

THE COMPANIES ACT, 2013

ARRANGEMENT OF SECTIONS

CHAPTER I

PRELIMINARY

SECTIONS

1. Short title, extent, commencement and application.
2. Definitions.

CHAPTER II

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

3. Formation of company.
- 3A. Members severally liable in certain cases.
4. Memorandum.
5. Articles.
6. Act to override memorandum, articles, etc.
7. Incorporation of company.
8. Formation of companies with charitable objects, etc.
9. Effect of registration.
10. Effect of memorandum and articles.
- 10A. Commencement of business, etc.
11. [*Omitted.*].
12. Registered office of company.
13. Alteration of memorandum.
14. Alteration of articles.
15. Alteration of memorandum or articles to be noted in every copy.
16. Rectification of name of company.
17. Copies of memorandum, articles, etc., to be given to members.
18. Conversion of companies already registered.
19. Subsidiary company not to hold shares in its holding company.
20. Service of documents.
21. Authentication of documents, proceedings and contracts.
22. Execution of bills of exchange, etc.

CHAPTER III

PROSPECTUS AND ALLOTMENT OF SECURITIES

PART I.—*Public offer*

23. Public offer and private placement.
24. Power of Securities and Exchange Board to regulate issue and transfer of securities, etc.
25. Document containing offer of securities for sale to be deemed prospectus. 26. Matters to be stated in prospectus.
27. Variation in terms of contract or objects in prospectus.
28. Offer of sale of shares by certain members of company.
29. Public offer of securities to be in dematerialised form.
30. Advertisement of prospectus.
31. Shelf prospectus.
32. Red herring prospectus.
33. Issue of application forms for securities.
34. Criminal liability for mis-statements in prospectus.
35. Civil liability for mis-statements in prospectus.

SECTIONS

- 36. Punishment for fraudulently inducing persons to invest money.
- 37. Action by affected persons.
- 38. Punishment for personation for acquisition, etc., of securities.
- 39. Allotment of securities by company.
- 40. Securities to be dealt with in stock exchanges.
- 41. Global depository receipt.

PART II.—*Private placement*

- 42. Issue of shares on private placement basis.

CHAPTER IV

SHARE CAPITAL AND DEBENTURES

- 43. Kinds of share capital.
- 44. Nature of shares or debentures.
- 45. Numbering of shares.
- 46. Certificate of shares.
- 47. Voting rights.
- 48. Variation of shareholders' rights.
- 49. Calls on shares of same class to be made on uniform basis.
- 50. Company to accept unpaid share capital, although not called up.
- 51. Payment of dividend in proportion to amount paid-up.
- 52. Application of premiums received on issue of shares.
- 53. Prohibition on issue of shares at discount.
- 54. Issues of sweat equity shares.
- 55. Issue and redemption of preference shares.
- 56. Transfer and transmission of securities.
- 57. Punishment for personation of shareholder.
- 58. Refusal of registration and appeal against refusal.
- 59. Rectification of register of members.
- 60. Publication of authorised, subscribed and paid-up capital.
- 61. Power of limited company to alter its share capital.
- 62. Further issue of share capital.
- 63. Issue of bonus shares.
- 64. Notice to be given to Registrar for alteration of share capital.
- 65. Unlimited company to provide for reserve share capital on conversion into limited company.
- 66. Reduction of share capital.
- 67. Restrictions on purchase by company or giving of loans by it for purchase of its shares.
- 68. Power of company to purchase its own securities.
- 69. Transfer of certain sums to capital redemption reserve account.
- 70. Prohibition for buy-back in certain circumstances.
- 71. Debentures.
- 72. Power to nominate.

CHAPTER V

ACCEPTANCE OF DEPOSITS BY COMPANIES

- 73. Prohibition on acceptance of deposits from public.
- 74. Repayment of deposits, etc., accepted before commencement of this Act.
- 75. Damages for fraud.

2

SECTIONS

- 76. Acceptance of deposits from public by certain companies.
- 76A. Punishment for contravention of section 73 or section 76.

CHAPTER VI

REGISTRATION OF CHARGES

- 77. Duty to register charges, etc.
- 78. Application for registration of charge.
- 79. Section 77 to apply in certain matters.
- 80. Date of notice of charge.
- 81. Register of charges to be kept by Registrar.
- 82. Company to report satisfaction of charge.
- 83. Power of Registrar to make entries of satisfaction and release in absence of intimation from company.
- 84. Intimation of appointment of receiver or manager.
- 85. Company's register of charges.
- 86. Punishment for contravention.
- 87. Rectification by Central Government in Register of charges.

CHAPTER VII

MANAGEMENT AND ADMINISTRATION

- 88. Register of members, etc.
- 89. Declaration in respect of beneficial interest in any share.
- 90. Register of significant beneficial owners in a Company.
- 91. Power to close register of members or debenture holders or other security holders.
- 92. Annual return.
- 93. [*Omitted.*].
- 94. Place of keeping and inspection of registers, returns, etc.
- 95. Registers, etc., to be evidence.
- 96. Annual general meeting.
- 97. Power of Tribunal to call annual general meeting.
- 98. Power of Tribunal to call meetings of members, etc.
- 99. Punishment for default in complying with provisions of sections 96 to 98.
- 100. Calling of extraordinary general meeting.
- 101. Notice of meeting.
- 102. Statement to be annexed to notice.
- 103. Quorum for meetings.
- 104. Chairman of meetings.
- 105. Proxies.
- 106. Restriction on voting rights.
- 107. Voting by show of hands.
- 108. Voting through electronic means.
- 109. Demand for poll.
- 110. Postal ballot.

111. Circulation of members' resolution.
112. Representation of President and Governors in meetings.
113. Representation of corporations at meeting of companies and of creditors.
114. Ordinary and special resolutions.
115. Resolutions requiring special notice.
116. Resolutions passed at adjourned meeting.
117. Resolutions and agreements to be filed.

SECTIONS

118. Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot.
119. Inspection of minute-books of general meeting.
120. Maintenance and inspection of documents in electronic form.
121. Report on annual general meeting.
122. Applicability of this Chapter to One Person Company.

CHAPTER VIII

DECLARATION AND PAYMENT OF DIVIDEND

123. Declaration of dividend.
124. Unpaid Dividend Account.
125. Investor Education and Protection Fund.
126. Right to dividend, rights shares and bonus shares to be held in abeyance pending registration of transfer of shares.
127. Punishment for failure to distribute dividends.

CHAPTER IX

ACCOUNTS OF COMPANIES

128. Books of account, etc., to be kept by company.
129. Financial statement.
- 129A. Periodical financial results.
130. Re-opening of accounts on court's or Tribunal's orders.
131. Voluntary revision of financial statements or Board's report.
132. Constitution of National Financial Reporting Authority.
133. Central Government to prescribe accounting standards
134. Financial statement, Board's report, etc.
135. Corporate Social Responsibility.
136. Right of member to copies of audited financial statement.
137. Copy of financial statement to be filed with Registrar.
138. Internal Audit.

CHAPTER X

AUDIT AND AUDITORS

139. Appointment of auditors.
140. Removal, resignation of auditor and giving of special notice.
141. Eligibility, qualifications and disqualifications of auditors.
142. Remuneration of auditors.

143. Powers and duties of auditors and auditing standards.
144. Auditor not to render certain services.
145. Auditor to sign audit reports, etc.
146. Auditors to attend general meeting.
147. Punishment for contravention.
148. Central Government to specify audit of items of cost in respect of certain companies.

CHAPTER XI

APPOINTMENT AND QUALIFICATIONS OF DIRECTORS

149. Company to have Board of Directors.

4

SECTIONS

150. Manner of selection of independent directors and maintenance of data bank of independent directors.
151. Appointment of director elected by small shareholders.
152. Appointment of directors.
153. Application for allotment of Director Identification Number.
154. Allotment of Director Identification Number.
155. Prohibition to obtain more than one Director Identification Number.
156. Director to intimate Director Identification Number.
157. Company to inform Director Identification Number to Registrar.
158. Obligation to indicate Director Identification Number.
159. Penalty for default of certain provisions.
160. Right of persons other than retiring directors to stand for directorship.
161. Appointment of additional director, alternate director and nominee director.
162. Appointment of directors to be voted individually.
163. Option to adopt principle of proportional representation for appointment of directors.
164. Disqualifications for appointment of director.
165. Number of directorships.
166. Duties of directors.
167. Vacation of office of director.
168. Resignation of director.
169. Removal of directors.
170. Register of directors and key managerial personnel and their shareholding.
171. Members' right to inspect.
172. Penalty.

CHAPTER XII

MEETINGS OF BOARD AND ITS POWERS

173. Meetings of Board.
174. Quorum for meetings of Board.
175. Passing of resolution by circulation.
176. Defects in appointment of directors not to invalidate actions taken.
177. Audit committee.
178. Nomination and Remuneration Committee and Stakeholders Relationship Committee.
179. Powers of Board.
180. Restrictions on powers of Board.
181. Company to contribute to *bona fide* and charitable funds, etc.
182. Prohibitions and restrictions regarding political contributions.

183. Power of Board and other persons to make contributions to national defence fund, etc.
184. Disclosure of interest by director.
185. Loan to directors, etc.
186. Loan and investment by company.
187. Investments of company to be held in its own name.
188. Related party transactions.
189. Register of contracts or arrangements in which directors are interested.
190. Contract of employment with managing or whole-time directors.
191. Payment to director for loss of office, etc., in connection with transfer of undertaking, property or shares.
192. Restriction on non-cash transactions involving directors.
193. Contract by One Person Company.
194. [*Omitted.*].
195. [*Omitted.*].

5

CHAPTER XIII

APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

SECTIONS

196. Appointment of managing director, whole-time director or manager.
197. Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.
198. Calculation of profits.
199. Recovery of remuneration in certain cases.
200. Central Government or company to fix limit with regard to remuneration.
201. Forms of, and procedure in relation to, certain applications.
202. Compensation for loss of office of managing or whole-time director or manager.
203. Appointment of key managerial personnel.
204. Secretarial audit for bigger companies.
205. Functions of company secretary.

CHAPTER XIV

INSPECTION, INQUIRY AND INVESTIGATION

206. Power to call for information, inspect books and conduct inquiries.
207. Conduct of inspection and inquiry.
208. Report on inspection made.
209. Search and seizure.
210. Investigation into affairs of company.
211. Establishment of Serious Fraud Investigation Office.
212. Investigation into affairs of company by Serious Fraud Investigation Office.
213. Investigation into company's affairs in other cases.
214. Security for payment of costs and expenses of investigation.
215. Firm, body corporate or association not to be appointed as inspector.
216. Investigation of ownership of company.
217. Procedure, powers, etc., of inspectors.
218. Protection of employees during investigation.
219. Power of inspector to conduct investigation into affairs of related companies, etc.
220. Seizure of documents by inspector.
221. Freezing of assets of company on inquiry and investigation.
222. Imposition of restrictions upon securities.

- 223. Inspector's report.
- 224. Actions to be taken in pursuance of inspector's report.
- 225. Expenses of investigation.
- 226. Voluntary winding up of company, etc., not to stop investigation proceedings.
- 227. Legal advisers and bankers not to disclose certain information.
- 228. Investigation, etc., of foreign companies.
- 229. Penalty for furnishing false statement, mutilation, destruction of documents.

CHAPTER XV

COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

- 230. Power to compromise or make arrangements with creditors and members.
- 231. Power to Tribunal to enforce compromise or arrangement.
- 232. Merger and amalgamation of companies.
- 233. Merger or amalgamation of certain companies.
- 234. Merger or amalgamation of company with foreign company.

6

SECTIONS

- 235. Power to acquire shares of shareholders dissenting from scheme or contract approved by majority.
- 236. Purchase of minority shareholding.
- 237. Power of Central Government to provide for amalgamation of companies in public interest.
- 238. Registration of offer of schemes involving transfer of shares.
- 239. Preservation of books and papers of amalgamated companies.
- 240. Liability of officers in respect of offences committed prior to merger, amalgamation, etc.

CHAPTER XVI

PREVENTION OF OPPRESSION AND MISMANAGEMENT

- 241. Application to Tribunal for relief in cases of oppression, etc.
- 242. Powers of Tribunal.
- 243. Consequence of termination or modification of certain agreements.
- 244. Right to apply under section 241.
- 245. Class action.
- 246. Application of certain provisions to proceedings under section 241 or section 245.

CHAPTER XVII

REGISTERED VALUERS

- 247. Valuation by registered valuers.

CHAPTER XVIII

REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES

- 248. Power of Registrar to remove name of company from register of companies.
- 249. Restrictions on making application under section 248 in certain situations.
- 250. Effect of company notified as dissolved.
- 251. Fraudulent application for removal of name.
- 252. Appeal to Tribunal.

CHAPTER XIX

REVIVAL AND REHABILITATION OF SICK COMPANIES

- 253. [Omitted].
- 254. [Omitted].
- 255. [Omitted].
- 256. [Omitted].
- 257. [Omitted].
- 258. [Omitted].
- 259. [Omitted].
- 260. [Omitted].
- 261. [Omitted].
- 262. [Omitted].
- 263. [Omitted].
- 264. [Omitted].
- 265. [Omitted].
- 266. [Omitted].
- 267. [Omitted].
- 268. [Omitted].
- 269. [Omitted].

7

CHAPTER XX

WINDING UP

SECTIONS

- 270. Winding up by Tribunal.

PART I.—*Winding up by the Tribunal*

- 271. Circumstances in which company may be wound up by Tribunal.
- 272. Petition for winding up.
- 273. Powers of Tribunal.
- 274. Directions for filing statement of affairs.
- 275. Company Liquidators and their appointments.
- 276. Removal and replacement of liquidator.
- 277. Intimation to Company Liquidator, provisional liquidator and Registrar.
- 278. Effect of winding up order.
- 279. Stay of suits, etc., on winding up order.
- 280. Jurisdiction of Tribunal.
- 281. Submission of report by Company Liquidator.
- 282. Directions of Tribunal on report of Company Liquidator.
- 283. Custody of company's properties.
- 284. Promoters, directors, etc., to cooperate with Company Liquidator.
- 285. Settlement of list of contributories and application of assets. 286. Obligations of directors and managers.
- 287. Advisory Committee.
- 288. Submission of periodical reports to Tribunal.
- 289. [Omitted.]
- 290. Powers and duties of Company Liquidator.
- 291. Provision for professional assistance to Company Liquidator.
- 292. Exercise and control of Company Liquidator's powers.

293. Books to be kept by Company Liquidator.
294. Audit of Company Liquidator's accounts.
295. Payment of debts by contributory and extent of set-off.
296. Power of Tribunal to make calls.
297. Adjustment of rights of contributories.
298. Power to order costs.
299. Power to summon persons suspected of having property of company, etc.
300. Power to order examination of promoters, directors, etc.
301. Arrest of person trying to leave India or abscond.
302. Dissolution of company by Tribunal.
303. Appeals from orders made before commencement of

Act. [*Omitted.*].

304. [*Omitted.*].
305. [*Omitted.*].
306. [*Omitted.*].
307. [*Omitted.*].
308. [*Omitted.*].
309. [*Omitted.*].
310. [*Omitted.*].
311. [*Omitted.*].
312. [*Omitted.*].
313. [*Omitted.*].

8

SECTIONS

314. [*Omitted.*].
315. [*Omitted.*].
316. [*Omitted.*].
317. [*Omitted.*].
318. [*Omitted.*].
319. [*Omitted.*].
320. [*Omitted.*].
321. [*Omitted.*].
322. [*Omitted.*].
323. [*Omitted.*].

PART III.—*Provisions applicable to every mode of winding up*

324. Debts of all descriptions to be admitted to proof.
325. [*Omitted.*].
326. Overriding preferential payments.
327. Preferential payments.
328. Fraudulent preference.
329. Transfers not in good faith to be void.
330. Certain transfers to be void.
331. Liabilities and rights of certain persons fraudulently preferred.
332. Effect of floating charge.
333. Disclaimer of onerous property.
334. Transfers, etc., after commencement of winding up to be void.
335. Certain attachments, executions, etc., in winding up by Tribunal to be void.
336. Offences by officers of companies in liquidation.
337. Penalty for frauds by officers.

338. Liability where proper accounts not kept.
339. Liability for fraudulent conduct of business.
340. Power of Tribunal to assess damages against delinquent directors, etc.
341. Liability under sections 339 and 340 to extend to partners or directors in firms or companies.
342. Prosecution of delinquent officers and members of company.
343. Company Liquidator to exercise certain powers subject to sanction.
344. Statement that company is in liquidation.
345. Books and papers of company to be evidence.
346. Inspection of books and papers by creditors and contributories.
347. Disposal of books and papers of company.
348. Information as to pending liquidations.
349. Official Liquidator to make payments into public account of India.
350. Company Liquidator to deposit monies into scheduled bank.
351. Liquidator not to deposit monies into private banking account.
352. Company Liquidation Dividend and Undistributed Assets Account.
353. Liquidator to make returns, etc.
354. Meetings to ascertain wishes of creditors or contributories.
355. Court, tribunal or person, etc., before whom affidavit may be sworn.
356. Power of Tribunal to declare dissolution of company void.
357. Commencement of winding up by Tribunal.
358. Exclusion of certain time in computing period of limitation.

PART IV.—*Official Liquidators*

SECTIONS

359. Appointment of Official Liquidator.
360. Powers and functions of Official Liquidator.
361. Summary procedure for liquidation.
362. Sale of assets and recovery of debts due to company.
363. Settlement of claims of creditors by Official Liquidator.
364. Appeal by creditor.
365. Order of dissolution of company.

CHAPTER XXI

PART I.—*Companies authorised to Register under this Act*

366. Companies capable of being registered.
367. Certificate of registration of existing companies.
368. Vesting of property on registration.
369. Saving of existing liabilities.
370. Continuation of pending legal proceedings.
371. Effect of registration under this Part.
372. Power of Court to stay or restrain proceedings.
373. Suits stayed on winding up order.
374. Obligations of companies registering under this Part.

PART II.—*Winding up of unregistered companies*

- 375. Winding up of unregistered companies.
- 376. Power to wind up foreign companies although dissolved.
- 377. Provisions of Chapter cumulative.
- 378. Saving and construction of enactments conferring power to wind up partnership firm, association or company, etc., in certain cases.

