

# DIRECTOR

### CHAPTER – XI

#### Appointment and Qualification of Director

**Section :** 149 to 172 of company act 2013

**Rule :** Companies ( Appointment and Qualification ) Rule 2014

### CHAPTER – XII

#### Board meeting and its Power

**Section :** 173 to 195 of company act 2013

**Rule :** Companies ( Board meeting and its Power ) Rule 2014

### CHAPTER – XIII

#### Appointment and remuneration of Managerial remuneration

**Section :** 196 to 205 of company act 2013

**Rule :** Companies ( Appointment and remuneration o) Rule 2014

## Chapter- XI

### *Director : Appointment and qualification of Director*

*(Provision Applicable Section 149 to 172 of company Act 2013 and Companies*

### Director - Introduction

<b>Meaning</b>	Director is the person occupying the position as director by whatever name called.
<b>Definition</b>	As per section 2(34) Director means director appointed to the board of the company.
<b>Type of Director</b>	From the point of Nature of employment : <ol style="list-style-type: none"><li>1. <b>Executive director</b> : The director who are under whole time employment in the company i.e. Managing Director and Whole time director.</li><li>2. <b>Non Executive Director</b> : Director who are not in full time engaged in the company . they come to company only at the time of taking any decision at BM i.e. Director other than MD and WTD</li></ol>
<b>Interpretation</b>	<ul style="list-style-type: none"><li>▪ The meaning of the director has given the regards on the function not on the name or any other background of person so choose to be appointed as director. Hence any person comply with the function of the director shall consider as director irrespective of whether he is in designation of director or not</li><li>▪ As per the case of Forest Dean Coal Mining Co, Director has interpreted as “Function is everything , name matter nothings”</li></ul>

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

### Section : 149 Basic Information about director

<b>Minimum no of director</b>	<ul style="list-style-type: none"> <li>▪ In the case of a public company- three Director</li> <li>▪ In the case of a private company- two Director</li> <li>▪ One man company – One Director</li> </ul> <p><b>Note :</b> The above provisions are mandatory to be complied with, any business transacted after the number of director fall below the statutory limit shall be invalid <b>[Re. Sly. Spink and Co]</b></p>
<b>Maximum number of director</b>	<ul style="list-style-type: none"> <li>▪ Any company can have maximum fifteen (15) no of Director</li> <li>▪ If company want to appoint more than 15 no of Directors : Special resolution in GM is required</li> </ul>
<b>Resident director</b>	As per section 149(3) Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year
<b>For existing company - applicability</b>	Every existing company must follow or be comply with the provision of this section <b>within one year</b> from such commencement of this act

Particular	Woman Director	Resident Director	Independent Director
<b>Applicability</b>	<ul style="list-style-type: none"> <li>▪ Every Listed Company</li> <li>▪ Every Other public company</li> </ul> <p>i. <b>PUSC</b> Rs 100 Cr. or more , or</p> <p>ii. <b>Turnover</b> of Rs 300 Cr. or more</p>	<b>Every company- at least one Director</b> ( Director who stayed in India for a period not less than 182 days )	<p><b>For listed company</b> - <math>\frac{1}{3}^{\text{rd}}</math> of total number of director. Any fraction rounded up to 1</p> <p><b>Other Public company under Rule 4</b> - At least two director</p> <p><b><u>Other Public company means company having</u></b></p> <ul style="list-style-type: none"> <li>▪ <b>PUSC</b> 10 Cr. or more</li> <li>▪ <b>TO</b> 100 Cr. or more</li> <li>▪ <b>Aggregate outstanding loan , debenture</b> 50 Cr. or more</li> </ul>
<b>Time limit for appointment</b>	<ul style="list-style-type: none"> <li>▪ <b>Company under CA act 1956</b> – within 1 year</li> <li>▪ <b>Company under CA act 2013-</b> within 6 months</li> </ul>		<b>It is required to be followed at all the time</b>

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

Declaration	Not required	NR	<b>Required at</b> <ul style="list-style-type: none"> <li>At the <b>first BM</b> in which he participates as a director and</li> <li>At the <b>first BM</b> in every FY or</li> <li>Whenever there is any change in the circumstances which may affect his status as an independent director.</li> </ul>
-------------	--------------	----	--

