



Comparison between Companies Act 1956 and the revised Act 2013

S.No	Scope	Companies Act, 2013	Companies Act, 1956	Comments
1.	Definition of “Charge”	Section 2(16): “charge” means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.	No provision	Charge was not defined earlier but includes interest and lien in the definition provided now.
2.	Definition of “Listed Company”	Section 2(52): “listed company” means a company which has any of its securities listed on any recognised stock exchange	Section (23A): "listed public companies" means a public company which has any of its securities listed in any recognised stock exchange	Now covers all types of companies and not only public companies.
3.	Definition of “Officer who is in Default”	Section 2(60): “officer who is in default”, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:— (i) whole-time director; (ii) key managerial personnel; (iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified; (iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of	Section 2(31) "officer who is in default", in relation to any provision referred to in section 5, has the meaning specified in that section. Section 5: For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely : (a) the managing director or managing directors ; (b) the whole-time director or whole-time directors ; (c) the manager ; (d) the secretary ;	The scope of officer in default has been broadened. The share transfer agents, registrars and merchant bankers to the issue or transfer related issue of shares, are also brought under its ambit. Directors who are aware of the default by the way of participation in board meeting or receiving the minutes will also be included in this category even if company has Managing Director/Whole Time Director/ other Key Managerial Personnel.



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		accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default; (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity; (vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance; (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer	(e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act ; (f) any person charged by the Board with the responsibility of complying with that provision : <i>Provided</i> that the person so charged has given his consent in this behalf to the Board ; (g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors : <i>Provided</i> that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.	CFO is also included in this category. Moreover any Key Managerial Personnel/ person charged with duty of the compliance, will only be included under this category, if they knowingly commit the default.
4.	Definition of “One Person Company”	Section 2(62): “One Person Company” means a company which has only one person as a Member.	No Provision	New definition, the concept was not there under the Companies Act, 1956.
5,	Articles of Association	Section 5: (1) The articles of a company shall contain the regulations for management of the company. (2) The articles shall also contain such matters, as may be prescribed: <i>Provided</i> that nothing prescribed in this sub-	Section 26: There may in the case of a public company limited by shares, and there shall in the case of an unlimited company or a company limited by guarantee or a private company limited by shares, be registered with the	Articles of Association of the Company may contain provision with respect to entrenchment whereby the specific provisions of the Articles can be altered only



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	section shall be deemed to prevent a company from including such additional matters in its articles as may be considered necessary for its management. (3) The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with. (4) The provisions for entrenchment referred to in sub-section (3) shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company. (5) Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed. (6) The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company. (7) A company may adopt all or any of the regulations contained in the model articles applicable to such company. (8) In case of any company, which is registered	memorandum, articles of association signed by the subscribers of the memorandum, prescribing regulations for the company. Section 27: (1) In the case of an unlimited company, the articles shall state the number of members with which the company is to be registered and, if the company has a share capital, the amount of share capital with which the company is to be registered. (2) In the case of a company limited by guarantee, the articles shall state the number of members with which the company is to be registered. (3) In the case of a private company having a share capital, the articles shall contain provisions relating to the matters specified in sub-clauses (a), (b) and (c) of clause (iii) of sub-section (1) of section 3; and in the case of any other private company, the articles shall contain provisions relating to the matters specified in the said sub-clauses (b) and (c). Section 28: (1) The articles of association of a company limited by shares may adopt all or any of the regulations contained in Table A in Schedule I. (2) In the case of any such company which	if the more restrictive conditions or procedures as compared to those applicable in case of Special Resolution have been met with. These provisions may either be made at the time of formation or by the way of amendment in Articles. Where Articles contain provisions for entrenchment, a specific notice of such provisions is to be given to the Registrar. The Central Government is empowered to prescribe Model Articles for different types of companies, in addition to the forms given under the Act. The Articles shall be in respective forms, specified in Tables F,G,H,I and J in Schedule 1, as may be applicable to such Company but the company can also provide additional matters.
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		after the commencement of this Act, in so far as the registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to such company, those regulations shall, so far as applicable, be the regulations of that company in the same manner and to the extent as if they were contained in the duly registered articles of the company. (9) Nothing in this section shall apply to the articles of a company registered under any previous company law unless amended under this Act.	is registered after the commencement of this Act, if articles are not registered, or if articles are registered, insofar as the articles do not exclude or modify the regulations contained in Table A aforesaid, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles. Section 29: The articles of association of any company, not being a company limited by shares, shall be in such one of the forms in Tables C, D and E in Schedule I as may be applicable, or in a form as near thereto as circumstances admit : <i>Provided</i> that nothing in this section shall be deemed to prevent a company from including any additional matters in its articles insofar as they are not inconsistent with the provisions contained in the form in any of the Tables C, D and E, adopted by the company.	
6.	Offer or invitation for subscription of securities on private placement	Section 42: (1) Without prejudice to the provisions of section 26, a company may, subject to the provisions of this section, make private placement through issue of a private placement offer letter. (2) Subject to sub-section (1), the offer of securities or invitation to subscribe securities,	Section 67: (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to	This new clause in the Act 2013 provides for a company to make private placement through issue of a private placement offer letter.



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		shall be made to such number of persons not exceeding fifty or such higher number as may be prescribed, [excluding qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option as per provisions of clause (b) of sub-section (1) of section 62], in a financial year and on such conditions (including the form and manner of private placement) as may be prescribed. <i>Explanation I.</i>—If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter. <i>Explanation II.</i>— For the purposes of this section, the expression— (7) “qualified institutional buyer” means the qualified institutional buyer as defined in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 as amended from time to time.	offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner. (2) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner. (3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section(2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances – (a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation ; or (b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation :	Such offer to be made to maximum 50 persons [excluding QIBs and employees of the company being offered securities under a scheme of employees stock option], in a financial year and on the prescribed conditions. Higher Number may be prescribed through rules. The terms “private placement and “qualified institutional buyer” has been defined in the clause itself. All monies payable towards subscription of these securities shall be paid through cheque or demand draft or other banking channels but not by cash All such offers shall be made only to such persons whose names are recorded by the company prior to the
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	(ii) “private placement” means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in this section. (3) No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company. (4) Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of this Act, and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be required to be complied with. (5) All monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not by cash. (6) A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application	<i>Provided</i> that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more <i>Provided further</i> that nothing contained in the first proviso shall apply to the non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956). (3A) Notwithstanding anything contained in sub-section (3), the Securities and Exchange Board of India shall, in consultation with the Reserve Bank of India, by notification in the Official Gazette, specify the guidelines in respect of offer or invitation made to the public by a public financial institution specified under section 4A or non-banking financial company referred to in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934).] (4) Without prejudice to the generality of sub-section (3), a provision in a company’s articles prohibiting invitations to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded in the manner set forth in that sub-section.	invitation to subscribe, and that such persons shall receive the offer by name;
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	money to the subscribers within fifteen days from the date of completion of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent. Per annum from the expiry of the sixtieth day: <i>Provided</i> that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than— (a) for adjustment against allotment of securities; or (b) for the repayment of monies where the company is unable to allot securities. (7) All offers covered under this section shall be made only to such persons whose names are recorded by the company prior to the invitation to subscribe, and that such persons shall receive the offer by name, and that a complete record of such offers shall be kept by the company in such manner as may be prescribed and complete information about such offer shall be filed with the Registrar within a period of thirty days of circulation of relevant private placement offer letter. (8) No company offering securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large	(5) The provisions of this Act relating to private companies shall be construed in accordance with the provisions contained in sub- sections (1) to (4).	
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		about such an offer. (9) Whenever a company makes any allotment of securities under this section, it shall file with the Registrar a return of allotment in such manner as may be prescribed, including the complete list of all security-holders, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed. (10) If a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two crore rupees, whichever is higher, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.		
7.	Prohibition on issue of shares at discount	Section 53: (1) Except as provided in section 54, a company shall not issue shares at a discount. (2) Any share issued by a company at a discounted price shall be void. (3) Where a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer who is in default shall be punishable with imprisonment for a term which may extend to six months or	Section 79: (1) A company shall not issue shares at a discount except as provided in this section. (2) A company may issue at a discount shares in the company of a class already issued, if the following conditions are fulfilled, namely, - (i) the issue of the shares at a discount is authorised by a resolution passed by the company in general meeting and sanctioned by the Central Government; (ii) the resolution specifies the maximum	The clause provides that a company cannot issue shares at discount other than as Sweat equity shares. Issuance of shares on discount with the approval of the central government has been omitted. The penalty provision has been enhanced. Minimum and maximum amount of



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		with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.	rate of discount at which the shares are to be issued : <i>Provided</i> that no such resolution shall be sanctioned by the Central Government if the maximum rate of discount specified in the resolution exceeds ten per cent, unless <i>the</i> Central Government is of opinion that a higher percentage of discount may be allowed in the special circumstances of the case ; (iii) not less than one year has at the date of the issue elapsed since the date on which the company was entitled to commence business ; and (iv) the shares to be issued at a discount are issued within two months after the date on which the issue is sanctioned by the Central Government or within such extended time as the Central Government may allow. (3) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the Central Government for an order sanctioning the issue ; and on any such application, the Central Government, if having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.	fine has been provided in the Act 2013.
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			<i>Provided</i> that in the case of revival and rehabilitation of Sick Industrial Companies under chapter VIA, the provisions of this section shall have effect as if for the words `Central Government, the words `Tribunal' had been substituted. (4) Every prospectus relating to the issue of the shares shall contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the prospectus. If default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.	
8.	Issue and redemption of preference shares	Section 55: (1) No company limited by shares shall, after the commencement of this Act, issue any preference shares which are irredeemable. (2) A company limited by shares may, if so authorised by its articles, issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue subject to such conditions as may be prescribed: <i>Provided</i> that a company may issue preference shares for a period exceeding twenty years for infrastructure projects, subject to the	Section 80: (1) Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed: <i>Provided</i> that - (a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption ;	Under the Act 2013 a company may issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue as per prescribed conditions for infrastructure projects, subject to the redemption of certain percentage on an annual basis at the option of such preferential



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	redemption of such percentage of shares as may be prescribed on an annual basis at the option of such preferential shareholders: <i>Provided</i> further that— (a) no such shares shall be redeemed except out of the profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of such redemption; (b) no such shares shall be redeemed unless they are fully paid; (c) where such shares are proposed to be redeemed out of the profits of the company, there shall, out of such profits, be transferred, a sum equal to the nominal amount of the shares to be redeemed, to a reserve, to be called the Capital Redemption Reserve Account, and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the Capital Redemption Reserve Account were paid-up share capital of the company; and (d) (i) in case of such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133, the premium, if any, payable on redemption shall be provided for out of the profits of the company, before the shares are redeemed:	(b) no such shares shall be redeemed unless they are fully paid ; (c) the premium, if any, payable on redemption shall have been provided for out of the profits of the company or out of the company's security premium account, before the shares are redeemed ; (d) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits which would otherwise have been available for dividend, be transferred to a reserve fund, to be called the capital redemption reserve account, a sum equal to the nominal amount of the shares redeemed ; and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve account were paid-up share capital of the company. (2) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be <i>Provided</i> by the articles of the company. (3) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of its authorised share capital.	shareholders.
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	<i>Provided</i> also that premium, if any, payable on redemption of any preference shares issued on or before the commencement of this Act by any such company shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed. (ii) in a case not falling under sub-clause (i) above, the premium, if any, payable on redemption shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed. (3) Where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may, with the consent of the holders of three-fourths in value of such preference shares and with the approval of the Tribunal on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed: <i>Provided</i> that the Tribunal shall, while giving approval under this sub-section, order the	(4) Where in pursuance of this section, a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued ; and accordingly the share capital of the company shall not, for the purpose of calculating the fees payable under section 611, be deemed to be increased by the issue of shares in pursuance of this sub-section : <i>Provided</i> that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this sub-section unless the old shares are redeemed within one month after the issue of the new shares. (5) The capital redemption reserve account may, notwithstanding anything in this section, be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares. (5A) Notwithstanding anything contained in this Act, no company limited by shares shall, after the commencement of the Companies (Amendment) Act, 1996, issue any preference share which is irredeemable or is redeemable after the expiry of a	
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		redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares. <i>Explanation.</i>—For the removal of doubts, it is hereby declared that the issue of further redeemable preference shares or the redemption of preference shares under this section shall not be deemed to be an increase or, as the case may be, a reduction, in the share capital of the company. (4) The capital redemption reserve account may, notwithstanding anything in this section, be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares. <i>Explanation.</i>—For the purposes of sub-section (2), the term “infrastructure projects” means the infrastructure projects specified in Schedule VI.	period of twenty years from the date of its issue. (6) If a company fails to comply with the provisions of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ten thousand rupees.	
9.	Further issue of share capital	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, namely:—	Section 81: (1) Where at any time after the expiry of two years from the formation of a company or at any time after the expiry of one year from the allotment of shares in that company made for the first time after its formation, whichever is earlier, it is proposed to increase the subscribed capital of the company by allotment of further shares, then, - (a) such further shares shall be offered to	Applicability : all companies Under the Act 2013 apart from existing shareholders, if the company having share capital at any time, proposes to increase its subscribed capital by the issued further shares, such sharers may also be offered to employees by way of ESOP.