CHAPTER XXIA
PRODUCER COMPANIES
PART I
PRELIMINARY

- 378A. Definitions.

PART II

INCORPORATION OF PRODUCER COMPANIES AND OTHER MATTERS

- 378B. Objects of producer company.
- 378C. Formation of Producer Company and its registration.
- 378D. Membership and voting rights of Members of Producer Company.
- 378E. Benefits to Members.
- 378F. Memorandum of Producer Company.
- 378G. Articles of association.
- 378H. Amendment of memorandum.
- 378-I. Amendment of articles.
- 378J. Option to inter-State co-operative societies to become Producer Companies.

10

SECTIONS

- 378K. Effect of incorporation of Producer Company.
- 378L. Vesting of undertaking in Producer Company.
- 378M. Concession, etc., to be deemed to have been granted to Producer Company. 378N.
- Provisions in respect of officers and other employees of inter-State co-operative society. PART

III

MANAGEMENT OF PRODUCER COMPANY

- 378-O. Number of directors.
- 378P. Appointment of directors.
- 378Q. Vacation of office by directors.
- 378R. Powers and functions of Board.
- 378S. Matters to be transacted at general meeting.
- 378T. Liability of directors.
- 378U. Committee of directors.
- 378V. Meetings of Board and quorum.

378W. Chief Executive and his functions.

378X. Secretary of Producer Company.

378Y. Quorum.

378Z. Voting rights.

PART IV

GENERAL MEETINGS

378ZA. Annual general meetings.

PART V

SHARE CAPITAL AND MEMBERS RIGHTS

378ZB. Share capital.

378ZC. Special user rights.

378ZD. Transferability of shares and attendant rights.

PART VI

FINANCE, ACCOUNTS AND AUDIT

378ZE. Books of account.

378ZF. Internal audit.

378ZG. Duties of auditor under this Chapter.

378ZH. Donation or subscription by Producer Company.

378Z-I. General and other reserves.

378ZJ. Issue of bonus shares.

11

SECTIONS

PART VII

LOANS TO MEMBERS AND INVESTMENTS

378ZK. Loan, etc., to Members.

378ZL. Investment in other companies, formation of subsidiaries, etc.

PART VIII

PENALTIES

378ZM. Penalty for contravention.

PART IX

AMALGAMATION, MERGER OR DIVISION

378ZN. Amalgamation, merger or division, etc., to form new Producer Companies. PART X

RESOLUTION OF DISPUTES

378Z-O. Disputes.

PART XI

MISCELLANEOUS PROVISIONS

- 378ZP. Strike off name of Producer Company.
- 378ZQ. Provisions of this Chapter to override other laws.
- 378ZR. Application of provisions relating to private companies.

PART XII

RE-CONVERSION OF PRODUCER COMPANY TO INTER-STATE CO-OPERATIVE SOCIETY

- 378ZS. Re-conversion of Producer Company to inter-State co-operative society.
- 378ZT. Power to modify Act in its application to Producer Companies.
- 378ZU. Power to make rules.

CHAPTER XXII

COMPANIES INCORPORATED OUTSIDE INDIA

- 379. Application of Act to foreign companies.
- 380. Documents, etc., to be delivered to Registrar by foreign companies.
- 381. Accounts of foreign company.
- 382. Display of name, etc., of foreign company.
- 383. Service on foreign company.
- 384. Debentures, annual return, registration of charges, books of account and their inspection. 385. Fee for registration of documents.
- 386. Interpretation.
- 387. Dating of prospectus and particulars to be contained therein.
- 388. Provisions as to expert's consent and allotment.
- 389. Registration of prospectus.
- 390. Offer of Indian Depository Receipts.
- 391. Application of sections 34 to 36 and Chapter XX.
- 392. Punishment for contravention.
- 393. Company's failure to comply with provisions of this Chapter not to affect validity of contracts, etc.

12

CHAPTER XXIII

GOVERNMENT COMPANIES

SECTIONS

- 394. Annual reports on Government companies.
- 395. Annual reports where one or more State Governments are members of companies.

CHAPTER XXIV

REGISTRATION OFFICES AND FEES

- 396. Registration offices.
- 397. Admissibility of certain documents as evidence.
- 398. Provisions relating to filing of applications, documents, inspection, etc., in electronic form. 399. Inspection, production and evidence of documents kept by Registrar.
- 400. Electronic form to be exclusive, alternative or in addition to physical form. 401. Provision of value added services through electronic form.
- 402. Application of provisions of Information Technology Act, 2000.

- 403. Fee for filing, etc.
- 404. Fees, etc., to be credited into public account.

CHAPTER XXV

COMPANIES TO FURNISH INFORMATION OR STATISTICS

- 405. Power of Central Government to direct companies to furnish information or statistics.

CHAPTER XXVI

NIDHIS

- 406. Provision relating to *Nidhis* and its application, etc.

CHAPTER XXVII

NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL

- 407. Definitions.
- 408. Constitution of National Company Law Tribunal.
- 409. Qualification of President and Members of Tribunal.
- 410. Constitution of Appellate Tribunal.
- 411. Qualifications of Chairperson and members of Appellate Tribunal.
- 412. Selection of Members of Tribunal and Appellate Tribunal.
- 413. Term of office of President, Chairperson and other Members.
- 414. Salary, allowances and other terms and conditions of service of Members.
- 415. Acting President and Chairperson of Tribunal or Appellate Tribunal.
- 416. Resignation of Members.
- 417. Removal of Members.
- 417A. Qualifications, terms and conditions of service of Chairperson and Member.
- 418. Staff of Tribunal and Appellate Tribunal.
- 419. Benches of Tribunal.
- 420. Orders of Tribunal.
- 421. Appeal from orders of Tribunal.
- 422. Expeditious disposal by Tribunal and Appellate Tribunal.
- 423. Appeal to Supreme Court.
- 424. Procedure before Tribunal and Appellate Tribunal.
- 425. Power to punish for contempt.

13

SECTIONS

- 426. Delegation of powers.
- 427. President, Members, officers, etc., to be public servants.
- 428. Protection of action taken in good faith.
- 429. Power to seek assistance of Chief Metropolitan Magistrate, etc.
- 430. Civil court not to have jurisdiction.
- 431. Vacancy in Tribunal or Appellate Tribunal not to invalidate acts or proceedings.
- 432. Right to legal representation.
- 433. Limitation.
- 434. Transfer of certain pending proceedings.

CHAPTER XXVIII

SPECIAL COURTS

- 435. Establishment of Special Courts.
- 436. Offences triable by Special Courts.

- 437. Appeal and revision.
- 438. Application of Code to proceedings before Special Court.
- 439. Offences to be non-cognizable.
- 440. Transitional provisions.
- 441. Compounding of certain offences.
- 442. Mediation and Conciliation Panel.
- 443. Power of Central Government to appoint company prosecutors.
- 444. Appeal against acquittal.
- 445. Compensation for accusation without reasonable cause.
- 446. Application of fines.
- 446A. Factors for determining level of punishment.
- 446B. Lesser penalties for certain companies.

CHAPTER XXIX
MISCELLANEOUS

- 447. Punishment for fraud.
- 448. Punishment for false statement.
- 449. Punishment for false evidence.
- 450. Punishment where no specific penalty or punishment is provided.
- 451. Punishment in case of repeated default.
- 452. Punishment for wrongful withholding of property.
- 453. Punishment for improper use of “Limited” or “Private Limited”.
- 454. Adjudication of penalties.
- 454A. Penalty for repeated default.
- 455. Dormant company.
- 456. Protection of action taken in good faith.
- 457. Non-disclosure of information in certain cases.
- 458. Delegation by Central Government of its powers and functions.
- 459. Powers of Central Government of Tribunal to accord approval, etc., subject to conditions and to prescribe fees on applications.
- 460. Condonation of delay in certain cases.
- 461. Annual report by Central Government.
- 462. Power to exempt class or classes of companies from provisions of this Act.
- 463. Power of court to grant relief in certain cases.
- 464. Prohibition of association or partnership of persons exceeding certain number.
- 465. Repeal of certain enactments and savings.
- 466. Dissolution of Company Law Board and consequential provisions.
- 467. Power of Central Government to amend Schedules.
- 468. Power of Central Government to make rules relating to winding up.

SECTIONS

- 469. Power of Central Government to make rules.
- 470. Power to remove difficulties.

- SCHEDULE I.
- SCHEDULE II.
- SCHEDULE III.
- SCHEDULE IV.
- SCHEDULE V.
- SCHEDULE VI.
- SCHEDULE VII.

15
THE COMPANIES ACT, 2013
ACT NO. 18 OF 2013

[29th August, 2013.]

An Act to consolidate and amend the law relating to companies.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

CHAPTER I
PRELIMINARY

1. Short title, extent, commencement and application.—(1) This Act may be called the Companies Act, 2013.

(2) It extends to the whole of India.

(3) This section shall come into force at once and the remaining provisions of this Act shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint and *different dates may

*1. **12th September, 2013** – S. 2(I),(3), (4), (5), (6), (8), (9), (10), (11), (12), (14), (15), (16), (17), (18), (19), (20), (21), (22), (24), (25), (26), (27), (28), (29) [except sub-clause (iv)], (30), (32), (33), (34), (35), (36), (37), (38), (39), (40), (43), (44), (45), (46), (49), (50), (51), (52), (53), (54), (55), (56), (57), (58), (59), (60), (61), (63), (64), (65), (66), (67) [except sub-clause (ix)], (84), (86),(87) [except the proviso and *Explanation (d)*], (88), (89), (90), (91), (92), (93), (94), (95); s. 19, 21, 22, 23 [except clause (b) of sub-section (1) and sub-section (2)], 24, 25 [except sub-section (3)], 29, 30, 31, 32, 33 [except sub-section (3)], 34, 35 [except clause (e) of sub-section (1)], 36, 37, 38 39 [except sub-section (4)], 40 [except sub-section (6)], 44, 45, 49, 50, 51, 57, 58, 59, 60, 65, 69, 70 [except sub-section (2)], 86, 91, 100 [except sub-section (6)], 102, 103, 104, 105 [except the third and fourth provisos of sub-section (1) and sub-section (7)], 106, 107, 111, 112, 113 [except clause (b) of sub-section (1)], 114, 116, 127, 133, 161 [except sub-section (2)], 162, 163, 176, 180, 181, 182, 183, 185, 192, 194,195, 202, 379, 382, 383, 386 [except clause (a)], 394, 405, 407, 408, 409, 410, 411, 412, 413, 414, 439, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 456, 457, 458, 459, 460, 461, 462, 463, 467, 468, 469, 470, *vide* notification No. S.O. 2754(E), dated 12th September, 2013, *see* Gazette of India, Extraordinary, Part II, sec. 3(ii).

1st April 2014 – S. 2(2), (7), (13), (31), (41), (42), (47), (48), (62), (83), (85) and *Explanation (d)* of clause (87); ss. 3, 4, 5, 6; s. 7 [except sub-section (7)]; s. 8 [except sub-section (9)]; ss. 9, 10, 11, 12 and 13; s. 14 [except second proviso to sub-section (1) and sub-section (2)]; ss. 15, 16, 17 and 18; section 20; clause (b) of sub-section (1) and sub-section (2) of section 23; sub-section (3) of section 25; ss. 26, 27 and 28; sub-section (3) of s. 33; clause (e) of sub-section (1) of s. 35; sub-section (4) of s. 39; sub-section (6) of s. 40; ss. 41, 42 and 43; ss. 46 and 47; ss. 52, 53 and 54; s. 55 [except sub-section (3)]; s. 56; s. 61 [except proviso to clause (b) of sub-section (1)]; s. 62 [except sub-sections (4) to (6)]; ss. 63 and 64; ss. 67 and 68; sub-section (2) of section 70; s. 71 [except sub-sections (9) to (11)]; ss. 72 and 73; sub-section (1) of s. 74; ss. 76, 77, 78, 79, 80, 81, 82, 83, 84 and 85; ss. 87, 88, 89 and 90; ss. 92, 93, 94, 95 and 96; sub-section (6) of s.100; s. 101; third and fourth provisos to sub-section (1) and sub-section (7) of s. 105; ss. 108, 109 and 110; clause (b) of sub-section (1) of s. 113; s. 115; ss. 117and 118; s. 119 [except sub-section (4)]; ss. 120, 121, 122 and 123; s. 126; ss. 128 and 129; s.134; ss. 136, 137, 138 and 139; s. 140 [except second proviso to sub-section (4) and sub-section (5)]; ss. 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159 and 160; sub-section (2) of s. 161; ss. 164, 165, 166, 167 and 168; s. 169 [except sub-section (4)]; ss. 170, 171, 172, 173, 174 and 175; ss. 177, 178 and 179; s. 184; ss. 186, 187, 188, 189, 190 and 191; s. 193; ss. 196, 197, 198, 199, 200 and 201; ss. 203, 204, 205, 206, 207, 208, 209, 210 and 211; s. 212 [except references of sub-section (10) of s. 66, sub-section (5) of s. 140], s. 213, sub-section (1) of s. 251 and sub-section (3) of s. 339 made in sub-section (6) and also sub-sections (8) to (10)]; ss. 214, 215; s. 216 [except sub-section (2)]; s. 217; ss. 219 and 220; s. 223; s. 224 [except sub-sections (2) and (5)]; s. 225; ss. 228 and 229; ss. 366, 367, 368and 369; s. 370 (except the proviso); s. 371; s. 374; ss. 380and 381; ss. 384and 385; clause (a) of s. 386; ss. 387, 388, 389and 390; sub-section (1) of s. 391; ss. 392 and 393; ss. 395, 396, 397and 398; s. 399 [except reference of word Tribunal in sub-section (2)]; ss. 400, 401, 402, 403and 404; s. 406; s. 442; ss. 454and 455; s. 464; Schs. I, II, III, IV, V and VI, *vide* notification No. S.O. 902(E), dated 26th March, 2014, *see* Gazette of India, Extraordinary, Part II, sec.3(ii).

1st April, 2014 – S. 135 and Sch. VII, *vide* notification No. S.O. 582(E), dated 27th February, 2014, *see* Gazette of India, Extraordinary, Part II, sec. 3 (ii). **6th June, 2014** – Sub-sections (2) and (3) of s. 74, *vide* notification No. S.O. 1459(E), dated 6th June, 2014, *see* Gazette of India, Extraordinary, Part II, sec. 3(ii). **13th January, 2016**–S. 125(5), (6) [except with respect to the manner of administration of the Investor Education and Protection Fund] and (7), *vide* notification No. S.O. 125(E), *see* Gazette of India, Extraordinary, Part II, sec. 3(ii).

18th May, 2016–S. 2(29) (iv), ss. 435 to 438 and s. 440, *vide* notification No. S.O. 1795(E), dated 18th May, 2016, *see* Gazette of India, Extraordinary, Part II, sec. 3(ii). **1st June, 2016**–S. 7(7) [except clause (c) and (d)], s. 14(2), second proviso to sub-section (1) of s. 14, s. 55 (3), proviso to clause (b) of sub-section (1) of s. 61; s. 62 (4) to (6), s. 71 (9), (10) and (11), s. 75; s. 97; s. 98 and s. 99; S. 119 (4), s. 130 and 131; second proviso to sub-section (4) and (5) of s. 140, s. 169(4), s. 213, s. 216 (2), s. 218, s. 221, s. 222, s. 224 (5), ss. 241, 242 [except clause (b) of sub-section (1), cls. (c) and (g) of sub-section (2)], 243, 244 and 245; Reference of word “Tribunal” s. 399 (2),ss. 415 to 433, s. 434 (1) (a) and (b) & (2), s. 441and 466, *vide* notification No. S.O. 1934(E), dated 1st June, 2016, *see* Gazette of India, Extraordinary Part II, sec. 3(ii).

7th September, 2016–S. 124, s. 125 (1) to (4), (6) [with respect to the manner of administration of the Investor Education and Protection Fund] and (8) to (11) *vide* Notification No. S.O. 2866(E), dated 5th September, 2016, *see* Gazette of India, Extraordinary, Part II, sec. 3(ii).

9th September, 2016– S. 227, 242 (1) (b), (2) (c) & (g), s. 246, Ss. 337 to 341 (to the extent of their applicability for s. 246), *vide* notification No. S.O. 2912(E), dated 9th September, 2016, *see* Gazette of India, Extraordinary, Part II, sec. 3(ii).

15th December, 2016–S. 2 (23), s.7 (7) (c) and (d), s. 8 (9), s. 48, s. 66, s. 224 (2), s. 226, s. 230 [except sub-section (11) and (12)], and ss. 231 to 233, ss. 235 to 240, ss. 270 to 288, ss. 290 to 303, ss. 324, ss. 326 to 365, proviso to s. 370, ss. 372 to 373, ss. 375 to 378, s. 391 (2), s. 434 (1) cl. (c) *vide* notification No. S.O. 3677(E), dated 7th December, 2016, *see* Gazette of India, Extraordinary Part II, sec. 3 (ii).

26th December, 2016–Ss. 248 to 252, *vide* notification No. S.Ó. 4167(E), dated 26th December, 2016, *see* Gazette of India, Extraordinary Part II, sec. 3 (ii). **13th April, 2017**– S. 234, *vide* notification No. S.O. 1182(E), dated 13th April, 2017, *see* Gazette of India, Extraordinary Part II, sec. 3 (ii). **24th August, 2017**–S. 212 (8), (9) and (10), *vide* notification No. S.O. 2751(E), dated 24th August, 2017, *see* Gazette of India, Extraordinary Part II, sec. 3 (ii). **20th September, 2017**–Proviso to clause (87) of s. 2, *vide* notification No. S.O. 3086(E), dated 20th September, 2017, *see* Gazette of India, Extraordinary Part II, sec. 3 (ii).

