

Declaration/Payment of Dividends,
 Registration of Charge,
 Opportunities for CAs as Regd. Valuer
 Privileges of a Private Companies
 Penalties and Fraud;
 Compliances that need your attention

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Declaration and Payment of Dividend

- Section 2(35) defines Dividend
- Dividend includes any interim dividend
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- Chapter VIII [Sections 123 – 127]
- Section 123 – Declaration of Dividend
- Section 124 – Unpaid Dividend Account
- Section 125 – Investor Education & Protection Fund
- Section 126 – Rights held in abeyance pending transfer
- Section 127 – Punishment – failure to distribute dividend

Declaration and Payment of Dividend

- Dividend can be declared only out of –
 - Profits of the company for that year after providing for depreciation; and/or
 - Profits of the company of the previous year(s) after providing depreciation
 - Money provided by Government, Central or State, in pursuance of guarantee given by that government.
- Transfer to reserves at the discretion of the Board
- Dividend can be declared only out of free reserves.
- Depreciation to be provided in accordance with the provisions of Schedule II of the Act.
- Dividend (including interim dividend) to be deposited in a separate bank account within five days from the date of declaration

Declaration and Payment of Dividend

- Dividend to be paid to the registered owner in cash, that is not in kind, but by cheque, warrant or electronic means. Exception – Issue of Bonus shares by capitalisation of reserves
- No dividend in case of default in acceptance of deposits [section 73] or repayment of deposits [section 74]
- Where transfer is not effected for any reason, the company
 - Transfer the dividend to Unpaid Dividend Account
 - Pay to the transferee, if so authorised in writing by the transferor, being the registered owner.
 - Keep in abeyance any offer of rights shares/issue of bonus shares

Declaration and Payment of Dividend

- Dividend out of accumulated profits transferred to reserves, shall be subject to conditions, namely:
 - In the case of inadequacy or absence of profits, the rate of dividend shall not exceed the average of the rates at which dividend was declared in the three years immediately preceding that year, except in case of a company which has not declared dividends in the three preceding financial years.
 - Shall not draw from such accumulated profits, more than one-tenth of the paid up capital and free reserves as per the latest audited financial statement and shall be first utilised to set off losses incurred in the financial year.
 - Post transfer, the balance of such reserves shall not be less than 15% of the paid-up capital as per latest audited financial statement.
 - No dividend to be declared unless the previous losses and depreciation is provided for.

Declaration and Payment of Dividend

- Penalty for failure to distribute Dividend:
- Every director
 - Imprisonment upto two years
 - Fine @ Rs. 1,000/- for every day during which the default continues.
 - Company shall pay simple interest @ 18% p.a. during which the default continues
- No offence in certain cases where the failure was not due to the default on part of the company or for valid reasons.

Unpaid Dividend

- Unpaid Dividend
- Where the dividend has not be paid or has not been claimed within 30 days of the declaration of the dividend, the same to be transferred to a separate account called “Unpaid Dividend Account”
- Within 90 (ninety) days thereafter prepare a statement containing names, their last known addresses and the amount of unpaid dividend to be paid shall be displayed on the website of the company and on such other website approved by the Central Government in the prescribed format and manner.

Unpaid Dividend

- Unpaid Dividend (contd.)
- Interest @ 12% per annum on default of transfer of the amount to Unpaid Dividend Account from the date of expiry of thirty days stated earlier. Interest shall enure to the benefit of the shareholders in proportion of their holding.
- On the expiry of seven years from the date on which it was transferred to Unpaid Dividend Account, the unpaid amount of dividend so also the shares relating thereto, to be transferred to – Investor Education and Protection Fund alongwith the statement in prescribed form [Form No. DIR 5]

Unpaid Dividend

- Claimant can apply to IE&PF at any time after the amount is so transferred after the expiry of 7 years.
- Failure will attract penalty –
 - Company :- Fine not less than Rs. 5 lacs and which may extend upto rupees twenty five lacs
 - Every officer who is responsible:- Fine not less than Rs. 1 lac and which may extend upto rupees five lacs

Investor Education & Protection Fund

- Credits to the Fund:-
 - Grants from Central Government
 - Donations from Government, Central or State, companies or any other institutions
 - Amount transferred for the Unpaid Dividend Account
 - Amount in the General Revenue Account being unpaid dividend under the Companies Act, 1956, not transferred to IE&PF A/c.
 - Amount lying in IE&PF A/c. under the Companies Act, 1956
 - Amount received through disgorgement or disposal of securities of the person convicted for personation u/s 38 of the Act.

Investor Education & Protection Fund

- Credits to the Fund:-
 - Application money received for allotment of securities and due for refund.
 - Matured deposits with companies other than banking companies.
 - Matured debentures with companies
 - Interest accrued on the above items
 - Sale proceeds of fractional shares arising out of bonus shares, merger and amalgamation, for seven or more years
 - Redemption amount of preference shares remaining unpaid/unclaimed for seven or more years
 - Such Other amount as may be prescribed.

Depreciation

- Schedule II (Section 123)
- Depreciation is the systematic allocation of the depreciable amount of an asset over its useful life.
- Depreciable Amount = [Cost – Residual Value]
- Useful Life of asset is
 - the period over which an asset is expected to be available for use by an entity; or
 - the number of production or similar units expected to be obtained from the asset by the entity.
- Depreciation includes amortisation.
- It contains only useful lives of tangible assets and does not prescribe depreciation rates.

Depreciation



- The depreciation shall be calculated on a *pro rata basis*
 - In the case of additions, from the date of such addition or,
 - In case such asset has been sold, discarded, demolished or destroyed up to the date thereof.
- Component approach mandatory.
 - Where cost of a part of the asset is significant to total cost of the asset and useful life of that part is different from the useful life of the remaining asset, useful life of that significant part shall be determined separately.

Depreciation



- **Transitional Provisions:**
- From the date this Schedule comes into effect, the carrying amount of the asset as on that date—
 - (a) shall be depreciated over the remaining useful life of the asset as per this Schedule;
 - (b) after retaining the residual value, shall be recognised in the opening balance of retained earnings where the remaining useful life of an asset is NIL.
- “*Continuous process plant*” means a plant which is required and designed to operate for 24 hours a day.
- Factory Buildings does not include offices, godowns, staff quarters.

