

OVERVIEW OF  
COMPANIES ACT,2013

**Adv. Arun Saxena**  
**Saxena & Saxena Law Chambers**  
**Advocates & Attorneys**  
**603-604, New Delhi House**  
**27, Barakhamba Road,**  
**New Delhi – 110 001.**  
**Mob.: 9810037364**  
**E-mail : [advisor@sslclegal.in](mailto:advisor@sslclegal.in)**

## DIRECTORS

# Minimum Directors 149(1)

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- ☐ Public co. 3
- ☐ Private co. 2
- ☐ OPC 1

# Maximum Directors 149(1)

4

- A company can have maximum no. of directors 15.
- If company wants to appoint more than 15, company can appoint after passing Special Resolution.

# Maximum No of Directors ship 165

5

- A person cannot become director in more than 20 companies as against 15 companies under existing Act. ( alternate directorship shall be counted)

Out of 20, public companies should not be more than 10.

Transition period --- one year

# Resident Director

6

- Every company shall have at least one director who has stayed in India for not less than 182 days in previous calendar year.
- Transition period --- one year

# Woman Director 149(1)

7

- Following companies shall appoint atleast one women Director:-
  - ▣ Listed company
  - ▣ Other public company having paid up capital of Rs.100.00 crores or more Or
  - ▣ Turnover Rs.300.00 crores or more
  - ▣ Company incorporated under this Act shall comply the provisions within 6 months from its incorporation.
  - ▣ Vacancy of woman director shall be filled in next meeting of board or 3 months from the date of vacancy whichever is later.

# Appointment of Directors 152

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## First Directors:-

- By articles or subscribers to the Memorandum.
- Subscriber of OPC in case of OPC
- Every Director shall be appointed in the General Meeting except provided in the Act.



# Rotation of Directors 152(6)

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- Applicable to all limited companies.
- Unless articles provides retirement of all the directors at every general meeting – not less than  $\frac{2}{3}$ <sup>rd</sup> of total number of directors shall be eligible to retire by rotation.
- $\frac{1}{3}$ <sup>rd</sup> of such directors shall retire by rotation.
- The person selected for retirement by rotation shall have longest period in the office.
- If retirement in the same period for 2 directors then it will be decided by the draw-of-lot.

# Rotation of Directors 152(6)

10

- The vacancy for the retiring auditor shall be filled up by appointing any other person or the retiring director himself.
- For the purpose of calculation of total number of directors for rotation , number of independent directors shall not be considered.

# Additional Director 161(1)

11

- Board can have powers in articles to appoint Additional Director.
- The term of Additional Director shall be till the conclusion of next Annual General Meeting or the last date on which AGM have been held whichever is earlier.

# Alternate Directors 161(2)

12

- The Board of Directors may appoint alternate directors to any other director.
- If the director is absent, **outside India** for not less than three months.
- The term of alternate director shall not be more than the term of original director.
- The alternate director shall vacate the office if the original director **returns to India**.
- Alternate director for independent director ( must fulfill the qualifications of Independent director)

# Nominee Director 161(3)

13

- Subject to the article, company may appoint a person as the Director nominated by
- Any institution in terms of any agreement or by
- Central Government, State Government, by virtue of its shareholding in the Government company.

# Qualifications of Directors

14

- ▣ Person has been allotted DIN
- ▣ A declaration that he is not disqualified under act.
- ▣ Consent to act as Director is given to the company and company has filed such consent with ROC within 30 days.

# Dis-qualification of Directors 164

15

If he :-

- **Is of Unsound mind**
- **Is an un-discharged insolvent.**
- **Has applied for be adjudicated as insolvent and application is pending.**
- **The order has been passed by Tribunal disqualifying him for appointment as Director.**
- **If he fails to pay calls on the shareholder and 6 months have lapsed from the last date of payment of call.**

# Dis-qualification of Directors 164

16

If he :-

- If he is the **director of the company which**
- **has not filed financial statement** and annual return for the period of continuous **three financial years or**
- **has failed to repay the deposit** obtained by it and the interest thereon.
- **Failed to redeem any debt** on due date and pay interest thereon.
- **Failed to pay any dividend** declared for one year or more.