18th October, 2017–S. 247, *vide* notification No. S.O. 3393(E), dated 18th October, 2017, *see* Gazette of India, Extraordinary Part II, sec. 3(ii). **21st March, 2018**– S. 132 (3) and (11), *vide* notification No. S.O. 1316(E), dated 21st March, 2018, *see* Gazette of India, Extraordinary Part II, sec. 3(ii). **1st October, 2018**–S.132 (1) and (12), *vide* notification No. S.O. 5098(E), dated 1st October, 2018, *see* Gazette of India, Extraordinary Part II, sec. 3(ii). **24th October, 2018**– S. 132 (2), (4), (5), (10), (13), (14) and (15) *vide* notification No. S.O. 5385(E), dated 24th October, 2018, *see* Gazette of India, Extraordinary Part II, sec. 3(ii).

30th January, 2019–S.465 in so far as they relate to the repeal of the Companies Act, 1956 (1 of 1956) [that in except in so far as they relate to the repeal of the Registration of Companies (Sikkim) Act, 1961 (Sikkim Act 8 of 1961)] *vide* notification No. S.O. 560(E), dated 30th January 2019, *see* Gazette of India, Extraordinary Part II, sec. 3(ii). **1st July, 2019**–S. 81, *vide* notification No. S.O. 2269(E), dated 15th August, 2019, *see* Gazette of India, Extraordinary Part II, sec. 3(ii).

3rd February, 2020–S. 230 (11) and (12), *vide* notification No. S.O. 525(E), dated 3rd February, 2020, *see* Gazette of India, Extraordinary, Part II, sec. 3(ii). **21st December, 2020**–S. 1, 3, 6 to 10 (both inclusive), s. 12 to 17 (both inclusive), clauses (a) and (b) of s. 18, s. 19 to 21 (both inclusive), clause (i) of s. 22, 24,26, 28 to 31 (both inclusive), s. 33 to 39 (both inclusive), s. 41 to 44 (both inclusive), s. 46 to 51 (both inclusive), s. 54, 57, 61 and 63, *vide* notification No. S.O. 4646(E), dated 21st December, 2020, *see* Gazette of India, Extraordinary, Part II, sec. 3 (ii).

*. *Vide* Notification No. S.O. 3912 (E), dated 30th October, 2019, this Act is made applicable to the Union territory of Jammu and Kashmir and the Union territory of Ladakh.

be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

(4) The provisions of this Act shall apply to—

(a) companies incorporated under this Act or under any previous company law;

(b) insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 (4 of 1938) or the Insurance Regulatory and Development

Authority Act, 1999 (41 of 1999);

(c) banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949 (10 of 1949);

(d) companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003 (36 of 2003);

(f) such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf, subject to such exceptions, modifications or adaptation, as may be specified in the notification.

2. Definitions.—In this Act, unless the context otherwise requires,—

(1) “abridged prospectus” means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf; (2) “accounting standards” means the standards of accounting or any addendum thereto for companies or class of companies referred to in section 133;

(3) “alter” or “alteration” includes the making of additions, omissions and substitutions; (4) “Appellate Tribunal” means the National Company Law Appellate Tribunal constituted under section 410;

(5) “articles” means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act; (6) “associate company”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

¹[*Explanation.*—For the purpose of this clause,—

(a) the expression “significant influence” means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement;

(b) the expression “joint venture” means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;]

(7) “auditing standards” means the standards of auditing or any addendum thereto for companies or class of companies referred to in sub-section (10) of section 143;

(8) “authorised capital” or “nominal capital” means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company; (9) “banking company” means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(10) “Board of Directors” or “Board”, in relation to a company, means the collective body of the directors of the company;

(11) “body corporate” or “corporation” includes a company incorporated outside India, but does not include—

(i) a co-operative society registered under any law relating to co-operative societies; and (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;

(12) “book and paper” and “book or paper” include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;

(13) “books of account” includes records maintained in respect of—

1. The *Explanation* subs. by Act 1 of 2018, s. 2 (w.e.f. 7-5-2018).

(i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;

(ii) all sales and purchases of goods and services by the company;

(iii) the assets and liabilities of the company; and

(iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;

(14) “branch office”, in relation to a company, means any establishment described as such by the company;

(15) “called-up capital” means such part of the capital, which has been called for payment;

(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;

(17) “chartered accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;

(18) “Chief Executive Officer” means an officer of a company, who has been designated as such by it;

(19) “Chief Financial Officer” means a person appointed as the Chief Financial Officer of a

company; (20) “company” means a company incorporated under this Act or under any previous company law;

(21) “company limited by guarantee” means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;

(22) “company limited by shares” means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them;

¹[(23) “Company Liquidator” means a person appointed by the Tribunal as the Company Liquidator in accordance with the provisions of section 275 for the winding up of a company under this Act;]

(24) “company secretary” or “secretary” means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) who is appointed by a company to perform the functions of a company secretary under this Act;

(25) “company secretary in practice” means a company secretary who is deemed to be in practice under sub-section (2) of section 2 of the Company Secretaries Act, 1980 (56 of 1980);

(26) “contributory” means a person liable to contribute towards the assets of the company in the event of its being wound up.

Explanation.—For the purposes of this clause, it is hereby clarified that a person holding fully paid up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory under the Act whilst retaining rights of such a contributory;

(27) “control” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;

1. Subs. by Act 31 of 2016, s. 255 and the Eleventh Schedule, for clause (23) (w.e.f. 15-11-2016).

¹[(28) “Cost Accountant” means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;]

(29) “court” means—

(i) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any district court or district courts subordinate to that High Court under sub-clause (ii);

(ii) the district court, in cases where the Central Government has, by notification, empowered any district court to exercise all or any of the jurisdictions conferred upon the High Court, within the scope of its jurisdiction in respect of a company whose registered office is situate in the district;

(iii) the Court of Session having jurisdiction to try any offence under this Act or under any previous company law;

(iv) the Special Court established under section 435;

(v) any Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law;

(30) “debenture” includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not:

²[Provided that—

(a) the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934 (2 of 1934); and

(b) such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company,

shall not be treated as debenture;]

(31) “deposit” includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India;

(32) “depository” means a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996);

(33) “derivative” means the derivative as defined in clause (ac) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(34) “director” means a director appointed to the Board of a company;

(35) “dividend” includes any interim dividend;

(36) “document” includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form;

(37) “employees’ stock option” means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price;

1. Subs. by Act 1 of 2018, s. 2, for clause (28) (w.e.f. 9-2-2018).
2. The Proviso ins. by s. 2, *ibid.* (w.e.f. 9-2-2018).

(38) “expert” includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force;

(39) “financial institution” includes a scheduled bank, and any other financial institution defined or notified under the Reserve Bank of India Act, 1934 (2 of 1934);

(40) “financial statement” in relation to a company, includes—

- (i) a balance sheet as at the end of the financial year;
- (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- (iii) cash flow statement for the financial year;
- (iv) a statement of changes in equity, if applicable; and
- (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;

(41) “financial year”, in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:

¹[Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year:

Provided further that any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Act, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement;]

²[Provided also *that*] a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause;

(42) “foreign company” means any company or body corporate incorporated outside India which—

- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) conducts any business activity in India in any other manner;

(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 unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or

(ii) any change in carrying amount of an asset or of a liability recognised 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;

1. The proviso subs. by Act 22 of 2019, s. 2 (w.e.f. 2-11-2018).

2. Subs. by s. 2, *ibid.*, for “Provided further that” (w.e.f. 2-11-2018).

20

(44) “Global Depository Receipt” means any instrument in the form of a depository receipt, by whatever name called, created by a foreign depository outside India and authorised by a company making an issue of such depository receipts;

(45) “Government company” means any company in which not less than fifty-one per cent. of the paid-up share capital is held 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, and includes a company which is a subsidiary company of such a Government company;

(46) “holding company”, in relation to one or more other companies, means a company of which such companies are subsidiary companies;

¹[*Explanation.*—For the purposes of this clause, the expression “company” includes any body corporate;]

(47) “independent director” means an independent director referred to in sub-section (6) of section 149;

(48) “Indian Depository Receipt” means any instrument in the form of a depository receipt created by a domestic depository in India and authorised by a company incorporated outside India making an issue of such depository receipts;

²* * * * (50) “issued capital” means such capital as the company issues from time to time for subscription; (51) “key managerial personnel”, in relation to a company, means—

(i) the Chief Executive Officer or the managing director or the manager;

(ii) the company secretary;

(iii) the whole-time director;

(iv) the Chief Financial Officer; ³* * *

⁴[(v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and

(vi) such other officer as may be prescribed;]

(52) “listed company” means a company which has any of its securities listed on any recognised stock exchange:

⁵[Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.]

(53) “manager” means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;

(54) “managing director” means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

1. The *Explanation* ins. by Act 1 of 2018, s. 2 (w.e.f. 9-2-2018).
2. Clause (49) omitted by s. 2, *ibid.* (w.e.f. 9-2-2018).
3. The word “and” omitted by s. 2, *ibid.* (w.e.f. 9-2-2018).
4. Subs. by s. 2, *ibid.*, for sub-clause (v) (w.e.f. 9-2-2018).
5. The Proviso ins. by Act 29 of 2020, s. 2 (w.e.f. 22-1-2021).

21

Explanation.—For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management;

(55) “member”, in relation to a company, means—

(i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;

(ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;

(iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;

(56) “memorandum” means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act;

(57) “net worth” means the aggregate value of the paid-up share capital and all reserves created out of the profits ¹[, securities premium account and debit or credit balance of profit and loss account,] after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;

(58) “notification” means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly;

(59) “officer” includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act;

(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 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

1. Subs. by Act 1 of 2018, s. 2, for “and securities premium account” (w.e.f. 9-2-2018).

22

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;

(61) “Official Liquidator” means an Official Liquidator appointed under sub-section (1) of section 59;

(62) “One Person Company” means a company which has only one person as a member;

(63) “ordinary or special resolution” means an ordinary resolution, or as the case may be, special resolution referred to in section 114;

(64) “paid-up share capital” or “share capital paid-up” means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called;

(65) “postal ballot” means voting by post or through any electronic mode;

(66) “prescribed” means prescribed by rules made under this Act;

(67) “previous company law” means any of the laws specified below:—

(i) Acts relating to companies in force before the Indian Companies Act, 1866 (10 of 1866); (ii) the Indian Companies Act, 1866 (10 of 1866);

(iii) the Indian Companies Act, 1882 (6 of 1882);

(iv) the Indian Companies Act, 1913 (7 of 1913);

(v) the Registration of Transferred Companies Ordinance, 1942 (Ord. 54 of 1942); (vi) the Companies Act, 1956 (1 of 1956); and

(vii) any law corresponding to any of the aforesaid Acts or the Ordinances and in force—

(A) in the merged territories or in a Part B State (other than the State of Jammu and Kashmir*), or any part thereof, before the extension thereto of the Indian Companies Act, 1913 (7 of 1913); or

(B) in the State of Jammu and Kashmir*, or any part thereof, before the commencement

of the Jammu and Kashmir (Extension of Laws) Act, 1956 (62 of 1956), in so far as banking, insurance and financial corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968 (25 of 1968), in so far as other corporations are concerned;

(viii) the Portuguese Commercial Code, in so far as it relates to *sociedades anonimas*;

and (ix) the Registration of Companies (Sikkim) Act, 1961 (Sikkim Act 8 of 1961);

(68) “private company” means a company having a minimum paid-up share capital ^{1***} as may be prescribed, and which by its articles,—

(i) restricts the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

1. The words “of one lakh rupees or such higher paid-up share capital” omitted by Act 21 of 2015, s. 2 (w.e.f. 29-5-2015). *.
Vide Notification No. S.O. 3912 (E), dated 30th October, 2019, this Act is made applicable to the Union territory of Jammu and Kashmir and the Union territory of Ladakh.

23

Provided further that—

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

shall not be included in the number of members; and

(iii) prohibits any invitation to the public to subscribe for any securities of the company; (69) “promoter” means a person—

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;

(70) “prospectus” means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate;

(71) “public company” means a company which—

(a) is not a private company; ¹[and]

(b) has a minimum paid-up share capital ^{2***} as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles ;

(72) “public financial institution” means—

(i) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);

(ii) the Infrastructure Development Finance Company Limited, referred to in clause (vi) of sub-section (1) of section 4A of the Companies Act, 1956 (1 of 1956) so repealed under section 465 of this Act;

(iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002);

(iv) institutions notified by the Central Government under sub-section (2) of section 4A of the Companies Act, 1956 (1 of 1956) so repealed under section 465 of this Act;

(v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:

Provided that no institution shall be so notified unless—

(A) it has been established or constituted by or under any Central or State Act ¹[other than this Act or the previous company law]; or

1. Ins. by Act 1 of 2018, s. 2 (w.e.f. 9-2-2018).

2. The words “of five lakh rupees or such higher paid-up capital,” omitted by Act 21 of 2015, s. 2 (w.e.f. 29-5-2015).

24

(B) not less than fifty-one per cent. of the paid-up share capital is held or controlled 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;

(73) “recognised stock exchange” means a recognised stock exchange as defined in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(74) “register of companies” means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act;

(75) “Registrar” means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering companies and discharging various functions under this Act;

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

(i) a director or his relative;

(ii) a key managerial personnel or his relative;

(iii) a firm, in which a director, manager or his relative is a partner;

(iv) a private company in which a director or manager ¹[or his relative] is a member or director;

(v) a public company in which a director or manager is a director ²[and holds] along with his relatives, more than two per cent. of its paid-up share capital;

(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or

instructions given in a professional capacity;

³[(viii) any body corporate which is—

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

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

(C) an investing company or the venturer of the company.

Explanation.—For the purpose of this clause, “the investing company or the venturer of a company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate];

(ix) such other person as may be prescribed;

(77) “relative”, with reference to any person, means any one who is related to another,

if— (i) they are members of a Hindu Undivided Family;

(ii) they are husband and wife; or

(iii) one person is related to the other in such manner as may be prescribed;

(78) “remuneration” means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-tax Act, 1961 (43 of 1961);

(79) “Schedule” means a Schedule annexed to this Act;

1. Ins. by S.O. 1894 (E), dated 24th July, 2014.

2. Subs. by S.O. 1820 (E), dated 9th July, 2014 for “or holds” .

3. Subs. by Act 1 of 2018, s. 2, for sub-clause (viii) (w.e.f. 9-2-2018).

25

(80) “scheduled bank” means the scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934);

(81) “securities” means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(82) “Securities and Exchange Board” means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(83) “Serious Fraud Investigation Office” means the office referred to in section

211; (84) “share” means a share in the share capital of a company and includes stock;

(85) “small company” means a company, other than a public company,—

(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ¹[ten crore rupees]; ²[and]

(ii) turnover of which ³[as per profit and loss account for the immediately preceding financial year] does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than ⁴[one hundred crore rupees]:

Provided that nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act;

(86) “subscribed capital” means such part of the capital which is for the time being subscribed by the members of a company;

(87) “subsidiary company” or “subsidiary”, in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the ⁵[total voting power] either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation.—For the purposes of this clause,—

(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(b) the composition of a company’s Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

(c) the expression “company” includes any body corporate;

(d) “layer” in relation to a holding company means its subsidiary or subsidiaries;

1. Subs. by Act 1 of 2018, s. 2, for “five crore rupees” (w.e.f. 9-2-2018).

2. Subs. by notification No. S.O. 504(E), dated 13th February, 2015, for word “or” (w.e.f. 13-2-2015).

3. Subs. by Act 1 of 2018, s. 2, for “as per its last profit and loss account” (w.e.f. 9-2-2018).

4. Subs. by s. 2, *ibid.*, for “twenty crore rupees”(w.e.f. 9-2-2018).

5. Subs. by s. 2, *ibid.*, for “total share capital” (w.e.f. 7-5-2018).

(88) “sweat equity shares” means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;

(89) “total voting power”, in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes;

(90) “Tribunal” means the National Company Law Tribunal constituted under section 408; ¹[(91) “turnover” means gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year;]

(92) “unlimited company” means a company not having any limit on the liability of its members;

(93) “voting right” means the right of a member of a company to vote in any meeting of the company or by means of postal ballot;

(94) “whole-time director” includes a director in the whole-time employment of the company;

²[(94A) “winding up” means winding up under this Act or liquidation under the Insolvency and Bankruptcy Code, 2016 (31 of 2016), as applicable;]

(95) words and expressions used and not defined in this Act but defined in the Securities Contracts

(Regulation) Act, 1956 (42 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or the Depositories Act, 1996 (22 of 1996) shall have the meanings respectively assigned to them in those Acts.

CHAPTER II

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

3. Formation of company.—(1) A company may be formed for any lawful purpose by—

(a) seven or more persons, where the company to be formed is to be a public company;

(b) two or more persons, where the company to be formed is to be a private company;

or

(c) one person, where the company to be formed is to be One Person Company that is to say, a private company,

by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration:

Provided that the memorandum of One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles:

Provided further that such other person may withdraw his consent in such manner as may be prescribed:

Provided also that the member of One Person Company may at any time change the name of such other person by giving notice in such manner as may be prescribed:

Provided also that it shall be the duty of the member of One Person Company to intimate the company the change, if any, in the name of the other person nominated by him by indicating in the memorandum or otherwise within such time and in such manner as maybe prescribed, and the company shall intimate the Registrar any such change within such time and in such manner as may be prescribed:

Provided also that any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

1. Subs. by Act 1 of 2018, s. 2, for clause (91) (w.e.f. 9-2-2018).

2. Ins. by Act 31 of 2016, s. 255 and the Eleventh Schedule (w.e.f. 15-11-2016).

(2) A company formed under sub-section (1) may be either—

(a) a company limited by shares; or

(b) a company limited by guarantee; or

(c) an unlimited company.

¹[3A. Members severally liable in certain cases.—If at any time the number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two, and the company carries on business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.]

4. Memorandum.—(1) The memorandum of a company shall state—

(a) the name of the company with the last word “Limited” in the case of a public limited company, or the last words “Private Limited” in the case of a private limited company:

Provided that nothing in this clause shall apply to a company registered under section 8; (b) the State in which the registered office of the company is to be situated;

(c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof;

(d) the liability of members of the company, whether limited or unlimited, and also state,— (i) in the case of a company limited by shares, that liability of its members is limited to the amount unpaid, if any, on the shares held by them; and

(ii) in the case of a company limited by guarantee, the amount up to which each member undertakes to contribute—

(A) to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; and

(B) to the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves;

(e) in the case of a company having a share capital,—

(i) the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share; and

(ii) the number of shares each subscriber to the memorandum intends to take, indicated opposite his name;

(f) in the case of One Person Company, the name of the person who, in the event of death of the subscriber, shall become the member of the company.

