necessary and if not, the details thereof and the effect of such information on the financial statements;
(b) whether, in his opinion, proper books of account as required by law have been kept by the company and proper returns adequate for the purposes of his audit have been received from branches not visited by him;
(c) whether the branch audit report prepared by a person other than the company's auditor has been sent to him;
(d) whether the company 's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;
(e) whether, in his opinion, the financial statements comply with the accounting standards;
(f) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;
(g) whether any director is disqualified from being appointed as a director under section 164 (2);
(h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;
(i) whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls;
(j) Rule 11 prescribed that Auditor's Report shall also include their views and comments on the following matters, namely:-
    (i) whether the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statement;
    (ii) whether the company has made provision, as required under any law or accounting standards, for material foreseeable losses, if any, on long term contracts including derivative contracts;
    (iii) whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the company.

The auditor is required to provide the reasons, where any of the matters required to be included in the Audit Report under this Clause is answered in negative or with a qualification. {Section 143 (4)}

SECTION 135 : CORPORATE SOCIAL RESPONSIBILITY

This section seeks to provide that every company having specified net worth or turnover or net profit during any financial year shall constitute the Corporate Social Responsibility Committee of the Board. The composition of the committee shall be included in the Board's Report. The Committee shall formulate policy including the activities specified in Schedule VII. The Board shall disclose the content of policy in its report and place on website, if any of the company. The section further provides that the Board shall ensure that atleast two per cent of average net profits of the company made during three immediately preceding financial years shall be spent on such policy every year. If the company fails to spend such amount the Board shall give in its report the reasons for not spending.

There was no corresponding provision in the Companies Act, 1956 but Ministry of Corporate Affairs, Government of India had brought 'Corporate Social Responsibility Voluntary Guidelines, 2009' in December, 2009. According to these guidelines, each business entity should formulate a CSR policy to guide its strategic planning and provide a roadmap for its CSR initiatives, which should be an integral part of overall business policy and aligned with its business goals. The policy should be framed with the participation of various level executives and should be approved by the Board.

The CSR Policy is expected to normally cover following core elements:

(a) Care for all stakeholders
(b) Ethical functioning
(c) Respect for workers' rights and welfare
(d) Respect for human rights
(e) Respect for environment
(f) Activities for social and inclusive development

What is CSR

CSR has many interpretations but can be understood to be a concept imposing a liability on the Company to contribute to the society (whether towards environmental causes, educational promotion, social causes etc.) along with the reinforced duty to conduct the business in an ethical manner. Corporate Social Responsibility (CSR) is a form of self-regulation integrated into a business model. It is also known as corporate conscience, corporate citizenship, social performance or sustainable business/responsible business.

CSR involves both internal as well as external stakeholders. Internal stakeholders include the employees of the company whereas external stakeholders include community & environment, customers, vendors, shareholders, government etc. To carry out CSR effectively, it is essential that it has to be driven from top.

Application of Provision

Companies having net worth of Rs. 500 crores or more or turnover of Rs. l,000 crores or more or net profit of Rs. 5 crores or more during any financial year shall constitute a CSR Committee of Board comprising of 3 or more directors, one of whom shall be an independent director.

Composition of CSR Committee

The CSR committee shall consist of three or more directors, out which one director shall be an independent director. The presence of an Independent Director shall ensure that the Committee is not just a quasi committee addressing the whims of the Board, but is in fact, taking up an initiative. The composition of such Corporate Social Responsibility Committee shall have to be disclosed in the Board's Report as required under Section 134(4). An unlisted public company or a private company which is not required to appoint an independent director shall have its CSR Committee with independent director. A private company having only two directors on its Board shall constitute its CSR Committee with two such directors.

With respect of foreign company, the CSR Committee shall comprise of at least two persons of which one person resident in India and another person shall be nominated by the foreign company.

The CSR Committee shall Institute a transparent monitoring mechanism for implementation of CSR projects or programs or activities undertaken by the company.