# Dis-Qualifications of Director 164

17

Following additional dis-qualifications have been provided in the Act:-

- ❑ **Convicted for related party transaction** at any time during last 5 years.
- ❑ Convicted for any offence for imprisonment for 7 years or more.
- ❑ Convicted imprisonment for not less than 6 months or period of 5 years has not lapsed.

## DUTIES OF THE DIRECTOR (Section 166)

18

- Shall act in accordance with Articles of the Company
- Shall act in **good faith** in order to promote the objects of the company for the **benefit of members, company, employees, the community and for the prevention of environment.**
- Shall exercise his duties with **reasonable care, skill and diligence.**
- Shall not involve in the situation in which he has direct or indirect interest which **conflict with the interest of the company.**
- Shall not achieve or attempt to achieve undue gain or advantage.
- Shall not assign his office.
- Penalty : fine be not less than Rs.1,00,000/- or Rs.5,00,000/-.

- If he incurs any disqualification specified in Section 164.
- If fails to attend meetings for consecutive period of 12 months (3 meetings in existing act)

**Important :-** Director has to vacate his office even if his leave of absence is granted to him or her.

## VACATION OF OFFICE OF DIRECTOR (Section 167)

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- ❑ He acts in contravention of provision 164 (entering into contract or arrangement in which he is interested directly or indirectly).
- ❑ Fails to disclose the interest in any contract.(184)
- ❑ He becomes disqualified by order of the Court.
- ❑ He is removed in pursuant to provision of this Act.

## VACATION OF OFFICE OF DIRECTOR (Section 167)

21

- Where all the directors have vacated the office then the promoter or the Central Government shall appoint the required number of directors till the time shareholders appoint in general meeting.
- Penalties:
- Imprisonment **not more than one year** and fine not less than **Rs.1.00 lac** which may extend to **Rs.5.00 lacs** or both.

- Every listed company shall have at least **1/3<sup>rd</sup>** of total number of directors as independent directors.
- Following companies shall have atleast **2 independent directors** :-
  - ▣ Other Public company - paid up capital Rs.10.00 crores or more or
  - ▣ Public company having turnover of Rs.100.00 crores or more or
  - ▣ public company having aggregate outstanding loans or borrowings, debentures, deposits, exceeding Rs.50.00 crores.

# Independent director

23

- Independent Director has been defined as
- A Director other than MD or whole time Director or nominee director
  - ▣ Who, in the opinion of the Board is a person of integrity and possess relevant expertise and experience.
  - ▣ Who is/was not the promoter of the company and its subsidiary or associate company
  - ▣ Who is not related to promoter or Director in the company, holding company, subsidiary company or associate company.

# Independent director

24

- Has no pecuniary relation ship with co, holding/subsidiary or associate company during 2FY or CY.
- None of his relative has pecuniary with co, holding/subsidiary or associate company its promoters or directors having 2% or more of Turnover or Rs. 50 lakh ( whichever is lower) during 2 FY or CY.
- He or his relative does not hold position of KMP or employee of co, holding/sub/associate co in any preceding 3 years.



# Independent director

25

- ❑ He is or has been an employee /prop/partner of firm of auditors/cs/cost auditors of co/holding / sub/associate co during 2 FY or CY.
- ❑ with legal firm has transaction with Co/holding/sub/associate co. having transaction of 10% or more of gross turnover.
- ❑ Holds together with his relative 2% or more of voting power.
- ❑ He is a CFO/director of non-profit organization that receives 25% or more from the company or holds 2% or more voting power.

# INDEPENDENT DIRECTOR (Section 149)

26

Every independent Director shall disclose :

- at the first meeting of the Board in which he participate as Director and
- thereafter in every first meeting of every financial year or whatsoever

A declaration that :

- i. He meets the criteria of independent director as provided in the Act.
- ii. Any change in the circumstances which may affect his status as Independent Director.

- Independent Director shall not be entitle to any remuneration, stock option other than
- sitting fee, the commission on the basis of profit and reimbursement of expenses for participation in the meeting of Boards and committee.
- Independent Director shall hold office for term upto 5 consecutive years but shall be eligible for re-appointment after passing a special resolution by the company.
- He may hold two terms of 5 years thereafter he may rejoin after 3 years.
- Code of conduct for independent Directors – In Schedules
- Liabilities of Independent Director shall be only for the acts of omission / commission which had occurred with his knowledge and with his consent or convenience.

