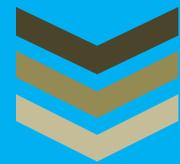


# Referencer for Quick Revision



## Final Course Paper-4: Corporate and Economic Laws

A compendium of subject-wise capsules published in the  
monthly journal "The Chartered Accountant Student"



**Board of Studies  
(Academic)  
ICAI**

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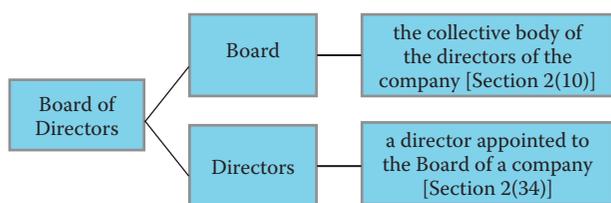
CA FINAL - PAPER 4 - CORPORATE AND ECONOMIC LAWS

At the Final level, for the Company Law portion of the subject “Corporate and Economic Laws” involves conceptual understanding, analysis and application of provisions of the Companies Act, 2013 to solve application-oriented issues. This subject is very dynamic on account of the amendments on the regular basis.

In this capsule for students, an attempt has been made to comprise the significant provisions of the Companies Act, 2013 covered under Chapter 1 and Chapter 2 of the Part I –Section A of the Corporate Laws. These Chapters are very important from examination point of view. You students are advised to read the October, 2021 edition of the Study Material with relevant RTP for a thorough understanding of the relevant provisions and the related amendments of Companies Act, 2013. This capsule will be giving a quick glance to the significant provisions of the said chapters and illustrative case scenarios followed by MCQs to hone your application skills. This capsule on Final Paper 4: Corporate and Economic Laws is intended to assist you in the process of revision of concepts discussed in the Study Material.

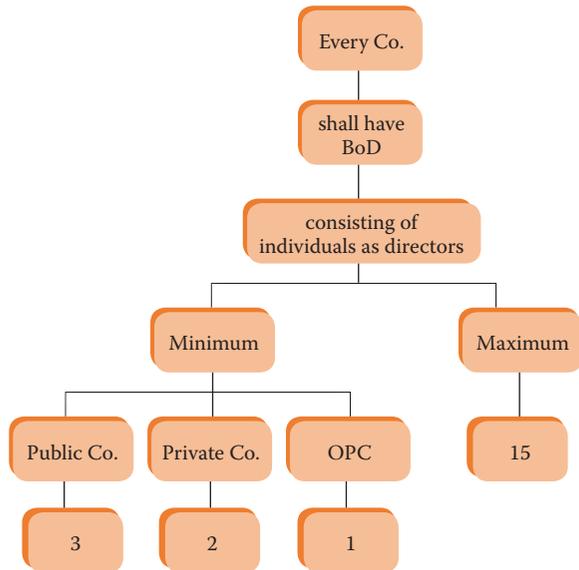
CHAPTER 1: APPOINTMENT AND QUALIFICATIONS OF DIRECTORS

(1) Board of Directors



(2) Provisions related to appointment of directors in the companies

(i) Number of directors [Section 149(1)]



A co. may appoint more than 15 directors after passing special resolution (SR)  
Limit of maximum of 15 directors, and their increase in limit by special resolution- shall not apply to Government & section 8 companies.

(ii) Provision related to Women director (WD) [Proviso to section 149(1) + Rule 3 of the Companies (Appointment and Qualifications of Directors) Rules, 2014]

<b>No. of Women Director</b>	❖ At least one
<b>Companies which require to have Women directors</b>	❖ every listed co.;
	❖ every other public co. having -
	➤ paid-up share capital of 100 crore rupees or more; or
	➤ turnover of 300 hundred crore rupees or more.
<b>Filling of Intermittent Vacancy</b>	❖ Immediate next Board meeting or three months from the date of such vacancy, whichever is later.
<b>Of which date the amount of paid-up capital or turnover shall be taken in to consideration</b>	As on the last date of latest audited financial statements.

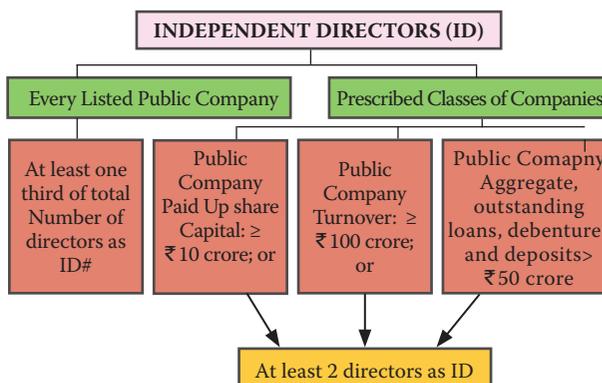
(iii) Provision related to Resident director (RD) [Section 149(3)]

<b>Meaning of Resident Director</b>	Who has stayed in india for a total period of not less than 182 days during financial year
<b>Number</b>	Atleast One
<b>Companies which should appoint resident director</b>	Every Company

In case of a newly incorporated company, the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated.

(iv) Provisions related to Independent Directors (Section 149 read with the relevant rules)

(a) Companies require to appoint Independent Directors (ID)



# Any fraction contained in such one-third number shall be rounded off as one.

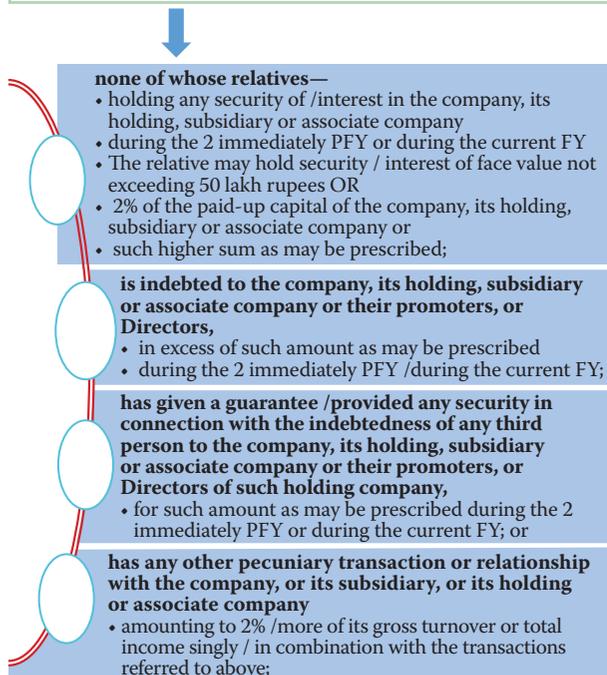
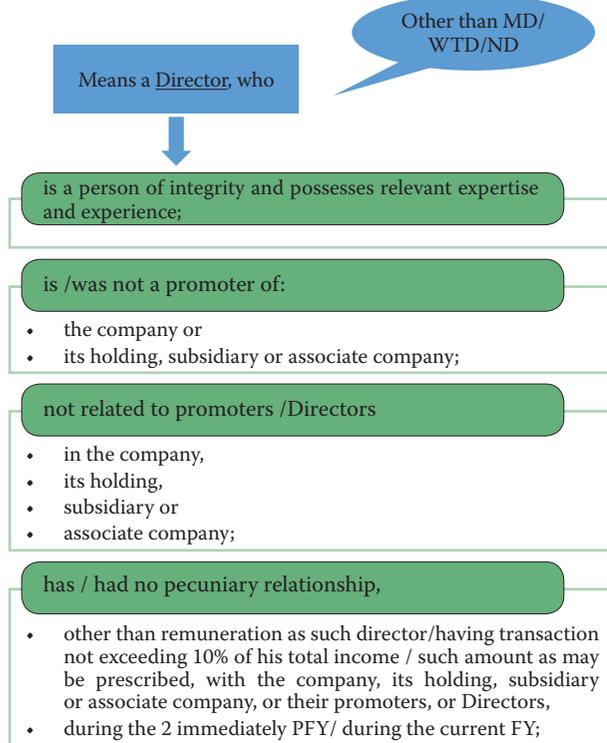
## CORPORATE AND ECONOMIC LAWS

**Higher number of ID appointed:** Due to composition of audit committee in the prescribed companies, higher number of ID shall be appointed

**Non-Applicability:** If company ceases to fulfil any of the 3 conditions for 3 consecutive years

**Exemption** from appointment of ID'S in the following class of unlisted public companies: *a Joint Venture, Wholly Owned Subsidiary, and a Dormant Company.*

### (b) Who is ID



### who, neither himself nor any of his relatives—

- holds / has held the position of a KMP or
- is / has been employee of the company / its holding, subsidiary or associate company
- in any of the 3 FY immediately preceding the FY in which he is proposed to be appointed;
- Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding 3 FY.

is / has been an employee or proprietor or a partner, in any of the 3 FYs immediately preceding the financial year in which he is proposed to be appointed, of—

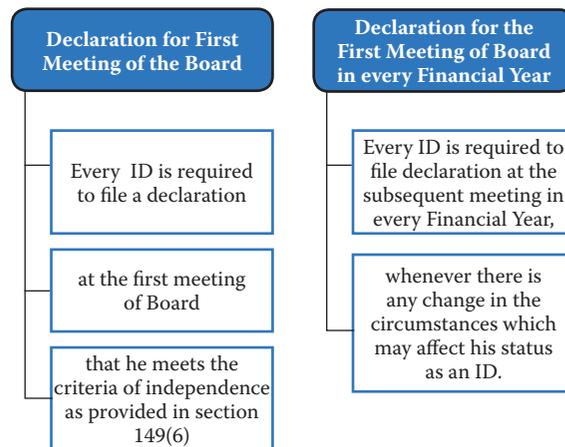
- a firm of auditors / company secretaries in practice / cost auditors of the company / its holding, subsidiary or associate company; or
- any legal / a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to 10% or more of the gross turnover of such firm;

holds together with his relatives 2% or more of the total voting power of the company; or

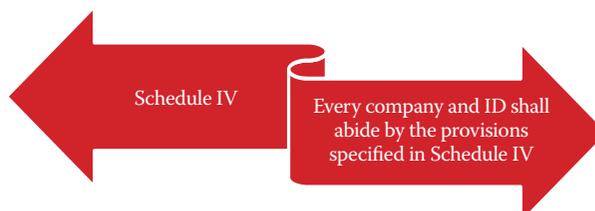
is a Chief Executive / director, of any nonprofit organisation that receives 25% or more of its receipts from the company, any of its promoters, Directors or its holding, subsidiary or associate company or that holds 2% or more of the total voting power of the company; or

who possesses such other qualifications as may be prescribed.

### (c) Submission of Declaration by the Independent Director (ID) [Section 149(7)]



### (d) Compliance of Schedule IV [Section 149(8)]



## (e) Whether ID can have Stock Options [Section 149(9)]

Notwithstanding anything contained in any other provision of this Act, but subject to the provisions of sections 197 and 198, an independent director-

shall not be entitled-  
• to any stock option

and

may receive -  
• remuneration by way of fee provided under section 197(5),  
• reimbursement of expenses for participation in the Board and other meetings, and  
• profit related commission as may be approved by the members.

Provided that if a company has no profits or its profits are inadequate, an independent director may receive remuneration, exclusive of any fees payable under sub-section (5) of section 197, in accordance with the provisions of Schedule V

## (f) Tenure of office of ID [Section 149(10) & 149(11)]

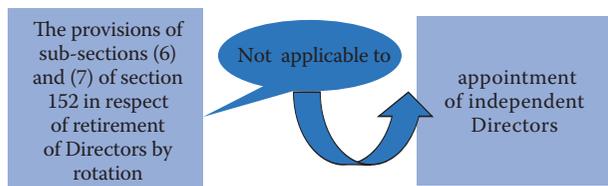
An independent director shall hold office for a term up to-	No independent director shall hold office for more than two consecutive terms,	Explanation-
<ul style="list-style-type: none"> <li>5 consecutive years on the Board of a company,</li> <li>but shall be eligible for reappointment on passing of a special resolution by the company, and</li> <li>disclosure of such appointment in the Board's report.</li> </ul>	<ul style="list-style-type: none"> <li>but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director</li> <li>Provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.</li> </ul>	<ul style="list-style-type: none"> <li>For the purposes of sub-sections (10) and (11), any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under those sub-sections.[Section 149(11)]</li> </ul>

## (g) Liability of ID [Section 149(12)]

Notwithstanding anything contained in this Act,

Parties	Shall be held liable only in respect of such-
(i) an independent director (ii) a non-executive director not being promoter or key managerial personnel	<ul style="list-style-type: none"> <li>acts of omission or commission by a company which had occurred with his knowledge,</li> <li>attributable through Board processes</li> <li>with his consent or connivance, or</li> <li>where he had not acted diligently</li> </ul>

## (h) Retirement of ID by rotation [Section 149(13)]



## (i) Remuneration of Independent Directors [Section 197(5)]

Entitled to:	Not Entitled to:
Fee provided under section 197(5) Sitting Fee for attending the meeting of the Board or its Committees: Maximum Rs. One lakh per meeting. Note: The sitting payable to ID and Women Directors shall not be less than that of the sitting fee payable to other directors.	Any stock option [Section 149(9)]
Reimbursement of expenses for participation in: (i) Board Meetings (ii) Other Meetings	
Profit related commission as may be approved by the members	

## (v) Provisions related to Small Shareholder Director (SSD) [Section 151] read with Rule 7 of the Companies (Appointment and Qualifications of Directors) Rules, 2014.

Small Shareholders Director	Is it compulsory to appoint SSD?	No (not mandatory)
	Which co. may appoint?	Listed co.
	Number	One
	Who is Small Shareholders Director	A shareholder holding shares of nominal value of not more than ₹20,000 or such other sum as may be prescribed
	How SSD is appointed	by notice - of not less than 1000 small shareholders; or one-tenth of the total number of such shareholders whichever is lower

### Special Features of SSD

- SSD shall not be liable to retire by rotation
- SSD's tenure shall not exceed a period of 3 consecutive years and on expiry of the tenure he shall not be eligible for re-appointment.
- A person shall not be appointed as SSD if the person is not eligible for appointment in terms of section 164.
- SSD shall vacate the office if (i) the SSD incurs any of the disqualification specified in section 164; (ii) the office of the SSD becomes vacant in pursuance of section 167; (iii) The SSD ceases to meet the criteria of independence as provided in section 149(6).
- SSD shall not hold the position of SSD in more than two companies at the same time. Moreover, the second company in which he is appointed as SSD shall not be in the competing business with that of the first company.
- A SSD shall not, for a period of three years from the date on which he ceases to hold office as a SSD in a company, be appointed in or be associated with such company in any other capacity, either directly or indirectly.