(2) The name stated in the memorandum shall not—

(a) be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law; or

(b) be such that its use by the company—

(i) will constitute an offence under any law for the time being in force; or

(ii) is undesirable in the opinion of the Central Government.

(3) Without prejudice to the provisions of sub-section (2), a company shall not be registered with a name which contains—

(a) any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the Central Government, any State Government, or any local authority, corporation or body constituted by the Central Government or any State Government under any law for the time being in force; or

1. Ins. by Act 1 of 2018, s. 3 (w.e.f. 9-2-2018).

28

(b) such word or expression, as may be prescribed, unless the previous approval of the Central Government has been obtained for the use of any such word or expression.

(4) A person may make an application, in such form and manner and accompanied by such fee, as may be prescribed, to the Registrar for the reservation of a name set out in the application as—

(a) the name of the proposed company; or

(b) the name to which the company proposes to change its name.

(5) ¹[(i) Upon receipt of an application under sub-section (4), the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of twenty days from the date of approval or such other period as may be prescribed:

Provided that in case of an application for reservation of name or for change of its name by an existing company, the Registrar may reserve the name for a period of sixty days from the date of approval.]

(ii) Where after reservation of name under clause (i), it is found that name was applied by furnishing wrong or incorrect information, then,—

(a) if the company has not been incorporated, the reserved name shall be cancelled and the person making application under sub-section (4) shall be liable to a penalty which may extend to one lakh rupees;

(b) if the company has been incorporated, the Registrar may, after giving the company an opportunity of being heard—

(i) either direct the company to change its name within a period of three months, after passing an ordinary resolution;

(ii) take action for striking off the name of the company from the register of companies;

or (iii) make a petition for winding up of the company.

(6) The memorandum of a company shall be in respective forms specified in Tables A, B, C, D and E in Schedule I as may be applicable to such company.

(7) Any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

5. Articles.—(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:

Provided that nothing prescribed in this sub-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.

1. Subs. by Act 1 of 2018, s. 4, for clause (i) (w.e.f. 26-1-2018).

(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 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.

6. Act to override memorandum, articles, etc.—Save as otherwise expressly provided in this Act—
(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and (b) any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be. **7. Incorporation of company.**—(1) There shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the following documents and information for registration, namely:—

(a) the memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;

(b) a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with;

(c) ¹[a declaration] from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

(d) the address for correspondence till its registered office is established;

(e) the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate, such particulars as may be prescribed;

(f) the particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity as may be prescribed; and

(g) the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.

(2) The Registrar on the basis of documents and information filed under sub-section (1) shall register all the documents and information referred to in that sub-section in the register and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.

(3) On and from the date mentioned in the certificate of incorporation issued under sub-section (2), the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate.

1. Subs. by Act 1 of 2018, s. 5, for “an affidavit” (w.e.f. 27-7-2018).

(4) The company shall maintain and preserve at its registered office copies of all documents and information as originally filed under sub-section (1) till its dissolution under this Act.

(5) If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action under section 447.

(6) Without prejudice to the provisions of sub-section (5) where, at any time after the incorporation of a company, it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action, the promoters, the persons named as the first directors of the company and the persons making declaration under clause (b) of sub-section(1) shall each be liable for action under section 447.

(7) Without prejudice to the provisions of sub-section (6), where a company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants,—

(a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or

(b) direct that liability of the members shall be unlimited; or

(c) direct removal of the name of the company from the register of companies;

or (d) pass an order for the winding up of the company; or

(e) pass such other orders as it may deem fit:

Provided that before making any order under this sub-section,—

(i) the company shall be given a reasonable opportunity of being heard in the matter; and

(ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

8. Formation of companies with charitable objects, etc.—(1) Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—

(a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;

(b) intends to apply its profits, if any, or other income in promoting its objects;

and (c) intends to prohibit the payment of any dividend to its members,

the Central Government may, by licence issued in such manner as may be prescribed, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word “Limited”, or as the case may be, the words “Private Limited”, and thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section.

(2) The company registered under this section shall enjoy all the privileges and be subject to all the obligations of limited companies.

(3) A firm may be a member of the company registered under this section.

(4) (i) A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.

(ii) A company registered under this section may convert itself into company of any other kind only after complying with such conditions as may be prescribed.

(5) Where it is proved to the satisfaction of the Central Government that a limited company registered under this Act or under any previous company law has been formed with any of the objects specified in clause (a) of sub-section (1) and with the restrictions and prohibitions as mentioned respectively in clauses (b) and (c) of that sub-section, it may, by licence, allow the company to be registered under this section subject to such conditions as the Central Government deems fit and to change its name by omitting the word “Limited”, or as the case may be, the words “Private Limited” from its name and thereupon the Registrar shall, on application, in the prescribed form, register such company under this section and all the provisions of this section shall apply to that company.

(6) The Central Government may, by order, revoke the licence granted to a company registered under this section if the company contravenes any of the requirements of this section or any of the conditions subject to which a licence is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest, and without prejudice to any other action against the company under this Act, direct the company to convert its status and change its name to add the word “Limited” or the words “Private Limited”, as the case may be, to its name and thereupon the Registrar shall, without prejudice to any action that may be taken under sub-section (7), on application, in the prescribed form, register the company accordingly:

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard:

Provided further that a copy of every such order shall be given to the Registrar.

(7) Where a licence is revoked under sub-section (6), the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section:

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard.

(8) Where a licence is revoked under sub-section (6) and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

(9) If on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to ¹[Insolvency and Bankruptcy Fund formed under section 224 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016)].

(10) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.

(11) If a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable ²*** with fine which shall not be less than twenty-five thousand rupees but which may extend to ³[twenty-five lakh rupees]:

Provided that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.

9. Effect of registration.—From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members

1. Subs. by Act 31 of 2016, s. 255 and the Eleventh Schedule, for “the Rehabilitation and Insolvency Fund formed under section 269” (w.e.f. 15-11-2016).
2. The words “with imprisonment for a term which may extend to three years or” omitted by Act 29 of 2020, s. 3 (w.e.f. 21-12-2020).
3. Subs. by Act 29 of 2020, s. 3, for “twenty-five lakh rupees, or with both” (w.e.f. 21-12-2020).

32

of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession^{1***} with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.

10. Effect of memorandum and articles.—(1) Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.

(2) All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

²[**10A. Commencement of business, etc.**—(1) A company incorporated after the commencement of the Companies (Amendment) Act, 2019 and having a share capital shall not commence any business or exercise any borrowing powers unless—

(a) a declaration is filed by a director within a period of one hundred and eighty days of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and

(b) the company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12.

(2) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees.

(3) Where no declaration has been filed with the Registrar under clause (a) of sub-section (1) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.]

11. [Commencement of business, etc.] *Omitted by the Companies (Amendment) Act, 2015 (21 of 2015), s. 4 (w.e.f. 29-5-2015).*

12. Registered office of company.—(1) A company shall, ³[within thirty days of its incorporation] and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

(2) The company shall furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation in such manner as may be prescribed.

(3) Every company shall—

(a) paint or affix its name, and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, and if the characters employed therefor are not those of the language or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages;

⁴[(b) have its name engraved in legible characters on its seal, if any;]

(c) get its name, address of its registered office and the Corporate Identity Number along with

telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and

1. The words “and a common seal” omitted by Act 21 of 2015, s. 3 (w.e.f. 29-5-2015).
2. Ins. by Act 22 of 2019, s. 3 (w.e.f. 2-11-2018).
3. Subs. by Act 1 of 2018, s. 6, for “on and from the fifteenth day of its incorporation”(w.e.f. 27-7-2018).
4. Subs. by Act 21 of 2015, s. 5, for clause (b) (w.e.f. 29-5-2015).

33

(d) have its name printed on *hundies*, promissory notes, bills of exchange and such other documents as may be prescribed:

Provided that where a company has changed its name or names during the last two years, it shall paint or affix or print, as the case may be, along with its name, the former name or names so changed during the last two years as required under clauses (a) and (c):

Provided further that the words “One Person Company” shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

(4) Notice of every change of the situation of the registered office, verified in the manner prescribed, after the date of incorporation of the company, shall be given to the Registrar ¹[within thirty days] of the change, who shall record the same.

(5) Except on the authority of a special resolution passed by a company, the registered office of the company shall not be changed,—

(a) in the case of an existing company, outside the local limits of any city, town or village where such office is situated at the commencement of this Act or where it may be situated later by virtue of a special resolution passed by the company; and

(b) in the case of any other company, outside the local limits of any city, town or village where such office is first situated or where it may be situated later by virtue of a special resolution passed by the company:

Provided that no company shall change the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State unless such change is confirmed by the Regional Director on an application made in this behalf by the company in the prescribed manner.

(6) The confirmation referred to in sub-section (5) shall be communicated within a period of thirty days from the date of receipt of application by the Regional Director to the company and the company shall file the confirmation with the Registrar within a period of sixty days of the date of confirmation who shall register the same and certify the registration within a period of thirty days from the date of filing of such confirmation.

(7) The certificate referred to in sub-section (6) shall be conclusive evidence that all the requirements of this Act with respect to change of registered office in pursuance of sub-section (5) have been complied with and the change shall take effect from the date of the certificate.

(8) If any default is made in complying with the requirements of this section, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees.

²[(9) If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (1), he may without prejudice to the provisions of sub-section (8), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.]

13. Alteration of memorandum.—(1) Save as provided in section 61, a company may, by a special resolution and after complying with the procedure specified in this section, alter the provisions of its

memorandum.

(2) Any change in the name of a company shall be subject to the provisions of sub-sections (2) and (3) of section 4 and shall not have effect except with the approval of the Central Government in writing:

Provided that no such approval shall be necessary where the only change in the name of the company is the deletion therefrom, or addition thereto, of the word “Private”, consequent on the conversion of any one class of companies to another class in accordance with the provisions of this Act.

1. Subs. by Act 1 of 2018, s. 6, for “within fifteen days” (w.e.f. 27-7-2018).
2. Ins. by Act 22 of 2019, s. 4 (w.e.f. 2-11-2018).

34

(3) When any change in the name of a company is made under sub-section (2), the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.

(4) The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.

(5) The Central Government shall dispose of the application under sub-section (4) within a period of sixty days and before passing its order may satisfy itself that the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company or that the sufficient provision has been made by the company either for the due discharge of all its debts and obligations or that adequate security has been provided for such discharge.

(6) Save as provided in section 64, a company shall, in relation to any alteration of its memorandum, file with the Registrar—

(a) the special resolution passed by the company under sub-section (1);

(b) the approval of the Central Government under sub-section (2), if the alteration involves any change in the name of the company.

(7) Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same, and the Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.

(8) A company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and—

(i) the details, as may be prescribed, in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change;

(ii) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.

(9) The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special

resolution in accordance with clause (a) of sub-section (6) of this section.

(10) No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.

(11) Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

14. Alteration of articles.—(1) Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution, alter its articles including alterations having the effect of conversion of—

(a) a private company into a public company; or

(b) a public company into a private company:

Provided that where a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private

35

company under this Act, the company shall, as from the date of such alteration, cease to be a private company:

¹[Provided further that any alteration having the effect of conversion of a public company into a private company shall not valid unless it its approved by an order of the Central Government on an application made in such form and manner as may be prescribed:

Provided also that any application pending before the Tribunal, as on the date of commencement of the Companies (amendment) Act, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.]

(2) Every alteration of the articles under this section and a copy of the order of the ²[Central Government] approving the alteration as per sub-section (1) shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same.

(3) Any alteration of the articles registered under sub-section (2) shall, subject to the provisions of this Act, be valid as if it were originally in the articles.

15. Alteration of memorandum or articles to be noted in every copy.—(1) Every alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles, as the case may be.

(2) If a company makes any default in complying with the provisions of sub-section (1), the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the memorandum or articles issued without such alteration.

16. Rectification of name of company.—(1) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which,— (a) in the opinion of the Central Government, is identical with or too nearly resembles the name by which a company in existence had been previously registered, whether under this Act or any previous company law, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of three months from the issue of such direction, after adopting an ordinary resolution for the purpose;

(b) on an application by a registered proprietor of a trade mark that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999 (47 of 1999), made to the Central Government within three years of incorporation or registration or change of name of the company, whether under this Act or any previous company law, in the opinion of the Central Government, is identical with or too nearly resembles to an existing trade mark, it may direct the company to change its name and the company shall change its name or new name, as the

case may be, within a ³[period of three months] from the issue of such direction, after adopting an ordinary resolution for the purpose.

(2) Where a company changes its name or obtains a new name under sub-section (1), it shall within a period of fifteen days from the date of such change, give notice of the change to the Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and the memorandum.

⁴[(3) If a company is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the company in such manner as may be prescribed and the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name, which the company shall use thereafter:

Provided that nothing in this sub-section shall prevent a company from subsequently changing its name in accordance with the provisions of section 13.]

17. Copies of memorandum, articles, etc., to be given to members.—(1) A company shall, on being so requested by a member, send to him within seven days of the request and subject to the payment of such fees as may be prescribed, a copy of each of the following documents, namely:—

1. Subs. by Act 22 of 2019, s. 5, for the Proviso (w.e.f. 2-11-2018).
2. Subs. by s. 5, *ibid.*, for “Tribunal” (w.e.f. 2-11-2018).
3. Subs. by Act 29 of 2020, s. 4, for “period of six months” (w.e.f. 1-9-2021).
4. Subs. by s. 4, *ibid.*, for sub-section (3) (w.e.f. 1-9-2021).

36

(a) the memorandum;

(b) the articles; and

(c) every agreement and every resolution referred to in sub-section (1) of section 117, if and in so far as they have not been embodied in the memorandum or articles.

(2) If a company makes any default in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable for each default, to a penalty of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

18. Conversion of companies already registered.—(1) A company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of this Chapter.

(2) Where the conversion is required to be done under this section, the Registrar shall on an application made by the company, after satisfying himself that the provisions of this Chapter applicable for registration of companies have been complied with, close the former registration of the company and after registering the documents referred to in sub-section (1), issue a certificate of incorporation in the same manner as its first registration.

(3) The registration of a company under this section shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by or on behalf of the company before conversion and such debts, liabilities, obligations and contracts may be enforced in the manner as if such registration had not been done.

19. Subsidiary company not to hold shares in its holding company.—(1) No company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void:

Provided that nothing in this sub-section shall apply to a case—

(a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or

(b) where the subsidiary company holds such shares as a trustee; or

(c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company:

Provided further that the subsidiary company referred to in the preceding proviso shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee, as referred to in clause (a) or clause (b) of the said proviso.

(2) The reference in this section to the shares of a holding company which is a company limited by guarantee or an unlimited company, not having a share capital, shall be construed as a reference to the interest of its members, whatever be the form of interest.

20. Service of documents.—(1) A document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed:

Provided that where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

(2) Save as provided in this Act or the rules made thereunder for filing of documents with the Registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed:

Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

Explanation.—For the purposes of this section, the term “courier” means a person or agency which delivers the document and provides proof of its delivery.

37

21. Authentication of documents, proceedings and contracts.—Save as otherwise provided in this Act,—

- (a) a document or proceeding requiring authentication by a company; or
- (b) contracts made by or on behalf of a company,

may be signed by any key managerial personnel or ¹[an officer or employee of the company] duly authorised by the Board in this behalf.

22. Execution of bills of exchange, etc.—(1) A bill of exchange, *hundi* or promissory note shall be deemed to have been made, accepted, drawn or endorsed on behalf of a company if made, accepted, drawn, or endorsed in the name of, or on behalf of or on account of, the company by any person acting under its authority, express or implied.

(2) A company may, by writing ²[under its common seal, if any,] authorise any person, either generally or in respect of any specified matters, as its attorney to execute other deeds on its behalf in any place either in or outside India:

³[Provided that in case a company does not have a common seal, the authorisation under this sub-section shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.]

(3) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company ⁴***.

CHAPTER III

PROSPECTUS AND ALLOTMENT OF SECURITIES

PART I.—*Public offer*

23. Public offer and private placement.—(1) A public company may issue securities— (a) to public through prospectus (herein referred to as “public offer”) by complying with the provisions of this Part; or

(b) through private placement by complying with the provisions of Part II of this Chapter; or (c) through a rights issue or a bonus issue in accordance with the provisions of this Act and in case of a listed company or a company which intends to get its securities listed also with the provisions of the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made thereunder.

(2) A private company may issue securities—

(a) by way of rights issue or bonus issue in accordance with the provisions of this Act; or (b) through private placement by complying with the provisions of Part II of this Chapter. ⁵[(3) Such class of public companies may issue such class of securities for the purposes of listing on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be prescribed.

(4) The Central Government may, by notification, exempt any class or classes of public companies referred to in sub-section (3) from any of the provisions of this Chapter, Chapter IV, section 89, section 90 or section 127 and a copy of every such notification shall, as soon as may be after it is issued, be laid before both Houses of Parliament.]

Explanation.—For the purposes of this Chapter, “public offer” includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus.

24. Power of Securities and Exchange Board to regulate issue and transfer of securities, etc.—(1) The provisions contained in this Chapter, Chapter IV and in section 127 shall,— (a) in so far as they relate to —

(i) issue and transfer of securities; and

1. Subs. by Act 1 of 2018, s. 7, for “an officer of the company” (w.e.f. 9-2-2018).

2. Subs. by Act 21 of 2015, s. 6, for “under its common seal” (w.e.f. 29-5-2015).

3. The proviso ins. by s. 6, *ibid.* (w.e.f. 29-5-2015).

4. The words “and have the effect as if it were made under its common seal” omitted by s. 6, *ibid.* (w.e.f. 29-5-2015).

5. Ins. by Act 29 of 2020, s. 5, (w.e.f. 30-10-2023).

(ii) non-payment of dividend,

by listed companies or those companies which intend to get their securities listed on any recognised stock exchange in India, except as provided under this Act, be administered by the Securities and Exchange Board by making regulations in this behalf;

(b) in any other case, be administered by the Central Government.