# Committees of Board

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	Audit Committee	Nomination, Remuneration & Stakeholders Committee	Vigil Mechanism
Listed Company	Yes	Yes	Yes
Other Public Co.			
a) Paid up capital Rs.10 crores or more	Yes	Yes	No
b) Turnover Rs.100 crores or more	Yes	Yes	No
c) Aggregate loan having debenture, deposit exceeds Rs.50 crores or more	Yes	Yes	Yes

# Committees of Board

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	Audit Committee	Nomination, Remuneration & Stakeholders Committee	Vigil Mechanism
d) Company having deposits	No	No	Yes
e) No. of members	3	3	Not specified
f) Independent directors	Majority	50%	As per Board
g) Transition period	1 year	1 year	No

## Vigil Mechanism :

- shall provide adequate safeguard against victimisation .
- In case of frivolous complaint suitable action by Audit Committee / Director nominated.

# Resignation of Directors 168

30

- ❑ Board shall note all the resignations.
- ❑ Company shall file necessary form with ROC.
- ❑ Directors shall also file the copy of the resignation alongwith the reasons to register within 30 days.
- ❑ Date of resignation shall be the date of the receipt of letter from the Director or any date mentioned therein whichever is later.
- ❑ The Director who resigns shall be liable for the liabilities during his tenure in the company as Director.
- ❑ Where all the Directors resign or vacate then promoter or Central Government shall appoint the required number of directors till shareholders appoints.

# Removal of the Directors(section 169)

31

- By ordinary resolution after giving reasonable opportunity.
- Company cannot remove the Director appointed by the Tribunal.
- Special notice is required, opportunity will be given to such Director for hearing.
- Directors will be entitle to give representation.
- The director who was removed will not be appointed by Board as the Director.

# Register of Directors ( Section 170)

32

- The particulars of KMP's shall also be included in the register.
- The return of appointment of Director shall also be required for the appointment or modification in terms of KMPs.



# Director by Small Shareholders

33

- Applicable for :-
  - ▣ Listed company
  - ▣ By notice of 1000 or more small shareholders or 1/10<sup>th</sup> of total number of such members whichever is less.
  - ▣ Small shareholders means holding not more than Rs.20,000/-.
  - ▣ Company may suo-moto also appoint such director.
    - Such director shall be independent director.
    - Shall not retire by rotation.
    - Tenure not exceeding 3 consecutive years.

# Director by Small Shareholders

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- Shall not hold more than two such Directorship
- Both the companies should not be in competition business.
- After expiry of tenure he will not be associated with company in any manner.

# Meetings (Section 173)

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- First meeting – within 30 days of incorporation
- Thereafter - At least 4 meetings in a year and gap between 2 meetings should not be more than 120 days.
- **OPC, small company and dormant company** shall hold one meeting in each half year – gap between 2 meetings shall not be less than 90 days.
- Length of the notice – 7 days
- Resolution by circulation will be passed by **majority** of Directors
- Resolution passed by circulation shall be noted in next meeting.

# Meeting by video conference 173(2)

36

Subject to following conditions :-

- At least one meeting in a year in person
- Notice of the meeting shall state the availability of option.
- Directors shall intimate the Chairman of his opinion to participate by video conference at least **3 days** before meeting
- Following matters shall not be dealt with video conferencing:
  - To approve the annual accounts
  - To approve the Board's Report.
  - Approval of prospectus
  - Proposal of amalgamation, merger, demerger, acquisition and takeover.

# Board Report 134

37

## **Applicable Provisions:**

- Section 134(3) to 134(6).
- Rules 8 to 11 of Companies (Accounts) Rules, 2014
- Extracts of Annual Return [92(3) MAT (9)]
- Related party transaction (AOC 2)
- Other disclosures as per different provision of the Act.
- Shall be prepared based on stand alone financial statements.

# Board Report 134

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## CONTENTS:

- Shall contain **separate sections** for the position of each subsidiary, associate and **joint venture company**. [Rule 8(1)].
  
- Every listed company and other limited company having paid up share capital more than Rs.25.00 crores shall include the statement undertaking the **annual evaluation made by Board of its own performance**. Rule 8(4)]

# Board Report 134

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## CONTENTS:

- Details of material order passed by court, tribunal impacting going concern status and company's operation in future. Rule 8(5)(vii)]
- Disclosure of contents of CSR Policy (Rule 9).