## CORPORATE AND ECONOMIC LAWS

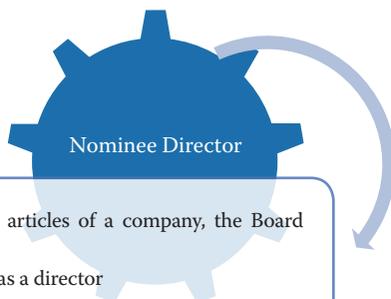
### (vi) Provisions related to Additional Director [Section 161(1)]

Additional Director		
<b>Appointment</b>	<b>Disqualified</b>	<b>Term</b>
<ul style="list-style-type: none"> <li>• AOA of a co. may confer on its BoD the power to-</li> <li>• appoint any person as an additional director</li> <li>• at any time</li> </ul>	<ul style="list-style-type: none"> <li>• A person, who fails to get appointed as a director in a GM, cannot be appointed</li> </ul>	<ul style="list-style-type: none"> <li>• Hold office up to the date of the next AGM or the last date on which the AGM should have been held, whichever is earlier.</li> </ul>

### (vii) Provision related to Alternate Director [Section 161(2)]

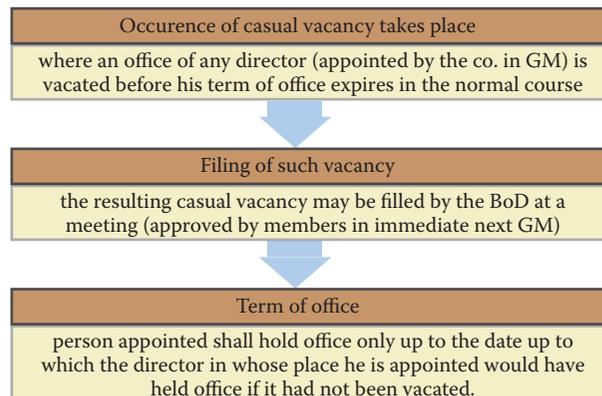
Alternate Director (ALT. DIR)	Appointed by-	BoD, if so authorised by AOA, or resolution passed by company in GM
	Time of appointment	during the absence of original director for a period of not less than 3 months from India.
<b>Exception:</b> No person shall be appointed as ALT. DIR-		who is holding any alternate directorship for any other director in the co. / holding directorship in the same co.
		for an independent director who is not qualified to be appointed as an ID
	Term of holding office	Till the period permissible to the original director
	Vacation	if & when the original director returns to India.
	Automatic re-appointment	apply to the original, and not to the alternate director.

### (viii) Nominee Director [Section 161(3)]



- Subject to the articles of a company, the Board may appoint-
- any person as a director
- nominated by any institution, or
- of any agreement or
- by the Central Government or the State Government by virtue of its shareholding in a Government company

### (ix) Appointment of director through casual vacancy [Section 161(4)]



### (x) Modes of appointment [Section 162 & 163]

#### (i) Appointment through single resolution

##### Appointment of Directors to be voted Individually

- Each director shall be appointed by a separate resolution
- Unless the meeting first agreed that the appointment shall be made by a single resolution and no vote has been cast against such agreement.
- Contravention of above shall be void.
- A motion for approving a person or for nominating a person, for appointment as a director, shall be treated as a motion for his appointment.

#### Non applicability of section 162 to the following companies:

- (1) A Government company in which the entire paid up share capital is held by the Central Government / by any State Government / Governments / by the Central Government and one or more State Governments;
- (2) A subsidiary of a Government company, referred above, in which the entire paid up share capital is held by the Government company.
- (3) A Private company

#### (ii) Appointment of Directors through proportional representation [Section 163]

AOA of co. may provide for appointment of not less than 2/3rd of total number of directors, in accordance with principle of proportional representation,

by single transferable vote / by system of cumulative voting / otherwise

##### Option to adopt principle of proportional representation for appointment of directors

Such appointments may be made once in every three years

Casual vacancies of such directors shall be filled as per section 161(4).

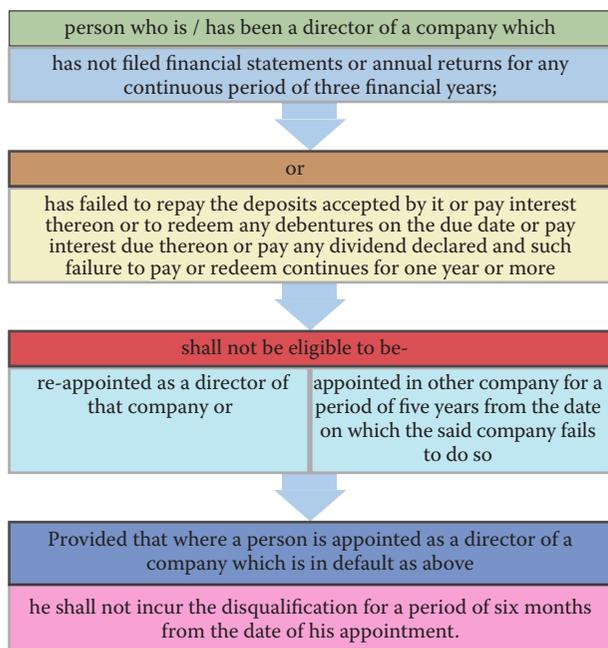
**Non applicability of section 163 to the following companies:**

- (1) A Government company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments;
- (2) A subsidiary of a Government company, referred to above, in which the entire paid up share capital is held by the Government company.

**(3) Disqualifications for appointment of director [Section 164 (1)]**

General disqualification of directors in the following situations:	(a) of unsound mind and so declared by a competent court;
	(b) an undischarged insolvent;
	(c) applied to be adjudicated as an insolvent and his application is pending
	(d) convicted by a court of any offence, and sentenced in respect thereof to imprisonment for minimum 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence. However, if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of 7 years / more, he shall not be eligible to be appointed as a director in any company.
	(e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
	(f) not paid any calls in respect of any shares of the company held by him, and 6 months have elapsed from the last day fixed for the payment of the call;
	(g) he has been convicted of the offence of dealing with related party transactions under section 188 at any time during the last preceding 5 years; or
	(h) he has not complied with section 152(3) which requires a director to have a DIN under section 154.
	(i) he has not complied with the provisions of section 165(1).

**Other disqualifications [Section 164(2)]**

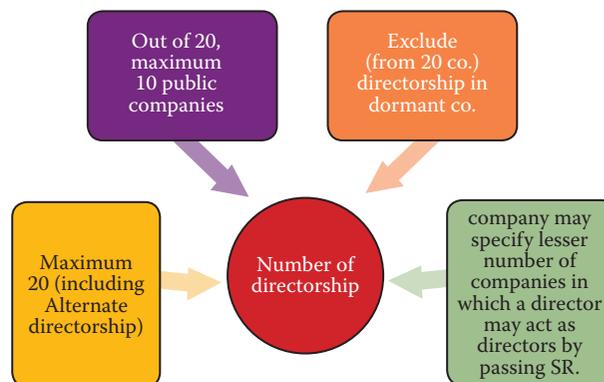


A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2).

The disqualifications as mentioned in (d), (e) and (g) of sub-section (1) of section 164 shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification.

Section 164(2) is not applicable to Government company.

**(4) Holding of maximum number of directorship [Section 165]**



Provision related to maximum holding of directorship shall not apply to section 8 companies.

**If a person accepts an appointment as a director in contravention to holding directorship in more than 20 companies / more than 10 public companies, he shall be liable to a penalty of ₹2,000 for each day after the first during which such violation continues, subject to a maximum of ₹2 Lakhs**

**(5) Duties of Directors [Section 166]**

- Act in accordance with AOA, subject to the provisions of the Act.
- Act in good faith to promote the objects of co. for benefit of its members & in the best interests of co., its employees, shareholders, community & for protection of environment.
- Exercise his duties with due & reasonable care, skill & diligence & with independent judgment.
- Not involve in a situation in which he may have a direct / indirect interest that conflicts, or possibly may conflict, with interest of co.
- Not achieve / attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates & if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company
- Not assign his office & if any assignment so made, it shall be void.
- In case of contravention, a director of the company shall be levied fine from ₹1,00,000 to ₹5,00,000.

## CORPORATE AND ECONOMIC LAWS

### (6) Vacation of Office of Director [Section 167]

Director incurs any of the disqualifications specified in sec. 164;

In case, he incurs disqualification under section 164(2), the office shall become vacant in all the companies, except the company in default

on absence from all meetings of BoD held during a period of 12 months

acts in contravention of provisions of sec. 184 relating to entering into contracts /arrangements in which he is interested;

fails to disclose his interest in any contract / arrangement in which he is interested, in contravention of the provisions of sec. 184;

becomes disqualified by an order of a court / the Tribunal;

convicted by a court for any offence & sentenced to imprisonment for not less than 6 months.

removed in pursuance of the provisions of this Act;

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

### (7) Resignation of Director [Section 168]

Director may by giving a notice in writing to co.

Board shall on receipt take note of the same

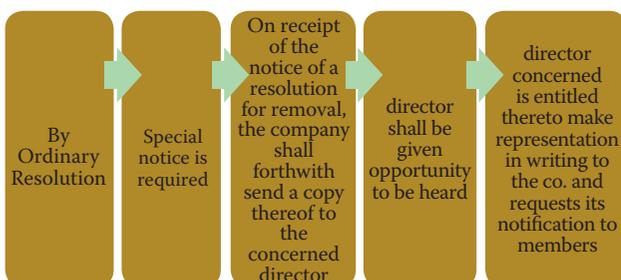
Co. shall within 30 days from receipt, intimate the Registrar & post the information on its website, if any.

Co. shall also place the fact of such resignation in BoD's Report laid in immediately following GM.

Director may forward a copy of his resignation with reasons to Registrar within 30 days of resignation

### (8) Removal of Directors [Section 169]

#### (i) Steps for removal



#### (ii) Restrictions on removal of certain directors

Directors appointed by Tribunal u/s 242

ID: who are re-appointed for second term u/s 149(10) can be removed only by passing SR+ opportunity of being heard

Directors appointed u/s 163

#### Case Scenario 1

Sukesh Web Developers Ltd. (for short SWD) is a public limited company, which was incorporated in December, 2018. Sukesh is the Managing Director of the company. The company is engaged in the business of developing Websites, Mobile App, providing of On-line Platform for conducting Business Meetings, Class Room Teachings and providing of pre-filled educational Tablets as per syllabus prescribed by the respective Central / State Boards, of Classes 6th to 12th.

At the time of incorporation, the company was formed by 7 members, who were actually classmates when they all were doing B. Tech (Electronics) from IIT, Mumbai. Initially they contributed the capital from their own resources and the paid up capital at the time of incorporation was ₹50 crores. Among the 7 members, 3 members occupied the position of director in the company. In addition to this, 2 other persons were also appointed as Independent Directors. One is a Professor (Finance) in IIM, Ahmedabad and another is an Advocate on Record at Supreme Court.

The popularity and user friendly features of ON-Line Products, increased the demand, and the turnover of the company dramatically increased from ₹100 crores in March 2019 to ₹350 crores by the end of March 2020.

The Company Secretary in full time employment of the company, apprised the Board that, company should now appoint at least one woman director on the Board. The Board agreed and the name of Sudha (the wife of Sukesh) was proposed and approved in the General Meeting of the company. Sudha was appointed as woman director in the Board of the Company with effect from 10th April, 2020.

Now, the Board of SWD consists of the following persons:

S. No.	Name	Designation	Group
1.	Sukesh	Managing Director	Promoter
2.	Rahul	Director	Promoter
3.	Parmeshwar	Director	Promoter
4.	Kamal	Independent Director	Professor (Finance)
5.	Damodar	Independent Director	Advocate on Record at Supreme Court
6.	Sudha	Woman Director	Wife of MD

During this pandemic situation, Rahul, one of the member and director in the company passed away due to Corona in December 2020. Rahul was the key person in procuring new business relations and was having good connections with various schools, in which the company's pre-loaded educational Tablets were being supplied. It was a great setback to the company.

However, the company went on doing business inspite of the fact that the minimum requirement of members in SWD (a public company) reduced from 7 to 6. The Company Secretary

apprised to the Board that Arundhati (the wife of deceased Rahul) has applied for transmission of shares in her name, which were held in the name of Rahul. The Board accepted the transmission request, and the Board Secretariat of the company entered the name of Arundhati as member of the company. Now again the minimum requirement of seven members of this public company fulfilled.

During the Financial Year 2020-21 the five meetings of the Board of Directors were held, but Sudha, being a woman director, never ever attended any meeting of the Board of Directors due to her shy nature and always sought leave of absence of the Board. The Company Secretary apprised in the Board Meeting held in April 2021, about the vacation of the post of woman director on account of continuous absence of Sudha in the Board Meetings held during the FY 2020-21 and requested the Board to again propose for the appointment of new woman director and also other director (in replacement of the demise of Rahul, Ex-Director). The Board accepted the recommendation of the Company Secretary and was advised to move ahead to complete the legal formalities.

Based on the above scenario, answer the following questions:

- The SWD was incorporated as public company. At which stage, the company is required to have at least one woman director in its Board:
  - It is not required to appoint any woman director, since the company is not a listed entity.
  - It is not required to appoint one woman director, since the paid-up capital of the company is only ₹ 50 crores, which is below the threshold limit of ₹ 100 crore.
  - It is required to appoint at least one woman director, since the turnover of the company has crossed ₹ 300 crore, which is actually ₹ 350 crores as on 31st March, 2020.
  - If both the conditions i.e. paid-up capital of ₹ 100 or more; AND turnover of ₹ 300 crore or more, are fulfilled, then such public company is required to have at least one woman director.

**Answer: (C)**

**Reason:**

Refer, Second Proviso to Section 149(1)(b) read with Rule 3(ii) (a) & (b) of the Companies (Appointment and Qualifications of Directors) Rules, 2014. If any of the parameter, viz: Paid-up capital of 100 crore OR Turnover 300 crores is achieved, the public company have to appoint at least one woman director.

- The company is not a listed entity, even then it has appointed two Independent Directors. Why?
  - By appointing independent director(s), the company is benefitted of their expertise and wisdom.
  - The company was required to appoint independent directors since its paid-up capital is ₹ 50 crore, (at the time of incorporation) which is above the threshold limit of ₹ 10 crores.
  - Appointing of Advocate on Records, Supreme Court as Independent director is beneficial to address the legal issues.
  - The company was used to get the financial advice, hence it appointed a Financial Professional as an Independent Director.

**Answer (B)**

**Reason:**

Refer Rule 4(1) of the Companies (Appointment and Qualifications of Directors) Rules, 2014.

- In the above case Sudha (the wife of Suresh, Managing Director) was appointed to fill up the vacancy of woman director. Whether appointment of relative of Managing Director to fill up the vacancy of woman director is permissible as per the provisions of the Companies Act, 2013:

- Sudha is the wife of MD, and hence cannot be considered to be appointed as woman director. So her appointment is not valid.
- There is no prohibition/ restriction in the Companies Act, 2013 to appoint any woman to fill up the vacancy of woman director even she is a relative of any of the director.
- Woman director should be chosen only from the Databank maintained by the Indian Institute of Company Affairs (IICA), New Delhi.
- Sudha should immediately break the relationship with her husband, who is MD in the company, if she wants to continue as woman director, in order to maintain the independent status.

**Answer: (B)**

**Reason:**

Refer, Second Proviso of Section 149(1)(b) read with Rule 3(ii) of the Companies (Appointment and Qualifications of Directors) Rules, 2014.

Please note that, the requirement is to fill post of woman director only and not the Independent Director.

- A public company should have minimum of:
  - 3 Members and 3 Directors
  - 3 Members and 7 Directors
  - 7 Members and 3 Directors
  - 7 Members and 7 Directors

**Answer: (C)**

**Reason:**

Refer, section 3(1) (a) and 149(1)(a)

- Rahul passed away in December, 2020. He was a member and also a director in the company. After his death the number of members as required for a public company fell short of the minimum requirement of seven. If the company carries on business for \_\_\_\_\_ while the number of members is so reduced every person who is a member of the company during the time that it so carries on business \_\_\_\_\_ shall be severally liable for the payment of the whole debts of the company contracted during that time:
  - more than 3 months / after those 3 months
  - more than 4 months / after those 4 months
  - more than 5 months / after those 5 months
  - more than 6 months / after those 6 months

**Answer: (D)**

**Reason:**

Refer, Section 3A

- Sudha being a woman director did not attended any meeting during FY 2020-21. However she always sought leave of absence of the Board. Sudha argued that when leave of absence have been sought, she may continue to be on Board by holding the Office of Woman Director. What is your opinion?
  - No, a woman director is given a special treatment under the Law, so the post of woman director shall not be treated as vacant.
  - Since in the given she has sought leave of absence of the Board, so the office of woman director shall not be treated as vacant.
  - The office of a director shall become vacant in case he absents himself from all the meetings of the Board of Directors held during a period of 12 months with or without seeking leave of absence of the Board.
  - In option (C) above, words used are 'he' and 'himself', which are used for a male person, so the intention of the law makers are very clear and the office of woman director cannot be treated as vacant. If the intention of the law maker would have been to include a woman director, the words in the above sentence [Option C] should have been used as 'she' and 'herself'.