### Independent director U/S 149(2)

Meaning definition	<p>An independent director in relation to a company, means a director <b><i>other than a managing director or a whole-time director or a nominee director,</i></b></p> <p><b><i>a)</i></b> who, in the opinion of the Board, is a <b><i>person of integrity and possesses relevant expertise and experience;</i></b></p> <p><b><i>b)</i></b> (i) who is or was <b><i>not a promoter</i></b> of the company or its holding, subsidiary or associate company; (ii) who is <b><i>not related to promoters or directors</i></b> in the company, its holding, subsidiary or associate company;</p> <p><b><i>c)</i></b> who has or had <b><i>no pecuniary relationship</i></b> with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;</p> <p><b><i>d)</i></b> None of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to</p> <ul style="list-style-type: none"> <li>2% or more of its <b><i>gross turnover or total income or</i></b></li> <li><b><i>Rs 50 Lac. or such higher amount</i></b> as may be prescribed, whichever is lower, <b><i>during current year or two immediately</i></b> preceding financial years</li> </ul> <p><b><i>e)</i></b> who, neither himself nor any of his relative</p> <ol style="list-style-type: none"> <li>holds or has held the <b><i>position of a key managerial personnel</i></b> or is or has been <b><i>employee</i></b> of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;</li> <li>is or has been an <b><i>employee or proprietor or a partner</i></b>, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of <ol style="list-style-type: none"> <li>a firm of auditors or company secretaries in practice or cost</li> </ol> </li> </ol>
--------------------	--

	<p>auditors of the company or its holding, subsidiary or associate company; or</p> <p>B. any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to <b>ten per cent. or more of the gross turnover</b> of such firm;</p> <p>iii. Holds together with his relatives <b>two per cent. or more of the total voting power</b> of the company; or</p> <p>iv. Is a <b>Chief Executive or director</b>, by whatever name called, of any nonprofit organization that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or</p> <p>f) who possesses such other qualifications as prescribed below: An independent director shall possess appropriate balance of skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business</p>		
Provision	Applicability [ Rule 4]	For listed company	1/3 <sup>rd</sup> of total number of director. Any fraction rounded up to 1
		Other prescribed classes of Public company under <b>Rule 4</b>	At least two director
	<p>Note : As per <b>Rule 4</b> of company ( appointment and qualification) rule 2014, following are considered under the classes of company</p> <ul style="list-style-type: none"> <li>Public company having paid up share capital of 10 Crores or more</li> <li>Public company having turnover 100 crore or more</li> <li>The public company which have in aggregate , outstanding loan , debenture and deposit exceeding 50 Crore rupee</li> </ul> <p><b>Note :</b> For any specific company for which this section is applicable can appoint higher number of ID ,</p> <ul style="list-style-type: none"> <li>if required under any law in India</li> <li>if required for composition of various committee, as per company act 2013 i.e. audit committee</li> </ul>		
	Director not to	(a)MD (b) WTD (c) Nominee director	

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

	<b>be ID</b>	
	<b>Quality</b>	who in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience ( No specific educational qualification)
	<b>Declaration to be given by ID</b>	Every independent director shall give a declaration that he meets the criteria of independence <ul style="list-style-type: none"> <li>i. At the <b>first meeting of the Board</b> in which he participates as a director and</li> <li>ii. At the <b>first meeting of</b> the Board in every financial year or</li> <li>iii. Whenever there is any change in the circumstances which may affect his status as an independent director.</li> </ul>
	<b>Period of his office</b>	For <u>a term</u> up to <u>five consecutive years</u> on the Board of a company, but shall be eligible for reappointment on passing of a <b>special resolution</b> by the company and disclosure of such appointment in the Board's report u/s 149(10)
	<b>Reappointment</b>	<ul style="list-style-type: none"> <li>▪ Independent director shall not hold office for more than <b><u>two consecutive terms.</u></b></li> <li>▪ He shall be eligible for appointment after the expiration of three years of ceasing to become an independent director:</li> <li>▪ Independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.</li> </ul>
	<b>What ID receive</b>	Independent director is not entitle to get employee stock option u/s 149(9) however may get <ul style="list-style-type: none"> <li>i. Remuneration in form of Fee ( sitting fee)[ section 149(9) read with 197(5)]</li> <li>ii. Reimbursement of expenses for participation in the Board and other meetings</li> <li>iii. Profit related commission .</li> </ul> As may be <b>approved by member</b> <b>Note : ID can not be paid Remuneration</b>

### Section 151 : Appointment of small share holder

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

<b>Small share holder</b>	“small shareholders” means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.	
<b>Provision</b>	<b>Applicability</b>	Appointment of Small share holder director is applicable to company having following feature <ul style="list-style-type: none"> <li>i. Company must be the public company</li> <li>ii. Every listed company may have one director elected by small share holder</li> <li>iii. Company must have at least 1000 or more small share holder</li> </ul>
	<b>Manner of appointment</b>	Company may appoint Small share holder director <ul style="list-style-type: none"> <li>i. On its own, or</li> <li>ii. On application been made by small share holder</li> </ul>
<b>Procedure</b>	As per Rule 7 of companies ( Director Appointment and Qualification ) Rule 2014, followings provision shall be followed	
	<b>Notice to company</b>	<ul style="list-style-type: none"> <li>▪ Notice in writing shall be made at least 14 days before the general meeting by at least 1000 small share holder or 1/10<sup>th</sup> of small share holder whichever is less</li> <li>▪ Notice shall contents the name, address, number of share held by person proposed to be appointed as SSH director</li> <li>▪ Such notice shall be signed by the person so proposed for being director</li> </ul>
	<b>Provision related to SSD</b>	Document accompanying with the notice signed by proposed director shall state <ul style="list-style-type: none"> <li>▪ He has Director identification director</li> <li>▪ He is not disqualified to become director</li> <li>▪ He has given his consent to act as director</li> </ul>
<b>Other provision</b>	<ol style="list-style-type: none"> <li>1) Small share holder can be eligible for Independent director subject to the provision of Rule 7(4)</li> <li>2) Small share holder shall not be considered as retiring director</li> <li>3) <b>Period of office and Tenure of SSH director</b> : Small share holder can be appointed for maximum of three years and the person can be elected for one more period of three years on expiry of his ten years i.e. Tenure refers two term of 3 years each.</li> <li>4) SSH is not eligible for reappointment after expiry of tenure</li> <li>5) <b>No of directorship</b>: A person shall not hold office as SSH director in more than two companies at same time</li> <li>6) SSH director cannot be appointed as managing director or Whole tie</li> </ol>	