Depreciation



- Extra Shift Depreciation working simplified by the 2013 act-
 - Will apply to P&M items subject to general rate i.e., useful life of 15 years
 - **For Double shift:** 50% more depreciation for that period for which asset used.
 - **For Triple shift:** 100% more depreciation for that period for which asset used.
 - **Not applicable to** Items marked NESD in the schedule.

Depreciation



• Illustration

Nature of asset	Act, 2013		Act 1956 Rate	Increase	% change
	Useful Life	Deemed rate			
General P & M	15 yrs	6.35%	4.75%	1.58%	33.33
General F & F	10	9.50%	6.33%	3.17%	50.08
Office Equipments	5	19%	4.75%	14.25%	300
Desktop/Laptop etc.,	3	31.67%	16.21%	15.46%	95.35
Electrical Installation Equipments	10	9.50%	4.75%	4.75%	100

Acceptance of deposits

- Sections 73 to 76 –
- Definition of “Deposit” – [Sec 2 (31)] – includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories prescribed in consultation with RBI.

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Acceptance of deposits

- Definition of “Deposit” – Rule 2(1)(b) of Companies (Acceptance of Deposits) Rules, 2014 – includes any receipt of money by way of deposit / loan / other form, but does not include –
 - Amount received from Central / State Government
 - Amount received from foreign Government / approved foreign donors
 - Bank loan
 - Loan from public financial institutions / insurance companies
 - Commercial paper / instrument issued as per RBI guidelines

Acceptance of deposits....

- Deposit does not include
 - Any amount received by a company from any other company
 - Amount received as securities application money (If securities are not allotted within 60 days of receipt of money & still not refunded within 15 days thereafter, the money to be treated as deposits)
 - Amount received from person, who at the time of receipt of money was a director (Director to give declaration that amount given to company is not out of borrowed money)
 - Amount raised through secured bonds / Debentures or bonds / debentures compulsorily convertible in equity in 5 years
 - Non-interest bearing security deposit received from employee, not exceeding his annual salary
 - Non-interest bearing amount received / held in trust

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Acceptance of deposits....

- Deposit does not include
 - Amount received in course / purposes of business
 - As advance against goods / services provided it is appropriated as such within 365 days.
 - Advance received under agreement for sale of property provided it is duly registered
 - Security deposit against supply of goods / services
 - Advance received against long term projects (in any of above 4 sub-points, if amount becomes refundable because company does not have permission to deal in that business, amount to be considered as deposits)
 - Amount brought in by promoters / relatives as unsecured loan at insistence of bank / financial institution

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Acceptance of deposits...

Provisions applicable in respect of deposits determined by type of company

Private company

Public company

Eligible company

- **Eligible company** – means a public company which has obtained prior consent of AGM through special resolution for accepting public deposits; and has
 - Net worth of at least Rs. 100 crores, or
 - Turnover of at least Rs. 500 crores,

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Acceptance of deposits....

Key questions	Private Company	Public Company	Eligible Company
From whom can deposits be accepted	Members	Members	Members + Public
What is the minimum tenure of deposits	6 months	6 months	6 months
Can deposits < 6 months repayment be accepted	Yes, provided such deposits are not > 10% of NW. Under no circumstances – deposits < 3 months maturity to be accepted		
What is the maximum tenure of deposits	3 years	3 years	3 years
Can deposits which are repayable on demand be accepted / renewed	No	No	No
Is there a monetary limit on total deposits o/s from members <ul style="list-style-type: none"> • NW = paid up capital + free reserves 	O/s + fresh deposits to be < 25% NW	O/s + fresh deposits to be < 25% NW	O/s + fresh deposits to be < 10% NW

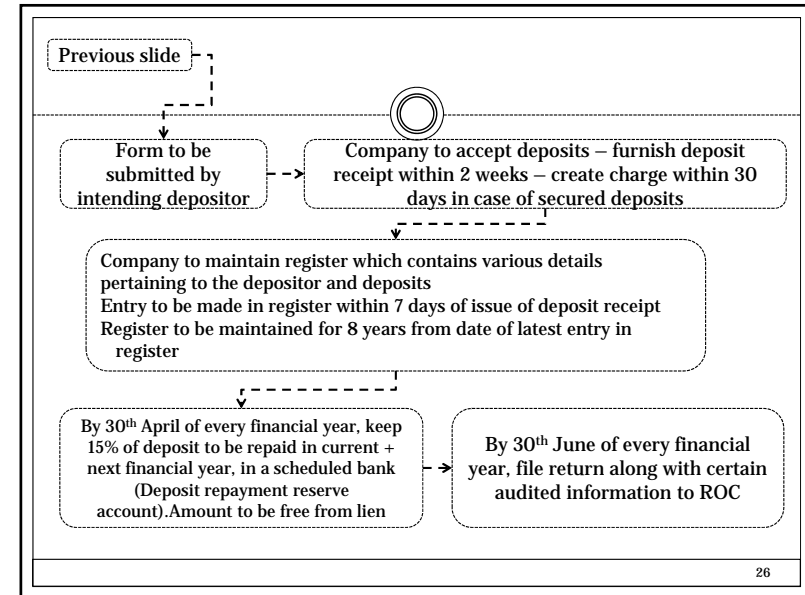
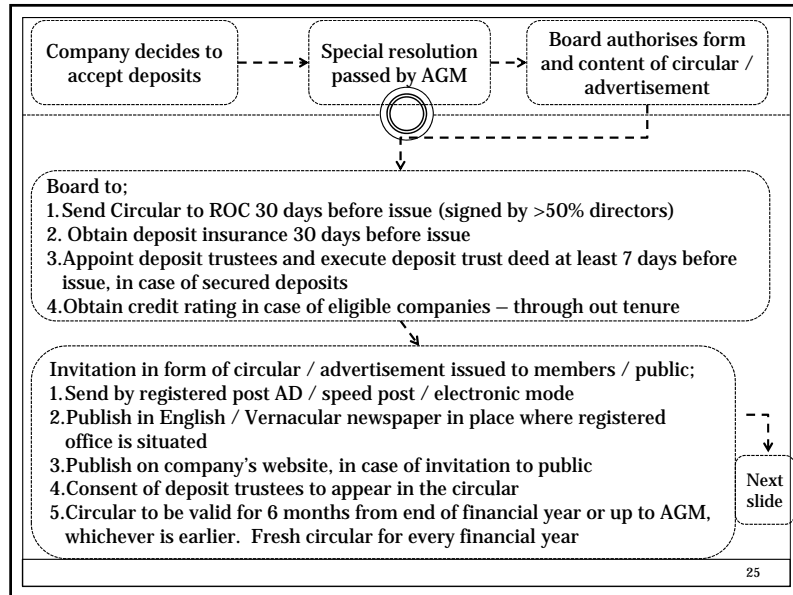
Sec 73-76 – Acceptance of deposits....