**Answer (C)**

**Reason:**

Refer section 167(1)(b) which provides that office of a director shall become vacant in case he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board.

The words ['he' / 'himself'] used in above section should not be construed in strict sense of using for male only, rather the spirit is of, to narrate the automatic vacancy of the office of director ( whether male director or female director), if certain points of law are not adhered by the concerned director.

# CORPORATE AND ECONOMIC LAWS

## CHAPTER 2: APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

### (1) Appointment of Managing Director, Whole-Time Director or Manager [Section 196]

#### (i) Appointment of MD and Manager [Section 196(1)]

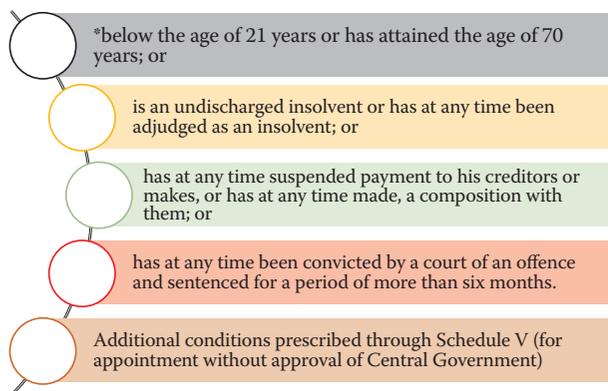


#### (ii) Tenure [Section 196(2)]



#### (iii) Disqualifications for MD, WTD or Manager [Section 196(3)]

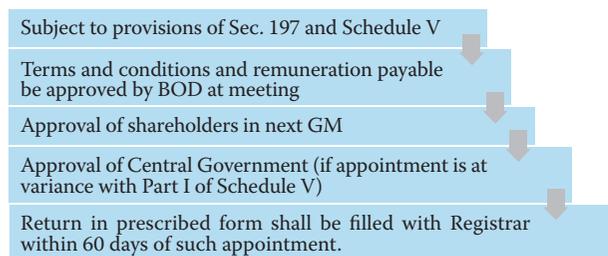
No company shall appoint or continue the employment of any person as MD, WTD or Manager who-



**\*Provided** that appointment of a person who has attained the age of 70 years may be made by:

- passing a special resolution with an explanatory statement indicating the justification for appointing such person.
- where no such special resolution is passed but votes cast in favour of such motion, and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of 70 years may be made.

#### (iv) Procedure of appointment of MD, WTD or Manager [Section 196(4)]



In case of Private company – given Section 196(4) shall not apply  
In case of Government company – given Section 196(2) and (4) shall not apply

### (2) Overall maximum Managerial Remuneration [Section 197(1)]

S. No.	Conditions	Maximum remuneration in any financial year	Conditions when remuneration can exceed as referred in column (b)
	(a)	(b)	(c)
(i)	Overall limit	11% of the net profits of the company for that financial year	Company in general meeting may authorize the payment of remuneration exceeding 11% of the net profits of the company subject to provisions of Schedule V.
(ii)	If there is one Managing director/ Whole time director/ manager	5% of the net profits of the company for that year	With the approval of the company in general meeting by Special Resolution, this limit may be exceeded.
(iii)	If there is more than one Managing director/ Whole time director/ manager	10% of the net profits	With the approval of the company in general meeting by Special Resolution, this limit may be exceeded.
(iv)	If there are directors who are neither Managing director nor whole time directors	1% of the net profits of the company if there is a managing director or a whole time director	Approval of the company in general meeting by Special Resolution is required.
(v)	If there are directors who are neither Managing director nor whole time directors	3% of the net profits of the company if there is no managing director or whole time director	Approval of the company in general meeting by Special Resolution is required.

Where the company has defaulted in payment of dues to any bank / PFI/ non-convertible debenture holders / any other secured creditor, the prior approval of the bank / PFI concerned / the non-convertible debenture holders / other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.

In case of Government Company, Section 197 shall not apply.

### (3) Appointment of KMP [Section 203]

#### (i) KMP [Section 2(51)]

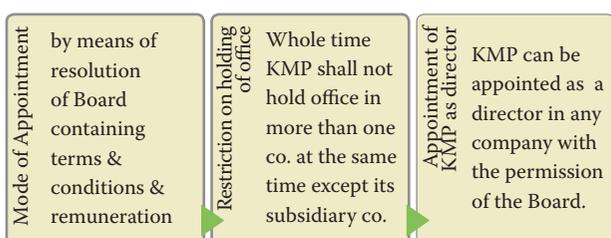


- MD/ CEO / Manager
- WTD (in absence of MD/CEO/Manager)
- CS;
- CFO.
- Officer not more than one level below the directors (in whole time employment designated as KMP)
- Other prescribed officer

**(ii) Companies which mandatorily required appointment of whole time KMP [Section 203(1) + Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014]**



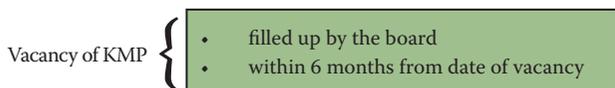
**(iii) Provisions related to appointment of whole time KMP [Section 203(2) & (3)]**



**(iv) Managing Director / Manager in more than one company [Third proviso to section 203(3)]**



**(v) Vacancy in office of KMP [Section 203(4)]**



In case of Government Company, as per section 4A, the provisions of sub-sections (1), (2), (3) and (4) of section 203, shall not apply to a Managing Director / Chief Executive Officer / Manager and in their absence, a Whole-Time Director of the Government Company.

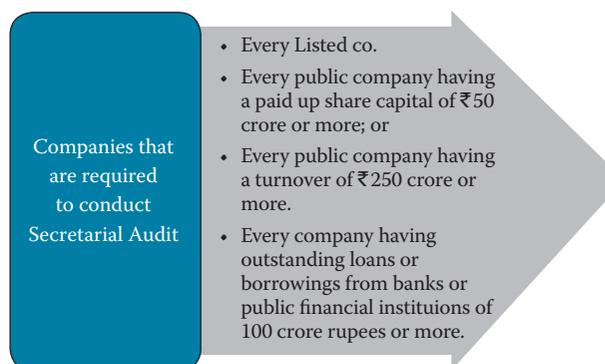
**(vi) Penalty [Section 203(5)]**

On company	Every Director & KMP in default	where the contravention is a continuing one
• fine of 5 lakh rupees	• fine extending to ₹50000/-.	• with a further fine from ₹1000/- for each day after the first during which such default continues to ₹5 lakh

**(4) Functions of the Company Secretary [Section 205]**

Functions of the CS includes	
	to report to the Board about compliance
	to ensure that the co. complies with the applicable secretarial standards;
	to provide to the directors of the co. guidance as they may require, with regard to their duties, responsibilities and powers;
	to facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings
	to obtain approvals from the Board, general meeting, the government and other authorities as required
	to represent before various regulators, and other authorities in connection with discharge of various duties under the Act;
	to assist the Board in the conduct of the affairs of the co.;
	to assist and advise the Board in ensuring good corporate governance and compliance & best practices
	to discharge such other duties as have been specified under the Act or rules; &
	such other duties as may be assigned by the Board from time to time.

**(5) Secretarial Audit (Section 204)**



The above companies shall annex with its Board's report made in section 134(3), a secretarial audit report (in Form No. MR.3), given by a company secretary in practice.

**Case Scenario 2**

Saraswati Golden Beverages Ltd. is an unlisted public company engaged in the business of manufacturing and selling of soft drinks. For the financial year ended on 31st March, 2020, its paid-share capital was ₹15 crores.

Sourabh is the Managing Director of the company, whose term is going to expire by the end of June 2021.

The Board of Directors of the company approved the re-appointment of Sourabh as Managing Director in meeting of the Board held on 5th April, 2020 and was subsequently approved by the shareholders in the Extra-ordinary General Meeting held on 25th April, 2020. The term of appointment was made for 7 years.

## CORPORATE AND ECONOMIC LAWS

Subsequently, Sourabh was selected for the post of CEO in another company in same business line. He resigned from the post of Managing Director from the present company on 25th May, 2020. He demanded compensation from the present company for the period (i) from the date of resigning and leaving the services up to 30.06.2021 on the present remuneration basis and (ii) from 1st July, 2021 to 30.06.2028 on the basis of remuneration fixed at the time of re-appointment.

After the resignation of Sourabh, the Nomination and Remuneration Committee of Board recommended the name of Mayank (as MD), which the Board of Directors approved in its meeting held on 1st June, 2020, which was also approved by the shareholders in the General Meeting held on 28th June 2020. The appointment was made for 5 years effective from 1st June 2020. The Board also celebrated the 69th birthday of Mayank after his joining, on 10th June 2020.

Deepak, who was designated as Company Secretary in the company died on 25th August, 2020 due to COVID-19. The company's AGM was also scheduled to be held on 5th September, 2020. The AGM was convened in the absence of the Company Secretary. The Company made an advertisement in the news paper about the vacancy of the Company Secretary but no one was ready to join during the COVID-19. Ultimately the appointment was made in the month of March 2021.

Based on the above scenario, answer the following questions:

- Whether the re-appointment of Sourabh for the post of Managing Director with effect from 1st July, 2021 is valid:
  - Sourabh's re-appointment is valid.
  - Sourabh's re-appointment is not valid as per the provisions of the Companies Act, 2013.
  - There should be a cooling period of 3 years between the retirement and re-appointment of Managing Director.
  - There should be a cooling period of 5 years between the retirement and re-appointment of Managing Director.

**Answer: (B)**

### Reason:

Section 196(2) provides that **no company shall appoint or re-appoint any person as its managing director**, whole-time director or manager for a **term exceeding five years** at a time: The proviso to section 196(2) provides that **no re-appointment shall be made earlier than one year before the expiry of his term**. In the given case, the Sourabh's re-appointment for Managing Director was made for 7 years. Further, his term as Managing Director was expiring by the end of June 2021, whereas, the re-appointment exercise has already been made before the expiry of his term.

- Sourabh after resigning from the services from the present company demanded compensation for the period (i) from the date of resigning and leaving the services to 30.06.2021 on the present remuneration basis and (ii) from 1st July, 2021 to 30.06.2028 on the basis of remuneration fixed at the time of re-appointment. Will he is entitled to get the compensation:
  - Yes, he is entitled to get the compensation for the period from the date of resigning the present company i.e. 25.05.2020 to 30.06.2021 at the rate of present remuneration.
  - Sourabh will also be entitled to get the compensation, as mentioned at para (A) above PLUS from 1st July, 2021 to 30.06.2028 on the basis of remuneration fixed at the time of re-appointment.
  - Sourabh will not get any compensation from the present company as per the provisions of the Companies Act, 2013.
  - Sourabh can be given compensation, subject to the approval of the shareholder in the General Meeting.

**Answer: (C)**

### Reason:

Section 202(2)(b) provides that **no payment of compensation shall be made where the director resigns from his office otherwise than on the reconstruction of the company or its amalgamation** as aforesaid.

- After joining as Managing Director on 1st June, 2020, the Mayank celebrated his 69th Birthday on 10th June, 2020. His appointment was made for 5 years effective from 1st June, 2020 which will be completed on 30th June, 2025. Mayank will attain the age of 70 years on 10th June, 2021. Whether his appointment is valid?
  - Mayank will automatically vacate the post of Managing Director after attaining the age of 70 years.
  - Mayank's present appointment is not valid since his appointment is for 5 years and just after one year of his joining, he will attain the age of 70.
  - Mayank's appointment is valid since at the time of appointment he has not attained the age of 70 years. However, to be on the safer side, before reaching the age of 70 years, the shareholders may pass special resolution for continuation of Mayank for the post of Managing Director.
  - Mayank's appointment is valid as he has appointed as the Managing Director for the first time.

**Answer: (C)**

### Reason:

Section 196(3)(a) provides that **no company shall appoint or continue the employment of any person as managing director**, whole-time director or manager who is below the age of 21 years or **has attained the age of 70 years**.

The Bombay HC in the case of *Sridhar Sundararajan v. Ultramarine & Pigments Ltd.*, [2015] 59 taxmann.com 249 has opined that there is no mid-tenure cessation of the Managing Directorship as a result of section 196(3)(a). All that section 196(3)(a) does, is to sound a note of caution in the public interest and to demand from the company a special resolution when a person who has already crossed the age of 70 years on certain date is proposed to be appointed or re-appointed. [2016] 66 taxmann.com 67 (Article)]

- The vacancy arrived due to sudden demise of company secretary can be filled up by the Board of Directors:
  - Before the convening of the AGM
  - After the convening of the AGM.
  - within a period of three months from the date of such vacancy.
  - within a period of six months from the date of such vacancy.

**Answer: (D)**

### Reason:

Section 203(4) provides that 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**.

- What are the consequences if a whole-time company secretary is not appointed?
  - The company is not liable to pay penalty since it advertised but no one was ready to join the company due to COVID-19 situation.
  - Only the company is liable to pay the penalty as prescribed under the Company Act, 2013
  - Only the directors of the company are liable to pay penalty as prescribed under the Company Act, 2013
  - The company, every director and KMP all are liable to pay penalty as prescribed under the Company Act, 2013.

**Answer: (D)**

### Reason:

Section 203(5) provides that if any company makes any default in complying with the provisions of this section, such company shall be liable to a **penalty of five lakh rupees** and **every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees** and where the default is a **continuing one**, with a further penalty of **one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees**.

**CA FINAL - PAPER 4: CORPORATE AND ECONOMIC LAWS**

At the Final level, the Company Law portion of the paper “Corporate and Economic Laws” involves conceptual understanding, analysis and application of provisions of the Companies Act, 2013 to solve application-oriented issues. In this capsule for students, an attempt has been made to comprise the significant provisions of the Companies Act, 2013 covered under the Chapter 3, in continuation to earlier published capsule covering Chapter 1 and Chapter 2 of the Company Law part of the study material. Before referring the capsule, you students are advised to read the October 2021 edition of the Study Material with relevant RTP for a thorough understanding of the relevant provisions and the related amendments of Companies Act, 2013. This will supplement your reading and recapitulating the important aspect of the relevant legal provisions. In fact, by giving a quick glance to the significant provisions of the said chapter and illustrative case scenario followed by MCQs will hone your application skills and understanding and revising the same. This capsule is intended to assist you in the process of revision of concepts discussed in the Study Material.

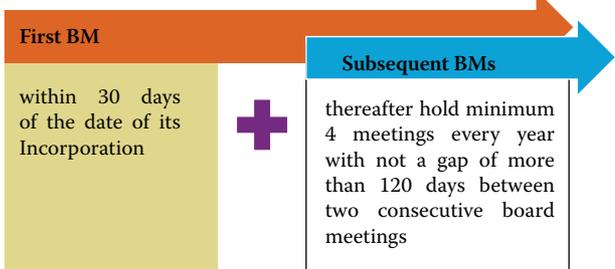
**CHAPTER 3: MEETINGS OF BOARD AND ITS POWERS**

**(1) Board Meeting (BM) [Section 173]**

**(1) Meetings of Board**

**(i) Holding of BM [Section 173(1)]-**

Every company shall hold Board meeting of its Board of Directors in the following manner:



**(ii) Participation in BM [Section 173 (2)]**



- in person
- through video conferencing
- other audio visual means as prescribed under Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014

**(iii) Notice of the BM [Section 173(3) & (4) + Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014]**

**A meeting of the Board shall be called by giving**

- not less than seven days' notice in writing
- to all the directors at registered address
- sent by hand delivery/ by post/ by electronic means

**Shorter notice less than 7 days may be served**

- to transact an urgent business
- atleast one independent director, if any, shall be present
- in his absence, decisions taken shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any

**Option to participate through video conferencing mode/ other audio visual means (Rule 3)**

- notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means

**On receipt of notice**

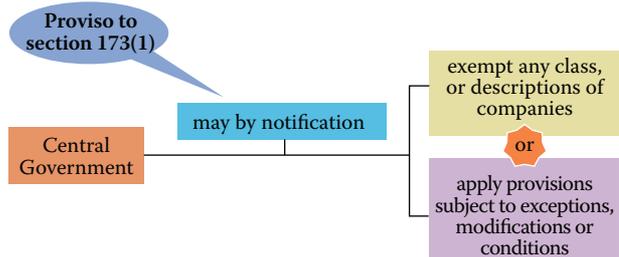
- a director intending to participate through video conferencing or audio visual means shall communicate his intention to the Chairperson or the company secretary of the company

**No intimation from director of his participation through the electronic mode**

- it shall be assumed that the director shall attend the meeting in person

In case of failure to serve the notice -Every officer of the company whose duty is to give notice, shall be liable to a penalty of ₹25,000.