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

	director
--	----------

### Section 152: Appointment of director – Basic provision

- Every director shall be appointed by the company in general meeting u/s 152(2).
- Appointment as Director is prohibited unless he is allotted any DIN u/s 152(3)
- As per section 152(4), Every person proposed to be appointed as a director by the company in general meeting or otherwise shall furnish,
  - 1) his Director Identification Number and
  - 2) a declaration that he is not disqualified to become a director under this Act
- Consent of director shall be filled by the person so appointed as a director with the Registrar within thirty days of his appointment in such manner as may be prescribed. u/s 152(5) In form no DIR 2
- Company shall be filed in the form DIR 12 for changes in the composition of director and KMP

### First Director u/s 152(1)

<b>Applicability</b>	To all company [ public and private company]
<b>Provision</b>	<ul style="list-style-type: none"> <li>▪ <b><u>First Director shall be considered from Article otherwise all individual director shall deemed as first director:</u></b> As per section 152(1), Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are <b><u>individuals</u></b> shall be deemed to be the first directors of the company until the directors are duly appointed and</li> <li>▪ <b><u>In case of a One Person Company</u></b>: An individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section.</li> </ul>

### Rotational Director u/s 152(6)(a)

<b>Definition</b>	<p><i>Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall—</i></p> <p><i>(i) be persons whose period of office is liable to determination by retirement of directors by rotation; and</i></p> <p><i>(ii) save as otherwise expressly provided in this Act, be appointed by the company in general meeting</i></p>
<b>Applicability</b>	To public company only

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

<b>Interpretation</b>	<b>Meaning</b>	Rotational director is a director whose period of office is liable to be determined under rotational basis
	<b>Who shall appoint</b>	Director under this section[ rotational director] shall be appointed by share holder in AGM or EGM
	<b>Composition</b>	Not less than two-thirds of the total number of director
	<b>Who are not consider in total director</b>	<p>Total number of director u/s 152(6) shall not include following director</p> <ol style="list-style-type: none"> <li>1. Independent director</li> <li>2. Nominee director</li> <li>3. Director appointed by Central government u/s 408</li> </ol> <p>Note : This provision is inclusive not the exclusive one i.e. the director who are already prescribed for not considering in the total number of director u/s 152(6) shall only be exclude not other [ <b>Additional director shall not be excluded</b> from total director for computation u/s 152(6)]</p>
	<b>Manner of Rotation</b>	<ol style="list-style-type: none"> <li>1. 1/3rd out of 2/3rd shall retired at each AGM</li> <li>2. If their number is neither three or a multiple of three, then the number nearest to 1/3<sup>rd</sup> shall retired from office u/s 152(6)(c)</li> <li>3. The director longest in the office shall retired first u/s 152(6)(d)</li> <li>4. As per section 152(6)(d), where more than one director got appointed in a single day, retirement of those director shall be decided <ul style="list-style-type: none"> <li>✓ By Agreement , otherwise</li> <li>✓ By lot.</li> </ul> </li> </ol>
	<b>Vacancy arise on retirement u/s 152(6)(e)</b>	<p>Where, any director retired, the vacancy created in the place of such director shall be filled by share holder by appointing</p> <ol style="list-style-type: none"> <li>a) The retiring director himself, or</li> <li>b) Any other person as director</li> </ol> <p><b>Note :</b></p> <ul style="list-style-type: none"> <li>▪ <i>Where the retiring director as given notice for his unwillingness to get reappointed as director or where the resolution for the reappointment is put for him and lost. Retiring director cannot get reappointed</i></li> <li>▪ <i>In this case, some other person can be appointed by complying with the provision of section 160 of company</i></li> </ul>



## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

		<i>act 2013 [ Through nomination procedure ]</i>
	<b>Other</b>	<ol style="list-style-type: none"> <li>1. AOA may provided all the director to retired at each AGM</li> <li>2. Additional director appointed <b><i>shall be included</i></b> in the total number of director for the purpose of section 152(6)</li> <li>3. Small share holder director u/s 151 <b><i>shall be considered</i></b> under total number of director for the purpose of section 152(6)</li> </ol>