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		(i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined; (ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right; (iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company; (b) to employees under a scheme of employees' stock option, subject to special resolution passed by company and subject to such conditions as may be prescribed; or I to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, if the price of such shares is	the persons who, at the date of the offer, are holders of the equity shares of the company, in proportion, as nearly as circumstances admit, to the capital paid-up on those shares at that date ; (b) the offer aforesaid shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days from the date of the offer within which the offer, if not accepted, will be deemed to have been declined ; I unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person ; and the notice referred to in clause (b) shall contain a statement of this right ; (d) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of directors may dispose of them in such manner as they think most beneficial to the company. <i>Explanation.</i> – In this sub-section, “equity share capital” and “equity shares” have the same meaning as in section 85. (1A) Notwithstanding anything contained	Under the existing section a company may issue further capital any time after the expiry of two years. Under the Act 2013 period of two years has been dispensed with.
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	determined by the valuation report of a registered valuer subject to such conditions as may be prescribed. (2) The notice referred to in sub-clause (i) of clause (a) of sub-section (1) shall be despatched through registered post or speed post or through electronic mode to all the existing shareholders at least three days before the opening of the issue. (3) Nothing in this section shall apply to the increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company: <i>Provided</i> that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in general meeting. (4) Notwithstanding anything contained in sub-section (3), where any debentures have been issued, or loan has been obtained from any Government by a company, and if that Government considers it necessary in the public interest so to do, it may, by order, direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as	in sub-section (1), the further shares aforesaid may be offered to any persons [whether or not those persons include the persons referred to in clause (a) of sub-section (1)] in any manner whatsoever – (a) if a special resolution to that effect is passed by the company in general meeting, or (b) where no such special resolution is passed, if the votes cast (whether on a show of hands, or on a poll, as the case may be) in favour of the proposal contained in the resolution moved in that general meeting (including the casting vote, if any, of the chairman) by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy, exceed the votes, if any, cast against the proposal by members so entitled and voting and the Central Government is satisfied, on an application made by the Board of directors in this behalf, that the proposal is most beneficial to the company. (2) Nothing in clause I of sub-section (1) shall be deemed – (a) to extend the time within which the offer should be accepted, or (b) to authorise any person to exercise the right of renunciation for a second time, on the ground that the person in whose favour	
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	appear to the Government to be reasonable in the circumstances of the case even if terms of the issue of such debentures or the raising of such loans do not include a term for providing for an option for such conversion: <i>Provided</i> that where the terms and conditions of such conversion are not acceptable to the company, it may, within sixty days from the date of communication of such order, appeal to the Tribunal which shall after hearing the company and the Government pass such order as it deems fit. (5) In determining the terms and conditions of conversion under sub-section (4), the Government shall have due regard to the financial position of the company, the terms of issue of debentures or loans, as the case may be, the rate of interest payable on such debentures or loans and such other matters as it may consider necessary. (6) Where the Government has, by an order made under sub-section (4), directed that any debenture or loan or any part thereof shall be converted into shares in a company and where no appeal has been preferred to the Tribunal under sub-section (4) or where such appeal has been dismissed, the memorandum of such company shall, where such order has the effect of increasing the authorised share capital of the company, stand altered and the authorised	the renunciation was first made has declined to take the shares comprised in the renunciation. (3) Nothing in this section shall apply – (a) to a private company ; or (b) to the increase of the subscribed capital of a public company caused by the exercise of an option attached to debentures issued or loans raised by the company – (i) to convert such debentures or loans into shares in the company, or (ii) to subscribe for shares in the company : <i>Provided</i> that the terms of issue of such debentures or the terms of such loans include a term providing for such option and such term – (a) either has been approved by the Central Government before the issue of debentures or the raising of the loans, or is in conformity with the rules, if any, made by that Government in this behalf ; and (b) in the case of debentures or loans other than debentures issued to, or loans obtained from, the Government or any institution specified by the Central Government in this behalf, has also been approved by a special resolution passed by the company in general meeting before the issue of the debentures or the raising of the loans. (4) Notwithstanding anything contained in	
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		share capital of such company shall stand increased by an amount equal to the amount of the value of shares which such debentures or loans or part thereof has been converted into.	the foregoing provisions of this section, where any debentures have been issued to, or loans have been obtained from, the Government by a company, whether such debentures have been issued or loans have been obtained before or after the commencement of the Companies (Amendment) Act, 1963, the Central Government may, if in its opinion it is necessary in the public interest so to do, by order, direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to that Government to be reasonable in the circumstances of the case, even if the terms of issue of such debentures or the terms of such loans do not include a term providing for an option for such conversion. (5) In determining the terms and conditions of such conversion, the Central Government shall have due regard to the following circumstances, that is to say, the financial position of the company, the terms of issue of the debentures or the terms of the loans, as the case may be, the rate of interest payable on the debentures or the loans, the capital of the company, its loan liabilities, its reserves, its profits during the preceding five years and the	
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			current market price of the shares in the company. (6) A copy of every order proposed to be issued by the Central Government under sub-section (4) shall be laid in draft before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions. (7) If the terms and conditions of such conversion are not acceptable to the company, the company may, within thirty days from the date of communication to it of such order or within such further time as may be granted by the Court, prefer an appeal to the Court in regard to such terms and conditions and the decision of the Court on such appeal and, subject only to such decision, the order of the Central Government under sub-section (4) shall be final and conclusive.	
10.	Power of company to purchase its own securities	Section 68: (1) Notwithstanding anything contained in this Act, but subject to the provisions of sub-section (2), a company may purchase its own shares or other specified securities (hereinafter referred to as buy-back) out of— (a) its free reserves; (b) the securities premium account; or (c) the proceeds of the issue of any shares or	Section 77A: (1) Notwithstanding anything contained in this Act, but subject to the provisions of sub-section (2) of this section and section 77B, a company may purchase its own shares or other specified securities (hereinafter referred to as "buyback") out of - (i) its free reserves ; or (ii) the securities premium account ; or	The definition of free reserve has been changed. There is required to be a gap of one year between two buy-backs. Now the route of making buybacks from odd lots, that



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	other specified securities: <i>Provided</i> that no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities. (2) No company shall purchase its own shares or other specified securities under sub-section (1), unless— (a) the buy-back is authorised by its articles; (b) a special resolution has been passed at a general meeting of the company authorising the buy-back: <i>Provided</i> that nothing contained in this clause shall apply to a case where— (i) the buy-back is, ten per cent. or less of the total paid-up equity capital and free reserves of the company; and (ii) such buy-back has been authorised by the Board by means of a resolution passed at its meeting; (c) the buy-back is twenty-five per cent. or less of the aggregate of paid-up capital and free reserves of the company: <i>Provided</i> that in respect of the buy-back of equity shares in any financial year, the reference to twenty-five per cent. in this clause shall be construed with respect to its total paid-up equity capital in that financial year; (d) the ratio of the aggregate of secured and	(iii) the proceeds of any shares or other specified securities : <i>Provided</i> that no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities. (2) No company shall purchase its own shares or other specified securities under sub-section (1), unless - (a) the buy-back is authorised by its articles ; (b) a special resolution has been passed in general meeting of the company authorising the buy-back : <i>Provided</i> that nothing contained in this clause shall apply in any case where- (a) the buy-back is or less than ten per cent of the total paid-up equity capital and free reserves of the company ; and (b) such buy-back has been authorised by the Board by means of a resolution passed at its meeting : <i>Provided further</i> that no offer of buy-back shall be made within a period of three hundred and sixty-five days reckoned from the date of the preceding offer of buy-back, if any. <i>Explanation.</i> - For the purposes of this clause, the expression "offer of buy-back"	is to say, where the lot of securities of a Public Company, whose shares are listed on a Recognised Stock Exchange, is smaller than such marketable lot, as may be specified by the stock exchange, has been dispensed with. Further the punishment has been increased wherein, in case of default, the Company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and any officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 3 years or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.
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	unsecured debts owed by the company after buy-back is not more than twice the paid-up capital and its free reserves; <i>Provided</i> that the Central Government may, by order, notify a higher ratio of the debt to capital and free reserves for a class or classes of companies; (e) all the shares or other specified securities for buy-back are fully paid-up; (f) the buy-back of the shares or other specified securities listed on any recognised stock exchange is in accordance with the regulations made by the Securities and Exchange Board in this behalf; and (g) the buy-back in respect of shares or other specified securities other than those specified in clause (f) is in accordance with such rules as may be prescribed; <i>Provided</i> that no offer of buy-back under this sub-section shall be made within a period of one year reckoned from the date of the closure of the preceding offer of buy-back, if any. (3) The notice of the meeting at which the special resolution is proposed to be passed under clause (b) of sub-section (2) shall be accompanied by an explanatory statement stating— (a) a full and complete disclosure of all material facts; (b) the necessity for the buy-back;	means the offer of such buy-back made in pursuance of the resolution of the Board referred in the first proviso; (c) the buy-back is or less than twenty-five per cent of the total paid-up capital and free reserves of the company : <i>Provided</i> that the buy-back of equity shares in any financial year shall not exceed twenty-five per cent of its total paidup equity capital in that financial year ; (d) the ratio of the debt owed by the company is not more than twice the capital and its free reserves after such buyback. <i>Provided</i> that the Central Government may prescribe a higher ratio of the debt than that specified under this clause for a class or classes of companies. <i>Explanation.</i> - For the purposes of this clause, the expression "debt" includes all amounts of unsecured and secured debts ; (e) all the shares or other specified securities for buy-back are fully paid-up ; (f) The buy-back of the shares or other specified securities listed on any recognised stock exchange is in accordance with the regulations made by the Securities and Exchange Board of India in this behalf ; and (g) the buy-back in respect of shares or other specified securities other than those	
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	(c) the class of shares or securities intended to be purchased under the buy-back; (d) the amount to be invested under the buy-back; and (e) the time-limit for completion of buy-back. (4) Every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board under clause (b) of sub-section (2). (5) The buy-back under sub-section (1) may be— (a) from the existing shareholders or security holders on a proportionate basis; (b) from the open market; (c) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity. (6) Where a company proposes to buy-back its own shares or other specified securities under this section in pursuance of a special resolution under clause (b) of sub-section (2) or a resolution under item (ii) of the proviso thereto, it shall, before making such buy-back, file with the Registrar and the Securities and Exchange Board, a declaration of solvency signed by at least two directors of the company, one of whom shall be the managing director, if any, in such form as may be prescribed and verified by an affidavit to the	specified in clause (f) is in accordance with the guidelines as may be prescribed. (3) The notice of the meeting at which special resolution is proposed to be passed shall be accompanied by an explanatory statement stating - (a) a full and complete disclosure of all material facts ; (b) the necessity for the buy-back ; (c) the class of security intended to be purchased under the buy-back ; (d) the amount to be invested under the buy-back ; and (e) the time limit for completion of buy-back. (4) Every buy-back shall be completed within twelve months from the date of passing the special resolution or a resolution passed by the Board under clause (b) of sub-section (2). (5) The buy-back under sub-section (1) may be - (a) from the existing security holders on a proportionate basis ; or (b) from the open market ; or (c) from odd lots, that is to say, where the lot of securities of a public company, whose shares are listed on a recognised stock exchange, is smaller than such marketable lot, as may be specified by the	
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	effect that the Board of Directors of the company has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration adopted by the Board: <i>Provided</i> that no declaration of solvency shall be filed with the Securities and Exchange Board by a company whose shares are not listed on any recognised stock exchange. (7) Where a company buys back its own shares or other specified securities, it shall extinguish and physically destroy the shares or securities so bought back within seven days of the last date of completion of buy-back. (8) Where a company completes a buy-back of its shares or other specified securities under this section, it shall not make a further issue of the same kind of shares or other securities including allotment of new shares under clause (a) of sub-section (1) of section 62 or other specified securities within a period of six months except by way of a bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares. (9) Where a company buys back its shares or	stock exchange ; or (d) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity. (6) Where a company has passed a special resolution under clause (b) of sub-section (2) 1[or the Board has passed a resolution under the first proviso to clause (b) of that sub-section] to buy-back its own shares or other securities under this section, it shall, before making such buy-back, file with the Registrar and the Securities and Exchange Board of India a declaration of solvency in the form as may be prescribed and verified by an affidavit to the effect that the Board has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year of the date of declaration adopted by the Board, and signed by at least two directors of the company, one of whom shall be the managing director, if any : <i>Provided</i> that no declaration of solvency shall be filed with the Securities and Exchange Board of India by a company whose shares are not listed on any recognised stock exchange. (7) Where a company buy-back its own	
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	other specified securities under this section, it shall maintain a register of the shares or securities so bought, the consideration paid for the shares or securities bought back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities and such other particulars as may be prescribed. (10) A company shall, after the completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board a return containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed: <i>Provided</i> that no return shall be filed with the Securities and Exchange Board by a company whose shares are not listed on any recognised stock exchange. (11) If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board, for the purposes of clause (f) of sub-section (2), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than one lakh rupees but which may	securities, it shall extinguish and physically destroy the securities so bought back within seven days of the last date of completion of buy-back. (8) Where a company completes a buy-back of its shares and other specified securities under this section, it shall not make further issue of the same kind of shares (including allotment of further shares under clause (a) of sub-section (1) of section 81) or other specified securities within a period of 2[six] months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares. (9) Where a company buy-back its securities under this section, it shall maintain a register of the securities so bought, the consideration paid for the securities bought-back, the date of cancellation of securities, the date of extinguishing and physically destroying of securities and such other particulars as may be prescribed. (10) A company shall, after the completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board of India, a return	
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		extend to three lakh rupees, or with both. <i>Explanation I.</i>—For the purposes of this section and section 70, “specified securities” includes employees’ stock option or other securities as may be notified by the Central Government from time to time. <i>Explanation II.</i>—For the purposes of this section, “free reserves” includes securities premium account.	containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed : <i>Provided</i> that no return shall be filed with the Securities and Exchange Board of India by a company whose shares are not listed on any recognised stock exchange. (11) If a company makes default in complying with the provisions of this section or any rules made thereunder, or any regulations made under clause (f) of sub-section (2), the company or any officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both. <i>Explanation.</i> - For the purposes of this section, - (a) "specified securities" includes employees' stock option or other securities as may be notified by the Central Government from time to time ; (b) "free reserves" shall have the meaning assigned to it in clause (b) of <i>Explanation</i> to section 372A.]	
11.	Debentures	Section 71. (1) A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption:	Section 117: No company shall, after the commencement of this Act, issue any debentures carrying voting rights at any meeting of the company, whether generally	Now secured debentures can be issued by Companies subject to certain terms and conditions that will be