**(iv) Exemption/relaxation from applicability of section 173(1)**



**Relaxation to companies from compliance of section 173**

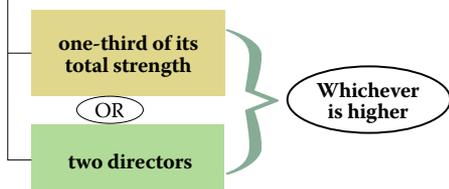
Section 8 companies- Applicable to the extent that the Board of Directors, shall hold at least one meeting within every six calendar months.	OPC, Small Co., Dormant Co. Private start ups- deemed to have been complied with the provisions of section 173, if at least one meeting of the BoDs has been conducted- • in each half of a calendar year; and • the gap between the two meetings is not less than 90 days.
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In case of OPC, in which there is only one director on its Board of Directors, it shall not be required to hold even a single Board meeting during the year.

## (2) Quorum [Section 174]

### (i) Quorum

quorum for a Board Meeting shall be -



For section 8 Companies, quorum for the BM, either 8 members or 25% of its total strength whichever is less, however, quorum shall not be less than two members.

### (ii) Quorum when directors participate through Video Conferencing

In case of participation of director through video conferencing or by other audio visual means

- shall also be counted for the purpose of determining the quorum at the meeting,
- unless he is to be excluded for any items of business under any provisions of the Act or the Rules [Explanation as given in Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014]

### (iii) Where quorum is less than prescribed under the Act [Section 174 (2) & (3)]

Where the quorum of continuing directors is reduced (as fixed by Act)

the continuing directors/director may act for the purpose of-

- increasing the number of directors to that fixed for the quorum, or
- of summoning a general meeting of the company

Where at any time the number of interested directors exceeds or is equal to 2/3 of the total strength of the BOD

the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time

In case of Private Company - Section 174(3), shall apply with the exception that the interested director may also be counted towards quorum in such meeting after disclosure of his interest pursuant to section 184.

### (iv) Where a meeting of the Board could not be held for want of quorum [Section 174(4)]

Unless the articles of the company otherwise provide,

the meeting shall automatically stand adjourned

- to the same day
- at the same time and place
- in the next week,

if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place

## (3) Powers of Board [Section 179]

### (i) Powers to be exercised by the Board [Section 179(1)]

The BoD of a company shall be entitled to

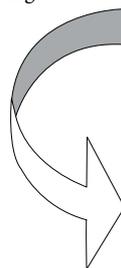
- exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do

Exception to Board's Power:

- The Board shall not exercise any power or do any act or thing which is directed or required,
- whether under this Act or by the memorandum or articles of the company or otherwise,
- to be exercised or done by the company in general meeting

### (ii) Illustrative Powers of Board [section 179(3)]

Board may exercise its powers by means of the resolution passed at a duly convened Board meeting



- make calls on shareholders in respect of money unpaid on shares
- authorise buy-back of securities
- issue securities
- borrow monies
- invest the funds of the company
- grant loans or give guarantee or provide security in respect of loan
- approve financial statement and the Board's report
- diversify the business
- approve amalgamation, merger or reconstruction
- take over a company or acquire a controlling or substantial stake in another company
- any other matter which may be prescribed in Rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014

The Board may, by a resolution passed at a meeting, delegate the powers specified in clauses (d) to (f) on conditions as it may specify 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

Additional powers prescribed under Rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014

to make political contributions;

to appoint or remove KMP;

to appoint internal auditors and secretarial auditor;

**(4) Restrictions on powers of Board [Section 180(1)]**

The BoD of a company shall exercise the following powers only with the consent of the company by a special resolution

(a) To sell, lease or dispose of the undertaking(whole/substantially of the whole) of the company, or it owns more than one, of the whole/substantially the whole of any of such undertakings

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

(c) borrow money, together with the money already borrowed by the company exceeding aggregate of its paid-up share capital, free reserves and securities premium 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

**Exemption to Clause (a) and conditions for such transaction [Section 180(3) & (4)]**

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

OR

the sale / lease of any property of the company where the ordinary business of the company consists of / comprises, such selling or leasing

Conditions for transaction referred to in clause (a) of sub-section (1)

Any special resolution passed by the company consenting to the transaction -

may stipulate such conditions as may be specified in such resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transactions

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

**Restriction as to borrowing of money under Clause(c) [Section 180(2) & (5)]**

Every special resolution passed by the company in general meeting in relation to the borrowing of money-

• shall specify the total amount up to which monies may be borrowed by the Board of Directors.

No debt incurred by the company in excess of the limit imposed -

• shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed had been exceeded.

Section 180 is not applicable to private company.

**(5) Powers of BoD of a Company to make contributions [Section 181, 182, & 183]**

To Bona fide charitable and other funds

- any amount the aggregate of which, in any financial year, exceed 5% of its average net profits for the three immediately preceding financial years.
- prior permission of the company in general meeting shall be required

To Political Contributions

- a company
- may contribute any amount to any political party,
- with a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors,
- and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making of the contribution authorised by it.
- Except a Government company, and a company which has been in existence for less than three financial years

To National Defence Fund, etc.

- BoD or any person or authority exercising the powers of the Board of Directors of a company in general meeting, may-
- contribute such amount as it thinks fit to the National Defence Fund or any other Fund approved by the Central Government for the purpose of national defence

**(6) Disclosure of interest by director [Section 184]**

**(i) Applicability:**

Section 184 is applicable on

- all directors of the company and
- all types of Companies

## (ii) When to disclose & what are the disclosures [Section 184(1) & (2)]

### When to disclose

- Every director shall disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in manner as prescribed in Rule 9 the Companies (Meetings of Board and its Powers) Rules, 2014:
  - At the First meeting of the Board in which he participates as a director; and
  - Thereafter, at the first meeting of the Board in every financial year; or
  - Whenever there is any change in the disclosures already made, then at the first Board meeting held after such change.

### Disclosures

- Every director of a company who is concerned or interested in a contract or arrangement /proposed contract or arrangement entered into /to be entered into:
  - with a body corporate in which such director or such director in association with any other director, holds more than two per cent shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or
  - with a firm or other entity in which, such director is a partner, owner or member, as the case may be,
  - the directors shall disclose his concern or interest, by giving a notice in writing at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting.

### Exceptions to following companies from application of section 184(2):

- shall apply to private companies with the exception that the interested director may participate in such meeting after disclosure of his interest
- shall apply to Section 8 Companies, only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds ₹1 lakh

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

## (iii) Manner of Disclosure [Rule 9 of the Companies (Meeting of Board and its Powers) Rule, 2014]

Every director shall disclose his concern / interest

- by written notice

in Form

- MBP-1

Such Director shall

- cause it to be disclosed at the meeting held immediately after the date of the notice

All notices shall be kept

- at the registered office of the company

Preserved

- for eight years from the end of the financial year to which they relate

They shall be kept in the custody of the

- Company Secretary or any other person authorised by the Board

## (iv) Consequences of non-disclosure [Section 184(3) 184(4)]

### Consequences of non-disclosure of concerned or interest in any contract or arrangement:

- It shall be voidable at the option of company
- Penalty levied on a director of the company
- With fine of ₹1 lakh

### Exceptions

Section 184 shall not apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent of the paid-up share capital in the other company or the body corporate

## (7) Loan to directors, etc. [Section 185]

### (i) No providing of loan / guarantee / security-General Law [Section 185(1)]

No company shall, directly or indirectly, advance

any loan, including any loan represented by a book debt to

or

give any guarantee

or

provide any security in connection with any loan

- to any director of company/ or of a company which is its holding company, or
- any partner or relative of any such director, or
- any firm in which any such director or relative is a partner.

### (ii) Conditions when company may advance loan/give guarantee/ provide security [Section 185(2)]

A company may advance any loan / give any guarantee / provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, only when-

a Special Resolution is passed by the company in general meeting along with the Explanatory statement

the loans are utilised by the borrowing company for its principal business activities.

(iii) Who will be “any person in whom any of the director of the company is interested” [Explanation to section 185(2)]

"Any person in whom any of the director of the company is interested" means—

any private company of which any such director is a director / member;	any body corporate at a general meeting of which not less than 25% of the total voting power may be exercised / controlled by any such director, / by 2 or more such directors, together; or	any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions / instructions of the Board, or of any director/s, of the lending company.
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(iv) Exceptions to section 185 [Section 185(3)]

<b>Exceptions to section 185</b>	giving of any loan to a managing director or whole-time director—	as a part of the conditions of service extended by the company to all its employees; or
		pursuant to any scheme approved by the members by a special resolution; or
	a company which in the ordinary course of its business provides loans/ /gives guarantees /securities for-	the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan; or
	any loan made by a holding company to its wholly owned subsidiary company / any guarantee given/ security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or	Provided loans made are utilized by the subsidiary company for its principal business activities
	Any guarantee given or security provided by a holding company in respect of any loan made by any bank or financial institution to its subsidiary company:	

(vi) Exemptions

**Exemptions to following companies from application of section 185 –**

<b>Nidhis</b> • Provided the loan is given to a director or his relative in their capacity as members and such transaction is disclosed in the annual accounts by a note.	<b>Private company</b> • In whose share capital no other body corporate has invested any money; • If the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice of its paid up share capital or ₹50 crore rupees, whichever is lower; and • Such company has no default in repayment of such borrowings subsisting at the time of making transactions under this section	<b>Government company</b> • Such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the state Government before making any loan or giving any guarantee or providing any security under the Section.
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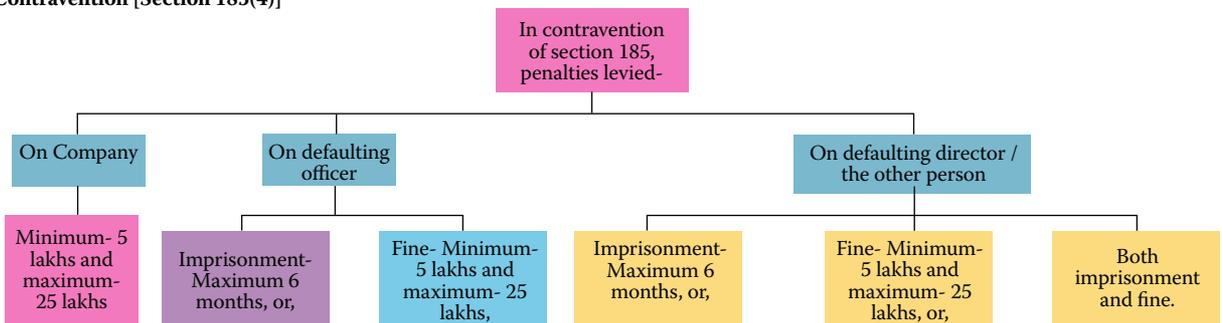
Above exemption is applicable to a **private and government company** if it has not committed a default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar.

**(8) Loan and Investment by Company [Section 186]**

(i) Investment by company [Section 186(1)]

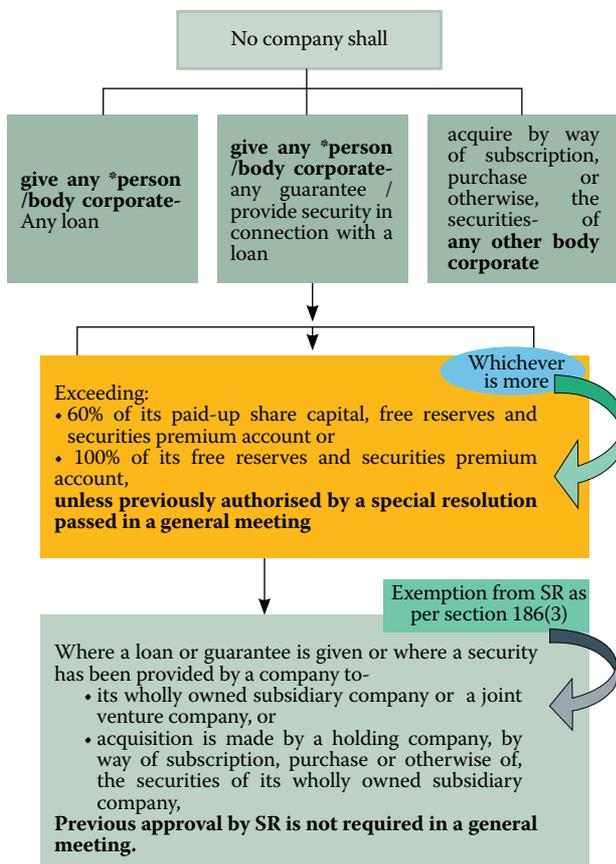
<b>Investment by company</b>
• a company shall unless otherwise prescribed, make investment through not more than 2 layers of investment companies
<b>Exemption</b>
However, above provisions shall not affect,— • a company <b>from acquiring any other company incorporated in a country outside India</b> if such other company has investment subsidiaries beyond two layers as per the laws of such country; • a <b>subsidiary company from having any investment subsidiary</b> for the purposes of meeting the requirements under any law / under any rule / regulation framed under any law for the time being in force.

(v) Contravention [Section 185(4)]



# CORPORATE AND ECONOMIC LAWS

(ii) Ceiling on the investment [Section 186(2) & (3) Read with Rule 13 of the Companies (Meetings of Board and its Powers) Rules, 2014]



\*Word "person" does not include any individual who is in the employment of the company.

(iii) Disclosure to members [Section 186(4)]

Company shall disclose to the members in the financial statement the full particulars of-

loan given,	investment made or guarantee given or security provided,	the purpose for which the loan / guarantee / security is proposed to be utilized by the recipient of the loan / guarantee / security.
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(iv) Requirements for the process of investment/ loan/guarantee/providing of security [Section 186(5)]



\*Provided that prior approval of a PFI shall not be required –

- where the aggregate of the loans and investments **so far made**, the amount for which guarantee or security **so far provided** to or in all other bodies corporate,
- along with the investments, loans, guarantee or security **proposed to be made or given**

**does not exceed the limit** specified under section 186(2) and there is **no default in repayment of loan instalments or payment of interest** thereon as per the terms and conditions of such loan to the PFI.