### Non Rotational director u/s 152(6)(b)

<b>Provision</b>	The remaining directors in the case of any such company shall, <i>in default of</i> , and <i>subject to any regulations in the articles</i> of the company, also be appointed by the company in general meeting [ <b>u/s 152(6)(b)</b> ]
<b>Interpretation</b>	<p><b>Who shall appoint :</b></p> <ul style="list-style-type: none"> <li>▪ Normally Non rotational director also to be appointed by share holder in AGM/EGM</li> <li>▪ The word <i>in default of</i>, and <i>subject to any regulations in the articles used</i> u/s 152(6)(b) state that if AOA provided otherwise then director [ non rotational director] shall be appointed complying with AOA. Otherwise SH shall be the authority for such appointment.</li> </ul> <p><b>Example : Director may be empowered to appoint non rotational director</b></p> <p><b>Composition :</b> Not more than <math>\frac{1}{3}^{\text{rd}}</math> of the total number of director.</p> <p><b>Period of office for Non rotational director :</b></p> <ul style="list-style-type: none"> <li>▪ There is nothing in this provision or act about the period of office what an non rotational director can hold. Hence <ul style="list-style-type: none"> <li>✓ NRD may be appointed for such period as may be determined by GM</li> <li>✓ NRD can be appointed for life.</li> <li>✓ NRD period of office may be decided by AOA too.</li> </ul> </li> </ul>

### Right of person other than retiring director to stand for directorship u/s 160

<b>Definition</b>	<p>(1) A person <u>who is not a retiring director</u> in terms of section 152 shall, <u>subject to the provisions of this Act</u>, be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, <u>not less than fourteen days</u> before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a- director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the <b><i>deposit of one lakh rupees</i></b> or such higher amount as may be prescribed which shall be refunded to such person or, as the case may be, to the member, <i>If the</i></p>
-------------------	--

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

	<p><i>person proposed gets elected as a director or gets more than twenty-five per cent of total valid votes cast either on show of hands or on poll on such resolution.</i></p> <p>(2) The company shall inform its members of the candidature of a person for the office of director under sub-section (1) in such manner as may be prescribed.</p>	
<b>Interpretation</b>	<b>Applicability</b>	To all the companies
	<b>Whose appointment</b>	It refers to the right of a person who is not the retiring director to stand for the directorship subject to compliance of provision of section 160
	<b>Provision</b>	<p><b>Nature of appointment:</b> Procedural in nature i.e. appointment made by complying with the procedure as prescribed under this section</p> <p><b>Procedure :</b></p> <p><b>Step 1:</b> An eligible person can apply for director ship</p> <p><b>Step 2 :</b> Application shall be made with compliance of following</p> <ul style="list-style-type: none"> <li>▪ Notice shall be made not less than 14 days before the general meeting</li> <li>▪ Notice shall be deposited at Registered office</li> <li>▪ Notice shall be signed by the person eligible to give notice</li> <li>▪ Deposit of <b>Rs1,00,000</b> shall be given along with such notice. Such deposit shall be refunded where <ul style="list-style-type: none"> <li>✓ Where he got selected ,or</li> <li>✓ Where he get more than 25% total valid vote cast[ whether on show of hand or on poll]</li> </ul> </li> </ul> <p><b>Step 3:</b> Company shall inform to all member about the candidature complying with the <b>Rule 13</b> of companies ( Appointment and Qualification of Director) Rule ,2014</p> <ul style="list-style-type: none"> <li>▪ At least 7 days before the meeting</li> <li>▪ By way of serving individual notice or putting at website</li> </ul> <p><b>Step 4:</b> Appointment shall be made by passing ordinary resolution</p> <p><b>Step 5:</b> Inform to Stock exchange where company is listed.</p> <p><b>Step 6:</b> Update the register</p>
<b>Which</b>	<b>Director who are not retiring director shall be eligible for appointment</b>	

director are not falling under this preview	<ul style="list-style-type: none"> <li>a. Additional director</li> <li>b. Alternate director</li> <li>c. Casual vacancy director</li> <li>d. Small share holder Director</li> <li>e. Director Appointed by Central government</li> <li>f. Nominee Director</li> </ul>
---	---

## Appointment of Director by Board Director

### Basic Provision regarding Director appointed by Board of Director

#### 161. (1 ) Additional Director :

The articles of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time who shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

#### 161(2) Alternate Director :

The Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company, to act as an alternate director for a director during his absence for a period of not less than three months from India:

#### 161(4) Casual Vacancy :

In the case of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board:

Parameter	Additional Director u/s 161(1)	Alternate Director u/s 161(2)	Casual vacancy Director u/s 161(4)
<b>Applicable</b>	All companies	All companies	Only Public company
<b>When to be appointed</b>	Where , there is heavy pressure of work on BOD	When any director is absent from India for a period not less than 3 months	When office of any director got vacate due to death, Disqualification and Resignation
<b>Who will appoint</b>	BOD	BOD	BOD
<b>Power to appoint</b>	If AOA so authorized.	The BOD must be authorized by	No express power in the article is required to fill a

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

		a. AOA b. Resolution passed in a GM	casual vacancy
<b>Mode of appointment</b>	By passing resolution at BM, or through circulation	By passing Resolution at BM or through Circulation.	At the board meeting only
<b>Period of office</b>	<ul style="list-style-type: none"> <li>Up to the next AGM</li> <li>The last date on which the AGM should have been held. w.e.i. earlier</li> </ul>	<ul style="list-style-type: none"> <li>For the period of original director i.e. the period what the OD would have hold , if OD would have not vacated</li> <li>Alternate director continue till the original director return to India</li> </ul>	C.V.D. shall hold office only up to the date up to which director in whose place he is appointed would have held office if he had not vacated
<b>Possibility of MD</b>	Permitted	Permitted	Permitted
<b>Can be considered as rotational Director</b>	Yes	Yes, if Original director is rotational director	No , As casual vacancy director hold the office for the unexpired period of the ceased director. Not retired by rotation u/s 152(6)
<b>Appointment as Independent director</b>		Where the alternate director is qualified to be appointed as Independent director.	

### Additional director

1	<p><b>Can additional director be appointed in order to increase the strength for considering the majority at Board ?</b></p> <p><i>As per section 161(1) Additional director cannot be appointed on extraneous consideration such as strengthening the position of majority in Board. Where there is no necessity of additional director except for gaining a majority. The appointment shall amounts to oppression of minority. [T.M. Paul vs. City hospital Pvt. Ltd( 2000)]</i></p>
---	--

2	<p><b>Where AGM not held on the due date, whether additional director shall continue till the meeting convened and completed ?</b></p> <p><i>Ans:</i></p> <ul style="list-style-type: none"> <li>❖ <i>As per provision of section 161(1), Additional director shall continue his office up to next AGM</i></li> <li>❖ <i>The work “next AGM” means the date when AGM is ought to have been held, not the actual date, when AGM is held</i></li> </ul> <p><i>Hence , If in any year, AGM is not been held within the time limit as prescribed by section 96. Additional director cannot continue in office after the expiry of the date, when the AGM is ought to have been held. He shall deemed to have been vacated from the office.(DCA Circular)from such</i></p>
3	<p><b>Period of office of Additional Director if he is appointed as MD:</b></p> <p><i>Office of Additional director appointed as MD is Co-terminus with the office of director. There are two position first Director, then Managing Director. The appointment as MD u/s 196 shall not override the provision contained in section 161(1). Hence the consequence shall be as follows:</i></p> <ul style="list-style-type: none"> <li><i>a. In the AGM, if Director u/s 161(1) is not reappointed again, then the office of MD shall automatically come to an end.</i></li> <li><i>b. At AGM, if Additional director get immediately appointed under section 160. He shall continue to be MD, notwithstanding such technical break at AGM.</i></li> <li><i>c. No separate compliance under section 197 or Schedule V is required- DCA clarification.</i></li> <li><i>d. If Additional Director not appointed immediately under section 160, but appointed again as additional director under section 161(1), then the office of MD shall also come to an end – department clarification shall not have any effect for the section 161(1) and 196 combination.</i></li> </ul>
4	<p><b>Can AD be reappointed at AGM as regular director , and how?</b></p> <p><i>Yes by complying with section 160</i></p>
5	<p><b><u>When Additional director appointed for filling casual vacancy by passing resolution by circulation:</u></b></p> <p><b><i>XYZ Ltd brought Mr. W as Additional Director for filling Casual Vacancy on death of director S. on 1-10-2012 by way of passing resolution by Circulation. Next AGM due on 30-9-2013. AGM could not hold on due time. Mr. W continue as director after such period</i></b></p> <p><b><i>Answer:</i></b></p> <ul style="list-style-type: none"> <li>❖ <i>In the given case , two issue are involved-</i> <ul style="list-style-type: none"> <li><i>i. Appointment</i></li> <li><i>ii. Continuation</i></li> </ul> </li> </ul>