CSR Activities

The Companies Act, 2013 does not prescribe the methodology by which CSR activities are to be undertaken by the company. Companies have been given flexibility to decide the activity within the framework, choose programmes, implement in the manner it desires, monitor it and ensure compliance of its own CSR policy. However, the CSR activities may be undertaken by way of the following methods:-

(a) By Charity: Company can donate money to various charitable trusts, societies, NGOs etc. who work for social economic welfare of society.
(b) By Contract: Company can hire an NGO or any other agency like that which can carry out the projects on behalf of the company.
(c) By Itself: Company can take up a project on its own or create its own trust and use its own staff for its proper working/ monitoring or through other trusts/ societies.

Penalty

The Companies Act requires that -

(i) The Board's report shall disclose the composition of the Corporate Social Responsibility Committee as per sub- section (3) of section 134;
(ii) If the company fails to spend such amount (i.e. at least two percent of the average net profit), the Board shall disclose and specify the reasons for not spending the amount in its report as per Clause (o) of sub-section (3) of section 134.

As per section 134 of Companies Act, 2013 if the Company fails to disclose such information,it shall be punishable with fine ,which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.

Format for The Annual Report On CSR Activities to be included in the Board's Report

1. A brief outline of the company's CSR policy, including overview of projects or programs proposed to be undertaken and a reference to the web-link to the CSR policy and projects or programs.
2. The composition of the CSR Committee.
3. Average net profit of the company for last three financial years
4. Prescribed CSR Expenditure (two percent of the amount as in the Item 3 above)
5. Details of CSR spent during the financial year.
   (a) Total amount to be spent for the financial year;
   (b) Amount unspent, if any;
   (c) Manner in which the amount spent during the financial year is detailed below.
   S. No. , CSR Sector in Projects or Amount, Amount spent, Cumulateive Amt Spent
   * Give details of implementing agency.
6. In case the company has failed to spend the two percent of the average net profit of the last three financial years or any part thereof, the company shall provide the reasons for not spending the amount in its Board report.
7. A responsibility statement of the CSR Committee that the implementation and monitoring of CSR Policy, is in compliance with CSR objectives and Policy of the company. (Signatures of concerned persons)

INSPECTION AND INVESTIGATION

Chapter XIV (Section 206 – 229) of the Companies Act 2013 deals with the aspects Inspection, inquiry and investigation. The broad regulatory framework covers aspects such as powers of registrar/central government to call for information, to inspect books and to conduct enquiries, procedure for inspection, powers of registrar in the course of inspect and the duties of officers in providing the information in the course of inspection, search/seizure, powers the central government to order an investigation into the

affair of the company, constitution Serious Fraud Investigation Office(SFIO), investigation into the affairs of the company by SFIO and other operational aspects.

INSPECTION

Section 206 of the Companies Act 2013 deals with inspection of documents and books and papers of any company. The section empowers the Registrar or Inspectors appointed by Central Government to conduct inspection in order to ascertain that all the transactions have been validly entered into and recorded in appropriate books and those applicable laws, rules and procedures have been compiled by the company. The section provides some penal provisions for the every defaulting officer of the company if it is clear from the inspection that the company is being or has been carried on for a fraudulent or unlawful purpose.

Purpose of conducting Inspection

Section 206 does not specify the circumstances or pre conditions which must be satisfied to invoke these provisions. Some of the objectives of conducting such inspections may be thus:

1. To detect concealment of income by falsification of accounts.
2. To secure knowledge about the mismanagement of the business of a company and transactions entered into with an intent to defraud creditors, shareholders or otherwise for fraudulent or unlawful purposes.
3. To ascertain whether the statutory auditors have discharged their functions and duties in certifying the true and fair view of a company's accounts and their proper maintenance.
4. To enable the Government to ascertain the quantum of profits accrued but not adequately accounted for.
5. To detect misapplication of funds leading a company tp a state of perpetual financial crisis.
6. To keep a watch on performance of a company.
7. To detect misuse of fiduciary responsibilities by the company's management for personal aggrandizement.