Explanation.—For the removal of doubts, it is hereby declared that all powers relating to all other matters relating to prospectus, return of allotment, redemption of preference shares and any other matter specifically provided in this Act, shall be exercised by the Central Government, the Tribunal or the Registrar, as the case may be.

(2) The Securities and Exchange Board shall, in respect of matters specified in sub-section (1) and the matters delegated to it under proviso to sub-section (1) of section 458, exercise the powers conferred upon it under sub-sections (1), (2A), (3) and (4) of section 11, sections 11A, 11B and 11D of the Securities and Exchange Board of India Act, 1992 (15 of 1992).

25. Document containing offer of securities for sale to be deemed prospectus.—(1) Where a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company; and all enactments and rules of law as to the contents of prospectus and as to liability in respect of mis-statements, in and omissions from, prospectus, or otherwise relating to prospectus, shall apply with the modifications specified in sub-sections (3) and (4) and shall have effect accordingly, as if the securities had been offered to the public for subscription and as if persons accepting the offer in respect of any securities were subscribers for those securities, but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, securities was made with a view to the securities being offered for sale to the public if it is shown—

(a) that an offer of the securities or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

(b) that at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it.

(3) Section 26 as applied by this section shall have effect as if—

(i) it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

(a) the net amount of the consideration received or to be received by the company in respect of the securities to which the offer relates; and

(b) the time and place at which the contract where under the said securities have been or are to be allotted may be inspected;

(ii) the persons making the offer were persons named in a prospectus as directors of a company.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document referred to in sub-section (1) is signed on behalf of the company or firm by two directors of the company or by not less than one-half of the partners in the firm, as the case may be. **26.**

Matters to be stated in prospectus.—(1) Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall, ¹[state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government:

Provided that until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the

1. Ins. by Act 1 of 2018, s. 8 (w.e.f. 7-5-2018).

Securities and Exchange Board of India Act, 1992 (15 of 1992), in respect of such financial information or reports on financial information shall apply]; —

¹* * * * *

(c) make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made thereunder; and

²* * * * * (2) Nothing in sub-section (1) shall apply—

(a) to the issue to existing members or debenture-holders of a company, of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant has a right to renounce the shares or not under sub-clause (ii) of clause (a) of sub-section (1) of section 62 in favour of any other person; or

(b) to the issue of a prospectus or form of application relating to shares or debentures which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange.

(3) Subject to sub-section (2), the provisions of sub-section (1) shall apply to a prospectus or a form of application, whether issued on or with reference to the formation of a company or subsequently.

Explanation.—The date indicated in the prospectus shall be deemed to be the date of its publication.

(4) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless on or before the date of its publication, there has been delivered to the Registrar for ²[filing], a copy thereof signed by every person who is named there in as a director or proposed director of the company or by his duly authorised attorney.

(5) A prospectus issued under sub-section (1) shall not include a statement purporting to be made by an expert unless the expert is a person who is not, and has not been, engaged or interested in the formation or promotion or management, of the company and has given his written consent to the issue of the prospectus and has not withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for ¹[filing] and a statement to that effect shall be included in the prospectus.

(6) Every prospectus issued under sub-section (1) shall, on the face of it,—

(a) state that a copy has been delivered for ¹[filing] to the Registrar as required under sub-section (4); and

(b) specify any documents required by this section to be attached to the copy so delivered or refer to statements included in the prospectus which specify these documents.

³* * * * *

(8) No prospectus shall be valid if it is issued more than ninety days after the date on which a copy thereof is delivered to the Registrar under sub-section (4).

(9) If a prospectus is issued in contravention of the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable ⁴*** with fine which shall not be less than fifty thousand rupees but which may extend to ⁵[three lakh rupees].

1. Clauses (a), (b) and (d) omitted by Act 1 of 2018, s. 8 (w.e.f. 7-5-2018).

2. Subs. by Act 22 of 2019, s. 6, for “registration” (w.e.f. 15-8-2019).

3. Sub-section (7) omitted by s. 6, *ibid.* (w.e.f. 15-8-2019).

4. The words “with imprisonment for a term which may extend to three years or” omitted by Act 29 of 2020, s. 6 (w.e.f. 21-12-2020).

5. Subs. by s. 6, *ibid.*, for “three lakh rupees, or with both” (w.e.f. 21-12-2020).

27. Variation in terms of contract or objects in prospectus.—(1) A company shall not, at any time, vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, except subject to the approval of, or except subject to an authority given by the company in general meeting by way of special resolution:

Provided that the details, as may be prescribed, of the notice in respect of such resolution to shareholders, shall also be published in the newspapers (one in English and one in vernacular language) in the city where the registered office of the company is situated indicating clearly the justification for such variation:

Provided further that such company shall not use any amount raised by it through prospectus for buying, trading or otherwise dealing in equity shares of any other listed company.

(2) The dissenting shareholders being those shareholders who have not agreed to the proposal to vary the terms of contracts or objects referred to in the prospectus, shall be given an exit offer by promoters or controlling shareholders at such exit price, and in such manner and conditions as may be specified by the Securities and Exchange Board by making regulations in this behalf.

28. Offer of sale of shares by certain members of company.—(1) Where certain members of a company propose, in consultation with the Board of Directors to offer, in accordance with the provisions of any law for the time being in force, whole or part of their holding of shares to the public, they may do

so in accordance with such procedure as may be prescribed.

(2) Any document by which the offer of sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company and all laws and rules made thereunder as to the contents of the prospectus and as to liability in respect of mis-statements in and omission from prospectus or otherwise relating to prospectus shall apply as if this is a prospectus issued by the company.

(3) The members, whether individuals or bodies corporate or both, whose shares are proposed to be offered to the public, shall collectively authorise the company, whose shares are offered for sale to the public, to take all actions in respect of offer of sale for and on their behalf and they shall reimburse the company all expenses incurred by it on this matter.

29. Public offer of securities to be in dematerialised form.—(1) Notwithstanding anything contained in any other provisions of this Act,—

(a) every company making public offer; and

(b) such other class or classes of^{1***} companies as may be prescribed,

shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 (22 of 1996) and the regulations made thereunder.

²[(1A) In case of such class or classes of unlisted companies as may be prescribed, the securities shall be held or transferred only in dematerialised form in the manner laid down in the Depositories Act, 1996 and the regulations made thereunder.]

(2) Any company, other than a company mentioned in sub-section (1), may convert its securities into dematerialised form or issue its securities in physical form in accordance with the provisions of this Act or in dematerialised form in accordance with the provisions of the Depositories Act, 1996 (22 of 1996) and the regulations made thereunder.

30. Advertisement of prospectus.—Where an advertisement of any prospectus of a company is published in any manner, it shall be necessary to specify therein the contents of its memorandum as regards the objects, the liability of members and the amount of share capital of the company, and the names of the signatories to the memorandum and the number of shares subscribed for by them, and its capital structure.

31. Shelf prospectus.—(1) Any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

(2) A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the

1. The word “public” omitted by Act 22 of 2019, s. 7 (w.e.f. 15-8-2019).

2. Ins. by s. 7, *ibid.* (w.e.f. 15-8-2019).

company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus:

Provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.

(3) Where an information memorandum is filed, every time an offer of securities is made under sub-section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

Explanation.—For the purposes of this section, the expression “shelf prospectus” means a prospectus

in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

32. Red herring prospectus.—(1) A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.

(2) A company proposing to issue a red herring prospectus under sub-section (1) shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer.

(3) A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.

(4) Upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.

Explanation.—For the purposes of this section, the expression “red herring prospectus” means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

33. Issue of application forms for securities.—(1) No form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an abridged prospectus:

Provided that nothing in this sub-section shall apply if it is shown that the form of application was issued—

(a) in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to such securities; or

(b) in relation to securities which were not offered to the public.

(2) A copy of the prospectus shall, on a request being made by any person before the closing of the subscription list and the offer, be furnished to him.

(3) If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.

34. Criminal liability for mis-statements in prospectus.—Where a prospectus, issued, circulated or distributed under this Chapter, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorises the issue of such prospectus shall be liable under section 447:

Provided that nothing in this section shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.

35. Civil liability for mis-statements in prospectus.—(1) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus

42

which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who—

(a) is a director of the company at the time of the issue of the prospectus;

(b) has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time;

(c) is a promoter of the company;

(d) has authorised the issue of the prospectus; and

(e) is an expert referred to in sub-section (5) of section 26,

shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage.

(2) No person shall be liable under sub-section (1), if he proves—

(a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

¹[(c) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by sub-section (5) of section 26 to the issue of the prospectus and had not withdrawn that consent before ²[filing of a copy of the prospectus with the Registrar] or, to the defendant's knowledge, before allotment thereunder.]

(3) Notwithstanding anything contained in this section, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in sub-section (1) shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

36. Punishment for fraudulently inducing persons to invest money.—Any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into,—

(a) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or

(b) any agreement, the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or

(c) any agreement for, or with a view to obtaining credit facilities from any bank or financial institution,

shall be liable for action under section 447.

37. Action by affected persons.—A suit may be filed or any other action may be taken under section 34 or section 35 or section 36 by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus.

38. Punishment for personation for acquisition, etc., of securities.—(1) Any person who—

(a) makes or abets making of an application in a fictitious name to a company for acquiring, or subscribing for, its securities; or

1. Ins. by Act 1 of 2018, s. 9 (w.e.f. 9-2-2018).

2. Subs. by Act 22 of 2019, s. 8, for “delivery of a copy of the prospectus for registration” (w.e.f. 15-8-2019).

(b) makes or abets making of multiple applications to a company in different names or in different combinations of his name or surname for acquiring or subscribing for its securities; or

(c) otherwise induces directly or indirectly a company to allot, or register any transfer of, securities to him, or to any other person in a fictitious name,

shall be liable for action under section 447.

(2) The provisions of sub-section (1) shall be prominently reproduced in every prospectus issued by a company and in every form of application for securities.

(3) Where a person has been convicted under this section, the Court may also order disgorgement of gain, if any, made by, and seizure and disposal of the securities in possession of, such person.

(4) The amount received through disgorgement or disposal of securities under sub-section (3) shall be credited to the Investor Education and Protection Fund.

39. Allotment of securities by company.—(1) No allotment of any securities of a company offered to the public for subscription shall be made unless the amount stated in the prospectus as the minimum amount has been subscribed and the sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument.

(2) The amount payable on application on every security shall not be less than five per cent. of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board by making regulations in this behalf.

(3) If the stated minimum amount has not been subscribed and the sum payable on application is not received within a period of thirty days from the date of issue of the prospectus, or such other period as may be specified by the Securities and Exchange Board, the amount received under sub-section (1) shall be returned within such time and manner as may be prescribed.

(4) Whenever a company having a share capital makes any allotment of securities, it shall file with the Registrar a return of allotment in such manner as may be prescribed.

(5) In case of any default under sub-section (3) or sub-section (4), the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

40. Securities to be dealt with in stock exchanges.—(1) Every company making public offer shall, before making such offer, make an application to one or more recognised stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.

(2) Where a prospectus states that an application under sub-section (1) has been made, such prospectus shall also state the name or names of the stock exchange in which the securities shall be dealt with.

(3) All monies received on application from the public for subscription to the securities 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 where the securities have been permitted to be dealt with in the stock exchange or stock exchanges specified in the prospectus; or

(b) for the repayment of monies within the time specified by the Securities and Exchange Board, received from applicants in pursuance of the prospectus, where the company is for any other reason unable to allot securities.

(4) Any condition purporting to require or bind any applicant for securities to waive compliance with any of the requirements of this section shall be void.

(5) If a default is made in complying with the provisions of this section, the company shall be punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh rupees and every

officer of the company who is in default shall be punishable ¹*** or with fine which shall not be less than fifty thousand rupees but which may extend to ²[three lakh rupees].

(6) A company may pay commission to any person in connection with the subscription to its securities subject to such conditions as may be prescribed.

41. Global depository receipt.—A company may, after passing a special resolution in its general meeting, issue depository receipts in any foreign country in such manner, and subject to such conditions, as may be prescribed.

PART II.—*Private placement*

³**42. Issue of shares on private placement basis.**—(1) A company may, subject to the provisions of this section, make a private placement of securities.

(2) A private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as “identified persons”), whose number shall not exceed fifty or such higher number as may be prescribed [excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option in terms of provisions of clause (b) of sub-section (1) of section 62], in a financial year subject to such conditions as may be prescribed.

(3) A company making private placement shall issue private placement offer and application in such form and manner as may be prescribed to identified persons, whose names and addresses are recorded by the company in such manner as may be prescribed:

Provided that the private placement offer and application shall not carry any right of renunciation.

Explanation I.—”private placement” means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer cum-application, which satisfies the conditions specified in this section.

Explanation II.—”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, made under the Securities and Exchange Board of India Act, 1992, (15 of 1992).

Explanation III.—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.

(4) Every identified person willing to subscribe to the private placement issue shall apply in the private placement and application issued to such person alongwith subscription money paid either by cheque or demand draft or other banking channel and not by cash:

Provided that a company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with sub-section (8). (5) 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:

Provided that, subject to the maximum number of identified persons under sub-section (2), a company may, at any time, make more than one issue of securities to such class of identified persons as may be prescribed.

(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 money to the subscribers within fifteen days

from the expiry of sixty days and if the company fails to repay the application money within the aforesaid

1. The words “with imprisonment for a term which may extend to one year or” omitted by Act 29 of 2020, s. 7 (w.e.f. 21-12-2020).
2. Subs. by s. 7, *ibid.*, for “three lakh rupees, or with both” (w.e.f. 21-12-2020).
3. Subs. by Act 1 of 2018, s. 10 (w.e.f. 7-8-2018).

45

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:

Provided 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) No company issuing 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 about such an issue. (8) A company making any allotment of securities under this section, shall file with the Registrar a return of allotment within fifteen days from the date of the allotment in such manner as may be prescribed, including a complete list of all allottees, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.

(9) If a company defaults in filing the return of allotment within the period prescribed under sub-section (8), the company, its promoters and directors shall be liable to a penalty for each default of one thousand rupees for each day during which such default continues but not exceeding twenty-five lakh rupees.

(10) Subject to sub-section (11), 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 raised through the private placement or two crore rupees, whichever is lower, and the company shall also refund all monies with interest as specified in sub-section (6) to subscribers within a period of thirty days of the order imposing the penalty.

(11) Notwithstanding anything contained in sub-section (9) and sub-section (10), any private placement issue not made in compliance of the provisions of sub-section (2) shall be deemed to be a public offer and all the provisions of this Act and the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the Securities and Exchange Board of India Act, 1992 (15 of 1992) shall be applicable.]

CHAPTER IV

SHARE CAPITAL AND DEBENTURES

43. Kinds of share capital.—The share capital of a company limited by shares shall be of two kinds, namely:—

(a) equity share capital—

(i) with voting rights; or

(ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; and

(b) preference share capital:

Provided that nothing contained in this Act shall affect the rights of the preference share holders who are entitled to participate in the proceeds of winding up before the commencement of this Act.

Explanation.—For the purposes of this section,—

(i) “equity share capital”, with reference to any company limited by shares, means all share capital which is not preference share capital;

(ii) “preference share capital”, with reference to any company limited by shares, means that part

of the issued share capital of the company which carries or would carry a preferential right with respect to—

(a) payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and

(b) repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company;

46

(iii) capital shall be deemed to be preference capital, notwithstanding that it is entitled to either or both of the following rights, namely:—

(a) that in respect of dividends, in addition to the preferential rights to the amounts specified in sub-clause (a) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;

(b) that in respect of capital, in addition to the preferential right to the repayment, on a winding up, of the amounts specified in sub-clause (b) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

44. Nature of shares or debentures.—The shares or debentures or other interest of any member in a company shall be movable property transferable in the manner provided by the articles of the company.

45. Numbering of shares.—Every share in a company having a share capital shall be distinguished by its distinctive number:

Provided that nothing in this section shall apply to a share held by a person whose name is entered as holder of beneficial interest in such share in the records of a depository.

46. Certificate of shares.—(1) A certificate, ¹[issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary], specifying the shares held by any person, shall be *prima facie* evidence of the title of the person to such shares.

(2) A duplicate certificate of shares may be issued, if such certificate —

(a) is proved to have been lost or destroyed; or

(b) has been defaced, mutilated or torn and is surrendered to the company.

(3) Notwithstanding anything contained in the articles of a company, the manner of issue of a certificate of shares or the duplicate thereof, the form of such certificate, the particulars to be entered in the register of members and other matters shall be such as may be prescribed.

(4) Where a share is held in depository form, the record of the depository is the *prima facie* evidence of the interest of the beneficial owner.

(5) If a company with intent to defraud issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares or rupees ten crores whichever is higher and every officer of the company who is in default shall be liable for action under section 447.

47. Voting rights.—(1) Subject to the ²[provisions of section 43, sub-section (2) of section 50 and sub section (1) of section 188],—

(a) every member of a company limited by shares and holding equity share capital therein, shall have a right to vote on every resolution placed before the company; and

(b) his voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company.

(2) Every member of a company limited by shares and holding any preference share capital therein shall, in respect of such capital, have a right to vote only on resolutions placed before the company which directly affect the rights attached to his preference shares and, any resolution for the winding up of the company or for the repayment or reduction of its equity or preference share capital and his voting right on a poll shall be in proportion to his share in the paid-up preference share capital of the company:

1. Subs. by Act 21 of 2015, s. 7, for “issued under the common seal of the company” (w.e.f. 29-5-2015). 2. Subs. by Act 1 of 2018, s. 11, for “provisions of section 43 and sub-section (2) of section 50” (w.e.f. 9-2-2018).

47

Provided that the proportion of the voting rights of equity shareholders to the voting rights of the preference shareholders shall be in the same proportion as the paid-up capital in respect of the equity shares bears to the paid-up capital in respect of the preference shares:

Provided further that where the dividend in respect of a class of preference shares has not been paid for a period of two years or more, such class of preference shareholders shall have a right to vote on all the resolutions placed before the company.

48. Variations of shareholders’ rights.—(1) Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class,—

(a) if provision with respect to such variation is contained in the memorandum or articles of the company; or

(b) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class:

Provided that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

(2) Where the holders of not less than ten per cent. of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal:

Provided that an application under this section shall be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case maybe, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) The decision of the Tribunal on any application under sub-section (2) shall be binding on the shareholders.