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	<i>Provided</i> that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting. (2) No company shall issue any debentures carrying any voting rights. (3) Secured debentures may be issued by a company subject to such terms and conditions as may be prescribed. (4) Where debentures are issued by a company under this section, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures. (5) No company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed. (6) A debenture trustee shall take steps to protect the interests of the debenture holders and redress their grievances in accordance with such rules as may be prescribed.	or in respect of particular classes of business. Section 117A: (1) A trust deed for securing any issue of debentures shall be in such form and shall be executed within such period as may be prescribed. (2) A copy of the trust deed shall be open to inspection to any member or debenture holder of the company and he shall also be entitled to obtain copies of such trust deed on payment of such sum as may be prescribed. (3) If a copy of the trust deed is not made available for inspection or is not given to any member or debenture holder, the company and every officer of the company who is in a default, shall be punishable, for each offence, with fine which may extend to five hundred rupees for every day during which the offence continues. Section 117B: (1) No company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless the company has, before such issue, appointed one or more debenture trustees for such debentures and the company has, on the face of the prospectus or the letter of offer, stated that the debenture trustee or	prescribed. A contract with the company to take up and pay for any debentures of the company may be enforced by a decree for specific performance. A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. Provided such issue has been approved by a special resolution passed at a general meeting. The necessary procedure for securing the issue of debentures, the form of debenture trust deed, the procedure for debenture holders to inspect the trust deed and to obtain copies thereof, quantum of debenture redemption reserve required to be created and such other
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	(7) Any provision contained in a trust deed for securing the issue of debentures, or in any contract with the debenture-holders secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from, or indemnifying him against, any liability for breach of trust, where he fails to show the degree of care and due diligence required of him as a trustee, having regard to the provisions of the trust deed conferring on him any power, authority or discretion: <i>Provided</i> that the liability of the debenture trustee shall be subject to such exemptions as may be agreed upon by a majority of debenture-holders holding not less than three-fourths in value of the total debentures at a meeting held for the purpose. (8) A company shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue. (9) Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Tribunal and the Tribunal may, after hearing the company and any other person interested in the matter, by order, impose such restrictions on the incurring of any further liabilities by the	trustees have given their consent to the company to be so appointed. <i>Provided</i> that no person shall be appointed as a debenture trustee, if he - (a) beneficially holds shares in the company ; (b) is beneficially entitled to moneys which are to be paid by the company to the debenture trustee ; (c) has entered into any guarantee in respect of principal debts secured by the debentures or interest thereon. (2) Subject to the provisions of this Act, the functions of the debenture trustees shall generally be to protect the interest of holders of debentures (including the creation of securities within the stipulated time) and to redress the grievances of holders of debentures effectively. (3) In particular, and without prejudice to the generality of the foregoing functions, a debenture trustee may take such other steps as he may deem fit - (a) to ensure that the assets of the company issuing debentures and each of the guarantors are sufficient to discharge the principal amount at all times ; (b) to satisfy himself that the prospectus or the letter of offer does not contain any matter which is inconsistent with the terms	matters, will be prescribed. The conditions governing the appointment of trustee will be prescribed. The powers of debenture trustee to protect the interests of the debenture holders and redress their grievances shall be in accordance with the prescribed rules. Companies Act, 2013 provides that only when the companies issue prospectus or make an offer or invitation to the public or its members exceeding 500 for the subscription of its debentures, then only it is required to appoint a debenture trustee. In case the Debenture Trustee comes to a conclusion that the assets of the company are insufficient or likely to become insufficient, then he or she may file a petition before the
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	company as the Tribunal may consider necessary in the interests of the debenture-holders. (10) Where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the Tribunal may, on the application of any or all of the debenture-holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon. (11) If any default is made in complying with the order of the Tribunal under this section, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than two lakh rupees but which may extend to five lakh rupees, or with both. (12) A contract with the company to take up and pay for any debentures of the company may be enforced by a decree for specific performance. (13) The Central Government may prescribe the procedure, for securing the issue of debentures, the form of debenture trust deed, the procedure for the debenture-holders to inspect the trust deed and to obtain copies thereof, quantum of debenture redemption	of the debentures or with the trust deed ; (c) to ensure that the company does not commit any breach of covenants and provisions of the trust deed ; (d) to take such reasonable steps to remedy any breach of the covenants of the trust deed or the terms of issue of debentures ; (e) to take steps to call a meeting of holders of debentures as and when such meeting is required to be held. (4) Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Central Government and the Central Government may, after hearing the company and any other person interested in the matter, by an order, impose such restrictions on the incurring of any further liabilities as the Central Government thinks necessary in the interests of holders of the debentures. <i>Provided</i> that in the case of revival and rehabilitation of a sick industrial company under Part VIA, the provisions of this section shall have effect as if for the words "Central Government", the word "Tribunal" had been substituted	Tribunal instead of Central Government. In case of failure to comply with any order of the Tribunal under the clause, the punishment has been increased. The provision regarding the re-issue of debentures has been dispensed with.
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		reserve required to be created and such other matters.	Section 117C: (1) Where a company issues debentures after the commencement of this Act, it shall create a debenture redemption reserve for the redemption of such debentures, to which adequate amounts shall be credited, from out of its profits every year until such debentures are redeemed. (2) The amounts credited to the debenture redemption reserve shall not be utilised by the company except for the purpose aforesaid. (3) The company referred to in sub-section (1) shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue. (4) Where a company fails to redeem the debentures on the date of maturity, the Tribunal may, on the application of any or all the holders of debentures shall, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith by the payment of principal and interest due thereon. (5) If default is made in complying with the order of the Tribunal under sub-section (4), every officer of the company who is in default, shall be punishable with imprisonment which may extend to three	
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			years and shall also be liable to a fine of not less than five hundred rupees for every day during which such default continues. Section 118: (1) A copy of any trust deed for securing any issue of debentures shall be forwarded to the holder of any such debentures or any member of the company, at his request and within seven days of the making thereof, on payment - (a) in the case of a printed trust deed, of such sum as may be prescribed; and (b) in the case of a trust deed which has not been printed, of such sum as may be prescribed for every one hundred words or fractional part thereof required to be copied. (2) If a copy is refused, or is not forwarded within the time specified in sub-section (1), the company, and every officer of the company who is in default, shall be punishable, for each offence, with fine which may extend to five hundred rupees and with a further fine which may extend to two hundred rupees for every day during which the offence continues. (3) The Central Government may also, by order, direct that the copy required shall forthwith be sent to the person requiring it. (4) The trust deed referred to in sub-section	
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			(1) shall also be open to inspection by any member or debenture holder of the company in the same manner, to the same extent, and on payment of the same fees, as if it were the register of members of the company. Section 119: (1) Subject to the provisions of this section, any provision contained in a trust deed for securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, shall be void insofar as it would have the effect of exempting a trustee thereof from, or indemnifying him against, liability for breach of trust, where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions. (2) Sub-section (1) shall not invalidate - (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release ; or (b) any provision enabling such a release to be given - (i) on the agreement thereto of a majority of not less than three-fourths in value of the debenture holders present and voting in	
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			person or, where proxies are permitted, by proxy, at a meeting summoned for the purpose ; and (ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act. (3) Sub-section (1) shall not operate - (a) to invalidate any provision in force at the commencement of this Act so long as any person then entitled to the benefit of that provision or afterwards given the benefit thereof under sub- section (4) remains a trustee of the deed in question ; or (b) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force. (4) While any trustee of a trust deed remains entitled to the benefit of a provision saved by sub-section (3), the benefit of that provision may be given either - (a) to all trustees of the deed, present and future ; or (b) to any named trustees or proposed trustees thereof ; by a resolution passed by a majority of not less than three-fourths in value of the debenture holders present in person	
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			or, where proxies are permitted, by proxy, at a meeting called for the purpose in accordance with the provisions of the deed or, if the deed makes no provision for calling meetings, at a meeting called for the purpose in any manner approved by the Court.	
12.	Prohibition on acceptance of deposits from public	Section 73: (1) On and after the commencement of this Act, no company shall invite, accept or renew deposits under this Act from the public except in a manner provided under this Chapter: <i>Provided</i> that nothing in this sub-section shall apply to a banking company and nonbanking financial company as defined in the Reserve Bank of India Act, 1934 and to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf. (2) A company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfilment of the following conditions, namely:—	Section 58A: (1) The Central Government may, in consultation with the Reserve Bank of India, prescribe the limits up to which, the manner in which and the conditions subject to which deposits may be invited or accepted by a company either from the public or from its members. (2) No company shall invite, or allow any other person to invite or cause to be invited on its behalf, any deposit unless- (a) such deposit is invited or is caused to be invited in accordance with the rules made under sub-section (1) (b) an advertisement, including therein a statement showing the financial position of the company, has been issued by the company in such form and in such manner as may be prescribed; and (c) the company is not in default in the repayment of any deposit or part thereof and any interest thereupon in accordance with the terms and conditions of such deposit.	The depositors being in the nature of unsecured creditors, had been subjected to a lot of hardship and in many cases lost their hard earned money, the Act 2013 proposes to prohibit companies from accepting deposits except from members. Further even for accepting deposits from the members, stringent conditions have been stipulated which include : -Passing resolution in general meeting, -Compliance with rules to be made in consultation with the Reserve Bank of India -providing security for the repayment of deposits -issuance of circular to members including therein a