Inspection is intended to be a routine and not ad hoc or special affair. However, if sufficient evidence of the company's affairs being mismanaged and/or managed in fraudulent way is revealed, the inspection can lead to orders for investigation into the affairs of the company.

Powers of registrar to call for information

As per section 206 of the Companies Act, 2013, if on a scrutiny of any document filed or any information received by him the Registrar is of the opinion that any further information or explanation or any further document relating to the company is necessary , he may call such other information by a written notice and require the company

(a) to furnish the information or explanation in writing or

(b) to produce such document

within the reasonable time specified in notice.

Company's duty to furnish required information

In accordance with section 206(2) of the Act , it is the duty of the company and of every other officer concerned to furnish the information or explanation to the best of their knowledge and power and to produce the documents as required by the registrar within the specified time mentioned in the notice under section 206(1) or the time extended by the Registrar.

Past employees to furnish information

Proviso to section 206(2) states that if such information or explanation is related to any past period then the officers who had been in the employment of the company for such period are also required to furnish such information or explanation to the best of their knowledge when the notice has been served by the Registrar to such past employees.

Further notice by the registrar, if no information is provided or information provided is inadequate.

Section 206(3) provides that

- where no information or explanation is furnished to the Registrar within the time specified under section 206(1) or if the Registrar on inspection of documents furnished finds that the information furnished is inadequate
  OR
- If on scrutiny the Registrar is of opinion that an unsatisfactory state of affairs exist s in the company and does not disclose a full and fair statement of the information required, he may, by another written notice, call on the company to produce for his inspection such further books of account, books, papers, and explanations as he may require at such place and at such time as he may specify in the notice.

The Proviso to section 206(3) states that before sending any such notice as mentioned in sub section 3, the Registrar shall record his reasons in writing for issuing such notice.

Powers of Registrar to call for information/explanation after informing the company of the allegations made against it

According to Section 206(4) the registrar, on the basis of information available or furnished to him or on a representation made to him by any person, is of the opinion that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act or if the grievances of investors are not being addressed, the Registrar may after informing the company of the allegations made against it by a written order,

(1) call on the company to furnish in writing any information or explanation on matters specified in the
(2) order within such time as he may specify therein and
(3) carry out such inquiry as he deems fit after providing the company a reasonable opportunity of being heard.

Powers of Central Government to direct the registrar/inspector to order an enquiry

The first proviso to section 206(4) provides that the Central Government may, if it is satisfied that the circumstances so warrant, direct the Registrar or an inspector appointed by it for the purpose to carry out the inquiry under this sub-section 4. When business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in section 447.

Powers of Central Government to direct for an inspection

Sections 206(5) and 206(6) empowers the role of Central Government to direct for inspection of any company, by appointing an inspector or by directing a statutory authority.

Section 206(5) provides that without prejudice to the foregoing provisions of this section, the Central Government may, if it is satisfied that the circumstances so warrant, direct inspection of books and papers of a company by an inspector appointed by it for the purpose.

Section 206(6) states that the central government may, having regard to the circumstances by general or special order authorise any statutory authority to carry out the inspection of books of account of the companies.

Punishment for non-compliance of section 206

Section 206(7) states that if any company fails to furnish any information or explanation or produce any document required under Section 206, the company and every officer of the company, who is in default shall be punishable with a fine which may extend to one lakh rupees and in the case of a continuing failure, with an additional fine which may extend to five hundred rupees for every day after the first during which the failure continues.