# Board Report

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Shall include:

- Extracts of annual Return
- No. of Board meetings.
- Directors responsibility statement.
- Statement of declaration by independent director.
- Companies Policy on Director's appointment and remuneration and qualification of independence of directors [If covered u/s 178(1)]  
[Nomination and Remuneration Committee]



# Board Report

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- Explanations/comments on adverse comments, qualifications or disclaimer by
  - ▣ Auditor and
  - ▣ Practicing Company Secretary in Secretarial Audit
- Particulars of loans, guarantees or investment(186).
- Particulars of related party transaction (188).
- The detail in respect of fraud reported by auditor u/s 143(12) other than which are reportable to Central Government.

# Board Report

42

- The state of the company's affairs;
- The amounts, if any, which it proposes to carry to any reserves;
- The amount, if any, which it recommends should be paid by way of dividend;
- Material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;

# Board Report

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- The conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed;
- A statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;
- The details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;

# Board Report

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## Directors responsibility statement:-

- In the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
- The directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;

# Board Report

45

Directors responsibility statement:-

- The directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities.
- The directors had prepared the annual accounts on a going concern basis;

# Board Report

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Directors responsibility statement:-

- The directors, in the case of a **listed company**, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.
- The directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

# Board Report

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## **Matters to be included under Rule 8(5)**

- ❑ Financial highlights
- ❑ Change in nature of business
- ❑ Details of directors & KMP and their changes
- ❑ Names of the companies became or ceased to be its sub/JV/associate cos.
- ❑ Details relating to the deposits and its defaults
- ❑ Details in respect of adequacy of financial control with respect to financial statement. (listed companies only).

# Board Report

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- Conservation of energy.
- Technology absorption.
- Foreign exchange earnings and outgo.



# Companies Amendment Act 2015

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## Other Disclosures:

- ❖ Corporate Governance Report (Listed Companies (Clause 49)).
- ❖ Reasons for Revision of Financial Statement (Section 131).
- ❖ Voting rights not exercised by employees regarding purchase of its own shares by employee or by trustee for benefit of employee [section 67(3)].
- ❖ Disclosures for shares with differential voting rights.
- ❖ Disclosure for issue of sweat equity shares.
- ❖ Disclosure relating to employee stock option and employee stock purchase scheme.

# Companies Amendment Act 2015

50

- ❖ Disclosure with respect to the Managing Personnel Rule 5(2) of Companies (Appointment and Remuneration of Managerial personnel) Rule 2014.
  - ❖ Employee who was in receipt of remuneration not less than Rs.60.00 lacs (through out the year).
  - ❖ Employees who are in receipt of the remuneration Rs.5.00 lacs per month (part of the year).
  - ❖ Employees who have received remuneration in aggregate in excess of withdrawn by MD or WTD or Manager and holds himself alongwith his spouse or dependent children not less than 2% of the equity of the company (whether part of the year or through out the year).

# Companies Amendment Act 2015

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- ❖ Reappointment of independent director after the term of 5 years [Section 149(10)].
- ❖ Composition of Audit Committee and reasons for not accepting recommendation of committee if any (section 178).
- ❖ Details of establishment of VIZIL mechanism if any [Section 177 (10)].
- ❖ Annual report on CSR (annexure to be annexed).

# Companies Amendment Act 2015

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Rule 5(1) of Companies (Appointment and remuneration Managerial Personnel) Rule, 2014 **(only for listed company):-**

- ❖ Ratio of remuneration of each director to median remuneration of employees of the company for FY.
- ❖ Percentage increase in remuneration of each director, CFO, CEO, CS or Manager if any for the FY.
- ❖ Percentage increase in median remuneration of employees in FY.
- ❖ Number of permanent employees on-roll of the company.
- ❖ Explanation and relationship between the average increase in remuneration and company performance.

# Companies Amendment Act 2015

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- ❖ Comparison of remuneration of KMP and company performance.
- ❖ Variation in market position of company, PE ratio as at close of date of current FY and previous FY and increase or decrease of market quotation of the company in comparison to the rate at which company come out with last public offer.
- ❖ Average percentage increase already made in salaries of employees other than managerial person in last financial year in comparison with percentile increase in managerial remuneration and justification there of and point out if there is any exceptional circumstance for the increase in remuneration.