Key questions	Private Company	Public Company	Eligible Company
Is there a monetary limit on total deposits o/s from public	NA	NA	O/s + fresh deposits to be < 25% NW
What is the monetary limit for Government companies wrt deposits	O/s + fresh deposits to be < 35% NW		
What is the maximum rate of interest payable on deposits	Rate <= maximum ROI prescribed by RBI for deposit accepting NBFCs (currently 12.5%)		
Is deposit insurance compulsory in case of deposits	Yes	Yes	Yes
What is the minimum amount of deposit insurance to be taken	Rs. 20,000	Rs. 20,000	Rs. 20,000
Can the cost of deposit insurance be passed on to the depositors	No	No	No
Can unsecured deposits be accepted	Yes	Yes	Yes

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Acceptance of deposits....

Key questions	Private Company	Public Company	Eligible Company
Is deposit insurance required even for unsecured deposits	Yes	Yes	Yes
What security is to be obtained for secured deposits	Any Assets (other than intangible assets)		
What should be quantum of security in case of secured deposits? How is it valued?	Security of assets charged should cover deposit + interest, not covered by deposit insurance. Deposits + interest not to exceed market value of assets charged (valued by registered valuer)		
What happens in case deposits are not fully secured?	Deposits will be termed as “unsecured deposits”		
Is appointment of deposit trustees compulsory	Only for secured deposits		
What happens to o/s deposits at commencement of the Act	To be repaid within 1 year, or extended time allowed by Tribunal	Existing repayment schedule to continue in case of regular repayment	



Acceptance of deposits....

- Deposit trustee not to be appointed, if he is
 - Director / KMP / employee of company / holding / subsidiary company or relative of aforesaid
 - Depositor in the company
 - Indebted to company / holding / subsidiary
 - Has material pecuniary relationship with company
 - Has guaranteed repayment of the company's deposits
- Deposit trustee can be removed only if approved by all directors in meeting. Such meeting to include independent director, if applicable

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Acceptance of deposits....

- Duty of deposit trustee to enforce compliance as required by Law and ensure protection of depositors interest
- Depositors meeting can be called on requisition by depositors with 10% of total deposit value
- Deposits in case of banks and NBFCs to be regulated by RBI – these provisions not to apply

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Registration of Charges

- Chapter VI [Sections 77 to 87]
- **Duty to register charges etc.:** A company creating a charge, shall, register the particulars of the said charge with the ROC within 30 days of its creation. [Form No. CHG 1 for other than Debentures and Form No. CHG 9 for Debentures]
- This charge could be:
 - on its property or assets or
 - any of its undertakings
 - whether tangible or otherwise
 - Situated in or outside India
- Signed by both the Company and the charge-holder together with the instruments creating the charge.

Registration of Charges

- **Rule 3 (4)(a)**
 - where the instrument or deed relates solely to the property situate outside India, the copy (instrument evidencing the creation/modification) shall be verified by:
 - ✦ a certificate issued either under the seal of the company or
 - ✦ under the hand of
 - any director or
 - company secretary of the company; or
 - an authorised officer of the charge holder
 - ✦ or under the hand of some person other than the company who is interested in the mortgage or charge,
 - ✦ stating that it is a true copy;

Registration of Charges

- **Rule 3 (4)(b)**
 - where the instrument or deed relates, whether wholly or partly, to the property situate in India, the copy shall be verified by:
 - ✦ a certificate issued under the hand of
 - any director; or
 - company secretary of the company; or
 - an authorised officer of the charge holder
 - ✦ stating that it is a true copy.

Registration of Charges

- **Charges requiring registration**
 - a charge created for the purpose of securing any issue of debentures or deposits;
 - a charge on uncalled share capital of the company;
 - a charge on any immovable property, wherever situate, or any interest therein;
 - a charge on any book debt of the company;
 - a charge, not being a pledge, on any movable property of the company;

Registration of Charges

- Charges requiring registration
 - a floating charge on the undertaking or any property of the company including stock-in-trade;
 - a charge on calls made but not paid;
 - a charge on a ship or any share in a ship;
 - a charge on intangible assets, including goodwill, patent, a licence under a patent, trade mark, copyright or a licence under a copyright.

Registration of Charges

- Application for Registration of charge in Form No. CHG 1.
- In case the company fails to get the charge registered, then the charge-holder may apply to ROC for the registration of the same
- On receiving such application, the ROC shall send notice to company
- And within 14 days, unless the company doesn't show sufficient cause as to why the said charge should not be registered, shall register the charge without signature of company
- The said charge-holder shall be entitled to recovery of fees and additional fees paid to ROC from the company

Registration of Charges

- ROC shall issue a certificate of registration of such charge in Form No. CHG 2
- ROC shall issue a certificate of modification of charge in Form No. CHG 3
- The certificate issued by the ROC shall be conclusive evidence that the requirements of Chapter VI of the Act and the rules have been complied with.
- The liquidator or any other creditor shall not take into account any charge created unless registered with the Registrar.

Registration of Charges

- Intimation of satisfaction of charge to be given to the ROC in Form No. CHG 4 within a period of 30 days from the date of such satisfaction ROC to issue memorandum of satisfaction in Form No. CHG 5.
- If a form is filed without the signature of charge-holder, ROC shall send notice to the charge-holder calling upon him to show cause within such time not exceeding 14 days, as to why the satisfaction should not be recorded. If no cause shown, ROC will register.
- Where the company fails to send intimation of satisfaction of charge to the ROC, who receives evidence of the satisfaction of charge from any other person, such as charge-holder, shareholder, or purchaser. However, the power is subject to evidences being produced to his satisfaction.