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	(a) issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed; (b) filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular; (c) depositing such sum which shall not be less than fifteen per cent. of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account; (d) providing such deposit insurance in such manner and to such extent as may be prescribed; (e) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and (f) providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the	(3)(a) Every deposit accepted by a company at any time before the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), in accordance with the directions made by the Reserve Bank of India under Chapter IIIB of the Reserve Bank of India Act, 1934 (2 of 1934), shall, unless renewed in accordance with clause (b), be repaid in accordance with the terms and conditions of such deposit. (b) No deposit referred to in clause (a) shall be renewed by the company after the expiry of the term thereof unless the deposit is such that it could have been accepted if the rules made under sub-section (1) were in force at the time when the deposit was initially accepted by the company. (c) Where, before the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), any deposit was received by a company in contravention of any direction made under Chapter IIIB of the Reserve Bank of India Act, 1934 (2 of 1934), repayment of such deposit shall be made in full on or before the 1st day of April, 1975, and such repayment shall be without prejudice to any action that may be taken under the Reserve Bank of India Act, 1934	statement showing the financial position of the company; credit rating obtained; total number of depositors and the amount due to these depositors in respect of previous deposits accepted by the company -other particulars in such form and in such manner as may be prescribed. Filing copy of the circular along with the statement with the Registrar 30 days before the date of the issue of the circular. Depositing a sum which shall not be less than 15% of the amount of its deposits maturing during the financial year and the financial year next following in a Deposit Repayment Reserve Account. Providing deposit insurance in such manner and to such
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		company: <i>Provided</i> that in case where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as “unsecured deposits” and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits. (3) Every deposit accepted by a company under sub-section (2) shall be repaid with interest in accordance with the terms and conditions of the agreement referred to in that sub-section. (4) Where a company fails to repay the deposit or part thereof or any interest thereon under sub-section (3), the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit. (5) The deposit repayment reserve account referred to in clause (c) of sub-section (2) shall not be used by the company for any purpose other than repayment of deposits.	(2 of 1934) for the acceptance of such deposit in contravention of such direction. (3A) Every deposit accepted by a company after the commencement of the Companies (Amendment) Act, 1988, shall, unless renewed in accordance with the rules made under sub-section (1), be repaid in accordance with the terms and conditions of such deposit. (4) Where any deposit is accepted by a company after the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), in contravention of the rules made under sub-section (1) repayment of such deposit shall be made by the company within thirty days from the date of acceptance of such deposit or within such further time, not exceeding thirty days, as the Central Government may, on sufficient cause being shown by the company, allow. (5) Where a company omits or fails to make repayment of a deposit in accordance with the provisions of clause (c) of sub-section (3), or in the case of deposit referred to in sub-section (4) within the time specified in that sub-section, - (a) the company shall be punishable with fine which shall not be less than twice the amount in relation to which the repayment of the deposit has not been made, and out	extent as may be prescribed. Certifying that the company has not defaulted in the repayment of deposit, accepted either before or after the commencement of the Act or in the payment of interest on such deposits. Where a company fails to repay the deposit or part thereof or any interest thereon, the depositor may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit. Some Observations : 1. While provision of security for the payment of sum and interest has been made, the manner in which the security would be created has not been
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			of the fine, if realised, an amount equal to the amount in relation to which the repayment of deposit has not been made, shall be paid by the Court, trying the offence, to the person to whom repayment of the deposit was to be made, and on such payment, the liability of the company to make repayment of the deposit shall, to the extent of the amount paid by the Court, stand discharged; (b) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine. (6) Where a company accepts or invites, or allows or causes any other person to accept or invite on its behalf, any deposit in excess of the limits prescribed under sub-section (1) or in contravention of the manner or condition prescribed under that sub-section or in contravention of the provisions of sub-section (2), as the case may be, - (a) the company shall be punishable, - (i) where such contravention relates to the acceptance of any deposit, with fine which shall not be less than an amount equal to the amount of the deposit so accepted ; (ii) where such contravention relates to the invitation of any deposit, with fine which may extend to 1[tan] lakh rupees but shall	specified and totally left to be decided as between the company and the members. 2. No specific penal provision has been made where the company makes a default in complying with the order of the Tribunal. A public company having prescribed net worth or turnover may accept deposits from persons other than its members subject to a stricter regime. Such company will have to comply with Chapter V of Companies Act 2013, 2012 and rules made by Central Government after consulting Reserve Bank of India. Further such company will also have to obtain credit rating from recognised agency and will also have to create a charge on its assets in case of secured deposits.
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			not be less than 2[fifty] thousand rupees; (b) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine. (7) (a) Nothing contained in this section shall apply to, - (i) a banking company, or (ii) such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf. (b) Except the provisions relating to advertisement contained in clause (b) of sub-section (2), nothing in this section shall apply to such classes of financial companies as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf. (8) The Central Government may, if it considers it necessary for avoiding any hardship or for any other just and sufficient reason, by order, issued either prospectively or retrospectively from a date not earlier than the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), grant extension of time to a company or class of companies to comply with, or exempt any company or class of companies from, all or any of the	
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			provisions of this section either generally or for any specified period subject to such conditions as may be specified in the order : <i>Provided</i> that no order under this sub-section shall be issued in relation to a class of companies except after consultation with the Reserve Bank of India. (9) Where a company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the Tribunal may, if it is satisfied, either on its own motion or on the application of the depositor, that it is necessary so to do to safeguard the interests of the company, the depositors or in the public interest, direct, by order, the company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order <i>Provided</i> that the Tribunal may, before making any order under this sub-section, give a reasonable opportunity of being heard to the company and the other persons interested in the matter. (10) Whoever fails to comply with any order made by the Tribunal under sub-section (9) shall be punishable with imprisonment which may extend to three	
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			years and shall also be liable to a fine of not less than rupees five hundred for every day during which such non-compliance continues. (11) A depositor may, at any time, make a nomination and the provisions of sections 109A and 109B shall, as far as may be, apply to the nomination made under this sub-section. <i>Explanation.</i> - For the purposes of this section, "deposit" means any deposit of money with, and includes any amount borrowed by, a company but shall not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.	
13.	Duty to register charges	Section 77: (1) It shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within thirty days of its creation: <i>Provided</i> that the Registrar may, on an application by the company, allow such registration to be made within a period of three	Section 125: (1) Subject to the provisions of this Part, every charge created on or after the 1st day of April, 1914, by a company and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof verified in the prescribed manner, are filed with the Registrar for registration in the manner	The Act 2013 lays the duty of creating charge on the company. The manner and forms etc for creation of charge (including for charges in respect of properties/ assets existing outside India) are proposed to be prescribed in the rules. The Act 2013 specifically provides that any subsequent registration of a charge shall not prejudice any rights acquired in respect of any



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	hundred days of such creation on payment of such additional fees as may be prescribed: <i>Provided</i> further that if registration is not made within a period of three hundred days of such creation, the company shall seek extension of time in accordance with section 87 <i>Provided</i> also that any subsequent registration of a charge shall not prejudice any right acquired in respect of any property before the charge is actually registered. (2) Where a charge is registered with the Registrar under sub-section (1), he shall issue a certificate of registration of such charge in such form and in such manner as may be prescribed to the company and, as the case may be, to the person in whose favour the charge is created. (3) Notwithstanding anything contained in any other law for the time being in force, no charge created by a company shall be taken into account by the liquidator or any other creditor unless it is duly registered under sub-section (1) and a certificate of registration of such charge is given by the Registrar under sub-section (2). (4) Nothing in sub-section (3) shall prejudice any contract or obligation for the repayment of the money secured by a charge.	required by this Act within thirty days after the date of its creation <i>Provided</i> that the Registrar may allow the particulars and instrument or copy as aforesaid to be filed within thirty days next following the expiry of the said period of thirty days on payment of such additional fee not exceeding ten times the amount of fee specified in Schedule X as the Registrar may determine, if the company satisfies the Registrar that it had sufficient cause for not filing the particulars and instrument or copy within that period.] (2) Nothing in sub-section (1) shall prejudice any contract or obligation for the repayment of the money secured by the charge. (3) When a charge becomes void under this section, the money secured thereby shall immediately become payable. (4) This section applies to the following charges: (a) a charge for the purpose of securing any issue of debentures; (b) a charge on uncalled share capital of the company; I a charge on any immovable property, wherever situate, or any interest therein; (d) a charge on any book debts of the company;	property before the charge is actually registered. The additional period for registration of charge has been increased from 30 to 300 days. Wherein the charge is not registered within extended days, then application will be required to be made to the Central Government for extension. The specific classification of charges specified in sub-section 4 has been omitted. In case the charge is created outside India and comprise solely of property outside India, then it shall be registered within 30 days of its creation and not from the date on which instrument creating charge is received in India, as earlier provided. Under the Act 2013 there is no separate provision for the
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			I a charge, not being a pledge, on any movable property of the company; (f) a floating charge on the undertaking or any property of the company including stock-in-trade; (g) a charge on calls made but not paid; (h) a charge on a ship or any share in a ship; (i) a charge on goodwill, on a patent or a licence under a patent, on a trade mark, or on a copyright or a licence under a copyright. (5) In the case of a charge created out of India and comprising solely property situate outside India, thirty days after the date on which the instrument creating or evidencing the charge or a copy thereof could, in due course of post and if despatched with due diligence, have been received in India, shall be substituted for thirty days after the date of the creation of the charge, as the time within which the particulars and instrument or copy are to be filed with the Registrar. (6) Where a charge is created in India but comprises property outside India, the instrument creating or purporting to create the charge under this section or a copy thereof verified in the prescribed manner, may be filed for registration,	registration of charges in respect of the issue of debentures. Reference to issue of certificate 'under his hand' have been omitted to allow issue of certificate electronically. Form and manner of issuing certificate of registration is proposed to be prescribed through Rules. Further reference to such certificate of registration being conclusive evidence has been omitted. The detailed requirements in respect of manner in which endorsement of Registrar's certificate would be made on debenture certificate would be prescribed through rules. The requirement under section 136 of existing Act may be prescribed through rules to be prescribed under clause 77(1) of the Act
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			notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate. (7) Where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not, for the purposes of this section, be treated as a charge on those book debts. (8) The holding of debentures entitling the holder to a charge on immovable property shall not, for the purposes of this section, be deemed to be an interest in immovable property. Section 132: The Registrar shall give a certificate under his hand of the registration of any charge registered in pursuance of this Part, stating the amount thereby secured; and the certificate shall be conclusive evidence that the requirements of this Part as to registration have been complied with.	2013.
14.	Appointment of auditors (Compulsory Rotation)	Section 139: (1) Subject to the provisions of this Chapter, every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the	Section 224: (1) Every company shall, at each annual general meeting, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general	Now every company shall, at its first annual general meeting, appoint an individual or a firm as an auditor who shall hold office