(4) The company shall, within thirty days of the date of the order of the Tribunal, file a copy thereof with the Registrar.

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49. Calls on shares of same class to be made on uniform basis.—Where any calls for further share

capital are made on the shares of a class, such calls shall be made on a uniform basis on all shares falling under that class.

Explanation.—For the purposes of this section, shares of the same nominal value on which different amounts have been paid-up shall not be deemed to fall under the same class.

50. Company to accept unpaid share capital, although not called up.—(1) A company may, if so authorised by its articles, accept from any member, the whole or a part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up.

(2) A member of the company limited by shares shall not be entitled to any voting rights in respect of the amount paid by him under sub-section (1) until that amount has been called up.

51. Payment of dividend in proportion to amount paid-up.—A company may, if so authorised by its articles, pay dividends in proportion to the amount paid-up on each share.

1. Sub-section (5) omitted by Act 29 of 2020, s. 8 (w.e.f. 21-12-2020).

48

52. Application of premiums received on issue of shares.—(1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a “securities premium 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 securities premium account were the paid-up share capital of the company.

(2) Notwithstanding anything contained in sub-section (1), the securities premium account may be applied by the company—

(a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;

(b) in writing off the preliminary expenses of the company;

(c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;

(d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or

(e) for the purchase of its own shares or other securities under section 68.

(3) The securities premium account may, notwithstanding anything contained in sub-sections (1) and (2), be applied by 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,—

(a) in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or

(b) in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or

(c) for the purchase of its own shares or other securities under section 68.

53. Prohibition on issue of shares at discount.—(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 ¹[discount] shall be void.

²[(2A) Notwithstanding anything contained in sub-sections (1) and (2), a company may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India under the Reserve Bank of India Act, 1934 (2 of 1934) or the Banking (Regulation) Act, 1949 (10 of 1949).]

³[(3) Where any company fails to comply with the provisions of this section, such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount of five lakh rupees, whichever is less, and the company shall also be liable to refund all monies received with interest at the rate of twelve per cent. per annum from the date of issue of such shares to the persons to whom such shares have been issued.]

54. Issue of sweat equity shares.—(1) Notwithstanding anything contained in section 53, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely:—

(a) the issue is authorised by a special resolution passed by the company;

1. Subs. by Act 1 of 2018, s. 12, for “discounted price” (w.e.f. 9-2-2018).

2. Ins. by s. 12, *ibid.* (w.e.f. 9-2-2018).

3. Subs. by Act 22 of 2019, s. 9, for sub-section (3) (w.e.f. 2-11-2018).

49

(b) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;

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(d) where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as may be prescribed.

(2) The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank *pari passu* with other equity shareholders.

55. Issue and redemption of preference shares.—(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:

Provided that a company may issue preference shares for a period exceeding twenty years for infrastructure projects, subject to the redemption of such percentage of shares as may be prescribed on an annual basis at the option of such preferential shareholders:

Provided 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:

Provided 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:

1. Clause (c) omitted by Act 1 of 2018, s. 13 (w.e.f. 7-5-2018).

50

Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.

Explanation.—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.

Explanation.—For the purposes of sub-section (2), the term “infrastructure projects” means the infrastructure projects specified in Schedule VI.

56. Transfer and transmission of securities.—(1) A company shall not register a transfer of securities of the company, or the interest of a member in the company in the case of a company having no share capital, other than the transfer between persons both of whose names are entered as holders of beneficial interest in the records of a depository, unless a proper instrument of transfer, in such form as may be prescribed, duly stamped, dated and executed by or on behalf of the transferor and the transferee and specifying the name, address and occupation, if any, of the transferee has been delivered to the company by the transferor or the transferee within a period of sixty days from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities:

Provided that where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period, the company may register the transfer on such terms as to indemnity as the Board may think fit.

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

(3) Where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless the company gives the notice of the application, in such manner as may be prescribed, to the transferee and the transferee gives no objection to the transfer within two weeks from the receipt of notice.

(4) Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted—

(a) within a period of two months from the date of incorporation, in the case of subscribers to the memorandum;

(b) within a period of two months from the date of allotment, in the case of any allotment of any of its shares;

(c) within a period of one month from the date of receipt by the company of the instrument of transfer under sub-section (1) or, as the case may be, of the intimation of transmission under sub-section (2), in the case of a transfer or transmission of securities;

(d) within a period of six months from the date of allotment in the case of any allotment of debenture:

Provided that where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

(5) The transfer of any security or other interest of a deceased person in a company made by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer.

51

¹[(6) Where any default is made in complying with the provisions of sub-sections (1) to (5), the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.]

(7) Without prejudice to any liability under the Depositories Act, 1996 (22 of 1996), where any depository or depository participant, with an intention to defraud a person, has transferred shares, it shall be liable under section 447.

57. Punishment for personation of shareholder.—If any person deceitfully personates as an owner of any security or interest in a company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

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

(2) Without prejudice to sub-section (1), the securities or other interest of any member in a public

company shall be freely transferable:

Provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.

(3) The transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

(4) If a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.

(5) The Tribunal, while dealing with an appeal made under sub-section (3) or sub-section (4), may, after hearing the parties, either dismiss the appeal, or by order—

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or

(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

(6) If a person contravenes the order of the Tribunal under this section, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

59. Rectification of register of members.—(1) If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, omitted there from, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal,

1. Subs. by Act 29 of 2020, s. 9, for sub-section (6) (w.e.f. 21-12-2020).

52

or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register.

(2) The Tribunal may, after hearing the parties to the appeal under sub-section (1) by order, either dismiss the appeal or direct that the transfer or transmission shall be registered by the company within a period of ten days of the receipt of the order or direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved.

(3) The provisions of this section shall not restrict the right of a holder of securities, to transfer such securities and any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.

(4) Where the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992) or this Act or any other law for the time being in force, the Tribunal may, on an application made by the depository, company, depository participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to set right the contravention and rectify its register or records concerned.

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60. Publication of authorised, subscribed and paid-up capital.—(1) Where any notice, advertisement or other official publication, or any business letter, billhead or letter paper of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication, or such letter, billhead or letter paper shall also contain a statement, in an equally prominent position and in equally conspicuous characters, of the amount of the capital which has been subscribed and the amount paid-up.

(2) If any default is made in complying with the requirements of sub-section (1), the company shall be liable to pay a penalty of ten thousand rupees and every officer of the company who is in default shall be liable to pay a penalty of five thousand rupees, for each default.

61. Power of limited company to alter its share capital.—(1) A limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to—

(a) increase its authorised share capital by such amount as it thinks expedient;

(b) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares:

Provided that no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;

(c) convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid up shares of any denomination;

(d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The cancellation of shares under sub-section (1) shall not be deemed to be a reduction of share capital.

62. Further issue of share capital.—(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—

1. Sub-section (5) omitted by Act 29 of 2020, s. 10 (w.e.f. 21-12-2020).

53

(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:—

(i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days¹ [or such lesser number of days as may be prescribed] 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 share holders 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

(c) 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 determined by the valuation report ²[of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed].

³[(2) The notice referred to in sub-clause (i) of clause (a) of sub-section (1) shall be dispatched through registered post or speed post or through electronic mode or courier or any other mode having proof of delivery 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:

Provided 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 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:

Provided 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

1. Ins. by Act 29 of 2020, s. 11 (w.e.f. 22-1-2021).

2. Subs. by Act 1 of 2018, s. 14, for "of a registered valuer subject to such conditions as may be prescribed" (w.e.f. 9-2-2018).

3. Subs. by s. 14, *ibid.*, for sub-section (2) (w.e.f. 9-2-2018).

company shall, where such order has the effect of increasing the authorised share capital of the company, stand altered and the authorised 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.

63. Issue of bonus shares.—(1) A company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—

(i) its free reserves;

(ii) the securities premium account; or

(iii) the capital redemption reserve account:

Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

(2) No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares under sub-section (1), unless—

(a) it is authorised by its articles;

(b) it has, on the recommendation of the Board, been authorised in the general meeting of the company;

(c) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;

(d) it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;

(e) the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up; (f) it complies with such conditions as may be prescribed.

(3) The bonus shares shall not be issued in lieu of dividend.

64. Notice to be given to Registrar for alteration of share capital.—(1) Where— (a) a

company alters its share capital in any manner specified in sub-section (1) of section 61;

(b) an order made by the Government under sub-section (4) read with sub-section (6) of section 62 has the effect of increasing authorised capital of a company; or

(c) a company redeems any redeemable preference shares,

the company shall file a notice in the prescribed form with the Registrar within a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum.

¹[(2) where any company fails to comply with the provisions of sub-section (1), such company rupees and every officer who is in default shall be liable to a penalty of ²[five hundred rupees] for each day during which such default continues, ³[subject to a maximum of five lakh rupees in case of a company and one lakh rupees in case of an officer who is in default].]

65. Unlimited company to provide for reserve share capital on conversion into limited company.—An unlimited company having a share capital may, by a resolution for registration as a limited company under this Act, do either or both of the following things, namely—

(a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;

(b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

1. Subs. by Act 22 of 2019, s. 10, for sub-section (2) (w.e.f. 2-11-2018).

2. Subs. by Act 29 of 2020, s. 12, for “one thousand rupees” (w.e.f. 21-12-2020).

3. Subs. by s. 12, *ibid.*, for “or five lakh rupees whichever is less” (w.e.f. 21-12-2020).

66. Reduction of share capital.—(1) Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in particular, may—

(a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or

(b) either with or without extinguishing or reducing liability on any of its shares,— (i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or (ii) pay off any paid-up share capital which is in excess of the wants of the company,

alter its memorandum by reducing the amount of its share capital and of its shares accordingly:

Provided that no such reduction shall be made if the company is in arrears in the repayment of any deposits accepted by it, either before or after the commencement of this Act, or the interest payable thereon.

(2) The Tribunal shall give notice of every application made to it under sub-section (1) to the Central Government, Registrar and to the Securities and Exchange Board, in the case of listed companies, and the creditors of the company and shall take into consideration the representations, if any, made to it by that Government, Registrar, the Securities and Exchange Board and the creditors within a period of three months from the date of receipt of the notice:

Provided that where no representation has been received from the Central Government, Registrar, the Securities and Exchange Board or the creditors within the said period, it shall be presumed that they have no objection to the reduction.

(3) The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit:

Provided that no application for reduction of share capital shall be sanctioned by the Tribunal unless the accounting treatment, proposed by the company for such reduction is in conformity with the accounting standards specified in section 133 or any other provision of this Act and a certificate to that effect by the company's auditor has been filed with the Tribunal.

(4) The order of confirmation of the reduction of share capital by the Tribunal under sub-section (3) shall be published by the company in such manner as the Tribunal may direct.

(5) The company shall deliver a certified copy of the order of the Tribunal under sub-section (3) and of a minute approved by the Tribunal showing—

(a) the amount of share capital;

(b) the number of shares into which it is to be divided;

(c) the amount of each share; and

(d) the amount, if any, at the date of registration deemed to be paid-up on each share, to the Registrar within thirty days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.

(6) Nothing in this section shall apply to buy-back of its own securities by a company under section 68.

(7) A member of the company, past or present, shall not be liable to any call or contribution in respect of any share held by him exceeding the amount of difference, if any, between the amount paid on the share, or reduced amount, if any, which is to be deemed to have been paid thereon, as the case may be, and the amount of the share as fixed by the order of reduction.

(8) Where the name of any creditor entitled to object to the reduction of share capital under this section is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his debt or claim, not entered on the list of creditors, and after such reduction, the company¹ commits a

1. Subs. by Act 31 of 2016, s. 255 and the Eleventh Schedule, for “is unable, within the meaning of sub-section (2) of section 271, to pay the amount of his debt or claim,” (w.e.f. 15-11-2016).

default, within the meaning of section 6 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in respect of the amount of his debt or claim],—

(a) every person, who was a member of the company on the date of the registration of the order for reduction by the Registrar, shall be liable to contribute to the payment of that debt or claim, an amount not exceeding the amount which he would have been liable to contribute if the company had commenced winding up on the day immediately before the said date; and

(b) if the company is wound up, the Tribunal may, on the application of any such creditor and proof of his ignorance as aforesaid, if it thinks fit, settle a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(9) Nothing in sub-section (8) shall affect the rights of the contributories among themselves. (10) If any officer of the company—

- (a) knowingly conceals the name of any creditor entitled to object to the reduction; (b) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or
- (c) abets or is privy to any such concealment or misrepresentation as aforesaid,

he shall be liable under section 447.

¹* * * * *

67. Restriction on purchase by company or giving of loans by it for purchase of its shares.—(1) No company limited by shares or by guarantee and having a share capital shall have power to buy its own shares unless the consequent reduction of share capital is effected under the provisions of this Act.

(2) No public company shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.

(3) Nothing in sub-section (2) shall apply to—

- (a) the lending of money by a banking company in the ordinary course of its business;
- (b) the provision by a company of money in accordance with any scheme approved by company through special resolution and in accordance with such requirements as may be prescribed, for the purchase of, or subscription for, fully paid-up shares in the company or its holding company, if the purchase of, or the subscription for, the shares held by trustees for the benefit of the employees or such shares held by the employee of the company;
- (c) the giving of loans by a company to persons in the employment of the company other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership:

Provided that disclosures in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report in such manner as may be prescribed.

(4) Nothing in this section shall affect the right of a company to redeem any preference shares issued by it under this Act or under any previous company law.

(5) If a company contravenes the provisions of this section, it shall be punishable with fine which shall not be less than one 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 one lakh rupees but which may extend to twenty-five lakh rupees.

1. Sub-section (11) omitted by Act 29 of 2020, s. 13 (w.e.f. 21-12-2020).

57

68. Power of company to purchase its own securities.—(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 other specified securities:

Provided 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:

Provided 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:

Provided 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 unsecured debts owed by the company after buy-back is not more than twice the paid-up capital and its free reserves:

Provided 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 recognized 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:

Provided 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;
- (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).

58

(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 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:

Provided 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 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:

Provided 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^{1****} with fine which shall not be less than one lakh rupees but which may extend to²[three lakh rupees].

Explanation 1.—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.

Explanation II.—For the purposes of this section, “free reserves” includes securities premium account.

69. Transfer of certain sums to capital redemption reserve account.—(1) Where a company purchases its own shares out of free reserves or securities premium account, a sum equal to the nominal

1. The words “with imprisonment for a term which may extend to three years or” omitted by Act 29 of 2020, s. 14 (w.e.f. 21-12-2020).

2. Subs. by s. 14, *ibid.*, for “three lakh rupees, or with both” (w.e.f. 21-12-2020).

59

value of the shares so purchased shall be transferred to the capital redemption reserve account and details of such transfer shall be disclosed in the balance sheet.

(2) The capital redemption reserve account may 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.

70. Prohibition for buy-back in certain circumstances.—(1) No company shall directly or indirectly purchase its own shares or other specified securities—

(a) through any subsidiary company including its own subsidiary companies;

(b) through any investment company or group of investment companies; or

(c) if a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or re payment of any term loan or interest payable thereon to any financial institution or banking company:

Provided that the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

(2) No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the provisions of sections 92, 123, 127 and section 129.

71. Debentures.—(1) A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption:

Provided 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.

(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:

Provided 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

60

company and any other person interested in the matter, by order, impose such restrictions on the incurring of any further liabilities by the 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 forth with on payment of principal and interest due thereon.

1* * * * *

(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 reserve required to be created and such other matters.

72. Power to nominate.—(1) Every holder of securities of a company may, at any time, nominate, in the prescribed manner, any person to whom his securities shall vest in the event of his death.

(2) Where the securities of a company are held by more than one person jointly, the joint holders may together nominate, in the prescribed manner, any person to whom all the rights in the securities shall vest in the event of death of all the joint holders.

(3) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of the securities of a company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the securities of the company, the nominee shall, on the death of the holder of securities or, as the case may be, on the death of the joint holders, become entitled to all the rights in the securities, of the holder or, as the case may be, of all the joint holders, in relation to such securities, to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

(4) Where the nominee is a minor, it shall be lawful for the holder of the securities, making the nomination to appoint, in the prescribed manner, any person to become entitled to the securities of the company, in the event of the death of the nominee during his minority.

CHAPTER V

ACCEPTANCE OF DEPOSITS BY COMPANIES

73. Prohibition on acceptance of deposits from public.—(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:

Provided that nothing in this sub-section shall apply to a banking company and non-banking financial company as defined in the Reserve Bank of India Act, 1934 (2 of 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:—

(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;

1. Sub-section (11) omitted by Act 29 of 2020, s. 15 (w.e.f. 21-12-2020).

61

¹[(c) depositing, on or before the thirtieth day of April each year, such sum which shall not be less than twenty per cent. of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account;]

²* * * * * (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, ³[such deposits and where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default;] and

(f) providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company:

Provided 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.

74. Repayment of deposits, etc., accepted before commencement of this Act.—(1) Where in respect of any deposit accepted by a company before the commencement of this Act, the amount of such deposit or part thereof or any interest due thereon remains unpaid on such commencement or becomes due at any time thereafter, the company shall—

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

⁴[(b) repay within three years from such commencement or on or before expiry of the period for which the deposits were accepted, whichever is earlier:

Provided that renewal of any such deposits shall be done in accordance with the provisions of Chapter V and the rules made thereunder.]

(2) The Tribunal may on an application made by the company, after considering the financial condition of the company, the amount of deposit or part thereof and the interest payable thereon and such other matters, allow further time as considered reasonable to the company to repay the deposit.

(3) If a company fails to repay the deposit or part thereof or any interest thereon within the time specified in sub-section (1) or such further time as may be allowed by the Tribunal under sub-section (2), the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees and every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.

75. Damages for fraud.—(1) Where a company fails to repay the deposit or part thereof or any interest thereon referred to in section 74 within the time specified in sub-section (1) of that section or such further time as may be allowed by the Tribunal under sub-section (2) of that section, and it is proved that the

1. Subs. by Act 1 of 2018, s. 15, for clause (c) (w.e.f. 15-8-2018).

2. Clause (d) omitted by s. 15, *ibid.* (w.e.f. 15-8-2018).

3. Subs. by s. 15, *ibid.*, for “such deposits;” (w.e.f. 15-8-2018).

4. Subs. by s. 16, *ibid.*, for clause (b) (w.e.f. 15-8-2018).

62

deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to the provisions contained in sub-section (3) of that section and liability under section 447, be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors.