Registration of Charges

- ROC shall issue a certificate of registration of satisfaction of charge in Form No. CHG 5.
- Intimation [in Form No. CHG 6] within 30 days to the ROC of the appointment/cessation thereof, as Receiver or Manager of the property so charged [Section 84]
 - Where any person obtains an order for the appointment of a receiver; or of a person to manage the property, which is already subject to a charge of a company;
 - Where any person appoints such receiver/ manager under any power contained in any instrument

Registration of Charges

- The provisions of registration of charges shall equally apply to:
 - a company acquiring any property subject to a charge; or
 - any modification in the terms or conditions or the extent or operation of any registered charge
- Where any person acquires a property, asset or undertaking in respect of which a charge has already been registered, it would be deemed that he has complete knowledge of that charge from the date the said charge was registered with the ROC

Registration of Charges

- ROC may on application by the company, allow this registration within 300 days (30+270), on payment of additional fees
- This application shall be supported by a declaration from the company by its secretary or director that such belated delay shall not adversely affect rights of any other creditors of the company
- If not within 300 days, company to seek extension of time from the CG; - Form No. CHG 8
- ROC shall not register the charge unless the delay is condoned by the Central Government

Registration of Charges

- Register of Charges [Section 85]
- Every company shall keep at its registered office a register of charges which shall include therein all charges and floating charges affecting any property or assets of the company or any of its undertakings. The instrument creating the charge shall also have to be kept along with the register.
- The register of charges shall be in Form No. CHG 7 and enter therein particulars of all the charges registered with the Registrar as well as particulars of any modification of charge and that of satisfaction of charge

Registration of Charges

- The entries in the said register shall be made forthwith after the creation, modification or satisfaction of charge, as the case may be.
- Entries in the register shall be authenticated by the secretary of the company or any other person authorised by the Board for the purpose.
- The register shall be preserved permanently and the instrument creating a charge shall be preserved for a period of 8 years from the date of satisfaction of charge by the company.

Registration of Charges

- Inspection of Register
- Register of charges and the instrument of charges, shall be open for inspection during business hours:
 - by any member or creditor without any payment of fees; or
 - by any other person on payment of such fees as prescribed in Annexure B and subject to such reasonable restrictions as the company may, by its articles, impose.

Registration of Charges

- Rectification CG in the register of charges
 - CG on being satisfied that an omission that has occurred:
 - ✦ was accidental; or
 - ✦ due to inadvertence; or
 - ✦ for some other sufficient cause or
 - ✦ It is not of a nature to prejudice the position of creditors or shareholders of the company or
 - ✦ on any other grounds, it is just and equitable to grant relief

REGISTERED VALUERS

Registered Valuers

Where valuation is required to be made under the Act, in respect of any property, stocks, shares, debentures, securities or goodwill or other assets or of networth of a company or its liabilities, such valuation shall be done by a registered valuer.

Scope

- Any valuation under the Companies Act 2013 to be done by registered valuer. Illustratively;
 - Valuation of further issue of shares
 - Valuation of properties / assets of the company particularly for non cash consideration
 - Valuation report in respect of shares, properties etc. for compromise and arrangement
 - Valuation for purposes of minority squeeze out
 - Voluntary winding up – valuation of assets

Registered Valuers

Responsibilities

- a. To make an impartial true and fair valuation of any assets
- b. To exercise due diligence while performing the functions as valuer
- c. To make the valuation in accordance with such rules as may be prescribed and
- d. Not to undertake valuation of any assets in which he has a direct or indirect interest or becomes interested at any time during or after the valuation of assets.

Registered Valuers

- Consequences of non-compliance by the valuer
 - Fine of not less than Rs. 25,000 upto Rs. 100,000.
 - In case of guilty of intention to defraud
 - ✦ Imprisonment upto one year
 - ✦ Fine ranging from Rs. 100,000 to Rs. 500,000
 - ✦ Refund the remuneration received by him
 - ✦ Liable for damages to the company or any other person for loss arising out of incorrect or misleading statements of particulars.

Registered Valuers

- Register of Valuers
- Persons eligible to apply for being registered as valuers
 - CA/CS/CWA in whole-time practice for a period not less than five years – for Financial Valuation
 - Any other Indian/foreign qualification recognised by MCA held by an Indian citizen – for Financial Valuation
 - Member of Institute of Engineers or Institute of Architects in whole-time practice for a period not less than five years – for Technical Valuation
 - Merchant Banker registered with SEBI having in employment persons having qualifications specified hereinabove. For Financial/Technical Valuation based on the qualification.
 - Any person/entity possessing necessary competence and prescribed qualifications.

Registered Valuers

- **Whole-time practice means, whether individually or in partnership/LLP or as employee of a recognised Merchant Banker, for the remuneration received or to be received, he**
 - Engages himself in the practice of valuation
 - Offers to perform or performs services involving financial valuation
 - Renders professional service/assistance in or about matters relating to valuation
- **Application for registration – Forms to be notified**

Registered Valuers

- **No person shall be a registered valuer, if**
 - He was sentenced to a term of imprisonment for any offence.
 - He was found guilty of misconduct in his professional capacity by any association/institute /other body with which he is registered
- **Removal of name**
- **Restoration of name**
- **Procedure for enquiry and appeal against the aggrieved order**
- **Valuation Report in the prescribed format**

Registered Valuers

- **Valuation**
 - Approach
 - ✦ Asset Approach
 - ✦ Income Approach
 - ✦ Market Approach
- **Valuation date: means the date on which the estimate of value is applicable. It may be different from the date of the investigation/valuation report**

- **Valuation**
 - Methods
 - ✦ Net Asset Value Method
 - ✦ Market Price Method
 - ✦ Yield Method/ Profit earning capacity value (PECV) method
 - ✦ Discounted Cash Flow Method (DCF)
 - ✦ Comparable Companies Multiples Method (CCM)
 - ✦ Comparable Transaction Multiples Method (CTM)
 - ✦ Price of Recent Investment Method (PORI)
 - ✦ Sum of the Parts Valuation Method (SOTP)
 - ✦ Liquidation Value
 - ✦ Weighted Average
 - ✦ Any other method accepted/notified by RBI/SEBI/Income Tax authorities
 - ✦ Any other method deemed fit with adequate justification

• Methods of Valuation (contd.)