# Signing of Board Report

54

Board Report to be signed by other person or atleast two directors (one shall be MD or by one director if there is only one director).

## Penalty:-

- ❑ **For Company** : Not less than Rs.50,000 to Rs.25,00,000/-
- ❑ **OID:** Imprisonment upto 3 years or fine Rs.50,000/- to Rs.5,00,000/- or both

# Disclosure of interest by Director (Section 184)

55

- 1) Interest in any co/body corporate/firm/association of individuals (including share holding)
- 2) If a director (Directly or indirectly) is any way concerned or interested in a contract or arrangement entered into or be entered into.

With body corporate in which he/her along with other director holds more than:

- ▣ 2% of shareholding
- ▣ or is a promoter, manager or CEO. OR

With the firm in which he is a partner or owner or member.

# Disclosure of interest by Director (Section 184)

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- ▣ he shall disclose the nature of interest
- ▣ At 1<sup>st</sup> meeting as director and at every 1<sup>st</sup> meeting of every financial year.
- ▣ shall not participate in discussion of such resolution. **The interested director may participate in such meeting after disclosure of his interest.**
- ▣ In case the director become interested after the execution of the agreement then he has to disclose the interest in the first meeting after such interest is created.
- ▣ In case such Director fails to disclose the interest in any such transaction, such contract or arrangement shall be **voidable** at the option of the company.



# Disclosure of interest by Director (Section 184)

57

Notice of disclosure in form **MBP1** shall be kept at R/O for 8yrs.

## **PENALTIES:**

Imprisonment upto one year or with fine shall not be less than **Rs.50,000** and may extend to **Rs.1,00,000/-** or with both.

# Powers of the Board (Section 179)

58

- Following powers under of Section 179 (3) are to be exercised in board meeting only.
  - 1) to make calls on shareholders in respect of money unpaid on their shares;
  - 2) to authorize buy-back of securities under section 68;
  - 3) to issue securities, including debentures, whether in or outside India;
  - 4) to borrow monies;
  - 5) to invest the funds of the company;
  - 6) To grant loan, give guarantee or provide security for loans

# Powers of the Board (Section 179)

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## Rule 8 to section 179(3)

- ❑ powers in board meetings only
- ❑ To make political contributions
- ❑ To appoint or remove KMP.
- ❑ To take note of appointment & removal of personal one level below KMP
- ❑ Appointment of internal auditors / secretarial Auditors
- ❑ To take note of disclosure of interest (184)

# Powers of the Board (Section 179)

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- ❑ To buy/sell investment of the( except trade investments) 5% or more of Paid up capital & free reserve of investee company.
- ❑ Invite/accept/ renew /public deposits and related matters.
- ❑ approve quarterly/half yearly/annual financial statements/ financial results.

# Powers of the Board 179(3)

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- ☐ To approve Financial statement or Board report
- ☐ To diversify the business
- ☐ To approve amalgamation, merger or reconstruction
- ☐ To take over a company or acquiring substantial interest in other company

# Restrictions on the power of the Board

## (Section 180)

62

Following acts cannot be done without the consent of the company by the special resolution:-

- ❖ To sell, lease or dispose off whole or substantially whole of undertaking.
- ❖ To invest (otherwise in trusted securities) the amount of compensation received by it as a result of amalgamation or merger.
- ❖ To borrow money exceeding its paid up capital and free reserves (except for banking companies).
- ❖ To remit the account for repayment or debt due from the director.
- ❖ Contribution to bonafide and charitable fund.( If exceeds 5 % of average net profit of 3 preceding F/Y.

# Section 180

63

- Action of the board not to be invalidated
- Powers can be delegated to the committees
- The shareholders may restrict any powers of directors.

(shall not apply to the private limited company)

# Restrictions for Political Contributions.182

64

- ❖ Political contribution should not exceed 7.5% of its average net profit during 3 immediate financial years.
- ❖ Not applicable to the government company and the companies in existence for < three financial years.
- ❖ Proper disclosure should be in Profit & Loss account.
- ❖ **Penalty:**  
Upto 5 times of amount of contribution and every officer of the company shall be punishable, imprisoned upto 6 months with fine 5 times of the amount contributed.