SUBMISSION OF REPORT OF INSPECTION TO CENTRAL GOVERNMENT

Section 208 of the Companies Act 2013 provides that the Registrar or inspector shall, after the inspection of the books of account or an inquiry under section 206 and other books and papers of the company under section 207, submit a report in writing to the Central Government along with such

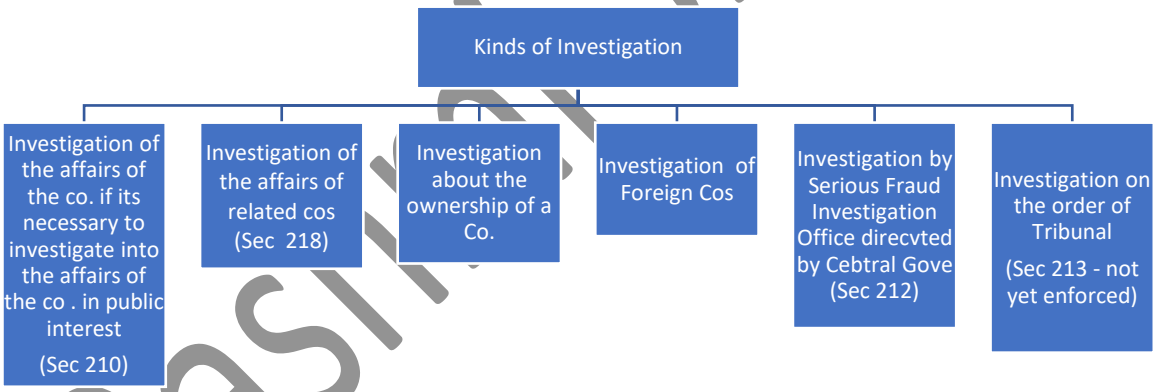
documents, if any, and such report may, if necessary, include a recommendation that further investigation into the affairs of the company is necessary giving his reasons in support.

INVESTIGATION

Shareholders have been vested with various rights including the right to elect directors under the Companies Act, 2013. However, shareholders are often ill-equipped to exercise effective control over the affairs of companies, and, particularly in companies whose shareholders are widely scattered, the shareholders are, by and large, sleeping and passive partners, and the affairs of such companies are managed to all intents and purposes, by its Board of directors to the exclusion of a predominant majority of shareholders. Such a situation leads to abuse of power by persons in control of the affairs of company. It became, therefore, imperative for the Central Government to assume certain powers to investigate the affairs of the company in appropriate cases particularly where there was reason to believe that the business of the company was being conducted with the intent to defraud its creditors or members or for a fraudulent or unlawful purpose, or in any manner oppressive of any of its members. Sections 210 to 229 of the Companies Act, 2013, contain provisions relating to investigation of the affairs of company.

Investigation within the meaning of the relevant provisions of the Act is a form of probe; a deeper probe; into the affairs of a company. It is a fact finding exercise. The main object of investigation is to collect evidence and to see if any illegal acts or offences are disclosed and then decide the action to be taken. The said expression also includes investigation of all its business affairs—profits and losses, assets including goodwill, contracts and transactions, investments and other property interests and control of subsidiary companies too [*R. v. Board of Trade, Ex parte St. Martin Preserving Co. Ltd.*, (1964) 2 All. E.R. 561 (Q.B.D.)].

KINDS OF INVESTIGATION



When the Central government may order for investigations into the affairs of the company?

Section 210 of the companies Act provides that

1. When the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company,—
   - on the receipt of a report of the Registrar or inspector under section 208;
   - on intimation of a special resolution passed by a company that the affairs of the company ought
   - to be investigated; or
   - in public interest, it may order an investigation into the affairs of the company.
2. When an order is passed by a court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government shall order an investigation into the affairs of that company.

For the purposes of this section, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct. [Section 210(3)]

ESTABLISHMENT OF SERIOUS FRAUD INVESTIGATION OFFICE BY CENTRAL GOVERNMENT

Section 211(1) seeks to provide that the Central Government shall establish serious fraud investigation office (SFIO). The SFIO will be headed by a director and will consist of experts from various disciplines.

The Central Government shall also appoint a Director in the SFIO not below the rank of Joint Secretary and may also appoint such experts and other officers as it considers necessary for the efficient discharge of functions. Until an SFIO is established under Section 211(1), the SFIO set up earlier vide Government of India resolution No.45011/16/2003-Admn1 dated 2nd July 2003 shall be deemed to be the Serious Frauds Investigation Office for the purpose of this section.