- Factors determining the valuation
 - ✦ Economic outlook – General as well as industry specific
 - ✦ Book Value/Financial condition
 - ✦ Earning capacity of the company
 - ✦ Dividend-paying capacity
 - ✦ Goodwill or other intangible value
 - ✦ Sales and the size of the block of asset to be sold
 - ✦ Market Prices
 - ✦ Contingent Liabilities
 - ✦ Nature of instrument/transaction

PENALTIES

Section	Particulars	Who is liable	Amount of penalty (Rs.)
4 (5) (ii)	Furnishing wrong or incorrect information while applying for reservation of name	Person making Application	UptoRs.1 lac
11 (2)	Commencing business without submitting declaration about having minimum share Capital	Company	UptoRs.5 lac
12 (8)	Default in complying with provisions relating to intimation and display of registered office of company and display of name of company	Company and every officer who is in Default	Rs.1,000/- per day (Max.1 lac)
15 (2)	Default in noting of alteration in Memorandum & Articles in every copy of memorandum and Articles	--do--	Rs.1,000/- (for every copy of Memorandum or Articles)
17 (2)	Default in sending copies of memorandum & articles to a member within 7 days on payment of fees	--do--	Rs.1,000/- per day of default or Rs.1 lac, whichever is less
33 (3)	Issuing application forms for securities without abridged prospectus, and not sending full prospectus on request	Company	Rs.50,000/- for each default
39 (5)	Not refunding allotment money within 30 days if minimum subscription not received and not filing return of allotment within 30 days	Company and every officer who is in Default	Rs.1,000/- per day of default or Rs.1 lac, whichever is less


PENALTIES

Section	Particulars	Who is liable	Amount of penalty (Rs.)
42 (10)	Default in provisions relating to private placement of securities	Company, promoters and directors	Upto amount involved in offer or invitation or Rs.2 crores, whichever is higher.
60 (2)	Default in provision relating to publication of authorized capital alongwith subscribed and paid up capital	Company / officer in default	Rs.10,000/- for default / Rs. 5,000/- for each default
91 (2)	Default in provision relating to closure of register of members and debenture holders	Company and every officer who is in Default	Rs.5,000/- per day (Max.1 lac) during which register is closed.
94 (4)	Default in keeping register of members and copies of annual returns at registered office and allowing its inspection	--do--	Rs.1,000/- per day (Max. Rs.1 lac) for each default
111 (5)	Default in circulation of members resolution	--do--	Rs.25,000/-
118 (11)	Default in provisions relating to maintenance of minutes of general meetings and Board meetings	--do--	Rs.25,000 (company) / Rs.5,000/- (officer)
119 (3)	Default in allowing inspection of minutes of general meeting or resolution passed by postal Ballot	--do--	Rs.25,000 (company) / Rs.5,000/- (officer)


PENALTIES

Section	Particulars	Who is liable	Amount of penalty (Rs.)
136 (3)	Default in sending copies of audited financial statement to members and its inspection	Company and every officer who is in default	Rs.25,000 (company) / Rs.5,000/- (officer)
173 (4)	Default in giving required notice of Board meeting	Every person whose duty is	Rs. 25000/-
189 (6)	Default in keeping register of contracts or arrangements in which directors are interested and disclosure by directors of their interest	Every director	Rs.25,000/-
190 (3)	Default in keeping contract of service with MD and WTD and allowing its inspection	Company and every officer who is in default	Rs.25,000 (company) / Rs.5,000/- (officer)
352 (8) (a)	Company Liquidator retaining money without depositing it in Company Liquidation Dividend and Undistributed Assets Account	Liquidator	Such amount as may be determined by ROC.
447	Fraud	Every person guilty of fraud	Imprisonment – six months to ten years Fine – amount involved upto three times thereof


Section	Particulars	Who is liable	Amount of penalty (Rs.)
448	Punishment for false statement	Any person making such statement	Same as in case of Section 447
449	Punishment for false evidence	Any person intentionally giving false evidence	Imprisonment – three years to seven years Fine – upto Rs. 10 lakhs
450	Where no specific penalty or punishment is specified	Any officer/person found guilty	Fine upto Rs. 10,000 For continuing offence – Rs. 1,000 per day
451	In case of repeated default	Company/every officer in default	Twice the fine in addition to the imprisonment, if any.
452	Punishment for wrongful withholding of property	Any officer/employee found guilty	Fine – Rs. 100,000 upto Rs. 500,000 Imprisonment upto two years
453	Improper use of “Limited” or “Private Limited”	Any person found guilty	Fine being not less than Rs. 500. For continuing offence – Rs. 2,000 per day
454	Where penalty is not paid by the company	Company	Fine not less than Rs. 25,000 upto Rs. 500,000
454	Where penalty is not paid by the officer in default	Such officer	Imprisonment upto six months and or fine of not less than Rs. 25,000 upto Rs. 100,000.

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- **Adjudication of penalties**
 - Concept of levy of penalties by adjudicating officers has been introduced for the first time in company law in Companies Act 2013. As per Companies (Adjudication of Penalties) Rules 2014 adjudicating officers (not below the rank of Registrar) can levy penalty after issuing show cause notice and hearing in person, if required.
 - Appeal against such order can be filed with the Regional Director.
 - It may be noted that penalty is different from fine. Only Special Court can take cognizance of offence under the Act and can order for fine/imprisonment.

Privileges of a Small Company

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- The financial statements shall not include the cash flow statement [proviso to Section 2(40)]
 - The annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company [proviso to Section 92(1)]
 - Small company can hold only one Board Meeting in each half of calendar year and the gap between the two meetings is not less than ninety days [Section 173(5)]

One Person Company

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- One Person Company means a company which has only one person as a member. [Section 2(62)]
 - The financial statements shall not include the cash flow statement [proviso to Section 2(40)]
 - Can have less than two members [Section 2(68) read with Section 3(1)]
 - The Memorandum of Association shall contain a name of the person, who in the event of the death of the subscriber or his incapacity to contract, shall become the member of the company. [Section 4(f)]
 - OPC member shall intimate to the Registrar change in the name of such nominated person. [fourth proviso to Section 3(1)]

the Privileges of an OPC (Contd.)