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	conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such as may be prescribed: <i>Provided</i> that the company shall place the matter relating to such appointment for ratification by members at every annual general meeting: <i>Provided</i> further that before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained from the auditor: <i>Provided</i> also that the certificate shall also indicate whether the auditor satisfies the criteria provided in section 141: <i>Provided</i> also that the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within fifteen days of the meeting in which the auditor is appointed. <i>Explanation.</i>—For the purposes of this Chapter, “appointment” includes reappointment. (2) No listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint—	meeting and shall, within seven days of the appointment, give intimation thereof to every auditor so appointed : <i>Provided</i> that before any appointment or re-appointment of auditor or auditors is made by any company at any annual general meeting, a written certificate shall be obtained by the company from the auditor or auditors proposed to be so appointed to the effect that the appointment or re-appointment, if made, will be in accordance with the limits specified in sub-section (1B). (1A) Every auditor appointed under sub-section (1) shall within thirty days of the receipt from the company of the intimation of his appointment, inform the Registrar in writing that he has accepted, or refused to accept, the appointment. (1B) On and from the financial year next following the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), no company or its Board of directors shall appoint or re-appoint any person who is in full-time employment elsewhere or firm as its auditor if such person or firm is, at the date of such appointment or re-appointment, holding appointment as auditor of the specified number of companies or more than the	from the conclusion of that meeting till the conclusion of its 6th Annual General Meeting and thereafter till the conclusion of every 6th meeting. However the company shall place the matter relating to such appointment for ratification by members at every annual general meeting. In the Act 2013, the written consent of auditor to such appointment is to be obtained before his appointment is made. The duty to inform the auditor of such appointment and to file a notice with the Registrar within fifteen days of the meeting in which the auditor is appointed will be that of company. The provisions for rotation of auditors in the listed
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	(a) an individual as auditor for more than one term of five consecutive years; and (b) an audit firm as auditor for more than two terms of five consecutive years: <i>Provided that—</i> (i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term; (ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term: <i>Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years:</i> <i>Provided also that every company, existing on or before the commencement of this Act which is required to comply with provisions of this sub-section, shall comply with the requirements of this sub-section within three years from the date of commencement of this Act:</i> <i>Provided also that, nothing contained in this sub-section shall prejudice the right of the</i>	specified number of companies : <i>Provided that in the case of a firm of auditors, "specified number of companies" shall be construed as the number of companies specified for every partner of the firm who is not in full-time employment elsewhere</i> <i>Provided further that where any partner of the firm is also a partner of any other firm or firms of auditors, the number of companies which may be taken into account, by all the firms together, in relation to such partner shall not exceed the specified number in the aggregate.</i> <i>Provided also that where any partner of a firm of auditors is also holding office, in his individual capacity, as the auditor of one or more companies, the number of companies which may be taken into account in his case shall not exceed the specified number, in the aggregate.</i> <i>Provided also that the provisions of this sub-section shall not apply, on and after the commencement of the Companies (Amendment) Act, 2000, to a private company.</i> (1C) For the purposes of enabling a company to comply with the provisions of sub-section (1B), a person or firm holding, immediately before the commencement of	company & certain other class of companies, as may be prescribed, have been Provided. An individual auditor having completed his more than one term of five consecutive years shall not be eligible for re-appointment. Likewise an audit firm having completed its term as auditor for more than two terms of five consecutive years shall not be eligible for re-appointment as auditor in same company for next 5 years. Now, no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year shall be appointed as auditor of the same company for a period of 5 years. A transition period of three years from the
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	company to remove an auditor or the right of the auditor to resign from such office of the company. (3) Subject to the provisions of this Act, members of a company may resolve to provide that— (a) in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or (b) the audit shall be conducted by more than one auditor. (4) The Central Government may, by rules, prescribe the manner in which the companies shall rotate their auditors in pursuance of sub-section (2) <i>Explanation.</i>—For the purposes of this Chapter, the word “firm” shall include a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008. (5) Notwithstanding anything contained in sub-section (1), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be	the Companies (Amendment) Act, 1974 (41 of 1974), appointment as the auditor of a number of companies exceeding the specified number, shall, within sixty days from such commencement, intimate his or its unwillingness to be re-appointed as the auditor from the financial year next following such commencement, to the company or companies of which he or it is not willing to be re-appointed as the auditor ; and shall simultaneously intimate to the Registrar the names of the companies of which he or it is willing to be re-appointed as the auditor and forward a copy of the intimation to each of the companies referred to therein. <i>Explanation I.</i> - For the purposes of sub-sections (1B) and (1C), "specified number" means, - (a) in the case of a person or firm holding appointment as auditor of a number of companies each of which has a paidup share capital of less than rupees twenty-five lakh, twenty such companies ; (b) in any other case, twenty companies, out of which not more than ten shall be companies each of which has a paidup share capital of rupees twenty-five lakh or more. <i>Explanation II.</i> - In computing the	commencement of this Act has been provided for the companies in existence to comply with the provision of rotation of auditor. The Act 2013 also provides for rotation of auditing partner and his team within an audit firm. Corresponds to section 619 of the Companies Act, 1956. In the case of Government companies, C&AG shall appoint an auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold office till the conclusion of the Annual General Meeting. Where at any annual general meeting, no auditor is appointed or re-appointed, the present Act requires the vacancy to be filled by Central Government but the
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	appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting. (6) Notwithstanding anything contained in sub-section (1), the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within ninety days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting. (7) Notwithstanding anything contained in sub-section (1) or sub-section (5), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor-General of India within sixty days from the date of registration of the company and in case the Comptroller and Auditor-General of India does not appoint such auditor within the said	specified number, the number of companies in respect of which or any part of which any person or firm has been appointed as an auditor, whether singly or in combination with any other person or firm, shall be taken into account. (2) Subject to the provisions of sub-section (1B) and section 224A, at any annual general meeting, a retiring auditor, by whatsoever authority appointed, shall be re-appointed, unless - (a) he is not qualified for re-appointment ; (b) he has given the company notice in writing of his unwillingness to be re-appointed ; (c) a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be re-appointed ; or (d) where notice has been given of an intended resolution to appoint some person or persons in the place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with. (3) Where at an annual general meeting no auditors are appointed or re-appointed, the Central Government may appoint a person to fill the vacancy.	Act 2013 proposes that the existing auditor shall continue to be the auditor of the company. The power of Central Government to appoint an auditor in such situation has been dispensed with. In case the company has an audit committee, then all appointments of auditors including filling of casual vacancy, shall be made after taking into account the recommendations of such committee. Now the first auditor of a company other than a Government company shall be appointed by the Board of Directors within 30 days of its incorporation and if the Board fails to do so, the members shall appoint the same within 90 days at an extra ordinary general meeting, who shall hold office till the conclusion of
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	period, the Board of Directors of the company shall appoint such auditor within the next thirty days; and in the case of failure of the Board to appoint such auditor within the next thirty days, it shall inform the members of the company who shall appoint such auditor within the sixty days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting. (8) Any casual vacancy in the office of an auditor shall— (i) in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors within thirty days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting; (ii) in the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Comptroller and Auditor-General of India within thirty days: <i>Provided</i> that in case the Comptroller and Auditor-General of India does not fill the	(4) The company shall, within seven days of the Central Government's power under sub-section (3), becoming exercisable, give notice of that fact to that Government ; and, if a company fails to give such notice, the company, and every officer of the company who is in default, shall be punishable, with fine which may extend to [five thousand] rupees. (5) The first auditor or auditors of a company shall be appointed by the Board of directors within one month of the date of registration of the company ; and the auditor or auditors so appointed shall hold office until the conclusion of the first annual general meeting : <i>Provided</i> that - (a) the company may, at a general meeting, remove any such auditor or all or any of such auditors and appoint in his or their places any other person or persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than fourteen days before the date of the meeting ; and (b) if the Board fails to exercise its powers under this sub-section, the company in general meeting may appoint the first	first Annual General Meeting. In case of Government companies, the First Auditor shall be appointed by the Comptroller and Auditor General (C&AG) within 60 days from the date of incorporation and if he fails to do so, the Board shall appoint auditor within next 30 days. In the case of Board's failure to do so, it has to inform the members of the company who will appoint the auditor within 60 days at an extra ordinary general meeting, who shall hold office till the conclusion of first Annual General Meeting.
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		vacancy within the said period, the Board of Directors shall fill the vacancy within next thirty days. (9) Subject to the provisions of sub-section (1) and the rules made thereunder, a retiring auditor may be re-appointed at an annual general meeting, if— (a) he is not disqualified for re-appointment; (b) he has not given the company a notice in writing of his unwillingness to be re-appointed; and (c) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed. (10) Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company. (11) Where a company is required to constitute an Audit Committee under section 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.	auditor or auditors. (6) (a) The Board may fill any casual vacancy in the office of an auditor ; but while any such vacancy continues, the remaining auditor or auditors, if any, may act : <i>Provided</i> that where such vacancy is caused by the resignation of an auditor, the vacancy shall only be filled by the company in general meeting. (b) Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting. (7) Except as provided in the proviso to sub-section (5), any auditor appointed under this section may be removed from office before the expiry of his term only by the company in general meeting, after obtaining the previous approval of the Central Government in that behalf. (8) The remuneration of the auditors of a company - (a) in the case of an auditor appointed by the Board or the Central Government, may be fixed by the Board or the Central Government, as the case may be ; (aa) in the case of an auditor appointed under section 619 by the Comptroller and Auditor-General of India, shall be fixed by	
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			the company in general meeting or in such manner as the company in general meeting may determine ; and (b) subject to clause (a), shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine. For the purposes of this sub-section, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".	
15.	Company to have board of directors (Concept of Independent Director and detailed)	Section 149: (1) Every company shall have a Board of Directors consisting of individuals as directors and shall have— (a) a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and (b) a maximum of fifteen directors: <i>Provided</i> that a company may appoint more than fifteen directors after passing a special resolution: <i>Provided</i> further that such class or classes of companies as may be prescribed shall have at least one woman director. (2) Every company existing on or before the date of commencement of this Act shall within one year from such commencement comply with the requirements of the provisions of sub-section (1).	252. (1) Every public company (other than a public company which has become such by virtue of section 43A) shall have at least three directors : <i>Provided</i> that a public company having, - (a) a paid-up capital of five crore rupees or more ; (b) one thousand or more small shareholders, may have a director elected by such small shareholders in the manner as may be prescribed. <i>Explanation.</i> - For the purposes of this sub-section "small shareholders" means a shareholder holding shares of nominal value of twenty thousand rupees or less in a public company to which this section applies.] (2) Every other company shall have at least two directors.	In case of one person company, a company is required to have minimum one director. Minimum number of directors in case of private and public companies is same as in 1956 Act i.e. two and three respectively. Maximum number of directors is increased from twelve to fifteen. For appointing more than fifteen directors, passing of special resolution is required. Under the 1956 Act, approval from Central



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	(3) Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year. (4) Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies. <i>Explanation.</i>—For the purposes of this sub-section, any fraction contained in such one-third number shall be rounded off as one. (5) Every company existing on or before the date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules in this regard as may be applicable, comply with the requirements of the provisions of sub-section (4). (6) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,— (a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience; (b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;	(3) The directors of a company collectively are referred to in this Act as the "Board of directors" or "Board". Section 253: No body corporate, association or firm shall be appointed director of a company, and only an individual shall be so appointed. <i>Provided</i> that no company shall appoint or re-appoint any individual as director of the company unless he has been allotted a Director Identification Number under section 266B. Section 259: In the case of a public company or a private company which is a subsidiary of a public company, any increase in the number of its directors, except - (a) in the case of a company which was in existence on the 21st day of July, 1951, an increase which was within the per-missible maximum under its articles as in force on that date, and (b) in the case of a company which came or may come into existence after that date, an increase which is within the permissible maximum under its articles as first registered, shall not have any effect unless approved by the Central Government ; and	Government was required for appointing beyond twelve. Under the Act, the prescribed class of companies are required to have atleast one woman director. The new law requires appointment of atleast one resident director in every company. The new law requires appointment of atleast one-third of total directors as independent directors in every listed company. Board independence is being accepted the world over as a vital norm for effective functioning of the company and to the benefit of shareholders in the long run. It is widely accepted today that independent directors bring an element of
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	(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company; (c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year; (d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year; (e) who, neither himself nor any of his relatives— (i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed; (ii) is or has been an employee or proprietor or a partner, in any of the three financial years	shall become void if, and insofar as, it is disapproved by that Government : <i>Provided</i> that where such permissible maximum is twelve or less than twelve, no approval of the Central Government shall be required	objectivity to Board processes. Studies on the working of independent directors suggest that they have been most effective in development of sound business strategies and performance monitoring. They also provide assurance to all those dealing with the company that Board's decisions will not be based on narrow vision. Corresponds to Section 152(3) No person shall be appointed as a director of a company unless he has been allotted the Director Identification Number under section 154] Number of directors can be increased by members approval. Central Government approval is not required. A transition period of one year is provided for compliance of this provision.
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	immediately preceding the financial year in which he is proposed to be appointed, of— (A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm; (iii) holds together with his relatives two per cent. or more of the total voting power of the company; or (iv) is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or (f) who possesses such other qualifications as may be prescribed. (7) Every independent director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that		‘Independent Director’ is defined in the Act clearly. It is well established that existence of any significant pecuniary relationship between the company and an individual acts against the person’s capacity to act independently of promoter’s/management interests. This aspect has been well taken care of in defining independent director. A declaration as to meeting the criteria of independence by independent director is required at the first meeting in which he participates and at first meeting in every financial year. Schedule IV to the Act 2013 is code of conduct for Independent directors. It provides for Role and functions, duties, manner of
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	he meets the criteria of independence as provided in sub-section (6). <i>Explanation.</i>—For the purposes of this section, “nominee director” means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests. (8) The company and independent directors shall abide by the provisions specified in Schedule IV. (9) Notwithstanding anything contained in any other provision of this Act, but subject to the provisions of sections 197 and 198, an independent director shall not be entitled to any stock option and may receive remuneration by way of fee provided under sub-section (5) of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members. (10) Subject to the provisions of section 152, an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report. (11) Notwithstanding anything contained in	appointment, resignation and evaluation etc. IDs are not entitled to stock option. They are entitled for profit related commission and sitting fees for attending the meetings. It is important to note that remuneration of independent directors is also linked to profit related commissions. There has to be a clear relationship between responsibility and performance vis-à-vis remuneration. An independent director shall hold office for a term upto 5 years. Maximum two consecutive terms are permissible. After cooling period of three years, independent director shall again be eligible for appointment in that company as Independent
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		sub-section (10), no independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director: <i>Provided</i> that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly. <i>Explanation.</i>—For the purposes of sub-sections (10) and (11), any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under those sub-sections. (12) Notwithstanding anything contained in this Act,— (i) an independent director; (ii) a non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently. (13) The provisions of sub-sections (6) and (7) of section 152 in respect of retirement of directors by rotation shall not be applicable to		director. Independent Director and Non-executive Director (not being Promoter or KMP) shall be held liable, only in respect of such acts of omission or commission by a Company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently
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		appointment of independent directors.		
16.	Power of board	Section 179: (1) The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do: <i>Provided</i> that in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting: <i>Provided</i> further that the Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting. (2) No regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made. (3) The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:— (a) to make calls on shareholders in respect of money unpaid on their shares; (b) to authorise buy-back of securities under	Section 291: (1) Subject to the provisions of this Act, the Board of directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do <i>Provided</i> that the Board shall not exercise any power or do any act or thing which is directed or required, whether by this or any other Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting : <i>Provided further</i> that in exercising any such power or doing any such act or thing, the Board shall be subject to the provisions contained in that behalf in this or any other Act, or in the memorandum or articles of the company, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting. (2) No regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made. Section 292: (1) The Board of directors of a company shall exercise the following	Following powers have been introduced to be exercised by the Board only at their meeting: - To issue securities whether in India or outside; - To grant loans or give guarantee or provide security in respect of loans; - To approve financial statement and the Director's report; - To diversify the business of the Company; - To approve amalgamation, merger or reconstruction; - To take over a Company or acquire a controlling or substantial stake in another Company; and - Such other matters