(v) Maintenance of register [Section 186(9) & (10)]

**Every company giving loan /a guarantee / providing security /making an acquisition shall**

- keep a register
- containing such particulars and maintained as per Rule 12 of the Companies (Meetings of Board and its Powers) Rules, 2014
- be kept at the registered office of the company
- be open to inspection at such office and extracts may be taken therefrom by any member

(vi) Non-applicability of section 186 [Section 186(11)]

Except sub-section (1) of section 186

**Section 186 shall not apply**

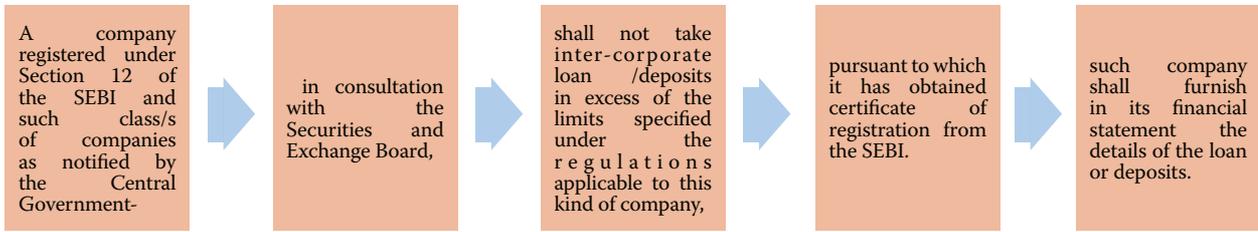
to a loan made, guarantee given /security provided or investment made by-

- a banking company or
- an insurance company or
- a housing finance company in the ordinary course of its business or
- or a company established with the object of and engaged in the business of financing industrial enterprises or
- of providing infrastructural facilities.

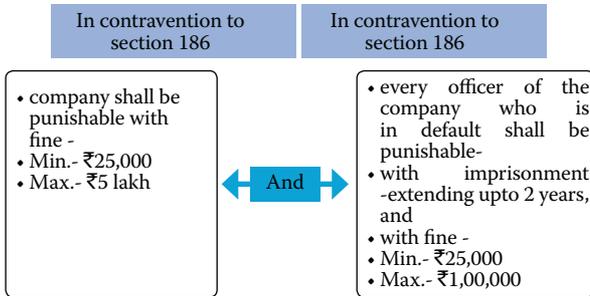
to any investment-

- made by an investment company;
- of shares allotted in pursuance of section 62(1)(a) or in shares allotted in pursuance of rights issues made by a body corporate;
- made, in respect of investment or lending activities, by a NBFC registered under Chapter III-B of the RBI Act, 1934 and whose principal business is acquisition of securities.

**(vii) Restriction on company registered under SEBI on inter-corporate loans [Section 186(6)]**



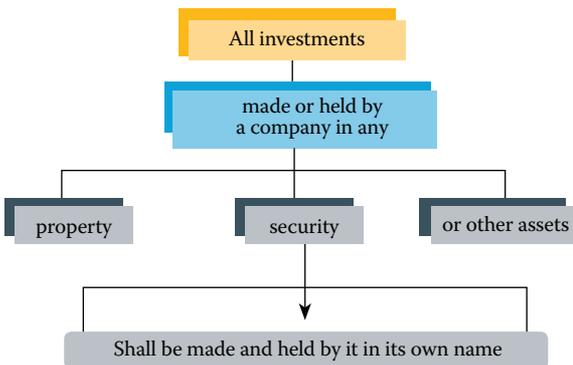
**(viii) Penalty [Section 186(13)]**



**Non-applicability of Section 186 to a Government company**  
 -to a Government company engaged in defence production.  
 -A Government company, other than a listed company, in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before making any loan or giving any guarantee or providing any security or making any investment under the section.  
 Such exception is applicable to a Government company which has not committed a default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar.

**(9) Investments of company to be held in its own name [Section 187]**

**(i) Investment made by company in its own name [Section 187(1)]**



However, 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.

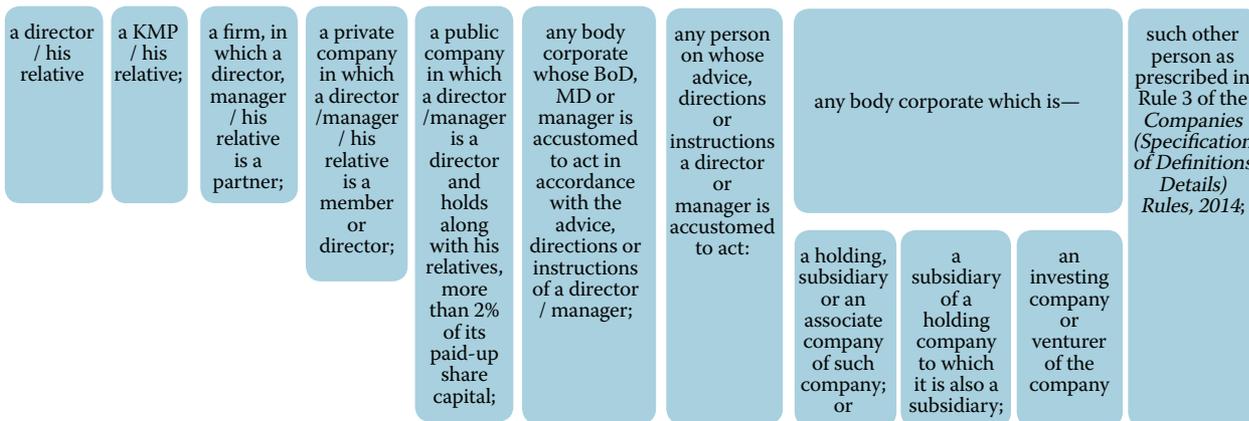
**(ii) Following investment is allowable to the company [Section 187(2)]**

- (a) depositing of shares /securities with a bank, for the collection of any dividend / interest payable thereon;
- or
- (b) depositing /transferring to / holding of shares /securities in the name of, the SBI or a scheduled bank (Banker), in order to facilitate the transfer thereof
- or
- (c) depositing with /transferring to, any person any shares / securities, by way of security for the repayment of any loan advanced to the company / the performance of any obligation undertaken by it;
- (d) holding investments in the form of securities held as a beneficial owner.

## (10) Related Party Transactions [Section 188 read with Rule 3 of the Companies (Specification of Definitions Details) Rules, 2014]

### (i) Meaning of Related Party

Related Party (Section 2 clause 76) with reference to a company, means-



### (ii) Contracts with related parties (RP) which are covered under section 188 [Section 188(1)]

Company shall enter into any contract or arrangement with a RP with respect to the below transactions, with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as prescribed under rule 15(1) of the Companies (Meetings of Board and its Powers) Rules, 2014

#### Transactions



However, no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as prescribed under Rule 15(3) of the Companies (Meetings of Board and its Powers) Rules, 2014, shall be entered into except with the prior approval of the company by a resolution. [First proviso to section 188(1)]

### (iii) Prescribed limits for the transactions to be entered into as contracts or arrangements with the prior approval of the Company [Rule 15(3) of the Companies (Meetings of Board and its Powers) Rules, 2014]

(A) Where the transaction/s to be entered into as contracts or arrangements with respect to clauses (a) to (e) of section 188(1), with criteria as mentioned below -

Conditions with respect to transactions to be entered into with the prior approval	Prescribed limits for the transactions to be entered into as contracts or arrangements
sale, purchase or supply of any goods or materials, directly or through appointment of agent	Amounting to <b>10%</b> or more of the <b>turnover</b> of the company, as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188
selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent	Amounting to <b>10%</b> or more of <b>net worth</b> of the company, as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188
leasing of property of any kind	Amounting to <b>10%</b> or more of the turnover of the company, as mentioned in clause (c) of sub-section (1) of section 188
availing or rendering of any services, directly or through appointment of agent	Amounting to <b>10%</b> or more of the <b>turnover</b> of the company, as mentioned in clause (d) and clause (e) respectively of sub-section (1) of section 188

It is hereby clarified that the limits specified above, shall apply for transaction/s to be entered into either individually or taken together with the previous transactions during a financial year.

**(B) Transaction entered is for appointment to any office or place of profit:** Where the transaction/s to be entered into as contracts or arrangements is for appointment to any office or place of profit in the company, its subsidiary company /associate company at a monthly remuneration exceeding ₹2.5 lakh; or

**(C) Transaction entered is for remuneration for underwriting the subscription of any securities etc.:** Where the transaction/s to be entered into as contracts or arrangements is for remuneration for underwriting the subscription of any securities or derivatives thereof, of the company exceeding 1% of the net worth as mentioned in section 188(1)(g).

**(iv) Concept of “Arm’s length transaction”**

Meaning			
a transaction	between two related parties	conducted as if they were unrelated,	so that there is no conflict of interest

**Applicability of section 188 on transactions on arm's length basis**

<b>Section 188(1) shall not apply to any transactions</b>	Except the transactions which are not on an arm's length basis, with the appropriate approval.
<ul style="list-style-type: none"> <li>entered into by the company in its ordinary course of business &amp; at an arm's length basis with no approval</li> </ul>	

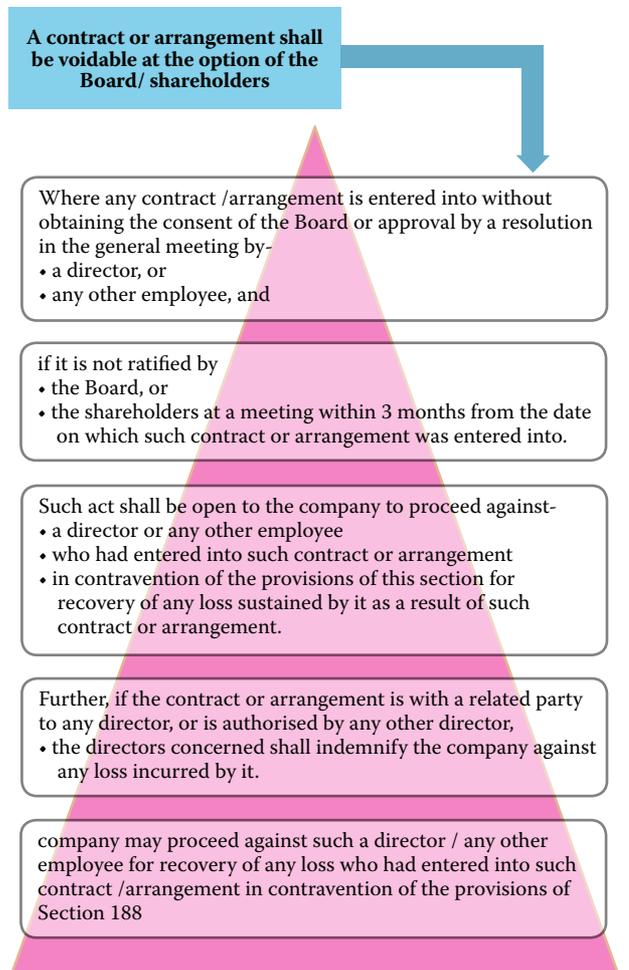
**(v) Relevant particulars to disclose in the notice of a general meeting and consequences on being a related party/or in relation to a related party, in a transaction. [Proviso & explanation to Section 188]**

<ul style="list-style-type: none"> <li>The explanatory statement to be annexed to the notice of a general meeting as per section 101, shall contain-</li> <li>name of the related party;</li> <li>name of the director / KMP who is related, if any;</li> <li>nature of relationship;</li> <li>nature, material terms, monetary value and particulars of the contract / arrangement;</li> <li>any other information relevant / important for the members to take a decision on the proposed resolution.</li> </ul>	<p>No voting by member who is related party</p> <ul style="list-style-type: none"> <li>no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party.</li> <li>the above shall not apply to a company in which ninety per cent or more members, in number, are relatives of promoters or are related parties.</li> </ul>	<p>Where any director is interested in any contract / arrangement with a related party, such director shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement. [Rule 15(2)]</p>
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**(vi) Passing of resolution is not necessitated [Proviso to Section 188(1)]**

No resolution required to be passed by members under first proviso	for transactions entered into between a holding company and its wholly owned subsidiary, whose accounts are consolidated with such holding company, and are placed before the shareholders at the general meeting for approval.
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**(vii) Consequences of Related party transaction [Section 188(3) & (4)]**



**(viii) Penalty for contravention [Section 188 (5)]:**

In the case of a-	Liability- Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall-
Listed company	liable to be penalty of ₹25 lakh; and
Any other company	liable to a penalty of ₹5 lakh

Exemption from applicability of section 188 for transactions arising out of Compromises, Arrangements and Amalgamations dealt with under specific provisions of the Companies Act, 2013.

**Case scenario**

Atlantic Garments Ltd., a company engaged in the business of manufacturing of garments for all seasons. The certificate of incorporation of the company bears the date 15<sup>th</sup> January, 2021. The company have in all 14 directors.

The first meeting of the Board was held on 15<sup>th</sup> February, 2021. Thereafter, the subsequent meetings of the Board were held on 29<sup>th</sup> February, 2021, 25<sup>th</sup> March, 2021, 30<sup>th</sup> August, 2021 and on 25<sup>th</sup> December, 2021.

In these meetings of the full strength of the Board was present except in the meeting of 25<sup>th</sup> March, 2021. In this meeting only 4 persons were present.

One of the director's address, as mentioned in the DIN, is of Mumbai, but he actually resides at Pune with his son. He insisted the Company Secretary to send the physical agenda papers to his Pune address

instead of the Mumbai address. He also requested to provide the air traveling expenses to him for attending the Board Meeting from the Pune to Mumbai & back.

Based on the above scenario, answer the following questions:

1.	<p>The first meeting of the Board was conducted on 15<sup>th</sup> February, 2021. Whether this meeting was convened in time, as prescribed under the Companies Act, 2013:</p> <p>A. Yes, as the first meeting of the Board may be convened at any time.</p> <p>B. Yes, as the first meeting of the Board shall be convened within 30 days of the date of incorporation. Here the date of incorporation is 15<sup>th</sup> January 2021 and the meeting should have been convened within 30 days, i.e., on or before 14<sup>th</sup> February, 2021.</p> <p>C. Yes, as the first meeting of the Board may be convened within a quarter of the date of incorporation.</p> <p>D. Yes, as the convening of first meeting within 30 days of its incorporation is not mandatory.</p> <p><b>Answer: (B)</b></p>
<b>Reason:</b>	
<p>Section 173(1) provides that every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board.</p> <p>From 15<sup>th</sup> January, 2021 (leaving this day) to 14<sup>th</sup> February, 2021 (including this day) 30 days are completed. Hence the first meeting of the Board should be convened between 16<sup>th</sup> January to 14<sup>th</sup> February, 2021 (both days inclusive). But in this case the meeting of Board was convened on 15<sup>th</sup> February, 2021 which is beyond the 30 days as prescribed under the Companies Act, 2013.</p>	
2.	<p>Whether the meeting of the Board held on 25<sup>th</sup> March, 2021 was valid:</p> <p>A. The meeting of the Board held on 25<sup>th</sup> March, 2021 was valid since it was convened after the last meeting held on 29<sup>th</sup> February, 2021 i.e. within the period of 120 days as prescribed under the Companies Act, 2013.</p> <p>B. The meeting of the Board was valid since the required quorum was present in the meeting.</p> <p>C. The meeting of the Board was not valid since the required quorum was not present in the meeting.</p> <p>D. There is no need to have quorum in the meetings of the Board.</p> <p><b>Answer: (C)</b></p>
<b>Reason:</b>	
<p>Section 174(1) provides that the quorum for a meeting of the Board of Directors of a company shall be <b>one third of its total strength or two directors, whichever is higher</b>, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.</p> <p>Section 174(4) provides that where a meeting of the Board could not be held for want of quorum, then, unless the articles of the company otherwise provide, <b>the meeting shall automatically stand adjourned to the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place.</b></p> <p>Further explanation to section 174(4) provides that for the purposes of this section, (i) <b>any fraction of a number shall be rounded off as one;</b> (ii) "total strength" shall not include directors whose places are vacant.</p> <p>Total Strength of directors = 14          One-third of 14 = 4.67          Rounded off to = 5 (Five)</p> <p>Where as in the meeting only 4 persons were present, hence due to want of required minimum quorum, the meeting shall have to adjourned to the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place.</p> <p>In the absence of the any information, it is presumed that adjourned meeting was held on 1<sup>st</sup> April, 2021.</p>	