	<p>❖ <b>Appointment</b> : Although AD can be appointed by passing BR in circulation, but Casual vacancy can be filled u/s 161(4) of the company act 2013, only by passing BR in BM. hence appointment of Mr. W is Void-ab-initio</p> <p>❖ <b>Continuation</b> : Although AD is brought to fill the vacancy , hold office until the OD would have held the office, but AD director has to vacate the office on the date of AGM or the last due date of AGM, whichever is earlier u/s 161(1) of the company act 2013. Hence Mr. W cannot continue beyond 30-09-2013</p> <p><b>Decision</b> : Mr. W appointment itself Void-ab-initio, hence he cannot continue even for a single day, hence concept of vacation beyond the AGM u/s 161 is not applicable here</p>
6	<b>Regulation 66 of Table F</b> , the number of director and additional director together shall not at any time exceed the maximum strength fixed for the board by AOA
7	<p><b>Additional Director is not a retiring director :</b></p> <p>Based on the period of holding the office , additional director continue till the AGM however retiring director is subject to section 152(6) not like additional director. And in other way Additional director is appointed by board where as retiring director has to be appointed by the share holder. Hence Additional director is not the retiring director</p>

### Alternate Director u/s 161(2)

	<p>Board of director of company may appoint a person as alternate director in the place of original director of the company , where such director is absence for a period of not less than three months from India, if</p> <ul style="list-style-type: none"> <li>➤ AOA has authorized to do so.</li> <li>➤ Company may by resolution passed in GM authorize BOD to appoint such director.</li> <li>➤ He is not holding any alternate directorship for any other director in the company.</li> </ul> <p>He want to be Independent director, he must be qualified to be an independent director</p>
2	<p><b>Can one alternate director be possible to be appointed for multiple original director ?</b></p> <p><b>Ex: Mr. A appointed as alternate director in XYZ Ltd. in place of Mr. M the OD. On the absence of Mr. P one of the existing director, Mr. A proposed himself to get appointed again as alternate director in place of P. Comment whether Proposal of Mr. A is Entertainable.</b></p> <p><b>Ans:</b> As per the provision of section 161(2) , a person who has already appointed as alternate director in place of existing director, shall not be eligible to be nominated for the appointment of alternate directorship for other director in same company.</p> <p><b>Q. If Mr. A would have proposed for appointment from beginning for appointment of position alternate director for Mr. M and P both. Will your answer vary ? whether in that case alternate director shall exercise single or multiple vote.</b></p> <p><b>Ans:</b> There is no provision in the act or article with regard to the single alternate director</p>



	<i>for more than one original director. Hence there would be no restriction on such kind of appointment( One alternate director can be appointed for more than one original director, where they are subject to the provision u/s 167(2)). He -shall be counted as two or more as the case may be present for the purpose of quorum exercise two or more vote. However he will be entitled for single person sitting fees ( for one director )</i>
<b>3</b>	<b>He cannot be consider as proxy of original director :</b> <i>Because, meaning of Proxy implies the power to vote but not to speak in the discussion at the meeting, however, provision of section 161(2) give same power, duty, responsibility to alternate director what, the OD normally entitled to exercise or do. Hence, Alternate director is not consider as proxy</i>
<b>4</b>	<p><b>Eligibility of Alternate director to be appointed as MD. View in the said case, where OD was not the MD</b></p> <p><b>Ex: Mr. A appointed as Alternate director by the BOD of N ltd. Member of N ltd decided Mr. A to be appointed as MD of that company. Advice them , as per the provision of company act 2013 about the eligibility of Mr. A to be appointed as MD</b></p> <p><i>Ans: There is no restriction under any section of company act 2013, which prohibit alternate director to be appointed as Managing director, however the validity of such appointment is subject to the compliance of provision of appointment of MD under company act 2013. Hence Mr. A can be appointed as MD</i></p> <p><b>Will your answer vary , if original director was not the MD ?</b> <i>Ans : No</i></p> <ul style="list-style-type: none"> <li>▪ If the term of Alternate director expired before the OD returned , the provision of automatic appointment of director shall be applicable to the original director only, not to the alternate director.</li> <li>▪ An alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India</li> </ul>
<b>5</b>	<p><b>Whether notice of BM be send to both Alternate director (AD) as well as original director(OD) ?</b></p> <p><i>Ans: As per section 161(2), alternate ditector has same right, duty, responsibility as a OD normally used to have. .it means both are entitling for the notice.</i></p>
<b>6</b>	<p><b>Can Alternate director be appointed as MD?</b></p> <p><i>Ans :yes , there is no provision in company act 2013, which will prohibit alternate director to be appointed as Managing director provided that, he must comply with section 195,196 and schedule V of company act 2013</i></p>
<b>7</b>	<p><b>Whether provision of reappointment be considered for AD or OD after expiry of tenure of OD</b> <i>Provision of reappointment of director shall apply to original director not to the additional director</i></p>