Investigation by Serious Fraud Investigation Office

Basis of ordering investigation by the Central Government

Section 212(1) provides that without prejudice to the provisions of section 210 (i.e., powers of Central Government to issue order to investigate into the affairs of the company) when the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office—

(*a*) on receipt of a report of the Registrar or inspector under section 208;

(*b*) on intimation of a special resolution passed by a company that its affairs are required to be investigated;

(*c*) in the public interest; or

(*d*) on request from any Department of the Central Government or a State Government, the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and The Director of SFIO may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.

Restrictions on other investigating agencies

Section 212(2) provides that where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office.

Manner of investigation and submission of report

Section 212(3) states where the investigation into the affairs of a company has been assigned by the Central Government to Serious Fraud Investigation Office, it shall

- conduct the investigation in the manner and follow the procedure provided in this Chapter; and
- submit its report to the Central Government within such period as may be specified in the order.

Investigating officer to exercise powers of Inspector

Where Section 212 (4) provides that the Director, Serious Fraud Investigation Office shall cause the affairs of the company to be investigated by an Investigating Officer who shall have the power of the inspector under section 217(procedures, powers, etc., of inspectors).

Responsibility of company and its officers to provide information to the Investigating Officer

Sub section(5) of section 212 states that the company and its officers and employees, who are or have been in employment of the company shall be responsible to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation.

Limitations on grant of Bail for offences liable is punishment for fraud under CrPC, 1973

Section 212(6) states that notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offences covered under the following sections of the Companies Act 2013 which attract the punishment of fraud in section 447 of the 2013 Act shall be cognizable:-

Section 7(5) - Default on furnishing false and incorrect particulars to registrar in relation to incorporation of company
Section 7(6) - punishment for incorporating a company on the basis of false information.
Section 34 - criminal liability for mis-statement in prospectus.
Section 36 - punishment for fraudulently inducing persons to invest money.
Section 38(1) - punishment for personation for acquisition of securities.
Section 46(5) - fraudulent issue of duplicate certificate of shares.
Section 66(10) - punishment for concealing the name of a creditor.
Section 140(5) - power of Tribunal to change the Audiot of the company on the grounds of fraudulent conduct.
Section 206 (4) - power of Registrar to call for inquiry or furnishing of any document by the company.
Section 213 - investigation into the affairs of the company by Tribunal.
Section 229 - penalty for furnishing false statement, mutilation, destruction of document.
Section 251(1) - fraudulent application for removal of name .
Section 339(3) - punishment for fraudulent conduct of business in course of winding up of business.
Section 448 - punishment for false statement

No person accused of any such offence under the above mentioned sections shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and
(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

Release on bail of certain specified persons

Ist proviso to section 212(6) provides that a person, who, is under the age of 16 years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs.

Special court not to take cognizance of any offence except under specified circumstances

The second proviso to the same section provides further that the Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by—

(i) the Director, Serious Fraud Investigation Office; or
(ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.

Limitation on Grant Of Bail - Section 212(7)

The limitation on granting of bail specified in section 212(6) is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.

Arrest of suspected persons

If the Director, Additional Director or Assistant Director of Serious Fraud Investigation Office authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person and such person shall soon be informed of the grounds of such arrest. [Section 210(8).

Copy of order to SFIO

Section 212(9) states that the Director, Additional Director or Assistant Director of Serious Fraud Investigation Office shall, immediately after arrest of such person under sub-section (8), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Serious Fraud Investigation Office in a sealed envelope, in such manner as may be prescribed and the Serious Fraud Investigation Office shall keep such order and material for such periods may be prescribed.

Copy of investigation report
Section 212(13) provides that notwithstanding anything contained in this Act or in any other law for the time being in force, a copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court.

Directions by central government after receiving report section 212(14)
On receipt of the investigation report, the Central Government may, after examination of the report (and after taking such legal advice, as it may think fit), direct the Serious Fraud Investigation Office to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company.

Where sub section 15 of section 212 provides that notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973.

Note:
Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office.