3.	<p>Whether the meeting of the Board held on 30<sup>th</sup> August, 2021 was valid:</p> <p>A. If the quorum in this meeting was present, it may be treated as valid.</p> <p>B. The gap between the previous meeting and the present meeting should not be more than 120 days. Since previous meeting was held on 25<sup>th</sup> March, 2021 (adjourned meeting held on 1<sup>st</sup> April 2021) there is a gap of more than 120 days, hence this meeting is not valid.</p> <p>C. The gap of more than 120 days between the two meetings can be extended by the Registrar.</p> <p>D. It is valid as it can convened within 180 days, i.e., till 30<sup>th</sup> September, 2021.</p> <p><b>Answer: (B)</b></p>
<b>Reason:</b>	
<p>Section 173(1) provides that every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board.</p> <p>Since gap exceeded between the two consecutive meetings is more than 180 days, so its not valid.</p>	
4.	<p>One of the director, who is actually residing at Pune, but his address as recorded with the company and in the DIN is of Mumbai. The director wish to receive the notice / agenda papers at Pune. At which address the notice for Board meeting and agenda papers may be sent?</p> <p>A. The notice/ agenda papers be sent as per the wish of the concerned director.</p> <p>B. The notice / agenda papers be sent at Pune address.</p> <p>C. The notice / agenda papers be sent at Mumbai address.</p> <p>D. The notice/ agenda papers be sent at both the addresses, i.e., at Pune as well as at Mumbai.</p> <p><b>Answer: (C)</b></p>
<b>Reason:</b>	
<p>Section 173(3) provides that a meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.</p>	
5.	<p>Whether such director, whose official address is recorded with the company is of Mumbai, but actually comes from Pune. Whether his air fare from Pune to Mumbai and back can be / provided / reimbursed?</p> <p>A. The actual air fare from Pune to Mumbai and back may be given.</p> <p>B. No air fare should be given to him. However, he may be reimbursed the actual taxi fare (if incurred) from Mumbai address to place of meeting in Mumbai (if Board meeting is held in Mumbai.)</p> <p>C. The air fare from Pune to Mumbai and back can be given, if other directors do no object.</p> <p>D. The air fare from Pune to Mumbai and back can be given if approved by the shareholders in the general meeting.</p> <p><b>Answer: (B)</b></p>
<b>Reason:</b>	
<p>Section 173(3) provides that a meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.</p> <p>Since the address in the company's record is of Mumbai, hence no air fare is permissible, if the board meetings are being held in Mumbai itself.</p>	

## FINAL - PAPER 4- CORPORATE AND ECONOMIC LAWS

This capsule comprises of significant provisions of the Companies Act, 2013 covering Inspection, Inquiry and Investigation (Chapter 4) and Compromise, Arrangements & Amalgamation (Chapter 5). In these chapters of Paper 4 –Corporate and Economic Laws, students are being tested on the skills prescribed under Level I, 2 & 3 of the skill grid.

Students are advised to read the October, 2021 edition of the Study Material with relevant RTP's/Amendments. This capsule will be giving a quick glance to the significant provisions of the said chapters. This capsule is intended to assist you in the process of understanding and revision of concepts discussed in the Study Material.

### CHAPTER 4: INSPECTION, INQUIRY AND INVESTIGATION

Chapter XIV contains Sections 206 to 229 of the Companies Act, 2013 which deals with the provisions relating to Inspection, Inquiry and Investigation into the affairs of company

#### (1) Powers given to the authorities for inspection, inquiry and investigation

Authorities	Powers
Registrar under sections 206, 207, 208 & 209	Section 206 - Call for information and inspection of books of account, papers and explanations and order for inquiry, Section 207 – Conduct of Inspection and Enquiry, The Registrar have all the powers as are vested in a civil court. Section 208 – Submission of inspection report, Section 209 - Search and seizure,
Inspector under sections 206, 207, 208,209 & 216	Section 206 - Call for information and inspection of books of account, papers and explanations and order for inquiry, Section 207 – Conduct of Inspection and Enquiry, The Registrar have all the powers as are vested in a civil court. Section 208 – submission of inspection report, Section 209 -Search and seizure Section 216 – To investigate on matters relating to company and its membership for determining ownership of company.
Central Government (CG) under sections 206, 210, 211, 212, 216 & 224	Section 206 – CG may authorize any statutory authority to carry out the Inspection of books of accounts of company, Section 210 - Investigate into affairs of company, Appointment of inspectors to investigate into affairs of the company and to report there on. Section 211 - Establishment of Serious Fraud Investigation Office (SFIO), Section 212 - Assignment of investigation into the affairs of company by SFIO Section 216 - Appointment of inspector to investigate on matters relating to company and its membership for determining ownership of company, Section 224 - Actions may be taken in pursuance of inspector's report
Regional director in section 206	Section 206 - Appoint inspector for inspection of books and papers of company
Tribunal under section 213, 221, 222	Section 213 -Pass an order for investigation into company's affairs in other cases, Section 221 - for freezing of assets of company on inquiry and investigation, Section 222 -for imposing restrictions upon securities

#### (2) Power to call for information, inspect books and conduct inquiries [Section 206]

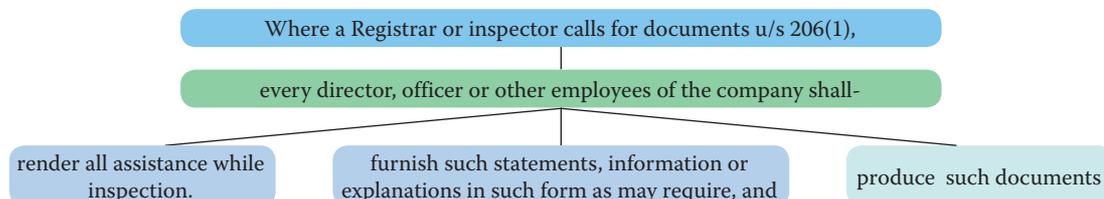
Concerned authorities	In the following circumstances	Have following Powers
Registrar	<ul style="list-style-type: none"> <li>• On a scrutiny of any document filed by a company, or</li> <li>• on any information received by him,</li> <li>- is of the opinion that any further information /explanation / any further documents relating to the company is necessary</li> </ul>	May by a written notice require the company— (a) to furnish in writing such information or explanation; or (b) to produce such documents
Where Registrar	<ul style="list-style-type: none"> <li>(a) is not furnished information or explanation within time, or</li> <li>(b) on examination, is of the opinion that the information / explanation furnished is inadequate; or</li> <li>(c) is satisfied on a scrutiny, that an unsatisfactory state of affairs exists in the company and the information or documents fails to disclose a full &amp; fair statement of the information required.</li> </ul>	May by another written notice call on the company- (a) to produce for inspection such further books of account, books, papers and explanations (b) at such place & time as specified in the notice by him.

# CORPORATE AND ECONOMIC LAWS

Concerned authorities	In the following circumstances	Have following Powers
Registrar	(1) on the basis of information available with or furnished; or (2) on a representation made to him by any person that the business of a company is being carried on for a fraudulent / unlawful purpose or not in compliance with the provisions of this Act; or (3) the grievances of investors are not being addressed,	May call the company to furnish in writing any information/explanation on matters specified in the order (within specified time) and carry out inquiry after providing the company a reasonable opportunity of being heard
Central Government	if is satisfied that the circumstances so warrant	<ul style="list-style-type: none"> <li>direct the Registrar / an inspector to carry out the inquiry</li> <li>direct inspection of books and papers of a company by an inspector appointed for the purpose</li> </ul>
Central Government	having regard to the circumstances	by general/special order, authorise any statutory authority to carry out the inspection of books of account of a company /class of companies

## (3) Conduct of inspection and inquiry [Section 207]

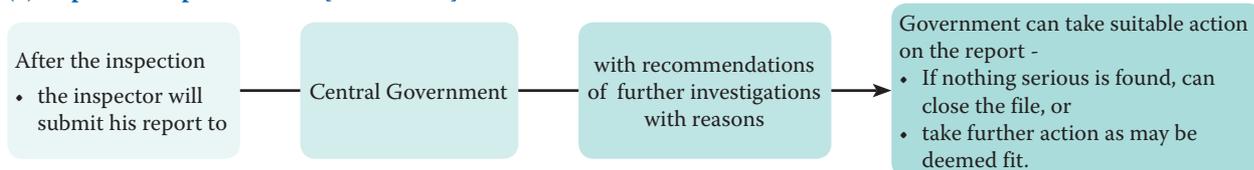
### (i) Duty of director, officer or employee



### (ii) Powers of the Registrar or inspector

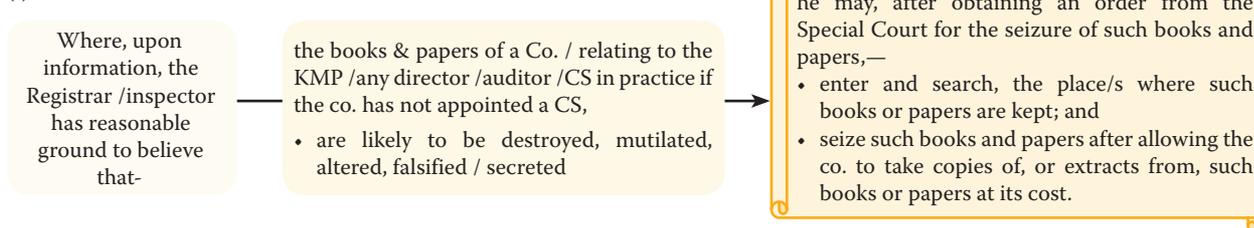
<b>The Registrar / inspector making an inspection or inquiry u/s 206 may,</b>
<ul style="list-style-type: none"> <li>during the course of such inspection or inquiry—                             <ul style="list-style-type: none"> <li>make/ cause to be made copies of books of account and other books and papers, or</li> <li>place / cause to be placed any marks of identification in such books in token of the inspection having been made.</li> </ul> </li> </ul>
<b>The Registrar / inspector making an inspection or inquiry shall have all the powers as of civil court, while trying a suit as to:</b>
<ul style="list-style-type: none"> <li>discovery &amp; production of books of account and other documents, as may be specified by such Registrar / inspector making the inspection or inquiry</li> <li>summoning &amp; enforcing the attendance of persons and examining them on oath, and</li> <li>inspection of any books, registers and other documents of the company at any place.</li> </ul>
<b>Penalty: Any director / officer of the company disobeys the direction issued by the Registrar / the inspector-</b>
<ul style="list-style-type: none"> <li>shall be punishable with imprisonment which may extend to 1 year and with fine varying 25,000 -1 lakh rupees.</li> <li>If has been convicted of an offence under this section, on and from the date on which he is so convicted, be deemed to have vacated his office</li> <li>on such vacation of office, shall be disqualified from holding an office in any company.</li> </ul>

## (4) Report on inspection made [Section 208]

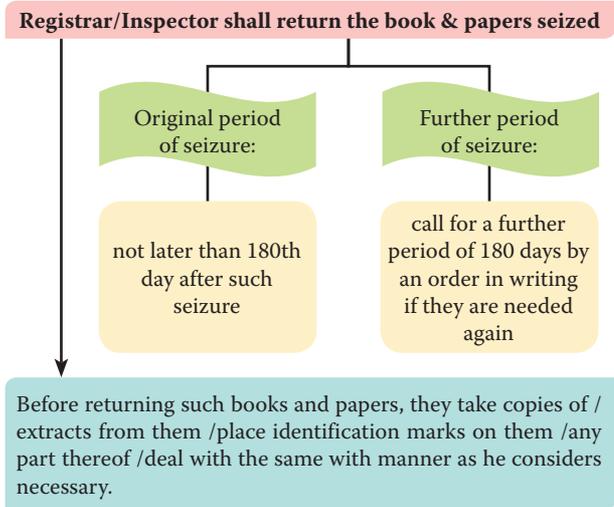


## (5) Search and Seizure [Section 209]

### (i) Circumstances for search & seizure

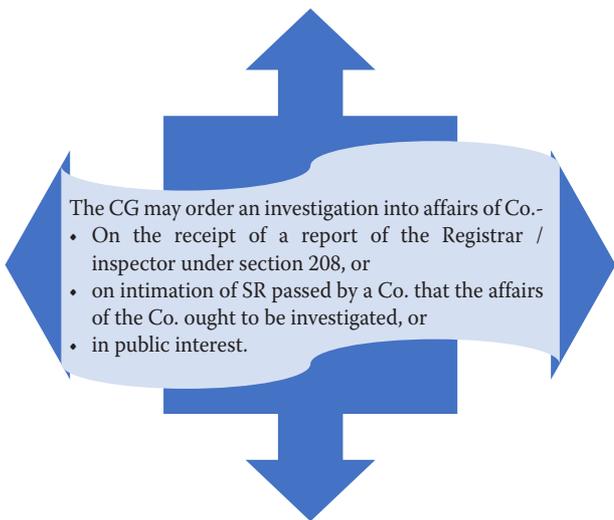


(ii) Period of Seizure

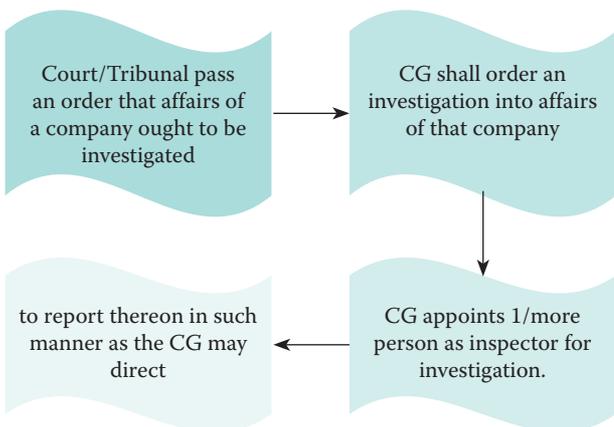


(6) Investigation into affairs of company [Section 210]

(i) By Central Government



(ii) By Court/Tribunal

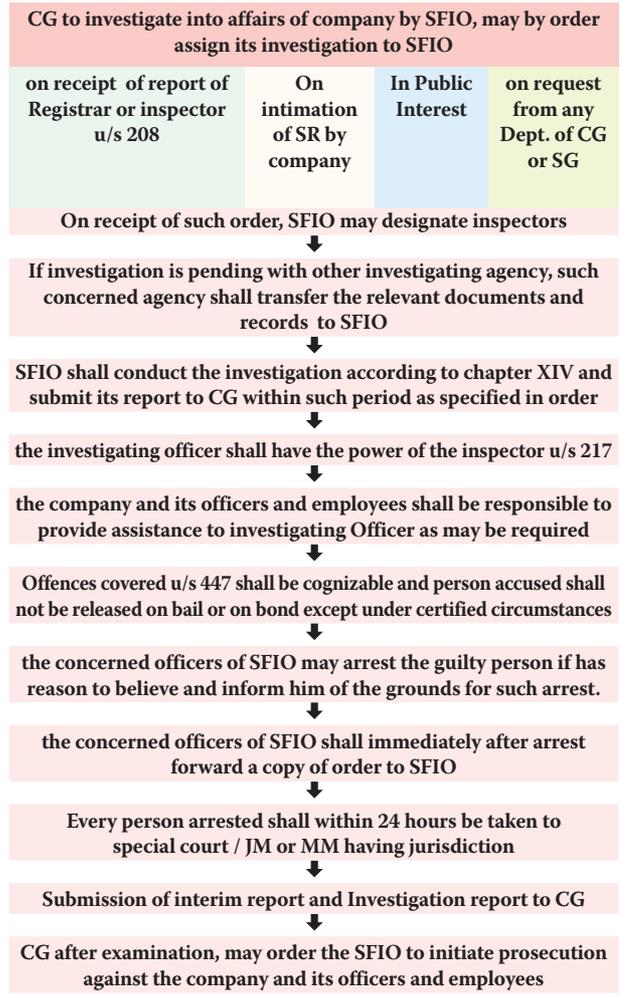


(7) Establishment of Serious Fraud Investigation Office [Section 211]