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	section 68; (c) to issue securities, including debentures, whether in or outside India; (d) to borrow monies; (e) to invest the funds of the company; (f) to grant loans or give guarantee or provide security in respect of loans; (g) to approve financial statement and the Board's report; (h) to diversify the business of the company; (i) to approve amalgamation, merger or reconstruction; (j) to take over a company or acquire a controlling or substantial stake in another company; (k) any other matter which may be prescribed: <i>Provided</i> that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify <i>Provided</i> further that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, or the placing of monies on deposit	powers on behalf of the company, and it shall do so only by means of resolutions passed at meetings of the Board : - (a) the power to make calls on shareholders in respect of money unpaid on their shares ; (aa) the power to authorise the buy-back referred to in the first proviso to clause (b) of sub-section (2) of section 77A; (b) the power to issue debentures; (c) the power to borrow moneys otherwise than on debentures; (d) the power to invest the funds of the company; and (e) the power to make loans <i>Provided</i> that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, a principal officer of the branch office, the powers specified in clauses (c), (d) and (e) to the extent specified in sub-sections (2), (3) and (4) respectively, on such conditions as the Board may prescribe <i>Provided further</i> that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order	as may be prescribed. Now the requirement that while delegating the power to any committee or any specified person, it is necessary to also specify the amount up to which that power can be exercised, has been dispensed with.
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		by a banking company with another banking company on such conditions as the Board may prescribe, shall not be deemed to be a borrowing of monies or, as the case may be, a making of loans by a banking company within the meaning of this section. <i>Explanation I.</i>—Nothing in clause (d) shall apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State Bank of India or any other banks established by or under any Act. <i>Explanation II.</i>—In respect of dealings between a company and its bankers, the exercise by the company of the power specified in clause (d) shall mean the arrangement made by the company with its bankers for the borrowing of money by way of overdraft or cash credit or otherwise and not the actual day-to-day operation on overdraft, cash credit or other accounts by means of which the arrangement so made is actually availed of. (4) Nothing in this section shall be deemed to affect the right of the company in general meeting to impose restrictions and conditions on the exercise by the Board of any of the powers specified in this section.	or otherwise, or the placing of moneys on deposit by a banking company, with another banking company on such conditions as the Board may prescribe, shall not be deemed to be a borrowing of moneys or, as the case may be, a making of loans by a banking company within the meaning of this section. <i>Explanation I.</i> - Nothing in clause (c) of sub-section (1) shall apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State Bank of India or any other banks established by or under any Act. <i>Explanation II.</i> - In respect of dealings between a company and its bankers, the exercise by the company of the power specified in clause (c) of sub-section (1) shall mean the arrangement made by the company with its bankers for the borrowing of money by way of overdraft or cash credit or otherwise and not the actual day-to-day operation on overdraft, cash credit or other accounts by means of which the arrangement so made is actually availed of. (2) Every resolution delegating the power referred to in clause (c) of sub-section (1) shall specify the total amount outstanding at any one time up to which moneys may	
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			be borrowed by the delegate. (3) Every resolution delegating the power referred to in clause (d) of sub-section (1) shall specify the total amount up to which the funds may be invested, and the nature of the investments which may be made, by the delegate. (4) Every resolution delegating the power referred to in clause (e) of sub-section (1) shall specify the total amount up to which loans may be made by the delegate, the purposes for which the loans may be made, and the maximum amount of loans which may be made for each such purpose in individual cases. (5) Nothing in this section shall be deemed to affect the right of the company in general meeting to impose restrictions and conditions on the exercise by the Board of any of the powers specified in sub-section (1).	
17.	Restrictions on power of board	Section 180. (1) The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely:— (a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of	Section 293: (1) The Board of directors of a public company, or of a private company which is a subsidiary of a public company, shall not, except with the consent of such public company or subsidiary in general meeting, - (a) sell, lease or otherwise dispose of the whole, or substantially the whole, of the undertaking of the company, or where the	Certain powers which under Section 293 of the Companies Act, 1956 can be exercised by the Board with the approval of general meeting only, are now applicable to all the Companies instead of only public companies and its



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	such undertakings. <i>Explanation.</i>—For the purposes of this clause,— (i) “undertaking” shall mean an undertaking in which the investment of the company exceeds twenty per cent. of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates twenty per cent. of the total income of the company during the previous financial year; (ii) the expression “substantially the whole of the undertaking” in any financial year shall mean twenty per cent. or more of the value of the undertaking as per the audited balance sheet of the preceding financial year; (b) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation; (c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company’s bankers in the ordinary course of business: <i>Provided</i> that the acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and	company owns more than one undertaking, of the whole, or substantially the whole, of any such undertaking; (b) remit, or give time for the repayment of, any debt due by a director except in the case of renewal or continuance of an advance made by a banking company to its director in the ordinary course of business ; (c) invest, otherwise than in trust securities, the amount of compensation received by the company in respect of the compulsory acquisition, after the commencement of this Act, of any such undertaking as is referred to in clause (a), or of any premises or properties used for any such undertaking and without which it cannot be carried on or can be carried on only with difficulty or only after a considerable time ; (d) borrow moneys after the commencement of this Act, where the moneys to be borrowed, together with the moneys already borrowed by the company (apart from temporary loans obtained from the company's bankers in the ordinary course of business), will exceed the aggregate of the paid-up capital of the company and its free reserves, that is to say, reserves not set apart for any specific purpose ; or (e) contribute, after the commencement of	subsidiaries. The clause now specifically provides the definition of the words “undertaking” and “substantially the whole undertaking”. Certain powers which under Section 293 of the Companies Act, 1956 can be exercised by the Board with the approval of general meeting only, are now to be approved by passing a special resolution instead of ordinary resolution as provided in the aforesaid Act. Now the approval of general meeting is only required when the Board wants to invest otherwise in trust securities, the compensation received by it as a result of Merger and Amalgamation only and not on compulsory acquisition of any undertaking or property or
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	withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of monies by the banking company within the meaning of this clause. <i>Explanation.</i>—For the purposes of this clause, the expression “temporary loans” means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of Act 2013s and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature; (d) to remit, or give time for the repayment of, any debt due from a director. (2) Every special resolution passed by the company in general meeting in relation to the exercise of the powers referred to in clause (c) of sub-section (1) shall specify the total amount up to which monies may be borrowed by the Board of Directors. (3) Nothing contained in clause (a) of sub-section (1) shall affect— (a) the title of a buyer or other person who buys or takes on lease any property, investment or undertaking as is referred to in that clause, in good faith; or (b) the sale or lease of any property of the company where the ordinary business of the company consists of, or comprises, such	this Act, to charitable and other funds not directly relating to the business of the company or the welfare of its employees, any amounts the aggregate of which will, in any financial year, exceed fifty thousand rupees, or five per cent, of its average net profits as determined in accordance with the provisions of sections 349 and 350 during the three financial years immediately preceding, whichever is greater. <i>Explanation I.</i> - Every resolution passed by the company in general meeting in relation to the exercise of the power referred to in clause (d) or in clause (e) shall specify the total amount up to which moneys may be borrowed by the Board of directors under clause (d) or, as the case may be, the total amount which may be contributed to charitable and other funds in any financial year under clause (e). <i>Explanation II.</i> - The expression “temporary loans” in clause (d) means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of Act 2013s and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financing expenditure of	premises, as provided under the Companies Act, 1956. The power to contribute to charitable and other funds as donation in any financial year for an amount in excess of five percent of its average net profits for three immediately preceding financial years is now outside the preview of its clause, and is included separately in the next clause. A separate clause has been provided for to deal with the powers of the Board to contribute to charitable and other funds. Now the permission shall not be required where contribution to political party exceeds the limit of 5% of the average net profits for the three immediately preceding financial years and the limits of monetary value has been dispensed
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	selling or leasing. (4) Any special resolution passed by the company consenting to the transaction as is referred to in clause (a) of sub-section (1) may stipulate such conditions as may be specified in such resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transactions: <i>Provided</i> that this sub-section shall not be deemed to authorise the company to effect any reduction in its capital except in accordance with the provisions contained in this Act. (5) No debt incurred by the company in excess of the limit imposed by clause (c) of sub-section (1) shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause had been exceeded. Section 181: The Board of Directors of a company may contribute to <i>bona fide</i> charitable and other funds: <i>Provided</i> that prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceed five per cent. of its average net profits for the three immediately preceding financial years.	a capital nature. <i>Explanation III.</i> - Where a portion of a financial year of the company falls before the commencement of this Act, and a portion falls after such commencement, the later portion shall be deemed to be a financial year within the meaning, and for the purposes, of clause (e). (2) Nothing contained in clause (a) of sub-section (1) shall affect - (a) the title of a buyer or other person who buys or takes a lease of any such undertaking as is referred to in that clause, in good faith and after exercising due care and caution; or (b) the selling or leasing of any property of the company, where the ordinary business of the company consists of, or comprises, such selling or leasing. (3) Any resolution passed by the company permitting any transaction such as is referred to in clause (a) of sub-section (1) may attach such conditions to the permission as may be specified in the resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transaction : <i>Provided</i> that this sub-section shall not be deemed to authorise the company to effect	with.
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			any reduction in its capital except in accordance with the provisions contained in that behalf in this Act. (4) The acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of moneys by the banking company within the meaning of clause (d) of sub-section (1). (5) No debt incurred by the company in excess of the limit imposed by clause (d) of sub-section (1) shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause had been exceeded.	
18.	Loan to directors etc.	Section 185: (1) Save as otherwise provided in this Act, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person: <i>Provided</i> that nothing contained in this sub-section shall apply to— (a) the giving of any loan to a managing or	Section 295: (1) Save as otherwise provided in sub-section (2), no company (herein-after in this section referred to as "the lending company") without obtaining the previous approval of the Central Government in that behalf shall, directly or indirectly, make any loan to, or give any guarantee or provide any security in connection with a loan made by any other person to, or to any other person by, - (a) any director of the lending company or	Section 295 of Companies Act, 1956 was applicable to only public companies while Section 185 of the 2013 Act is applicable to private companies as well. The requirements of obtaining approvals from the Central Government have been dispensed with. A



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	whole-time director— (i) as a part of the conditions of service extended by the company to all its employees; or (ii) pursuant to any scheme approved by the members by a special resolution; or (b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India. <i>Explanation.</i>—For the purposes of this section, the expression “to any other person in whom director is interested” means— (a) any director of the lending company, or of a company which is its holding company or any partner or relative of any such director; (b) any firm in which any such director or relative is a partner; (c) any private company of which any such director is a director or member; (d) any body corporate at a general meeting of which not less than twenty five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or (e) any body corporate, the Board of directors, managing director or manager, whereof is	of a company which is its holding company or any partner or relative of any such director ; (b) any firm in which any such director or relative is a partner ; (c) any private company of which any such director is a director or member ; (d) any body corporate at a general meeting of which not less than twenty-five per cent of the total voting power may be exercised or controlled by any such director, or by two or more such directors together ; or (e) any body corporate, the Board of directors, managing director, or manager whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company. (2) Sub-section (1) shall not apply to - (a) any loan made, guarantee given or security provided- (i) by a private company unless it is a subsidiary of a public company, or (ii) by a banking company ; (b) any loan made by a holding company to its subsidiary company; (c) any guarantee given or security <i>Provided</i> by a holding company in respect of any loan made to its subsidiary company.	managing or whole-time director can be given loan pursuant to scheme approved by the members by passing a special resolution or as a part of the conditions of service extended by the company to all its employees. A company whose business in ordinary course is to provide loan or guarantee or securities for the repayment of such loans, can provide loan or guarantee or security to its directors provided interest on loan is not less than bank rate declared by Reserve Bank of India. Punishment for contravention has been increased and not company will also be punishable in case of contravention of this clause. The exemption given to loan granted, guarantee or
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	accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company. (2) If any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of sub-section (1), the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.	(3) Where any loan made, guarantee given or security <i>Provided</i> by a lending company and outstanding at the commencement of this Act could not have been made, given or <i>Provided</i>, without the previous approval of the Central Government, if this section had then been in force, the lending company shall, within six months from the commencement of this Act or such further time not exceeding six months as the Central Government may grant for that purpose, either obtain the approval of the Central Government to the transaction or enforce the repayment of the loan made, or in connection with which the guarantee was given or the security was provided, notwithstanding any agreement to the contrary. (4) Every person who is knowingly a party to any contravention of sub- section (1) or (3), including in particular any person to whom the loan is made or who has taken the loan in respect of which the guarantee is given or the security is provided, shall be punishable either with fine which may extend to fifty thousand rupees or with simple imprisonment for a term which may extend to six months : <i>Provided</i> that where any such loan, or any loan in connection with which any such	security provided by any holding company to subsidiary or the exemptions granted to private company and a banking company has been dispensed with.
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			guarantee or security has been imposed under this sub-section ; and where the loan has been repaid in part, the maximum punishment which may be imposed under this sub-section by way of imprisonment shall be proportionately reduced. (5) All persons who are knowingly parties to any contravention of sub-section (1) or (3) shall be liable, jointly and severally, to the lending company for the repayment of the loan or for making good the sum which the lending company may have been called upon to pay in virtue of the guarantee given or the security provided by such company. (6) No officer of the lending company or of the borrowing body corporate shall be punishable under sub-section (4) or shall incur the liability referred to in sub-section (5) in respect of any loan made, guarantee given or security provided after the 1st day of April, 1956 in contravention of clause (d) or (e) of sub-section (1), unless at the time when the loan was made, the guarantee was given or the security was provided by the lending company, he knew or had express notice that clause was being contravened thereby.	
19.	Loan and investment by company	Section 186. (1) Without prejudice to the provisions contained in this Act, a company shall unless otherwise prescribed, make	Section 372A: (1) No company shall, directly or indirectly, - (a) make any loan to any other body	A company cannot make investment through more than two layers of