- The words – ‘One Person Company’ shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.
- The annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company [proviso to Section 92(1)]
- OPC not required to hold a general meeting as its annual general meeting [Section 96(1)]

the Privileges of an OPC (Contd.)

- Exempted from the applicability of the following provisions [Section 122] :-
 - Section 98 : Power of Tribunal to call meetings of members
 - Section 100: Calling of an extr-ordinary general meeting
 - Section 101/102 : Notice of Meeting and the Statement to be annexed to notice
 - Section 103 : Quorum for meetings
 - Section 104 : Chairman of meetings
 - Section 105 : Proxies
 - Section 106 – 108 : Restriction on voting rights and the voting by show of hands or through electronic means
 - Section 109 : Demand for poll
 - Section 110 : Postal ballot
 - Section 111 : Circulation of members’ resolution.

the Privileges of an OPC (Contd.)

- In case of an OPC, the ordinary businesses/ special business to be conducted at the general body meetings, shall be deemed to have been passed by ordinary/special resolution if, the resolution is communicated by the member to the company and entered in the minutes book required to be maintained u/s Section 118 and signed and dated by the member (director, in case of OPC with one director) [Section 122(3) and 122(4)]
- The report of the Board of Directors to be attached to the financial statements shall mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor [Section 134(4)]

the Privileges of an OPC (Contd.)

- OPC shall file a copy of the financial statements duly adopted by its member, alongwith all the documents, which are required to be attached thereto, within 180 days from the closure of the financial year.
- OPC shall have minimum one director [Section 149(1)(a)]
- Subscriber to the Memorandum of Association shall be the first director of the company until the directors are appointed. [Section 152(1)]
- Nothing contained in sections 173 and 174 (regarding Board Meetings etc.) is applicable to an OPC having one director [proviso to Section 173(5)]

the Privileges of an OPC (Contd.)

- An OPC having more than one director, can hold only one Board Meeting in each half of calendar year and the gap between the two meetings is not less than ninety days [Section 173(5)]
- The terms of the contract, not being in the ordinary course of business, unless the same is in writing, with the sole member/director of an OPC shall be as contained in its Memorandum of Association or as recorded in the minutes of the Board meeting held immediately after the contract is entered into. [Section 193(1)]
- The details of the contracts shall be informed to the Registrar within fifteen days [Section 193(2)]

Dormant Company/Inactive Company

- **Dormant Company [Section 455]**
 - Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.
- **Inactive Company**
 - “inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;

Dormant Company

- **Significant Accounting transaction** means any transaction other than:
 - (a) payment of fees by a company to the Registrar;
 - (b) payments made by it to fulfil the requirements of this Act or any other law;
 - (c) allotment of shares to fulfil the requirements of this Act;
 - (d) payments for maintenance of its office and records

Dormant Company

- **Other provisions relating to Dormant company**
 - Register of Dormant Companies
 - To retain the status
 - ✦ Have minimum number of directors
 - ✦ File such documents as may be prescribed
 - ✦ Pay such annual fees as may be prescribed
 - To convert into Active status
 - ✦ Make an application and file such documents as may be prescribed and pay such annual fees as may be prescribed
 - ROC shall have power to strike off the name of a dormant company

Privileges of Private companies under the Companies Act, 1956

- *Section 12(1) : A minimum of two persons may form a private company.*
- *Section 3(1)(b) : two or more persons, where the company to be formed is to be a private company;*
- *Section 3(1)(c) : one person, where the company to be formed is to be One Person Company that is to say, a private company,*

Privileges of Private companies under the Companies Act, 1956

- *Section 70 : Filing of statement in lieu of prospectus before allotment of shares is not required.*
- *No corresponding provision for filing of SLP*

Privileges of Private companies under the Companies Act, 1956

- *Section 77(2) : A private company which is not a subsidiary of a public company is not prohibited from giving financial assistance to any one for purchasing or subscribing for shares of the company or its holding company.*
- *Section 67(2) : No public company shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.*

Privileges of Private companies under the Companies Act, 1956

- *Section 81 : Restrictions envisaged requiring allotment of shares on pre-emptive basis to the existing shareholders are not applicable.*
- *Section 62(1) : Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—*
- *(a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions,*

Privileges of Private companies under the Companies Act, 1956

- *Section 85 – 90 : The provisions of these sections requiring that there should be only two kinds of share capital and that voting rights should be proportional to the capital paid up and prohibiting and terminating disproportionately excessive voting rights are not made applicable to a private company which is not a subsidiary of a public company and such company may issue share capital of such kinds, in such forms and with such proportionate or disproportionate or other voting rights as it may think fit.*

Privileges of Private companies under the Companies Act, 1956

- **43.** The share capital of a company limited by shares shall be of two kinds, namely:—
 - (a) equity share capital—
 - × (i) with voting rights; or
 - × (ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; and
 - (b) preference share capital:

Privileges of Private companies under the Companies Act, 1956

- *Section 111(11) and (13) : The right of appeal to the Company Law Board against rejection of a transfer of shares is not available as long as the private company is only enforcing the provisions of its Articles in rejecting a particular transfer. It appears that a right of appeal will be available where rejection is outside the provisions of the private company's Articles. The right of appeal is also available where there is transmission by court sale or sale by other public authority.*

Privileges of Private companies under the Companies Act, 1956

- *Section 58(1) : If a private company limited by shares refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any securities or interest of a member in the company, it shall within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.*

Privileges of Private companies under the Companies Act, 1956

- *Section 149 : A commencement of business certificate is not necessary.*
-
- *Section 11(1) : A company having a share capital shall not commence any business or exercise any borrowing powers unless—*
- *(a) a declaration is filed by a director in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him and the paid-up share capital of the company is not less than five lakh rupees in case of a public company and not less than one lakh rupees in case of a private company on the date of making of this declaration; and*
- *(b) the company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12.*

Privileges of Private companies under the Companies Act, 1956

- *Section 165 : Holding of statutory meeting and filing of statutory report are not required.*
- **No corresponding provision for holding of Statutory Meeting**

Privileges of Private companies under the Companies Act, 1956

- *Sections 170 -186 : The provisions of these section relating to general meetings, unless the provisions of any section are expressly made applicable by the company's Articles, do not apply to such private company to the extent to which the company makes its own provisions by its Articles. In particular, it is not bound by the prescribed 21 days' notice for general meeting required by the section and may make its own regulation by its Articles as regards the contents and manner of service of notice and persons on whom it is to be served, election of chairman, proxies, manner of taking votes, restrictions as regards exercise of voting rights by members who have not paid calls etc., and the manner of exercising of voting rights, taking of polls, etc.*

Privileges of Private companies under the Companies Act, 1956

- **Section 96(1)** : Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:
-
- **Section 103(1)(b)** : in the case of a private company, two members personally present, shall be the quorum for a meeting of the company.