Serious Fraud Investigation Office –an office established to investigate frauds relating to a company

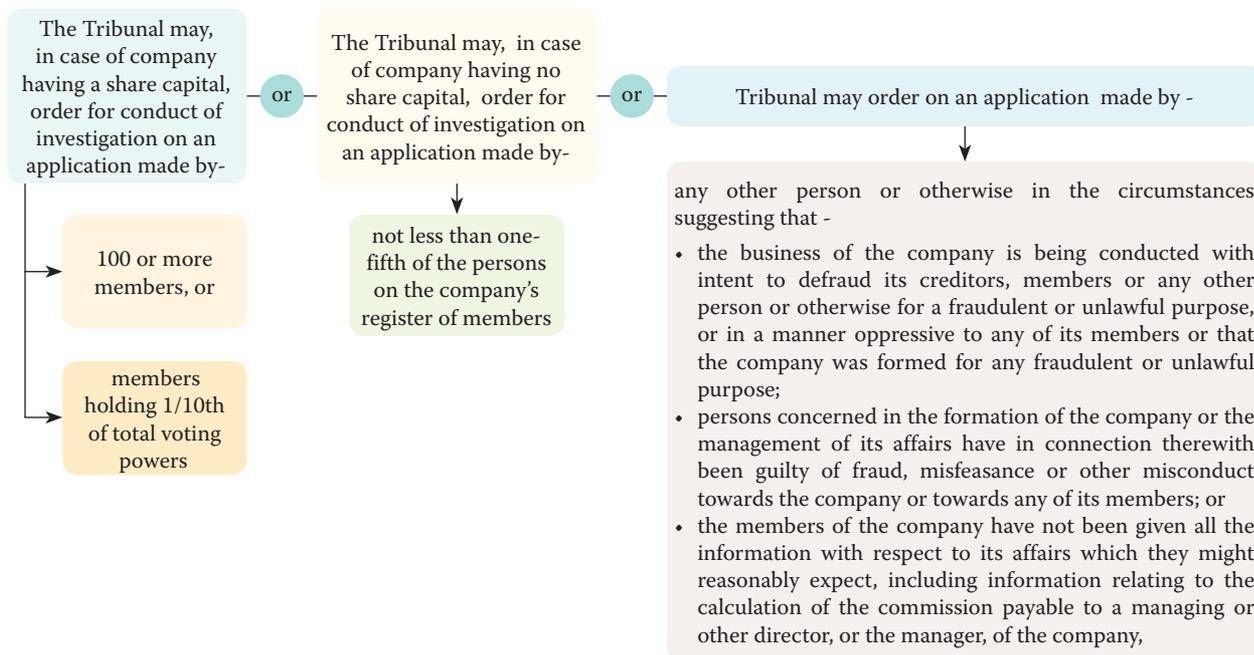


(8) Investigation into affairs of Co. by SFIO [Section 212]

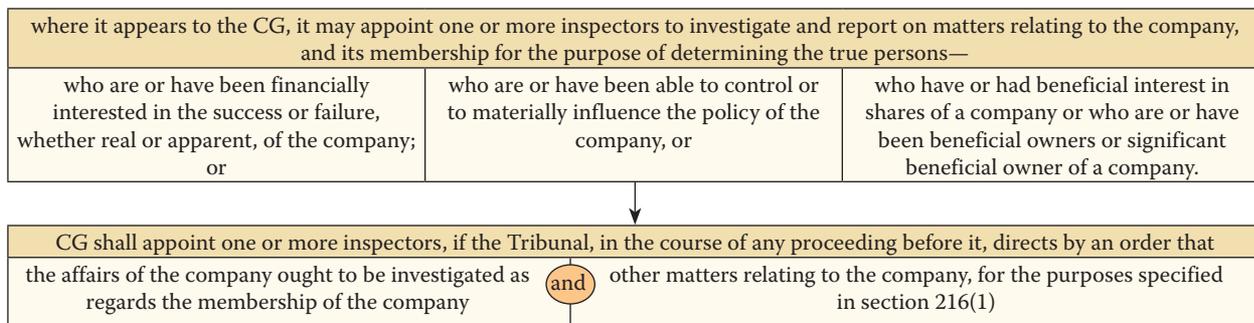


# CORPORATE AND ECONOMIC LAWS

## (9) Investigation into company's affairs in other cases (Section 213)

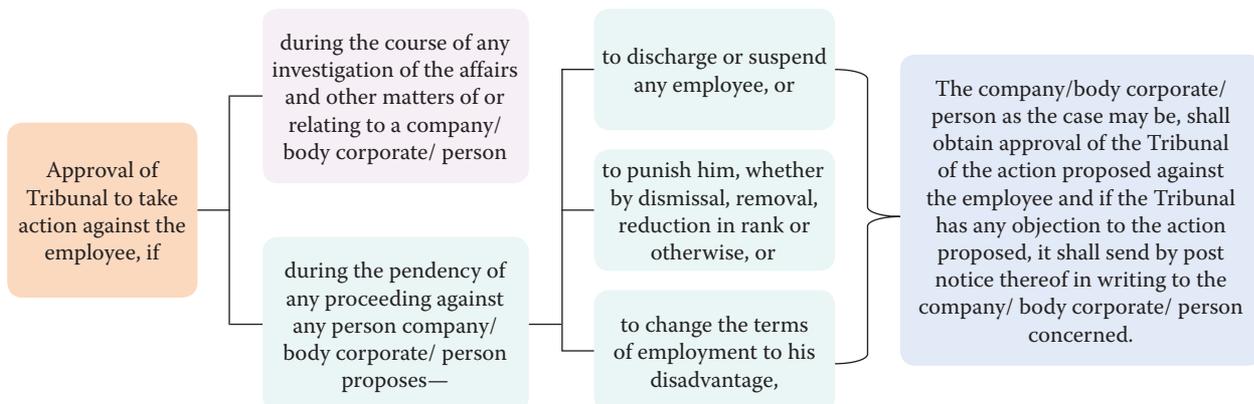


## (10) Investigation of ownership of company [Section 216]

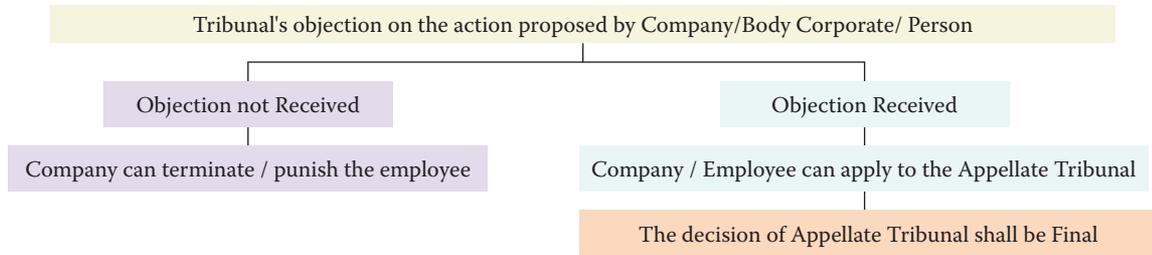


## (11) Protection of employees during investigation [Section 218]

### (i) To obtain approval of Tribunal



## (ii) Consequences of Tribunal's objections



## (12) Powers of inspector

### (i) To conduct investigation into affairs of related companies, etc. [Section 219]

If an inspector while investigating into the affairs of a company considers it necessary, can also investigate the affairs of—			
any other body corporate which is/ has at any relevant time been the company's subsidiary company or holding company, or a subsidiary company of its holding company,	any other body corporate which is/ has at any relevant time been managed by any person as managing director or as manager, who is, or was, at the relevant time, the managing director or the manager of the company,	any other body corporate whose Board of Directors comprises nominees of the company or is accustomed to act in accordance with the directions or instructions of the company or any of its Directors, or	any person who is or has at any relevant time been the company's managing director or manager or employee

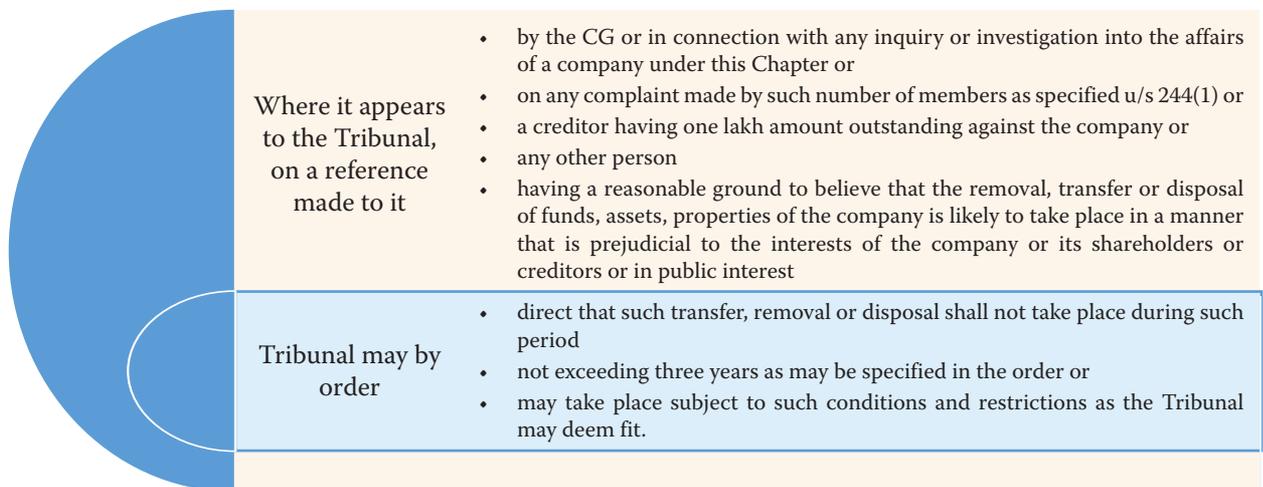
Report of inspector: The inspector shall, subject to the prior approval of the CG, investigate into and report on the affairs of the other body corporate/ managing director/ manager, in so far as he considers that the results of his investigation are relevant to the investigation of the affairs of the company for which he is appointed.

### (ii) Seizure of documents by inspector [Section 220]

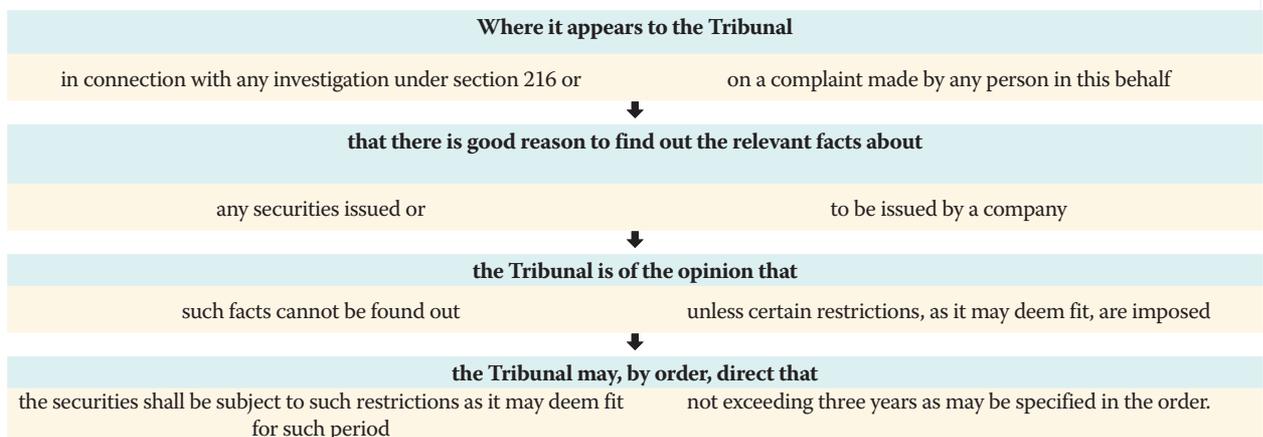
If the inspector believe that the related books and paper are likely to be destroyed, mutilated, altered, falsified or secreted, the inspector may—	<ul style="list-style-type: none"> <li>enter the place/s where such books and papers are kept in such manner as may be required and</li> <li>seize books and papers as is necessary after allowing the company to take copies of, or extracts from, such books and papers at its cost for the investigation.</li> </ul>
The inspector shall keep in his custody the books and papers seized	<ul style="list-style-type: none"> <li>for such a period not later than the conclusion of the investigation as he considers necessary and</li> <li>thereafter shall return the same to those from whose custody or power they were seized.</li> </ul>
The inspector may, before returning such books and papers	<ul style="list-style-type: none"> <li>take copies of, or extracts from them or</li> <li>place identification marks on them or any part thereof or</li> <li>deal with the same in such manner as he considers necessary</li> </ul>
Application of provisions of Cr.PC	<ul style="list-style-type: none"> <li>relating to searches or seizures shall apply <i>mutatis mutandis</i></li> <li>to every search or seizure made under this section.</li> </ul>

# CORPORATE AND ECONOMIC LAWS

## (13) Freezing of Assets of Company on Inquiry and Investigation [Section 221]



## (14) Imposition of Restrictions upon Securities [Section 222]

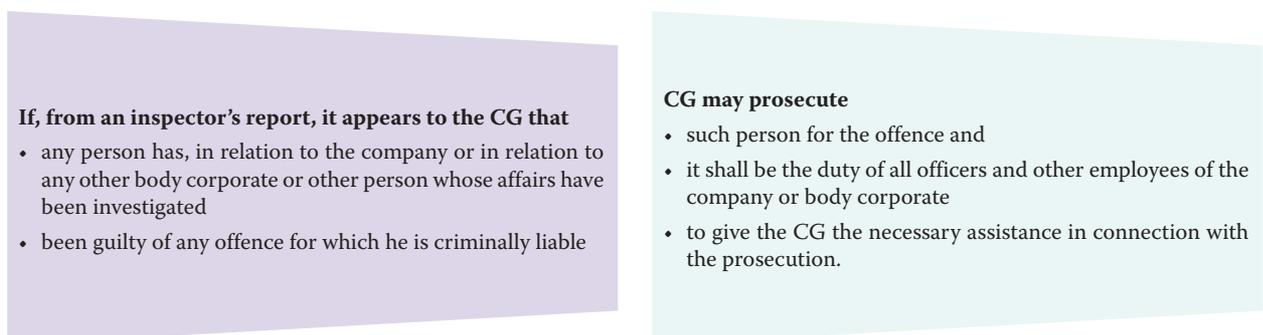


## (15) Inspector's report [Section 223]



## (16) Actions to be taken in pursuance of Inspector's Report [Section 224]

### (i) On basis of report, if person appears to be guilty of offence



**(ii) Filing of petition by person authorized by the CG:**

If any company or other body corporate is liable to be wound up and it appears to the CG from Inspector's report that it is expedient so to do

- CG may, unless the company or body corporate is already being wound up by the Tribunal, cause to be presented to the Tribunal by any person authorized by the Central Government in this behalf—
- a petition for the winding up of the company or body corporate on the ground that it is just and equitable that it should be wound up;
- an application under section 241; or
- both.

**(iii) Initiation of winding up proceeding suo moto by the CG**

If from Inspector's report, it appears to the CG that proceedings ought, in the public interest, to be brought by the company or any body corporate whose affairs have been investigated

for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs, of such company or body corporate; or

for the recovery of any property of such company or body corporate which has been misapplied or wrongfully retained,

CG may itself bring proceedings for winding up in the name of such company or body corporate.