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	investment through not more than two layers of investment companies: <i>Provided</i> that the provisions of this sub-section shall not affect,— (i) a company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country; (ii) a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force. (2) No company shall directly or indirectly — (a) give any loan to any person or other body corporate; (b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and (c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate, exceeding sixty per cent. of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more. (3) Where the giving of any loan or guarantee or providing any security or the acquisition under sub-section (2) exceeds the limits	corporate ; (b) give any guarantee, or provide security, in connection with a loan made by any other person to, or to any other person by, any body corporate ; and (c) acquire, by way of subscription, purchase or otherwise the securities of any other body corporate, exceeding sixty per cent of its paid-up share capital and free reserves, or one hundred per cent of its free reserves, whichever is more : <i>Provided</i> that where the aggregate of the loans and investments so far made, the amounts for which guarantee or security so far <i>Provided</i> to or in all other bodies corporate, along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceeds the aforesaid limits, no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting : <i>Provided further</i> that the Board may give guarantee, without being previously authorised by a special resolution, if, - (a) a resolution is passed in the meeting of the Board authorising to give guarantee in accordance with the provisions of this section ;	investment companies. The provision would help the Government to have track on the complex web of subsidiary firms. Exceptions to the clause are also provided. Investment company is defined under the clause as explanation. No company can give any loan, guarantee or acquire the securities exceeding sixty percent of paid up share capital, free reserves and securities premium account or hundred percent of its free reserves and securities premium account, whichever is more. Securities premium account is addition in calculating the limits. For giving loans / guarantee / providing security exceeding these limits prior
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	specified in that sub-section, prior approval by means of a special resolution passed at a general meeting shall be necessary. (4) The company shall disclose to the members in the financial statement the full particulars of the loans given, investment made or guarantee given or security <i>Provided</i> and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security. (5) No investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained: <i>Provided</i> that prior approval of a public financial institution shall not be required where the aggregate of the loans and investments so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate, along with the investments, loans, guarantee or security proposed to be made or given does not exceed the limit as specified in sub-section (2), and there is no default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan to the public	(b) there exists exceptional circumstances which prevent the company from obtaining previous authorisation by a special resolution passed in a general meeting for giving a guarantee ; and (c) the resolution of the Board under clause (a) is confirmed within twelve months, in a general meeting of the company or the annual general meeting held immediately after passing of the Board's resolution, whichever is earlier : <i>Provided also</i> that the notice of such resolution shall indicate clearly the specific limits, the particulars of the body corporate in which the investment is proposed to be made or loan or security or guarantee to be given, the purpose of the investment, loan or security or guarantee, specific sources of funding and such other details. (2) No loan or investment shall be made or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution referred to in section 4A, where any term loan is subsisting, is obtained <i>Provided</i> that prior approval of a public financial institution shall not be required	approval at general meeting by means of special resolution is necessary. The law now requires the company to disclose the full particulars of loans / guarantee / security provided along with the purpose for which these are proposed to be utilized. The provisions requiring consent of all the directors is retained. The companies which are registered under section 12 of the SEBI Act, 1992 and are covered under prescribed class of companies, for them there is a prescribed limit and also those companies shall furnish in its financial statement the details of loan or deposits. Instead of prevailing Bank rate, the New Law provides for prevailing yield of one
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	financial institution. (6) No company, which is registered under section 12 of the Securities and Exchange Board of India Act, 1992 and covered under such class or classes of companies as may be prescribed, shall take inter-corporate loan or deposits exceeding the prescribed limit and such company shall furnish in its financial statement the details of the loan or deposits. (7) No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan. (8) No company which is in default in the repayment of any deposits accepted before or after the commencement of this Act or in payment of interest thereon, shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting. (9) Every company giving loan or giving a guarantee or providing security or making an acquisition under this section shall keep a register which shall contain such particulars and shall be maintained in such manner as may be prescribed. (10) The register referred to in sub-section (9) shall be kept at the registered office of the company and —	where the aggregate of the loans and investments so far made, the amounts for which guarantee or security so far provided to or in all other bodies corporate, along with the investments, loans, guarantee or security proposed to be made or given does not exceed the limit of sixty per cent specified in sub-section (1), if there is no default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution : (3) No loan to any body corporate shall be made at a rate of interest lower than the prevailing bank rate, being the standard rate made public under section 49 of the Reserve Bank of India Act, 1934 (2 of 1934). (4) No company, which has defaulted in complying with the provisions of section 58A, shall, directly or indirectly, - (a) make any loan to any body corporate ; (b) give any guarantee, or provide security, in connection with a loan made by any other person to, or to any other person by, any body corporate ; and (c) acquire, by way of subscription, purchase or otherwise the securities of any other body corporate, till such default is subsisting.	year, three year, five year or ten year Government Security closest to the tenor of the loan. The particulars and manner of keeping the register shall be provided through rules. Exemption to private companies, companies whose principle business is acquisition of securities, loan by a holding company to its wholly owned subsidiary has been done away with. Penalty provisions revised. Clause 2 defines the terms as under: 2(43) “free reserves” means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend: provided that— (i) any amount representing unrealized gains, notional gains or revaluation of
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	(a) shall be open to inspection at such office; and (b) extracts may be taken therefrom by any member, and copies thereof may be furnished to any member of the company on payment of such fees as may be prescribed. (11) Nothing contained in this section, except sub-section (1), shall apply— (a) to a loan made, guarantee given or security provided by a banking company or an insurance company or a housing finance company in the ordinary course of its business or a company engaged in the business of financing of companies or of providing infrastructural facilities; (b) to any acquisition— (i) made by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities: <i>Provided</i> that exemption to non-banking financial company shall be in respect of its investment and lending activities; (ii) made by a company whose principal business is the acquisition of securities; (iii) of shares allotted in pursuance of clause (a) of sub-section (1) of section 62. (12) The Central Government may make rules for the purposes of this section. (13) If a company contravenes the provisions	(5) (a) Every company shall keep a register showing the following particulars in respect of every investment or loan made, guarantee given or security provided by it in relation to any body corporate under sub-section (1) namely : - (i) the name of the body corporate ; (ii) the amount, terms and purpose of the investment or loan or security or guarantee ; (iii) the date on which the investment or loan has been made ; and (iv) the date on which the guarantee has been given or security has been provided in connection with a loan. (b) The particulars of investment, loan, guarantee or security referred to in clause (a) shall be entered chronologically in the register aforesaid within seven days of the making of such investment or loan, or the giving of such guarantee or the provision of such security. (6) The register referred to in sub-section (5) shall be kept at the registered office of the company concerned and - (a) shall be open to inspection at such office ; and (b) extracts may be taken therefrom and copies thereof may be required, by any member of the company to the same extent,	assets, whether shown as a reserve or otherwise, or (ii) any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, shall not be treated as free reserves.
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		of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees. <i>Explanation.</i>—For the purposes of this section,— (a) the expression “investment company” means a company whose principal business is the acquisition of shares, debentures or other securities; (b) the expression “infrastructure facilities” means the facilities specified in Schedule VI.	in the same manner, and on payment of the same fees as in the case of the register of members of the company ; and the provisions of section 163 shall apply accordingly. (7) The Central Government may prescribe guidelines for the purposes of this section. (8) Nothing contained in this section shall apply - (a) to any loan made, any guarantee given or any security provided or any investment made by - (i) a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of financing industrial enterprises, or of providing infrastructural facilities ; (ii) a company whose principal business is the acquisition of shares, stock, debentures or other securities ; (iii) a private company, unless it is a subsidiary of a public company ; (b) to investment made in shares allotted in pursuance of clause (a) of sub-section (1) of section 81 ; (c) to any loan made by a holding company to its wholly-owned subsidiary ; (d) to any guarantee given or any security <i>Provided</i> by a holding company in respect	
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			of loan made to its wholly-owned subsidiary ; or (e) to acquisition by a holding company, by way of subscription, purchases or otherwise, the securities of its wholly owned subsidiary. (9) If default is made in complying with the provisions of this section, other than sub-section (5), the company and every officer of the company who is in default shall be punishable with imprisonment which may extend to two years or with fine which may extend to fifty thousand rupees : <i>Provided</i> that where any such loan or any loan in connection with which any such guarantee or security has been given, or provided by the company, has been repaid in full, no punishment by way of imprisonment shall be imposed under this sub-section, and where such loan has been repaid in part, the maximum punishment which may be imposed under this sub-section by way of imprisonment shall be appropriately reduced : <i>Provided further</i> that all persons who are knowingly parties to any such contravention shall be liable, jointly and severally, to the company for the repayment of the loan or for making good the same which the company may have	
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			been called upon to pay by virtue of the guarantee given or the securities provided by such company. (10) If default is made in complying with the provisions of sub-section (5), the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees and also with a further fine which may extend to five hundred rupees for every day after the first day during which the default continues. <i>Explanation.</i> - For the purposes of this section, - (a) "loan" includes debentures or any deposit of money made by one company with another company, not being a banking company ; (b) "free reserves" means those reserves which, as per the latest audited balance sheet of the company, are free for distribution as dividend and shall include balance to the credit of the securities premium account but shall not include share application money.	
20.	Related transactions party	Section 188. (1) Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement	Section 297: (1) Except with the consent of the Board of directors of a company, a director of the company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm, or	The following transactions also require the approval of Board : - selling or otherwise disposing of, or buying,