(2) Any suit, proceedings or other action may be taken by any person, group of persons or any association of persons who had incurred any loss as a result of the failure of the company to repay the deposits or part thereof or any interest thereon.

76. Acceptance of deposits from public by certain companies.—(1) Notwithstanding anything contained in section 73, a public company, having such net worth or turnover as may be prescribed, may accept deposits from persons other than its members subject to compliance with the requirements provided in sub-section (2) of section 73 and subject to such rules as the Central Government may, in consultation with the Reserve Bank of India, prescribe:

Provided that such a company shall be required to obtain the rating (including its networth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits:

Provided further that every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed.

(2) The provisions of this Chapter shall, *mutatis mutandis*, apply to the acceptance of deposits from public under this section.

¹**76A. Punishment for contravention of section 73 or section 76.**—Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules made thereunder or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or section 76 or rules made thereunder or such further time as may be allowed by the Tribunal under section 73,—

(a) the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than ²[one crore rupees or twice the

amount of deposit accepted by the company, whichever is lower] but which may extend to ten crore rupees; and

(b) every officer of the company who is in default shall be punishable with imprisonment which may extend to ³[seven years and with fine] which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, ^{4***}:

Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.]

CHAPTER VI

REGISTRATION OF CHARGES

77. Duty to register charges, etc.—(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:

⁵[Provided that the Registrar may, on an application by the company, allow such registration to be made—

(a) in case of charges created before the commencement of the Companies (Amendment) Act, 2019, within a period of three hundred days of such creation; or

1. Ins. by Act 21 of 2015, s. 8 (w.e.f. 29-5-2015).
2. Subs. by Act 1 of 2018, s. 17, for “one crore rupees” (w.e.f. 9-2-2018).
3. Subs. by s. 17, *ibid.*, for “seven years or with fine” (w.e.f. 9-2-2018).
4. The words “or with both” omitted by s. 17, *ibid.* (w.e.f. 9-2-2018).
5. Subs. by Act 22 of 2019, s. 11, for first and second provisos (w.e.f. 2-11-2018).

63

(b) in case of charges created on or after the commencement of the Companies (Amendment) Act, 2019, within a period of sixty days of such creation,

on payment of such additional fees as may be prescribed:

Provided further that if the registration is not made within the period specified— (a) in clause (a) to the first proviso, the registration of the charges shall be made within six months from the date of commencement of the Companies (Amendment) Act, 2019, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;

(b) in clause (b) to the first proviso, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such *ad valorem* fees as may be prescribed.]

Provided 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:

¹[Provided also that this section shall not apply to such charges as may be prescribed in consultation with the Reserve Bank of India.]

(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 ²[appointed under this Act or the Insolvency and Bankruptcy Code, 2016 (31 of 2016), as the case may be,] 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.

78. Application for registration of charge.—Where a company fails to ³[register the charge within the period of thirty days referred to in sub-section (1) of section 77] without prejudice to its liability in respect of any offence under this Chapter, the person in whose favour the charge is created may apply to the Registrar for registration of the charge along with the instrument created for the charge, within such time and in such form and manner as may be prescribed and the Registrar may, on such application, within a period of fourteen days after giving notice to the company, unless the company itself registers the charge or shows sufficient cause why such charge should not be registered, allow such registration on payment of such fees, as may be prescribed:

Provided that where registration is effected on application of the person in whose favour the charge is created, that person shall be entitled to recover from the company the amount of any fees or additional fees paid by him to the Registrar for the purpose of registration of charge.

79. Section 77 to apply in certain matters.—The provisions of section 77 relating to registration of charges shall, so far as may be, apply to—

- (a) a company acquiring any property subject to a charge within the meaning of that section; or
- (b) any modification in the terms or conditions or the extent or operation of any charge registered under that section.

80. Date of notice of charge.—Where any charge on any property or assets of a company or any of its undertakings is registered under section 77, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

81. Register of charges to be kept by Registrar.—(1) The Registrar shall, in respect of every company, keep a register containing particulars of the charges registered under this Chapter in such form and in such manner as may be prescribed.

1. The proviso ins. by Act 1 of 2018, s. 18 (w.e.f. 7-5-2018).
2. Ins. by Act 31 of 2016, s. 255 and the Eleventh Schedule (w.e.f. 15-11-2016).
3. Subs. by Act 1 of 2018, s. 19, for “register the charge within the period specified in section 77” (w.e.f. 7-5-2018).

64

(2) A register kept in pursuance of this section shall be open to inspection by any person on payment of such fees as may be prescribed for each inspection.

82. Company to report satisfaction of charge.—(1) A company shall give intimation to the Registrar in the prescribed form, of the payment or satisfaction in full of any charge registered under this Chapter within a period of thirty days from the date of such payment or satisfaction ¹***.

²[Provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of such additional fees as may be prescribed.]

(2) The Registrar shall, on receipt of intimation under sub-section (1), cause a notice to be sent to the holder of the charge calling upon him to show cause within such time not exceeding fourteen days, as may be specified in such notice, as to why payment or satisfaction in full should not be recorded as intimated to the Registrar, and if no cause is shown, by such holder of the charge, the Registrar shall order that a memorandum of satisfaction shall be entered in the register of charges kept by him under section 81 and shall inform the company that he has done so:

Provided that the notice referred to in this sub-section shall not be required to be sent, in case the intimation to the Registrar in this regard is in the specified form and signed by the holder of charge. (3) If any cause is shown, the Registrar shall record a note to that effect in the register of charges and shall inform the company.

(4) Nothing in this section shall be deemed to affect the powers of the Registrar to make an entry in the register of charges under section 83 or otherwise than on receipt of an intimation from the company.

83. Power of Registrar to make entries of satisfaction and release in absence of intimation from company.—(1) The Registrar may, on evidence being given to his satisfaction with respect to any

registered charge,—

- (a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or
- (b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking,

enter in the register of charges a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, notwithstanding the fact that no intimation has been received by him from the company.

(2) The Registrar shall inform the affected parties within thirty days of making the entry in the register of charges kept under sub-section (1) of section 81.

84. Intimation of appointment of receiver or manager.—(1) If any person obtains an order for the appointment of a receiver of, or of a person to manage, the property, subject to a charge, of a company or if any person appoints such receiver or person under any power contained in any instrument, he shall, within a period of thirty days from the date of the passing of the order or of the making of the appointment, give notice of such appointment to the company and the Registrar along with a copy of the order or instrument and the Registrar shall, on payment of the prescribed fees, register particulars of the receiver, person or instrument in the register of charges.

(2) Any person appointed under sub-section (1) shall, on ceasing to hold such appointment, give to the company and the Registrar a notice to that effect and the Registrar shall register such notice.

85. Company's register of charges.—(1) Every company shall keep at its registered office a register of charges in such form and in such manner as may be prescribed, which shall include there in all charges and floating charges affecting any property or assets of the company or any of its undertakings, indicating in each case such particulars as may be prescribed:

Provided that a copy of the instrument creating the charge shall also be kept at the registered office of the company along with the register of charges.

1. Omitted by Act 1 of 2018, s. 20, for certain words (w.e.f. 5-7-2018).

2. The Proviso ins. by s. 20, *ibid.* (w.e.f. 5-7-2018).

(2) The register of charges and instrument of charges, kept under sub-section (1) shall be open for inspection during business hours—

- (a) by any member or creditor without any payment of fees; or
- (b) by any other person on payment of such fees as may be prescribed,

subject to such reasonable restrictions as the company may, by its articles, impose.

86. Punishment for contravention.—¹[²[(1)] If any company is in default in complying with any of the provisions of this Chapter, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees].

³[(2) If any person willfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under section 447.]

⁴[**87. Rectification by Central Government in Register of charges.**—The Central Government on being satisfied that—

- (a) the omission to give intimate to the Registrar of the payment or satisfaction of a charge, within the time required under this Chapter; or
- (b) the omission or misstatement of any particulars, in any filing previously made to the Registrar

with respect to any charge or modification thereof or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,

was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, on the application of the company or any person interested and on such terms and conditions as it deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or misstatement shall be rectified.]

CHAPTER VII

MANAGEMENT AND ADMINISTRATION

88. Register of members, etc.—(1) Every company shall keep and maintain the following registers in such form and in such manner as may be prescribed, namely:—

- (a) register of members indicating separately for each class of equity and preference shares held by each member residing in or outside India;
- (b) register of debenture-holders; and
- (c) register of any other security holders.

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

(3) The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996 (22 of 1996), shall be deemed to be the corresponding register and index for the purposes of this Act.

(4) A company may, if so authorised by its articles, keep in any country outside India, in such manner as may be prescribed, a part of the register referred to in sub-section (1), called “foreign register” containing the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India.

⁵[(5) If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2), the

1. Subs. by Act 29 of 2020, s. 16, for sub-section (1) (w.e.f. 21-12-2020).

2. Section 86 numbered as sub-section (1) thereof by Act 22 of 2019, s.12 (w.e.f. 2-11-2018).

3. Ins. by s. 12, *ibid.* (w.e.f. 2-11-2018).

4. Subs. by s. 13, *ibid.*, for section 86 (w.e.f. 2-11-2018).

5. Subs. by Act 29 of 2020, s. 17, for sub-section (5) (w.e.f. 21-12-2020).

company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.]

89. Declaration in respect of beneficial interest in any share.—(1) Where the name of a person is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares, such person shall make a declaration within such time and in such form as may be prescribed to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares.

(2) Every person who holds or acquires a beneficial interest in share of a company shall make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.

(3) Where any change occurs in the beneficial interest in such shares, the person referred to in sub-section (1) and the beneficial owner specified in sub-section (2) shall, within a period of thirty days from the date of such change, make a declaration to the company in such form and containing such particulars as may be prescribed.

(4) The Central Government may make rules to provide for the manner of holding and disclosing beneficial interest and beneficial ownership under this section.

¹[(5) If any person fails to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), he shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of two hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.]

(6) Where any declaration under this section is made to a company, the company shall make a note of such declaration in the register concerned and shall file, within thirty days from the date of receipt of declaration by it, a return in the prescribed form with the Registrar in respect of such declaration with such fees or additional fees as may be prescribed, ^{2***}.

³[(7) If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified therein, the company and every officer of the company who is in default shall be liable to a penalty of one thousand rupees for each day during which such failure continues, subject to a maximum of five lakh rupees in the case of a company and two lakh rupees in case of an officer who is in default.]

(8) No right in relation to any share in respect of which a declaration is required to be made under this section but not made by the beneficial owner, shall be enforceable by him or by any person claiming through him.

(9) Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend to its members under this Act and the said obligation shall, on such payment, stand discharged. ⁴[(10) For the purposes of this section and section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to—

(i) exercise or cause to be exercised any or all of the rights attached to such share; or (ii) receive or participate in any dividend or other distribution in respect of such share.] ⁵[(11) The Central Government may, by notification, exempt any class or classes of persons from complying with any of the requirements of this section, except sub-section (10), if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.]

⁶**190. Register of significant beneficial owners in a company.**—(1) Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five per cent. or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence

1. Subs. by Act 29 of 2020, s. 18, for sub-section (5) (w.e.f. 21-12-2020).

2. The words and figures “within the time specified under section 403” omitted by Act 1 of 2018, s. 21 (w.e.f. 7-5-2018).

3. Subs. by Act 29 of 2020, s. 18, for sub-section (7) (w.e.f. 21-12-2020).

4. Ins. by Act 1 of 2018, s. 21, (w.e.f. 13-6-2018).

5. Ins. by Act 29 of 2020, s. 18 (w.e.f. 22-1-2021).

6. Subs. by Act 1 of 2018, s. 22, for section 90 (w.e.f. 13-6-2018).

67

or control as defined in clause (27) of section 2, over the company (herein referred to as “significant beneficial owner”), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed:

Provided that the Central Government may prescribe a class or classes of persons who shall not be required to make declaration under this sub-section.

(2) Every company shall maintain a register of the interest declared by individuals under sub section (1) and changes therein which shall include the name of individual, his date of birth, address, details of ownership in the company and such other details as may be prescribed.

(3) The register maintained under sub-section (2) shall be open to inspection by any member of the company on payment of such fees as may be prescribed.

(4) Every company shall file a return of significant beneficial owners of the company and changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form and manner as may be prescribed.

¹[(4A) Every company shall take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and require him to comply with the provisions of this section.] (5) A company shall give notice, in the prescribed manner, to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe—

(a) to be a significant beneficial owner of the company;

(b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or

(c) to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued,

and who is not registered as a significant beneficial owner with the company as required under this section. (6) The information required by the notice under sub-section (5) shall be given by the concerned person within a period not exceeding thirty days of the date of the notice.

(7) The company shall,—

(a) where that person fails to give the company the information required by the notice within the time specified therein; or

(b) where the information given is not satisfactory,

apply to the Tribunal within a period of fifteen days of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and such other matters as may be prescribed.

(8) On any application made under sub-section (7), the Tribunal may, after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares within a period of sixty days of receipt of application or such other period as may be prescribed.

²[(9) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8), within a period of one year from the date of such order:

Provided that if no such application has been filed within a period of one year from the date of the order under sub-section (8), such shares shall be transferred, without any restrictions, to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed;]

³[(9A) The Central Government may make rules for the purposes of this section.] ⁴[(10) If any person fails to make a declaration as required under sub-section (1), he shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of one thousand

1. Ins. by Act 22 of 2019, s. 14 (w.e.f. 15-8-2019).

2. Subs. by Act 22 of 2019, s. 14, for sub-section (9) (w.e.f. 2-11-2018).

3. Ins. by s. 14, *ibid.* (w.e.f. 15-8-2019).

4. Subs. by Act 29 of 2020, s. 19, for sub-section (10) (w.e.f. 21-12-2020).

rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.]

¹[(11) If a company, required to maintain register under sub-section (2) and file the information under sub-section (4)²[or required to take necessary steps under sub-section (4A)], fails to do so or denies inspection as provided therein, the company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day, after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with

a further penalty of two hundred rupees for each day, after the first during which such failure continues, subject to a maximum of one lakh rupees.]

(12) If any person wilfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable to action under section 447.]

91. Power to close register of members or debenture-holders or other security holders.—(1) A company may close the register of members or the register of debenture-holders or the register of other security holders for any period or periods not exceeding in the aggregate forty-five days in each year, but not exceeding thirty days at any one time, subject to giving of previous notice of at least seven days or such lesser period as may be specified by Securities and Exchange Board for listed companies or the companies which intend to get their securities listed, in such manner as may be prescribed.

(2) If the register of members or of debenture-holders or of other security holders is closed without giving the notice as provided in sub-section (1), or after giving shorter notice than that so provided, or for a continuous or an aggregate period in excess of the limits specified in that sub-section, the company and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for every day subject to a maximum of one lakh rupees during which the register is kept closed.

92. Annual return.—(1) Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding—

(a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;

(b) its shares, debentures and other securities and shareholding pattern;

²* * * * (d) its members and debenture-holders along with changes therein since the close of the previous financial year;

(e) its promoters, directors, key managerial personnel along with changes there in since the close of the previous financial year;

(f) meetings of members or a class thereof, Board and its various committees along with attendance details;

(g) remuneration of directors and key managerial personnel;

(h) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment; (i) matters relating to certification of compliances, disclosures as may be prescribed; (j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors ³* * * *; and

(k) such other matters as may be prescribed,

and signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice:

Provided that in relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

1. Subs. by Act 29 of 2020, s. 19, for sub-section (11) (w.e.f. 21-12-2020).

2. Clause (c) omitted by Act 1 of 2018, s. 23 (w.e.f. 5-3-2021).

3. The words “indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them” omitted by s. 23, *ibid* (w.e.f. 5-3-2021).

¹[Provided further that the Central Government may prescribe abridged form of annual return for “One Person Company, small company and such other class of classes of companies as may be prescribed”.] (2)

²[The annual return, filed by a listed company or, by a company having such paid-up capital or turnover as may be prescribed] shall be certified by a company secretary in practice in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.

(3) An extract of the annual return in such form as may be prescribed shall form part of the Board’s report. (4)

Every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed, ^{3***}.

⁴[(5) If any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ⁵[ten thousand rupees] and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of ⁶[two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default].]

(6) If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be ⁷[liable to a penalty of two lakh rupees].
93. [Return to be filed with Registrar in case promoter's stake changes.] Omitted by the Companies Act, 2017 (1 of 2018), s. 24 (w.e.f. 13-6-2018).

94. Place of keeping and inspection of registers, returns, etc.—(1) The registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company:

Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company ^{8***}:

Provided further that the period for which the registers, returns and records are required to be kept shall be such as may be prescribed.

(2) The registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by any member, debenture-holder, other security holder or beneficial owner, during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed.

(3) Any such member, debenture-holder, other security holder or beneficial owner or any other person may—

(a) take extracts from any register, or index or return without payment of any fee; or (b) require a copy of any such register or entries therein or return on payment of such fees as may be prescribed.

⁹[Provided that such particulars of the register or index or return as may be prescribed shall not be available for inspection under sub-section (2) or for taking extracts or copies under this sub-section.].

1. Ins. by Act 1 of 2018, s. 23 (w.e.f. 5-3-2021).

2. Subs. by S.O. 1177 (E), dated 29th April, 2014 for certain words (w.e.f. 29-4-2014).

3. The words "within the time as specified, under section 403" omitted by Act 1 of 2018, s. 23 (w.e.f. 7-5-2018).

4. Subs. by Act 22 of 2019, s. 15, for sub-section (5) (w.e.f. 2-11-2018).

5. Subs. by Act 29 of 2020, s. 20, for "fifty thousand rupees" (w.e.f. 21-12-2020).

6. Subs. by s. 20, *ibid.*, for "five lakh rupees" (w.e.f. 21-12-2020).

7. Subs. by s. 20, *ibid.*, for "punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees" (w.e.f. 21-12-2020).

8. The words "and the Registrar has been given a copy of the proposed special resolution in advance" omitted by Act 1 of 2018, s. 25 (w.e.f. 13-6-2018).