# Restriction on non cash transactions

## 192

65

- No company shall enter into any arrangement without prior approval in general meeting by which
- a director of co/holding/subsidiary /associate or a person connected with him acquires assets for other than cash from company
- Company acquire assets from such director or person for consideration other than cash
- Details with valuation in notice

# Prohibition on forwarding dealing in security by Director or key managerial person (Section 194)

66

- No Director or KMP shall buy securities in company holding, subsidiary or associate company
- A right to call for delivery or right to make delivery at specified price or time of specified number of shares or amount of debentures, OR
- a right, he may elect, to call for delivery or to make of delivery at specified price, time and number of shares or amount of debentures.

# Prohibition on forwarding dealing in security by Director or key managerial person (Section 194)

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## Penalty:

- ❑ imprisonment upto 2 years and fine from Rs.1,00,000/- to Rs.5,00,000/- or both. AND
- ❑ If Director or KMP acquires any securities then they shall be liable to surrender to the company. And
- ❑ Such transfers shall not be registered in the name of transferees and will remain in the name of transferors.

# Prohibition of insider trading of securities 195

68

No person including any director or kmp shall enter into insider trading.

## Insider trading means

- a) An act of subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities by any director or key managerial personnel or any other officer of a company either as principal or agent if such director or key managerial personnel or any other officer of the company is reasonable expected to have access to any non-public price sensitive information in respect of securities of company ; or
- b) An act of counseling about procuring or communicating directly or indirectly any non-public price-sensitive information to any person.

# Penalty

69

Imprisonment for 5 years or with fine which should not be less than Rs.5,00,000/- which may extend to Rs.25,00,00,000/- or three times of the amount of profit whichever is higher or both.

# Penalty

70

Imprisonment for 5 years or with fine which should not be less than Rs.5,00,000/- which may extend to Rs.25,00,00,000/- or three times of the amount of profit whichever is higher or both.

# Loan to Directors (Section 185)

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No company shall directly or indirectly provide any loan (including in nature of book debts) or give guarantee for providing security in connection with any loan to

- Any Director or
- Any other person in which Director is interested.

To any other person means:

- ▣ Any director of lending company or
- ▣ Director of holding company or
- ▣ any partner or relative of such director.
- ▣ Any firm in which he or she or his/ her relative is partner.
- ▣ Any private company in which such director is Director/Member

# Loan to Directors (Section 185)

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- ▣ Any body corporate in which not < 25% of voting power is exceeding by such director or by two or more such director
- ▣ Any body corporate, Board of Directors are accustomed to act with the directions of such director.



# Loan to Directors (Section 185)

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## **EXCEPTIONS:**

1. Company can provide the same to MD OR WTD, if it is a part of condition of service extended by company to its employees.

Or

Pursuant to any scheme approved by Special Resolution.

2. In case of finance companies, loans can be provided not lesser than bank rate.

# Companies Amendment Act 2015

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## Exemptions :-

- ▣ Loan given by holding company to wholly owned subsidiary or guarantee given or security provided by holding company in respect of the loan to wholly owned subsidiary company.
- ▣ Any guarantee given or security provided by holding company in respect of loan by any bank or financial institution to its subsidiary company.
- \* Provided such loans are utilised by subsidiary company for its principal business.

# Companies Amendment Act 2015

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## Exemptions :-

Notification dated 5<sup>th</sup> June 2015

- Section shall not apply to private limited company
  - ▣ in whose capital other body corporate has invested any money.
  - ▣ if borrowing from bank/ financial institution/ body corporate is less than twice of capital or Rs.50 crores whichever is less and no default in repayment of such borrowings at the time of the transaction.

# Loan to Directors (Section 185)

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## □ PANALTIES:

- Company : Rs. 5 lakh to Rs.25 lakh
- Director or any other person to whom loan given or security provided : Imprisonment upto 6 months or fine or both

# Loans & Investment by Company

## (Section 186)

77

- (1) A Company cannot make investment through not more than 2 layers of investment companies.
- **Exceptions:-**
  - ▣ Acquisition of any other company incorporated outside India if such other company has investment beyond two layers as per the laws of that country.
  - ▣ Investment by subsidiary company in investment subsidiary for the purpose of meeting any requirement under any law in force.
- (2) no company shall directly or indirectly:
  - (a) give loan to any person or other body corporate
  - ❖ (b) provide security in connection with loan and
  - ❖ (c) acquire the securities of any other body corporate.
  - ❖

# Loans & Investment by Company

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- EXCEEDING 60% of capital +free reserve & Premium  
OR  
100% of free reserve +premium  
whichever is higher
- If exceeds the limits S/R is required.