Privileges of Private companies under the Companies Act, 1956

- *Section 198 : Such a private company is not controlled by the provisions of fixing overall maximum remuneration of 11 % of net profits for the management of a company and the limit of minimum managerial remuneration ranging between Rs. 75,000 and Rs. 400,000 per month depending upon the effective capital of the company, in the event of no profits or inadequate profits. It may remunerate those in management by such higher percentage of profits as it may think fit.*
- Section 197 : applicable to public companies only

Privileges of Private companies under the Companies Act, 1956

- *Section 204 : Such private company is not governed by the restrictions as to duration etc., imposed by this section as regards appointment of a firm or body corporate to any office or place of profit.*
- No corresponding provision in the new Act

Privileges of Private companies under the Companies Act, 1956

- *Section 219 : Provisions as to right of a member to copies of Balance Sheet and Auditor's Report in relation to Balance Sheet laid before the company.*
- **Section 136(1)** states: Without prejudice to the provisions of section 101, a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled, not less than twenty-one days before the date of the meeting:

Privileges of Private companies under the Companies Act, 1956

- *Section 220 : The profit and loss account of such company though filed with the Registrar are not to be disclosed to the public, unlike in the case of a private company which is a subsidiary of a public company, whose balance sheet, profit and loss account and other financial particulars are open to public.*
- **137. (1)** A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting in such manner, with such fees or additional fees as may be prescribed within the time specified under section 403.

Privileges of Private companies under the Companies Act, 1956

- *Section 252: Such a private company need not have more than two directors*
- In view of the extinction of Section 43A [deemed public companies] this section was irrelevant after Companies (Amendment) Act, 2000 became operative. No corresponding provision under the new Act.

Privileges of Private companies under the Companies Act, 1956

- *Section 255 and 256 : The provisions relating to appointment, retirement, re-appointment etc., of directors who are to retire by rotation and the procedure relating thereto are not applicable to such a company.*
- Section 152(6) states that retirement of directors, unless the Articles otherwise specify, shall be applicable to public companies only.

Privileges of Private companies under the Companies Act, 1956

- *Section 257 : The provisions requiring giving of fourteen days' notice by new candidates seeking election as directors and deposit of Rs. 500 are not applicable to such companies.*
- Section 160 specifies the mode to contest election for directors retiring u/s 152 of the Act

Privileges of Private companies under the Companies Act, 1956

- *Section 259 : The provision requiring Central Government sanction for increasing the number of directors (by way of amendment of the articles or otherwise) beyond the maximum fixed in the existing Articles does not apply.*
- Section 149(1)(b) states every company shall have a maximum of fifteen directors
- Proviso 1 to the said section 149(1)(b) states that a company may appoint more than fifteen directors after passing a special resolution

Privileges of Private companies under the Companies Act, 1956

- *Section 261 : Provisions regarding the appointment of certain persons with the Managing Agents or holding certain offices , as directors except by sanction of a special resolution of the company, does not apply to such companies.*
- The above section was deleted by Companies Amendment Act, 2000. Hence not relevant now.

Privileges of Private companies under the Companies Act, 1956

- *Section 262 : The provisions relating to the manner of filling up casual vacancies among directors.*
- Section 161 - The privilege is extended to public companies also.

Privileges of Private companies under the Companies Act, 1956

- *Section 263 - 264: The duration of the period of office of those so appointed, the provision requiring that the appointment of directors should be voted individually and the requirement that the consent of each candidate for directorship should be filed with the Registrar do not apply to such private companies.*
- As per Section 162/Section 152, the exemption is no longer extended to private companies

Privileges of Private companies under the Companies Act, 1956

- *Section 266(5) Provision relating to the filing of consent with Registrar before a person's name is included in the prospectus or advertised as director is not applicable.*
- No corresponding provision in the new Act.

Privileges of Private companies under the Companies Act, 1956

- *Section 268 and 269 : Central Government's approval is not required in the case of such company either for appointment of or for amending any provisions relating to the appointment or re-appointment of a managing director or whole-time director of the company.*
- Section 2(94) read with Section 203 : Applicable to all companies

Privileges of Private companies under the Companies Act, 1956

- *Sections 270 to 273 : The provisions requiring the holding of a share qualification by directors and fixing the time within which such qualification is to be acquired and the filing with the Registrar of a declaration of his share qualification by each director are also not applicable.*
- No corresponding provision in the new Act.

Privileges of Private companies under the Companies Act, 1956

- *Section 274 : Such a company may by its articles , provide special disqualifications for appointment of directors.*
- Section 164(3) : Private companies will continue to enjoy the privilege.

Privileges of Private companies under the Companies Act, 1956

- *Section 275 to 279 : The restrictive provisions as regards the total number of directorships which any person may hold do not include any directorship held in a private companies, are not applicable.*
- Section 165 : maximum directorships allowed are twenty companies of which public companies shall not exceed ten.

Privileges of Private companies under the Companies Act, 1956

- *Section 283 : Such companies may provide special grounds for vacating office of a director.*
- Section 167(4) : Private companies will continue to enjoy the privilege.

Privileges of Private companies under the Companies Act, 1956

- *Section 284 : Provision for removal of directors in case of director holding office for life on April 1, 1952 is not applicable*
- No corresponding provision in the new Act.

Privileges of Private companies under the Companies Act, 1956

- *Section 293 : The restrictions imposed on the powers of the Board of Directors as regards selling, leasing, remitting or giving time for payments of debts, investing or borrowing moneys or contributing to charities other than for political purposes, are extended to such companies.*
- Section 180 : No exemption to private companies.