9. The proviso ins. by Act 1 of 2018, s. 25 (w.e.f. 13-6-2018).

(4) If any inspection or the making of any extract or copy required under this section is refused, the company and every officer of the company who is in default shall be liable, for each such default, to a penalty of one thousand rupees for every day subject to a maximum of one lakh rupees during which the refusal or default continues.

(5) The Central Government may also, by order, direct an immediate inspection of the document, or

direct that the extract required shall forthwith be allowed to be taken by the person requiring it.

95. Registers, etc., to be evidence.—The registers, their indices and copies of annual returns maintained under sections 88 and 94 shall be *prima facie* evidence of any matter directed or authorised to be inserted therein by or under this Act.

96. Annual general meeting.—(1) Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that in case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year:

Provided further that if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation:

Provided also that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

(2) Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate:

¹[Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance:

Provided further that] the Central Government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose.

Explanation.—For the purposes of this sub-section, “National Holiday” means and includes a day declared as National Holiday by the Central Government.

97. Power of Tribunal to call annual general meeting.—(1) If any default is made in holding the annual general meeting of a company under section 96, the Tribunal may, notwithstanding anything contained in this Act or the articles of the company, on the application of any member of the company, call, or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient:

Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) A general meeting held in pursuance of sub-section (1) shall, subject to any directions of the Tribunal, be deemed to be an annual general meeting of the company under this Act.

98. Power of Tribunal to call meetings of members, etc.—(1) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles of the company, the Tribunal may, either *suo motu* or on the application of any director or member of the company who would be entitled to vote at the meeting,—

(a) order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and

1. Subs. by Act 1 of 2018, s. 26, for “Provided that” (w.e.f. 13-6-2018).

(b) give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the

meeting, the operation of the provisions of this Act or articles of the company:

Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with any order made under sub-section (1) shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted. **99. Punishment for default in complying with provisions of sections 96 to 98.**—If any default is made in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.

100. Calling of extraordinary general meeting.—(1) The Board may, whenever it deems fit, call an extraordinary general meeting of the company.

¹[Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.] (2) The Board shall, at the requisition made by,—

(a) in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting;

(b) in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote,

call an extraordinary general meeting of the company within the period specified in sub-section (4). (3) The requisition made under sub-section (2) shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.

(4) If the Board does not, within twenty-one days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than forty five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition.

(5) A meeting under sub-section (4) by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board.

(6) Any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (4) shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting.

101. Notice of meeting.—(1) A general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as maybe prescribed:

²[Provided that a general meeting may be called after giving shorter notice than that specified in this sub-section if consent, in writing or by electronic mode, is accorded thereto—

(i) in the case of an annual general meeting, by not less than ninety-five per cent. of the members entitled to vote thereat; and

(ii) in the case of any other general meeting, by members of the company—

1. Ins. by Act 1 of 2018, s. 27 (w.e.f. 9-2-2018).

2. The proviso subs. by s. 28, *ibid.*, (w.e.f. 9-2-2018).

(a) holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or

(b) having, if the company has no share capital, not less than ninety-five per cent. of the total voting power exercisable at that meeting:

Provided further that where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub-section in respect of the former resolution or resolutions and not in respect of the latter.]

(2) Every notice of a meeting shall specify the place, date, day and the hour of the meeting and shall contain a statement of the business to be transacted at such meeting.

(3) The notice of every meeting of the company shall be given to—

(a) every member of the company, legal representative of any deceased member or the assignee of an insolvent member;

(b) the auditor or auditors of the company; and

(c) every director of the company.

(4) Any accidental omission to give notice to, or the non-receipt of such notice by, any member or other person who is entitled to such notice for any meeting shall not invalidate the proceedings of the meeting.

102. Statement to be annexed to notice.—(1) A statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:—

(a) the nature of concern or interest, financial or otherwise, if any, in respect of each items

of— (i) every director and the manager, if any;

(ii) every other key managerial personnel; and

(iii) relatives of the persons mentioned in sub-clauses (i) and (ii);

(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

(2) For the purposes of sub-section (1),—

(a) in the case of an annual general meeting, all business to be transacted thereat shall be deemed special, other than—

(i) the consideration of financial statements and the reports of the Board of Directors and auditors;

(ii) the declaration of any dividend;

(iii) the appointment of directors in place of those retiring;

(iv) the appointment of, and the fixing of the remuneration of, the auditors; and

(b) in the case of any other meeting, all business shall be deemed to be special:

Provided that where any item of special business to be transacted at a meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every promoter, director, manager, if any, and of every other key managerial personnel of the first mentioned

company shall, if the extent of such shareholding is not less than two per cent. of the paid-up share capital of that company, also be set out in the statement.

73

(3) Where any item of business refers to any document, which is to be considered at the meeting, the time and place where such document can be inspected shall be specified in the statement under sub section (1).

(4) Where as a result of the non-disclosure or insufficient disclosure in any statement referred to in sub section (1), being made by a promoter, director, manager, if any, or other key managerial personnel, any benefit which accrues to such promoter, director, manager or other key managerial personnel or their relatives, either directly or indirectly, the promoter, director, manager or other key managerial personnel, as the case may be, shall hold such benefit in trust for the company, and shall, without prejudice to any other action being taken against him under this Act or under any other law for the time being in force, be liable to compensate the company to the extent of the benefit received by him.

¹[(5) Without prejudice to the provisions of sub-section (4), if any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher.]

103. Quorum for meetings.—(1) Unless the articles of the company provide for a larger

number,— (a) in case of a public company,—

(i) five members personally present if the number of members as on the date of meeting is not more than one thousand;

(ii) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand;

(iii) thirty members personally present if the number of members as on the date of the meeting exceeds five thousand;

(b) in the case of a private company, two members personally present, shall be the quorum for a meeting of the company.

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

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

(b) the meeting, if called by requisitionists under section 100, shall stand cancelled:

Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give not less than three days notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

(3) If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

104. Chairman of meetings.—(1) Unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the Chairman thereof on a show of hands.

(2) If a poll is demanded on the election of the Chairman, it shall be taken forthwith in accordance with the provisions of this Act and the Chairman elected on a show of hands under sub-section (1) shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of the poll, and such other person shall be the Chairman for the rest of the meeting.

1. Subs. by Act 22 of 2019, s. 16, for sub-section (5) (w.e.f. 2-11-2018).

74

105. Proxies.—(1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf:

Provided that a proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll:

Provided further that, unless the articles of a company otherwise provide, this sub-section shall not apply in the case of a company not having a share capital:

Provided also that the Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy:

Provided also that a person appointed as proxy shall act on behalf of such member or number of members not exceeding fifty and such number of shares as may be prescribed.

(2) In every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member.

(3) If default is made in complying with sub-section (2), every officer of the company who is in default shall be ¹[liable to a penalty of five thousands rupees].

(4) Any provision contained in the articles of a company which specifies or requires a longer period than forty-eight hours before a meeting of the company, for depositing with the company or any other person any instrument appointing a proxy or any other document necessary to show the validity or otherwise relating to the appointment of a proxy in order that the appointment may be effective at such meeting, shall have effect as if a period of forty-eight hours had been specified in or required by such provision for such deposit.

(5) If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company ²[who issues the invitation as aforesaid or authorises or permits their issue, shall be liable to a penalty of fifty thousand rupees]:

Provided that an officer shall not be ³[liable] under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(6) The instrument appointing a proxy shall—

(a) be in writing; and

(b) be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.

(7) An instrument appointing a proxy, if in the form as may be prescribed, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company.

(8) Every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

1. Subs. by Act 22 of 2019, s. 17, for "punishable with fine which may extend to five thousand rupees" (w.e.f. 2-11-2018).

2. Subs. by Act 29 of 2020, s. 21, for certain words (w.e.f. 21-12-2020).

3. Subs. by s. 21, *ibid.*, for "punishable" (w.e.f. 21-12-2020).

75

106. Restriction on voting rights.—(1) Notwithstanding anything contained in this Act, the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.

(2) A company shall not, except on the grounds specified in sub-section (1), prohibit any member from exercising his voting right on any other ground.

(3) On a poll taken at a meeting of a company, a member entitled to more than one vote, or his proxy, where allowed, or other person entitled to vote for him, as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses.

107. Voting by show of hands.—(1) At any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 109 or the voting is carried out electronically, be decided on a show of hands.

(2) A declaration by the Chairman of the meeting of the passing of a resolution or otherwise by show of hands under sub-section (1) and an entry to that effect in the books containing the minutes of the meeting of the company shall be conclusive evidence of the fact of passing of such resolution or otherwise.

108. Voting through electronic means.—The Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means.

109. Demand for poll.—(1) Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf,—

(a) in the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and

(b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power.

(2) The demand for a poll may be withdrawn at any time by the persons who made the demand.

(3) A poll demanded for adjournment of the meeting or appointment of Chairman of the meeting shall be taken forthwith.

(4) A poll demanded on any question other than adjournment of the meeting or appointment of Chairman shall be taken at such time, not being later than forty-eight hours from the time when the

demand was made, as the Chairman of the meeting may direct.

(5) Where a poll is to be taken, the Chairman of the meeting shall appoint such number of persons, as he deems necessary, to scrutinise the poll process and votes given on the poll and to report thereon to him in the manner as may be prescribed.

(6) Subject to the provisions of this section, the Chairman of the meeting shall have power to regulate the manner in which the poll shall be taken.

(7) The result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken.

110. Postal ballot.—(1) Notwithstanding anything contained in this Act, a company—

(a) shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot; and

(b) may, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot,

in such manner as may be prescribed, instead of transacting such business at a general meeting:

76

¹[Provided that any item of business required to be transacted by means of postal ballot under clause (a), may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section.]

(2) If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

111. Circulation of members' resolution.—(1) A company shall, on requisition in writing of such number of members, as required in section 100,—

(a) give notice to members of any resolution which may properly be moved and is intended to be moved at a meeting; and

(b) circulate to members any statement with respect to the matters referred to in proposed resolution or business to be dealt with at that meeting.

(2) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless—

(a) a copy of the requisition signed by the requisitionists (or two or more copies which, between them, contain the signatures of all the requisitionists) is deposited at the registered office of the company,—

(i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting;

(ii) in the case of any other requisition, not less than two weeks before the meeting; and

(b) there is deposited or tendered with the requisition, a sum reasonably sufficient to meet the company's expenses in giving effect thereto:

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called on a date within six weeks after the copy has been deposited, the copy, although not deposited within the time required by this sub-section, shall be deemed to have been properly deposited for the purposes thereof.

(3) The company shall not be bound to circulate any statement as required by clause (b) of sub section (1), if on the application either of the company or of any other person who claims to be aggrieved, the

Central Government, by order, declares that the rights conferred by this section are being abused to secure needless publicity for defamatory matter.

(4) An order made under sub-section (3) may also direct that the cost incurred by the company by virtue of this section shall be paid to the company by the requisitionists, notwithstanding that they are not parties to the application.

(5) If any default is made in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees.

112. Representation of President and Governors in meetings.—(1) The President of India or the Governor of a State, if he is a member of a company, may appoint such person as he thinks fit to act as his representative at any meeting of the company or at any meeting of any class of members of the company.

(2) A person appointed to act under sub-section (1) shall, for the purposes of this Act, be deemed to be a member of such a company and shall be entitled to exercise the same rights and powers, including the right to vote by proxy and postal ballot, as the President or, as the case may be, the Governor could exercise as a member of the company.

113. Representation of corporations at meeting of companies and of creditors.—(1) A body corporate, whether a company within the meaning of this Act or not, may, —

1. The Proviso ins. by Act 1 of 2018, s. 29 (w.e.f. 9-2-2018).

77

(a) if it is a member of a company within the meaning of this Act, by resolution of its Board of Directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the company, or at any meeting of any class of members of the company;

(b) if it is a creditor, including a holder of debentures, of a company within the meaning of this Act, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised by resolution under sub-section (1) shall be entitled to exercise the same rights and powers, including the right to vote by proxy and by postal ballot, on behalf of the body corporate which he represents as that body could exercise if it were an individual member, creditor or holder of debentures of the company.

114. Ordinary and special resolutions.—(1) A resolution shall be an ordinary resolution if the notice required under this Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, 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 or by postal ballot, exceed the votes, if any, cast against the resolution by members, so entitled and voting.

(2) A resolution shall be a special resolution when—

(a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution; (b) the notice required under this Act has been duly given; and

(c) the votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

115. Resolutions requiring special notice.—Where, by any provision contained in this Act or in the articles of a company, special notice is required of any resolution, notice of the intention to move such

resolution shall be given to the company by such number of members holding not less than one per cent. of total voting power or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up and the company shall give its members notice of the resolution in such manner as may be prescribed.

116. Resolutions passed at adjourned meeting.—Where a resolution is passed at an adjourned meeting of—

- (a) a company; or
- (b) the holders of any class of shares in a company; or
- (c) the Board of Directors of a company,

the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

117. Resolutions and agreements to be filed.—(1) A copy of every resolution or any agreement, in respect of matters specified in sub-section (3) together with the explanatory statement under section 102, if any, annexed to the notice calling the meeting in which the resolution is proposed, shall be filed with the Registrar within thirty days of the passing or making thereof in such manner and with such fees as may be prescribed^{1***}:

Provided that the copy of every resolution which has the effect of altering the articles and the copy of every agreement referred to in sub-section (3) shall be embodied in or annexed to every copy of the articles issued after passing of the resolution or making of the agreement.

²[(2) If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees and every officer of the company

1. The words and figures “within the time specified under section 403” omitted by Act 1 of 2018, s. 30 (w.e.f. 7-5-2018).

2. Subs. by Act 29 of 2020, s. 22, for sub-section (2) (w.e.f. 21-12-2020).

who is in default including liquidator of the company, if any, shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of fifty thousand rupees.] (3) The provisions of this section shall apply to—

- (a) special resolutions;
- (b) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;
- (c) any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director;
- (d) resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members;

¹* * * * (f) resolutions requiring a company to be wound up voluntarily passed in pursuance of²[section 59 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016)];

(g) resolutions passed in pursuance of sub-section (3) of section 179:^{3***}

⁴[Provided that no person shall be entitled under section 399 to inspect or obtain copies of such resolutions; ^{5***}]

⁶[Provided further that nothing contained in this clause shall apply in respect of a resolution

passed to grant loans, or give guarantee or provide security in respect of loans under clause (f) of sub-section (3) of section 179 in the ordinary course of its business by—

(a) a banking company;

(b) any class of non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 (2 of 1934), as may be prescribed in consultation with the Reserve Bank of India;

(c) any class of housing finance company registered under the National Housing Bank Act, 1987 (53 of 1987), as may be prescribed in consultation with the National Housing Bank; and] (h) any other resolution or agreement as may be prescribed and placed in the public domain. **118. Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot.**—(1) Every company shall cause minutes of the proceedings of every general meeting of any class of shareholders or creditors, and every resolution passed by postal ballot and every meeting of its Board of Directors or of every committee of the Board, to be prepared and signed in such manner as may be prescribed and kept within thirty days of the conclusion of every such meeting concerned, or passing of resolution by postal ballot in books kept for that purpose with their pages consecutively numbered.

(2) The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat.

(3) All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting.

(4) In the case of a meeting of the Board of Directors or of a committee of the Board, the minutes shall also contain—

1. Clause (e) omitted by Act 1 of 2018, s. 30 (w.e.f. 7-5-2018).
2. Subs. by Act 31 of 2016, s. 255 and the Eleventh Schedule, for “section 304” (w.e.f. 15-11-2016).
3. The word “and” omitted by Act 21 of 2015, s. 9 (w.e.f. 29-5-2015).
4. Ins. by s. 9, *ibid.* (w.e.f. 29-5-2015).
5. The “and” omitted by Act 1 of 2018, s. 30 (w.e.f. 7-5-2018).
6. The proviso subs. by Act 29 of 2020, s. 22 (w.e.f. 22-1-2021).

79

(a) the names of the directors present at the meeting; and

(b) in the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution.

(5) There shall not be included in the minutes, any matter which, in the opinion of the Chairman of the meeting,—

(a) is or could reasonably be regarded as defamatory of any person; or

(b) is irrelevant or immaterial to the proceedings; or

(c) is detrimental to the interests of the company.

(6) The Chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds specified in sub-section (5).

(7) The minutes kept in accordance with the provisions of this section shall be evidence of the proceedings recorded therein.

(8) Where the minutes have been kept in accordance with sub-section (1) then, until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and the resolutions passed by postal ballot to have been duly passed and in particular, all appointments of directors, key managerial personnel, auditors or company secretary in practice, shall be deemed to be valid.

(9) No document purporting to be a report of the proceedings of any general meeting of a company shall be circulated or advertised at the expense of the company, unless it includes the matters required by

this section to be contained in the minutes of the proceedings of such meeting.

(10) Every company shall observe secretarial standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 (56 of 1980), and approved as such by the Central Government.

(11) If any default is made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.

(12) If a person is found guilty of tampering with the minutes of the proceedings of meeting, he 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.

119. Inspection of minute-books of general meeting.—(1) The books containing the minutes of the proceedings of any general meeting of a company or of a resolution passed by postal ballot, shall—

(a) be kept at the registered office of the company; and

(b) be open, during business hours, to the inspection by any member without charge, subject to such reasonable restrictions as the company may, by its articles or in general meeting, impose, so, however, that not less than two hours in each business day are allowed for inspection.

(2) Any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, and on payment of such fees as may be prescribed, with a copy of any minutes referred to in sub-section (1).

(3) If any inspection under sub-section (1) is refused, or if any copy required under sub-section (2) is not furnished within the time specified therein, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for each such refusal or default, as the case may be.

(4) In the case of any such refusal or default, the Tribunal may, without prejudice to any action being taken under sub-section (3), by order, direct an immediate inspection of the minute-books or direct that the copy required shall forthwith be sent to the person requiring it.

120. Maintenance and inspection of documents in electronic form.—Without prejudice to any other provisions of this Act, any document, record, register, minutes, etc.,—