## Other conditions:

- No loan / investment without the consent of financial institution if term loan granted by it subsists.
- However, Cosent is not required when amount doesnot exceeds the limits and if no default in repayment.

# Loans & Investment by Company

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- ❑ The rate of interest should not be lower than prevailing the yield of 1, 3, 5, and 10 years of Government securities.
- ❑ Disclosure of details and purposes of loan, guarantee, investment in financial statement.
- ❑ Cannot give any loan/investment if company is in default of paying deposit or interest and said default subsists.
- ❑ Company shall maintain register

# Loans & Investment by Company

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## Exemptions:

1. Loan by Banking company, insurance company and housing finance companies.
2. Acquisition of securities by
  - a. NBFC
  - b. Company whose principal business is for acquisition
  - c. As right shares

## Penalties:

Company	:	Rs. 25000 to Rs. 5lakh
Officer	:	Imprisonment upto 2 years
Fine	:	Rs. 25000 to Rs. 1lakh



# Related Party Transaction 188

## □ **Relative**

□ **Section 2 (77) “relative”, with reference to any person, means anyone who is related to another, if—**

- (i) they are members of a Hindu Undivided Family;
- (ii) they are husband and wife; or
- (iii) one person is related to the other in such manner as may be prescribed;

# Rule 4

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- |   |                                  |   |                                |
|---|----------------------------------|---|--------------------------------|
| 1 | Father (including step father)   | 2 | Mother (including step mother) |
| 3 | Son (including step son)         | 4 | Son's wife                     |
| 5 | Daughter                         | 6 | Daughter's husband             |
| 7 | Brother (including step brother) | 8 | Sister (including step sister) |

# Related Party

Sec 2 (76) “related party”, with reference to a company, means—

- (i) a director or his relative;
- (ii) a key managerial personnel or his relative;
- (iii) a firm, in which a director, manager or his relative is a partner;
- (iv) a private company in which a director or manager is a member or director;
- (v) a public company in which a director or manager or **his relative** is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;

# Related Party

(*viii*) any company which is—

(*A*) a holding, subsidiary or an associate company of such company; or

(*B*) a subsidiary of a holding company to which it is also a subsidiary;

(deleted by Companies Amendment Act 2015)

(*ix*) such other person as may be prescribed;

# Related Party Transaction (Section 188)

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Except with approval of Board of Directors, a company shall not enter into any contract or arrangement and the related party with respect to:

- ❑ Sale, Purchase or supply of goods or material and services.
- ❑ Selling or disposing off or buying of property
- ❑ Lease of property
- ❑ Appointment of any agent for sale, purchase of goods, services or property.

# Related Party Transaction (Section 188)

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- Appointment of any related party to any office or place of office of the company or its subsidiary or associate company.
- Contract for underwriting.

# Conditions for Related Party Transaction (Rule 15)

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- 1) Agenda shall disclose:
  - a) Name and relationship.
  - b) Nature, duration and particulars of contract
  - c) Terms and conditions of RPT
  - d) Any advance paid / received
  - e) Manner of determining the pricing
  - f) Any other information.
- 2) Director interested shall not participate in discussion.

Interested member can vote in case of private limited company after disclosing his interest.

# Conditions for Related Party Transaction (Rule 15)

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## 3) S/R is required if:

- a) Paid up capital Rs.>10.00 crores or Lower of 10% of turnover/networth or 100/50crs whichever is less .
- b) Sale / purchase / supply exceeds Rs.25% of Annual turnover.
- c) Sales of property > 10% of networth.
- d) Leasing of property > 10% of networth or 10% of Turnover.
- e) Availing services > 10% of networth
- f) Appointment to any office or place of office > Rs.2.50 lacs per month.
- g) Remuneration for underwriting exceeds 1% of networth.



# Related Party Transaction (Section 188)

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Note:

1. The provisions of section 188 will not be applicable to the transaction entered into by the company in its ordinary course of business other than the transaction which are not on Arm's Length Basis (the expression 'Arm's Length' means the transaction between two related parties i.e. contacting as if they were unrelated so that there is no conflict of interest).



# THANK YOU