<b>What is casual vacancy</b>	<ul style="list-style-type: none"> <li>❖ Casual vacancy may arise due to the reasons of death , disqualification, resignation, incapacity and removal etc.</li> <li>❖ Casual vacancy means the vacancy for an office of a director happen subsequent to                             <ul style="list-style-type: none"> <li>▪ A valid appointment made by Share holder, and</li> <li>▪ He has assumed his office.</li> <li>▪ The vacancy arise due to the reason as said above.</li> </ul> </li> </ul> <p><b>Note-</b> Where the director does not assume the office there can be no question of vacancy of such office.</p>		
<b>Applicability</b>	Only to public company		
<b>How to fill such vacancy</b>	<ul style="list-style-type: none"> <li>❖ Authorization of Article is not mandatory for the board to fill the casual vacancy</li> <li>❖ If AOA has prescribed any procedure for filling the casual vacancy ,then casual vacancy shall be filled by complying with that procedure</li> <li>❖ If AOA is silent , then BOD shall fill casual vacancy by passing resolution at board meeting not by way of circulation</li> </ul>		
<b>Who shall fill CV</b>	When CV arise for the office of director appointed by Share holder in general meeting	BOD shall fill that vacancy u/s 161(4)	
	When CV arise for the office of director appointed by Share holder in general meeting	BOD cannot fill that vacancy u/s 161(4). That shall be filled by share holder u/s 160 . or, BOD if so authorized by AOA can appoint an additional director u/s 161(1)	

### Issue – Casual vacancy director

<b>1</b>	<p><b>Vacation of Whose office shall consider as casual vacancy ?</b></p> <p>As per the provision of section 161(4), The vacancy arising in office of director shall consider as casual vacancy , if such director was appointed by shareholder in GM. Thus any casual vacancy in the office of the director (Additional director, casual vacancy, alternate director) as appointed by BOD is not a casual vacancy and cannot be filled up under section 161(4).</p>
<b>2</b>	<p><b>can Casual vacancy director be appointed by share holder ?</b> Ans :Article can provide the Shareholder to fill the casual vacancy</p>
<b>3</b>	<p><b>Who is authorized to fulfill the casual vacancy arise in the office of casual vacancy</b></p>



	<p><b>director?</b></p> <ul style="list-style-type: none"> <li>❖ As per the provision under section 161(4), casual vacancy of office of a director appointed at GM can be filled up by BOD .</li> <li>❖ if the director who appointed as casual vacancy director resigned and that of such vacancy arise cannot be consider as casual vacancy for this section and shall not be filled up by Board.</li> <li>❖ In this case, Share holder shall only appoint a director to fill the vacancy or BOD can appoint an additional director in that place</li> <li>❖ Vacancy in the office of proportional representational director u/s 163 and vacancy caused due to removal of director u/s 169 is also deemed to be casual vacancy.</li> </ul>
4	<p><b>Director removed at GM be treated as casual vacancy director – Comments</b></p> <p>If the vacancy created by removal of director is not filled up. Such vacancy may be treated as casual vacancy within the preview of section 161(4) of company act 2013.</p>
4	<p><b>Can board of director be entitled to fill the casual vacancy where Article is silent ?</b></p> <ul style="list-style-type: none"> <li>❖ The word ,” in default of and subject to any regulations in the articles” implies , it is not the AOA only to authorize to BOD to appoint CV director</li> <li>❖ The power of BOD to appoint director u/s 161(4) is derived from article but not subject to provision of article.</li> <li>❖ It takes the reference from the Article. However the power to appoint the casual vacancy director cannot be subject to the AOA authorization</li> </ul> <p>Thus even when article is silent, The BOD has power to file the vacancy</p>
5	<p><b>Can casual vacancy director be consider u/s 152(6) ?</b></p> <ul style="list-style-type: none"> <li>❖ Casual vacancy director shall not be considered as retiring director because he does retire at AGM.</li> <li>❖ As he will continue to the unexpired period of ex-director. So his appointment shall consider as within the preview of section 160.( No 152(6), but the 160 to be complied with for appointment of director u/s 161(4))</li> <li>❖ The director appointed as casual vacancy shall hold the office till the expired of the term of the director in whose place he was appointed.</li> </ul>
6	<p><b>Any director who is appointed as casual vacancy direct. Can he be considered as retiring director on his vacation for considering the automatic reappointment?</b></p> <ul style="list-style-type: none"> <li>❖ As per section 161(4) of company act 2013, any person who is appointed as casual vacancy director shall continue as director only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.</li> <li>❖ The concept of reappointment is applicable to original director not to the Casual vacancy director</li> </ul>

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

- ❖ However, in case he has to retire at the forthcoming Annual General Meeting and wants to be reappointed as a director he will have to follow the provisions of Companies Act, 2013 relating to the appointment of a person other than a retiring director as a director of the company u/s 160

### Nominee Director u/s 161 (3)

<b>Intention</b>	<b>Normally there are some director appointed by <u>Financial institution</u> and <u>Central government</u> to the board of director</b>	
<b>Provision</b>	<b>Authorization</b>	If AOA authorized to do so
	<b>Who will appoint</b>	<b>Board of director</b>
	<b>Who will nominate</b>	Financial Institution ( specifically for financial institution ), or CG
	<b>Manner</b>	Subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of <ul style="list-style-type: none"> <li>✓ The provisions of any law for the time being in force or</li> <li>✓ Any agreement or</li> <li>✓ by the Central Government or the State Government by virtue of its shareholding in a Government company</li> </ul>