Privileges of Private companies under the Companies Act, 1956

- *Section 295 : Provisions prohibiting loans to directors do not apply such companies.*
- Section 185 : No exemption to private companies.

Privileges of Private companies under the Companies Act, 1956

- *Section 300 : Provisions prohibiting an interested director from participating or voting in Board proceedings relating to his concern or interest in any contract arrangement does not apply.*
- Section 2(49) read with Section 174 : Exemption to OPC only.

Privileges of Private companies under the Companies Act, 1956

- *Section 303(1) : Such a company is not required to enter the date of birth in the register of directors.*
- No such exemption in the Act. Position will be clear after Rules are finalised.

Privileges of Private companies under the Companies Act, 1956

- *Section 309 to 311 : The provisions relating to the extent and manner of payment of remuneration to directors and the requirement that any increase in the remuneration of a director including a managing or whole-time director and any amendment of any provision relating thereto must have for their validity the approval of the Central Government are not applicable to such companies.*
- Section 197 applicable to public companies.

Privileges of Private companies under the Companies Act, 1956

- *Section 316 and 317 : The restrictions as to the number of companies of which a person may be appointed a managing director and prohibition of such appointment for more than five years at a time do not extend to such companies.*
- Section 196 and 203: The exemptions does not include private companies

Privileges of Private companies under the Companies Act, 1956

- *Section 349 and 350 : The provisions relating to percentage of quantum of remuneration payable to a managing agent; method of determination of net profits and provision for depreciation for determining such percentage or quantum; prohibition of office allowance; payment of additional remuneration and time and manner of payment of remuneration are not applicable to such companies.*
- Section 198 is applicable to public companies only

Privileges of Private companies under the Companies Act, 1956

- *Section 372A : The section relating to Inter-corporate loans and investments do not apply to such companies.*
- Section 186 : The exemptions does not include private companies

Privileges of Private companies under the Companies Act, 1956

- *Section 386 and 388 : The provisions restricting the number of companies for which a person may be appointed as Manager and remuneration of manager and the relevant provisions including Section 312 regarding assignment of office by director in relation to the Manager are not applicable to such companies.*
- Section 196 states that no company shall appoint or employ at the same time a managing director and a manager.

Privileges of Private companies under the Companies Act, 1956

- *Section 409 : The special powers of interference given to CLB to prevent change in the Board of Directors of a company where in the opinion of the Board(CLB) such change will be prejudicial to the interests of the company are not applicable to such companies.*
- No corresponding provision in the new Act.

Privileges of Private companies under the Companies Act, 1956

- *Section 416 : Contracts entered into by an agent of private company not being a subsidiary of a public company, if entered into by him on behalf of the company as undisclosed principal, need not be recorded by a memorandum in writing*
- No corresponding provision in the new Act.

Fraud under the Indian Contract Act, 1872

- "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agents, with intent to deceive another party thereto his agent, or to induce him to enter into the contract;
 - (1) the suggestion as a fact, of that which is not true, by one who does not believe it to be true;
 - (2) the active concealment of a fact by one having knowledge or belief of the fact;
 - (3) a promise made without any intention of performing it;
 - (4) any other act fitted to deceive;
 - (5) any such act or omission as the law specially declares to be fraudulent.

Fraud under the Companies Act, 2014

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

Fraud

- Wrongful gain means the gain by unlawful means of property to which the person gaining is not legally entitled.
- Wrongful loss means the loss by unlawful means of property to which the person gaining is legally entitled
- Definition much wider than the definition contained in Indian Contract Act.

Fraud

- Section 447 states: Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:
- Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Serious Fraud Investigation Office

- Responsibilities
 - Detecting and prosecuting or recommending for prosecution white-collar crimes/ corporate frauds.
 - Investigations characterised by
 - ✦ Complexity and having inter-departmental and multi-disciplinary ramifications
 - ✦ Substantial involvement of public interest – either in terms of size of monetary misappropriation or persons affected.
 - ✦ Investigations leading to or contributing towards a clear improvement in systems
 - ✦ Serious Fraud cases referred to be the Department of Corporate Affairs.

Serious Fraud Investigation Office

- CG may by order assign investigation into the affairs of a company –
 - On receipt of a report of the Registrar or Inspector u/s 208
 - On intimation of the special resolution passed by the members
 - In the public interest
 - On request from any department of Central Government or State Government
- Exclusivity of investigation
- Powers of Investigation Officer = Powers of Inspector u/s 217

Compliances that require your attention

- Commencement of business
- Issue of shares – Private Placement, Rights Issue and Bonus Issue. Valuation by a Registered Valuer.
- Cannot issue Irredeemable Preference Shares
- Cannot accept deposits
- Equity with differential voting rights can be issued subject to conditions
- Sweat Shares can be issued subject to conditions.
- Disgorgement
- Entrenchment

Compliances that require your attention

- Voting through postal ballot required in case of following;
 - Alteration of objects clause of MOA / Alteration of AOA
 - Change in registered office
 - Change in objects for which a company has raised money and there is still unutilised amounts out of such money
 - Issue of shares with differential rights
 - Variation in the rights attached to a class of shares or debentures
 - Buy-back of shares
 - Election of small shareholder director
 - Sale of whole / substantial part of undertaking
 - Giving loans / guarantee in excess of limits mentioned in sec 186

Compliances that require your attention

- Directorships, their appointment and their disqualifications
- No. of directorships
- Resignation, Removal and Vacation of Office
- Resident Director, Woman Director
- Notice of Board Meetings in writing
- Minutes of Board Meeting
- Change in particulars of directors
- Disclosure of interest; No voting rights to interested directors
- Provisions relating to Related Party Transactions
- Loans to Directors
- Loans from Members/Directors
- Penalties

Compliances that require your attention

- Board Report disclosure
- Annual Return
- Financial statements
- Prepare cash flow statement as part of the financial statements
- Vigil Mechanism
- Internal Audit mandatory where
 - Turnover = > Rs. 200 crores in the preceding financial year
 - Loans/Borrowings = > Rs. 100 crores at any point of time during the year.
- Corporate Social Responsibility

Declaration/Payment of Dividends, Registration of Charge, Opportunities for CAs as Regd. Valuer, Privileges of a Private Companies Penalties and Fraud; Compliances that need your attention



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