**(iv) Where fraud has been committed**

Where the Inspector's report states that fraud has taken place in a company and due to such fraud

any director, KMP, other officer of the company or any other person or entity

has taken undue advantage or benefit,

whether in the form of any asset, property or cash or in any other manner

CG may file an application before the Tribunal for appropriate orders

with regard to disgorgement of such asset, property, or cash

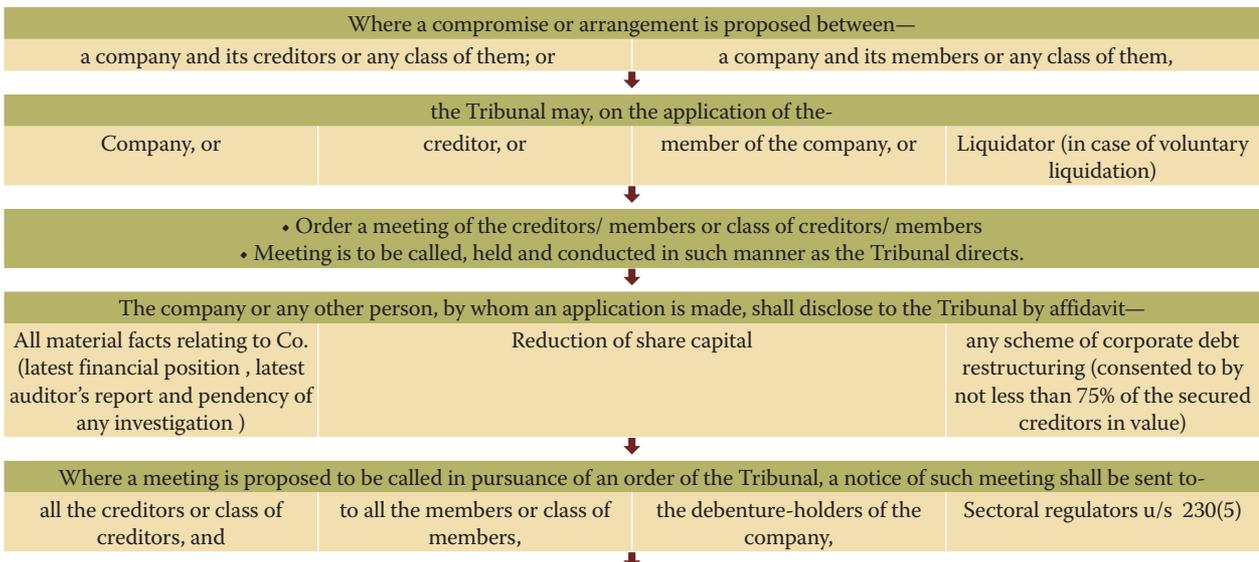
and

for holding such director, KMP, officer or other person liable personally without any limitation of liability.

**CHAPTER 5: COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS**

Chapter XV contains sections 230 to section 240 of the Companies Act, 2013 relating with provisions dealing with different modes of corporate restructuring – compromises, arrangements, amalgamations and reconstruction.

**(1) Power to Compromise or make arrangements with Creditors and Members [Section 230]**



# CORPORATE AND ECONOMIC LAWS

The above notice is to be sent individually at the address registered with the company

Notice of meeting shall be accompanied by:

statement disclosing the details of the compromise or arrangement	a copy of the valuation report, if any, and explaining their effect on creditors, KMP, promoters and non-promoter members, and the debenture-holders and	the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and	other prescribed matters
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Such notice and other documents shall also be placed on -

- the website of the Co., and
- in case of a listed Co., these documents shall be sent to the SEBI and stock exchange where the securities are listed, for placing on their website and
- also be published in newspapers

Notices to sectoral regulators to make representation, if likely to be affected by the compromise or arrangement

Meeting can be dispensed by Tribunal if atleast 90% in value of creditors agree & confirm to scheme of compromise or arrangement.

Objection to the compromise/arrangement shall be made by persons-

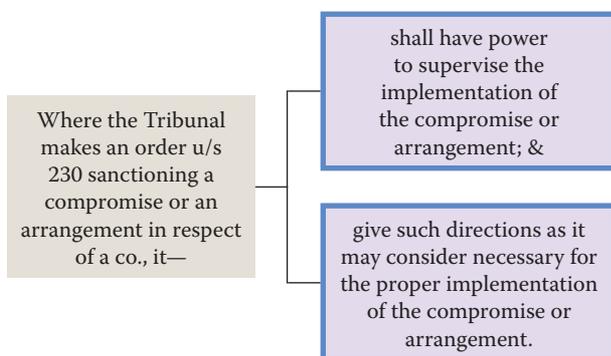
- holding 10% or more of shareholding, or
- having outstanding debt 5% or more of total outstanding debt

Where, at a meeting, majority of persons representing 3/4th in value agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding

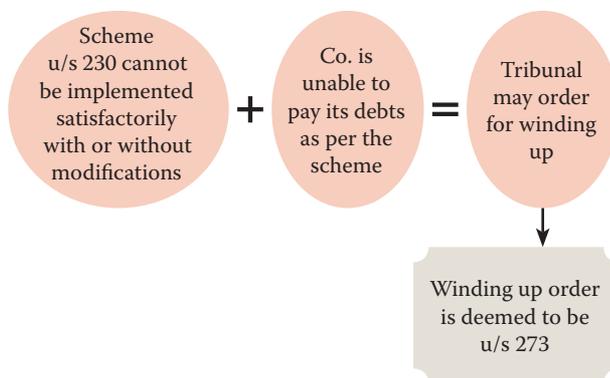
Filing of order of Tribunal with Registrar within 30 days of the receipt of the order.

## (2) Power of Tribunal to enforce Compromise or Arrangement [Section 231]

### (i) Power of Tribunal to implement the order



### (ii) Passing of Winding up order by Tribunal



## (3) Merger and Amalgamation of Companies [Section 232]

### (i) Filing of an application for purpose of reconstruction of companies involving merger/ amalgamation or transfer of undertaking, property etc.

Application filed u/s 230 to Tribunal and it is shown to the Tribunal that:

compromise or arrangement has been proposed for:

- reconstruction
- merger or
- amalgamation

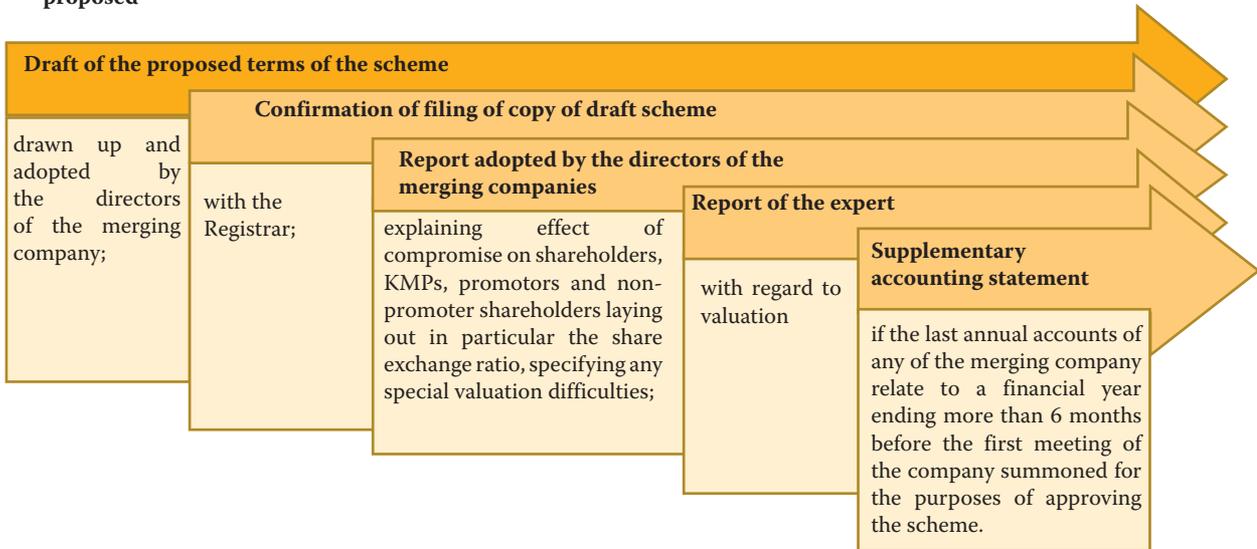
Under the scheme,

- the whole or any part of the undertaking, property or liabilities of transferor company is required to be transferred to transferee company, or
- is proposed to be divided among and transferred to two or more companies

Tribunal (on application)

- order a meeting of creditors or members
- to be called, held and conducted in manner as directed by Tribunal
- provisions u/s 230(6) to (8) shall apply *mutatis mutandis*

(ii) Circulation of information for the meeting by the merging companies / the companies in respect of which a division is proposed



(iii) Order of Tribunal on the agreement of compromise or arrangement

**Transfer to the transferee company-** whole or part of undertaking, property or liabilities of the transferor company (unless the Tribunal decided otherwise)

**Allotment or appropriation by transferee Co.-** shares, debentures, policies or other like instruments which, under compromise or arrangement, are to be allotted/ appropriated by that company to or for any person.

- The transferee Co. shall not, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies.
- Any such shares shall be cancelled or extinguished

**Continuation of legal proceedings by or against the transferee company-** pending by or against any transferor company on the date of transfer

**dissolution, without winding-up,** of any transferor company

**Make provision-** for any persons who dissent from the compromise or arrangement

**Allotment of shares held by NR shareholder under FDI-** allotment of shares of transferee Co. to such shareholder shall be in manner specified in the order.

**Transfer of the employees of the transferor company** to the transferee company

# CORPORATE AND ECONOMIC LAWS

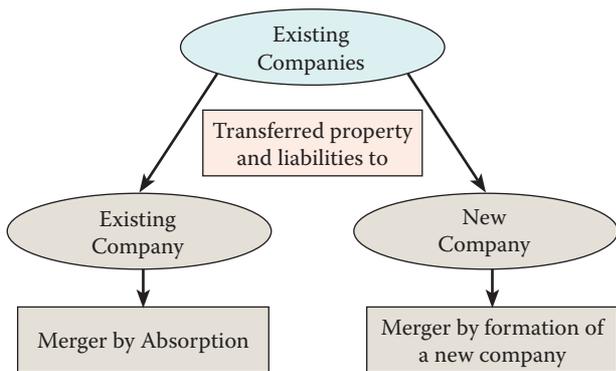
where transferor Co. is a listed Co. and transferee Co. is an unlisted Co.:

- (i) transferee Co. shall remain an unlisted Co. until it becomes a listed Co.
- (ii) if shareholders of transferor Co. decide to opt out of transferee Co., provision shall be made for payment of value of shares held by them and other benefits as per a pre-determined price formula or valuation
  - However, amount of payment or valuation for any share shall not be less than what has been specified by SEBI Regulations.

Where the transferor Co. is dissolved- fee, if any, paid by the transferor Co. on its authorised capital shall be set-off against any fees payable by the transferee Co. on its Authorised Capital subsequent to the amalgamation

Certificate by company's auditor- to be filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the Accounting Standards prescribed u/s 133.

## (iv) Merger by Absorption and Merger by formation of new company



## (v) Merging Companies

- Merging companies are in relation to a merger by absorption
  - to the transferor Co.s and
  - transferee Co.s
- Merging companies are in relation to a merger by formation of a new company
  - to the transferor Co.s

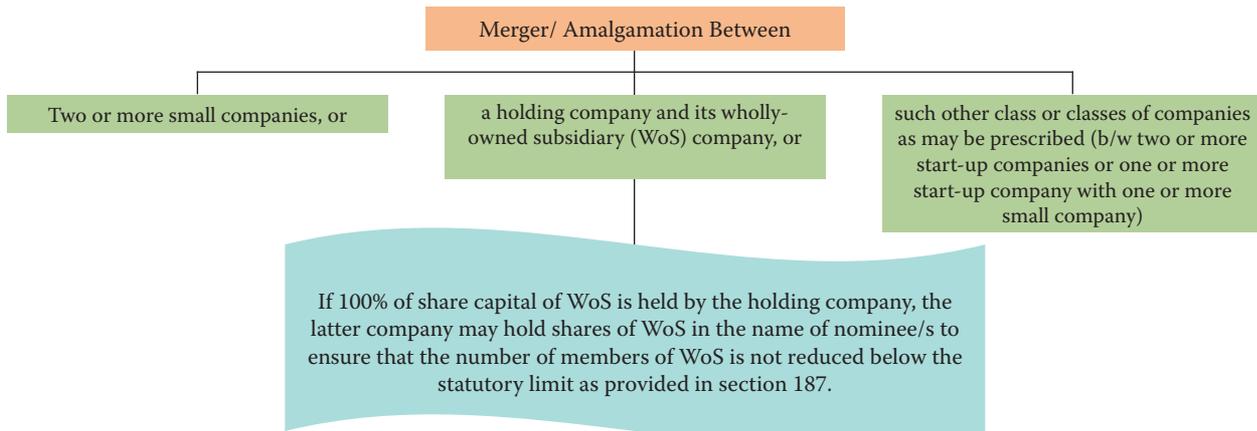
## (vi) Property

Property Includes

assets, rights and interests of every description	liabilities include debts and obligations of every description
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## (4) Fast track mode of Merger or Amalgamation of Certain Companies [Section 233]

### (i) Companies who may enter into scheme of merger or amalgamation



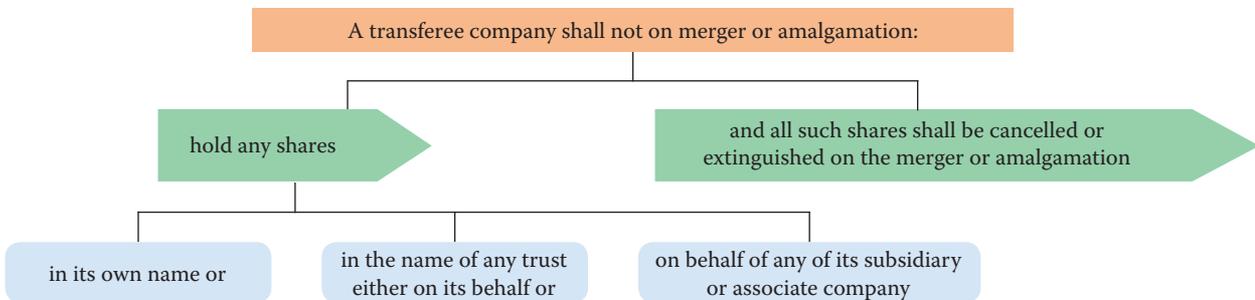
## (ii) Conditions for entering into scheme of merger or amalgamation

<p><b>A scheme of merger or amalgamation may be entered, subject to following conditions:</b></p>	<p>(a) a notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme within 30 days is issued by the transferor company or companies and the transferee company;</p> <p>(b) the objections and suggestions received are considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least 95% of the total number of shares;</p> <p>(c) each of the companies involved in the merger files a declaration of solvency, in the prescribed form, with the Registrar of the place where the registered office of the company is situated; and</p> <p>(d) the scheme is approved by majority representing 9/10th in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of 21 days along with the scheme to its creditors for the purpose or otherwise approved in writing.</p>
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## (iii) Effect of Registration of Scheme

- transfer of property or liabilities of the transferor company to the transferee company;
- the charges, if any, on the property of the transferor company shall be applicable to and enforceable against the transferee company;
- legal proceedings by or against the transferor company pending before any court of law shall be continued by or against the transferee company; and
- where the scheme provides for purchase of shares held by the dissenting shareholders or settlement of debt due to dissenting creditors, such amount, to the extent it is unpaid, shall become the liability of the transferee company.

## (iv) Effect of merger and amalgamation on transferee company



## (5) Merger or Amalgamation of Company with Foreign Company [Section 234]