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	with a related party with respect to— (a) sale, purchase or supply of any goods or materials; (b) selling or otherwise disposing of, or buying, property of any kind; (c) leasing of property of any kind; (d) availing or rendering of any services; (e) appointment of any agent for purchase or sale of goods, materials, services or property; (f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and (g) underwriting the subscription of any securities or derivatives thereof, of the company: <i>Provided</i> that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a special resolution: <i>Provided</i> further that no member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party: <i>Provided</i> also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business	a private company of which the director is a member or director, shall not enter into any contract with the company - (a) for the sale, purchase or supply of any goods, materials or services ; or (b) after the commencement of this Act, for underwriting the subscription of any shares in, or debentures of, the company : <i>Provided</i> that in the case of a company having a paid-up share capital of not less than rupees one crore, no such contract shall be entered into except with the previous approval of the Central Government. (2) Nothing contained in clause (a) of sub-section (1) shall affect - (a) the purchase of goods and materials from the company, or the sale of goods and materials to the company, by any director, relative, firm, partner or private company as aforesaid for cash at prevailing market prices ; or (b) any contract or contracts between the company on one side and any such director, relative, firm, partner or private company on the other for sale, purchase or supply of any goods, materials and services in which either the company or the director, relative, firm, partner or private company, as the case may be, regularly	property of any kind; - leasing of property of any kind; - availing or rendering of any services; - appointment of any agent for purchase or sale of goods, materials, services or property; - such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and - underwriting the subscription of any securities or derivatives thereof, of the company. Further, in the case of a company having prescribed amount of paid up share capital and for the transactions exceeding the prescribed amount, the prior approval of company by way of special resolution is required under the new law instead of Central
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	other than transactions which are not on an arm's length basis. <i>Explanation.</i>— In this sub-section,— (a) the expression “office or place of profit” means any office or place— (i) where such office or place is held by a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise; (ii) where such office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise; (b) the expression “arm's length transaction” means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest. (2) Every contract or arrangement entered into under sub-section (1) shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement.	trades or does business : <i>Provided</i> that such contract or contracts do not relate to goods and materials the value of which, or services the cost of which, exceeds five thousand rupees in the aggregate in any year comprised in the period of the contract or contracts ; or (c) in the case of a banking or insurance company any transaction in the ordinary course of business of such company with any director, relative, firm, partner or private company as aforesaid. (3) Notwithstanding anything contained in sub-sections (1) and (2), a director, relative, firm, partner or private company as aforesaid may, in circumstances of urgent necessity, enter, without obtaining the consent of the Board, into any contract with the company for the sale, purchase or supply of any goods, materials or services even if the value of such goods or cost of such services exceeds five thousand rupees in the aggregate in any year comprised in the period of the contract ; but in such a case, the consent of the Board shall be obtained at a meeting within three months of the date on which the contract was entered into. (4) Every consent of the Board required under this section shall be accorded by a	Government approval which is required under 1956 Act. Furthermore, the member shall not vote at any such resolution for approving any contract, if he is a related party. The transactions entered into in ordinary course of business are exempted from taking Board's approval except the transactions which are not on arm's length basis. The term, ‘Arm's length transaction’ has been defined in the explanation appended to the clause. Disclosure of all such contracts alongwith the justification for entering into such contracts needs to be given under Board's report. Companies can proceed against a director/employees who had authorized such
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	(3) Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a special resolution in the general meeting under sub-section (1) and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the Board and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it. (4) Without prejudice to anything contained in sub-section (3), it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement. (5) Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall,— (i) in case of listed company, be punishable with imprisonment for a term which may extend to one year or with fine which shall not	resolution passed at a meeting of the Board and not otherwise ; and the consent of the Board required under sub-section (1) shall not be deemed to have been given within the meaning of that sub-section unless the consent is accorded before the contract is entered into or within three months of the date on which it was entered into. (5) If consent is not accorded to any contract under this section, anything done in pursuance of the contract shall be voidable at the option of the Board. (6) Nothing in this section shall apply to any case where the consent has been accorded to the contract before the commencement of the Companies (Amendment) Act, 1960. Section 314: (1) Except with the consent of the company accorded by a special resolution, - (a) no director of a company shall hold any office or place of profit, and (b) no partner or relative of such director, no firm in which such director, or a relative of such director, is a partner, no private company of which such director is a director or member, and no director or manager of such a private company, shall hold any office or place of profit carrying a	contract in violation of provision of this section for recovery of any loss sustained by it. The penalty structure has been changed. The amount of penalty is different for public company whose shares are not listed in any stock exchange and listed public company. The provisions for prior approval of Board for appointment to any office or place of profit in the company or its subsidiary company are clubbed. Approval of Central Government is not required for appointment of any director or any other person to any office or place of profit in the company or its subsidiary. These sections are clubbed in one clause 188 of the Act 2013. Language is simplified.
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		be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both; and (ii) in case of any other company, be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.	total monthly remuneration of such sum as may be prescribed, except that of managing director or manager, banker or trustee for the holders of debentures of the company, - (i) under the company ; or (ii) under any subsidiary of the company, unless the remuneration received from such subsidiary in respect of such office or place of profit is paid over to the company or its holding company : <i>Provided</i> that it shall be sufficient if the special resolution according the consent of the company is passed at the general meeting of the company held for the first time after the holding of such office or place of profit <i>Provided further</i> that where a relative of a director or a firm in which such relative is a partner ; is appointed to an office or place of profit under the company or a subsidiary thereof without the knowledge of the director, the consent of the company may be obtained either in the general meeting aforesaid or within three months from the date of the appointment, whichever is later. <i>Explanation.</i> - For the purpose of this subsection, a special resolution according consent shall be necessary for every appointment in the first instance to an office or place of profit and to every	Redundant provisions deleted.
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			subsequent appointment to such office or place of profit on a higher remuneration not covered by the special resolution, except where an appointment on a time scale has already been approved by the special resolution. (1A) Nothing in sub-section (1) shall apply where a relative of a director or a firm in which such relative is a partner holds any office or place of profit under the company or a subsidiary thereof having been appointed to such office or place before such director becomes a director of the company. (1B) Notwithstanding anything contained in sub-section (1), - (a) no partner or relative of a director or manager, (b) no firm in which such director or manager, or relative of either, is a partner, (c) no private company of which such a director or manager, or relative of either, is a director or member, shall hold any office or place of profit in the company which carries a total monthly remuneration of not less than such sum as may be prescribed, except with the prior consent of the company by a special resolution and the approval of the Central Government. (2) (a) If any office or place of profit is	
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			held in contravention of the provisions of sub-section (1), the director, partner, relative, firm, private company, or the manager, concerned, shall be deemed to have vacated his or its office as such on and from the date next following the date of the general meeting of the company referred to in the first proviso or, as the case may be, the date of the expiry of the period of three months referred to in the second proviso to that sub-section, and shall also be liable to refund to the company any remuneration received or the monetary equivalent of any perquisite or advantage enjoyed by him or it for the period immediately preceding the date aforesaid in respect of such office or place of profit. (b) The company shall not waive the recovery of any sum refundable to it under clause (a) unless permitted to do so by the Central Government. (2A) Every individual, firm, private company or other body corporate proposed to be appointed to any office or place of profit to which this section applies shall, before or at the time of such appointment, declare in writing whether he or it is or is not connected with a director of the company in any of the ways referred to in	
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			sub-section (1). (2B) If, after the commencement of the Companies (Amendment) Act, 1974, any office or place of profit is held, without the prior consent of the company by a special resolution and the approval of the Central Government, the partner, relative, firm or private company appointed to such office or place of profit shall be liable to refund to the company any remuneration received or the monetary equivalent of any perquisite or advantage enjoyed by him, on and from the date on which the office was so held by him. (2C) If any office or place of profit is held in contravention of the provisions of the proviso to sub-section (1B), the director, partner, relative, firm, private company or manager concerned shall be deemed to have vacated his or its office as such on and from the expiry of six months from the commencement of the Companies (Amendment) Act, 1974, or the date next following the date of the general meeting of the company referred to in the said proviso, whichever is earlier, and shall be liable to refund to the company any remuneration received or the monetary equivalent of any perquisite or advantage enjoyed by him or it for the period	
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			immediately preceding the date aforesaid in respect of such office or place of profit. (2D) The company shall not waive the recovery of any sum refundable to it under sub-section (2B) unless permitted to do so by the Central Government. (3) Any office or place shall be deemed to be an office or place of profit under the company within the meaning of this section, - (a) in case the office or place is held by a director, if the director holding it obtains from the company anything by way of remuneration over and above the remuneration to which he is entitled as such director, whether as salary, fees, commission, perquisites, the right to occupy free of rent any premises as a place of residence, or otherwise (b) in case the office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it obtains from the company anything by way of remuneration whether as salary, fees, commission, perquisites, the right to occupy free of rent any premises as a place of residence, or otherwise. (4) Nothing in this section shall apply to a	
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			person, who being the holder of any office of profit in the company, is appointed by the Central Government, under section 408, as a director of the company.	
21.	Merger or amalgamation of a company with foreign company	Section 234: (1) The provisions of this Chapter unless otherwise provided under any other law for the time being in force, shall apply <i>mutatis mutandis</i> to schemes of mergers and amalgamations between companies registered under this Act and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government: <i>Provided</i> that the Central Government may make rules, in consultation with the Reserve Bank of India, in connection with mergers and amalgamations provided under this section. (2) Subject to the provisions of any other law for the time being in force, a foreign company, may with the prior approval of the Reserve Bank of India, merge into a company registered under this Act or <i>vice versa</i> and the terms and conditions of the scheme of merger may provide, among other things, for the payment of consideration to the shareholders of the merging company in cash, or in Depository Receipts, or partly in cash and partly in Depository Receipts, as the case may be, as per the scheme to be drawn up for the purpose.	No provision	The Companies Act, 1956 provides for merger of Foreign Company with an Indian Company. It does not allow Indian company to merge with foreign company. The Act 2013 has liberalized the provisions and makes provision for cross border mergers and amalgamations between Indian companies and companies incorporated in the jurisdictions of such countries. The manner in which such cross border merger will take place would be given under rules which would be prepared in consultation with Reserve Bank of India. The term ‘foreign company’ is explained for this section.



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		<i>Explanation.</i> —For the purposes of sub-section (2), the expression “foreign company” means any company or body corporate incorporated outside India whether having a place of business in India or not.		
22.	Class action (Liability of Advisors of Company)	Section 245: (1) Such number of member or members, depositor or depositors or any class of them, as the case may be, as are indicated in sub-section (2) may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors for seeking all or any of the following orders, namely:— (a) to restrain the company from committing an act which is <i>ultra vires</i> the articles or memorandum of the company; (b) to restrain the company from committing breach of any provision of the company’s memorandum or articles; (c) to declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors; (d) to restrain the company and its directors from acting on such resolution; (e) to restrain the company from doing an act	No Provision	New provision Specified number of members or depositors may file class action suit in the Tribunal against the company if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors. The ambit of order which a Tribunal may pass is specified in the clause. The shareholders and depositors can claim damages from: - Company; - Auditors - Expert - Advisor - Consultant or



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		which is contrary to the provisions of this Act or any other law for the time being in force; (f) to restrain the company from taking action contrary to any resolution passed by the members; (g) to claim damages or compensation or demand any other suitable action from or against— (i) the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part; (ii) the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or (iii) any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part; (h) to seek any other remedy as the Tribunal may deem fit. (2) Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any		- Any other person For any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part. The requisite number of members and depositors who may apply for class action suit is provided under the clause. The factors which may be considered by the Tribunal for admitting the application are specified under the clause. The order passed by the Tribunal is binding on company, members, depositors, auditors and any other person associated with the company. The Tribunal may reject the application if it finds the same to be frivolous or
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	improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner. (3) (i) The requisite number of members provided in sub-section (1) shall be as under:— (a) in the case of a company having a share capital, not less than one hundred members of the company or not less than such percentage of the total number of its members as may be prescribed, whichever is less, or any member or members holding not less than such percentage of the issued share capital of the company as may be prescribed, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares; (b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members. (ii) The requisite number of depositors provided in sub-section (1) shall not be less than one hundred depositors or not less than such percentage of the total number of depositors as may be prescribed, whichever is less, or any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed. (4) In considering an application under sub-section (1), the Tribunal shall take into	vexations. It has also the power to penalise the frivolous applicants. A Banking company is exempted under this clause
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		account, in particular— (a) whether the member or depositor is acting in good faith in making the application for seeking an order; (b) any evidence before it as to the involvement of any person other than directors or officers of the company on any of the matters provided in clauses (a) to (f) of subsection(1); (c) whether the cause of action is one which the member or depositor could pursue in his own right rather than through an order under this section; (d) any evidence before it as to the views of the members or depositors of the company who have no personal interest, direct or indirect, in the matter being proceeded under this section; (e) where the cause of action is an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be— (i) authorised by the company before it occurs; or (ii) ratified by the company after it occurs; (f) where the cause of action is an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company. (5) If an application filed under sub-section (1)		
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		is admitted, then the Tribunal shall have regard to the following, namely:— (a) public notice shall be served on admission of the application to all the members or depositors of the class in such manner as may be prescribed; (b) all similar applications prevalent in any jurisdiction should be consolidated into a single application and the class members or depositors should be allowed to choose the lead applicant and in the event the members or depositors of the class are unable to come to a consensus, the Tribunal shall have the power to appoint a lead applicant, who shall be in charge of the proceedings from the applicant's side; (c) two class action applications for the same cause of action shall not be allowed; (d) the cost or expenses connected with the application for class action shall be defrayed by the company or any other person responsible for any oppressive act. (6) Any order passed by the Tribunal shall be binding on the company and all its members, depositors and auditor including audit firm or expert or consultant or advisor or any other person associated with the company. (7) Any company which fails to comply with an order passed by the Tribunal under this section shall be punishable with fine which		
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		shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees. (8) Where any application filed before the Tribunal is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, reject the application and make an order that the applicant shall pay to the opposite party such cost, not exceeding one lakh rupees, as may be specified in the order. (9) Nothing contained in this section shall apply to a banking company. (10) Subject to the compliance of this section, an application may be filed or any other action may be taken under this section by any person, group of persons or any association of persons representing the persons affected by any act or omission, specified in sub-section (1).		
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