### Appointment of 2more director by passing single resolution [Section 162 ]

<b>Applicability</b>	To all companies for share holder meeting only	
<b>Authorization</b>	The word subject to AOA state that, authorization from AOA is mandatory for the appointment.	
<b>Procedure</b>	<ul style="list-style-type: none"> <li>▪ First pass a resolution authorizing the appointment of two or more directors by a single resolution. Such resolution shall be passed without even a single vote against the resolution.</li> <li>▪ Then, pass a resolution appointing such director ( two or more director) by a single resolution.</li> <li>▪ The resolution shall be an ordinary resolution</li> </ul>	
<b>Other Issues</b>	<b>1.Where objection was not raised about the compliance of section 162</b>	<ul style="list-style-type: none"> <li>▪ Any resolution passed for appointment of 2 or more director in single resolution shall be void</li> <li>▪ Its shall have same stand irrespective of whether any objection was raised with that respect or not.</li> </ul>

	<b>2.Can silence amount to consents</b>	Silence under section 162 shall not be amounting to consent .Hence the resolution with silence of even one share holder shall not render its validity.
	<b>3.Automatic reappointment u/s152</b>	If appointment u/s 162 is not complied with then the director so appointed u/s 162 shall not be eligible for automatic reappointment under section 152(7)

## Disqualification of director [Section 164]

### Normal disqualification u/s 164(1)

**Applicable :** To all company at every appointment of director or reappointment of director : As per section 164(1), A person shall not be eligible for appointment as a director of a company, if

- he is of ***unsound mind*** and stands so declared by a competent court
- he is an ***undercharged insolvent***
- he has applied to be ***adjudicated as an insolvent and his application is pending.***
- He has been convicted by a court of any offence, whether involving moral turpitude or otherwise,***
  - sentence for imprisonment for a period more than 6 months and 5 year has not expired from the completion of such imprisonment
  - sentence for imprisonment for a period more than 7 years or more- shall not be eligible for appointment in ***any company***
- A person against whom an order disqualifying him for the appointment as director has passed by a court of tribunal and the order is in force
- A person who has not paid any call on share of the company held by him and 6 months have elapsed from the last date

### Section 164(2) : Prohibit the reappointment or appointment as a director of a company in which he is a director, committed specific default

A person who is or has been a director of a company shall be disqualified from being **reappointed as a director of that company** or appointed **in any other company** for a period of **5 years** if the company in which he is or has been a director

- Has not filed financial statements u/s 2(40) **or** annual returns for any continuous period of three financial years, or
- Has failed to
  - Repay the deposits accepted by it or to pay interest thereon or
  - Redeem any debentures on the due date or to pay interest due thereon or
  - Pay any dividend declared

such ***failure continues for one year or more,***

**Disqualification period :** For a period 5 year

**Issue 1 : Where default is made good after falling under disqualification u/s**

<p>fixed for the payment of the call</p> <p>g. A person who has been convicted for an offence dealing with related party transaction , under section 188 at any time during preceding 5 years</p> <p>h. He has not been allotted DIN u/s 152(3) of company act 2013</p> <p><b>Disqualification period :</b> Period of Disqualification is up to the any period if specified in this section otherwise disqualification shall be for the period till the problem got solved</p>	<p><b>164(2):</b> On making good the default committed u/s 162(2) shall not make eligible the director or prevent director from the consequences of such disqualification</p> <p><b>Issue 2: Interpretation of Section 161(2)(a)</b></p> <p>The word 'or' used in the said provision between Financial Statement ,Annual account implies that default of any one for continuous period of three financial years will incompetent the person from appointment of director in that company and in any other company.</p>
--	--

### OTHER

#### **Rule 14 of the companies ( Appointment and Disqualification of Director) 2014**

- Every person who is proposed to be appointed or reappointed as director shall file an intimation in form DIR 8 with company by stating whether he is disqualified or not as per the provision of section 164(2)
- Company on default of section 164(2) shall immediately but not later than 30 days from the date of default , file with ROC in form no DIN 9 furnishing the name and address of all the directors of company during the relevant financial years
- ROC shall on receipt of application shall registered the form and place it in the document filed for public inspection
- Any application for the removal of the disqualification of director shall be made in form DIR 10

**Additional ground for disqualification :** AOA of private company may provide any additional ground for the disqualification

**No immediate effect in certain ground :** The ground of disqualification under section 164(1)(d),(e), and (g)

- Shall not have effect for a period of 30 days.
- Where any appeal is preferred within 30 days, until the expiry of 7 days from the date of disposal of such appeal
- On any further appeal, until the expiry of 7 days from the date of disposal of such appeal.

#### **Section 165 : Number of directorships**

<b>Logic of this section</b>	<p>A person shall not hold office ,at the same time ,as a director in more than 20 companies( section 165 ) .This is made to ensure that</p> <ul style="list-style-type: none"> <li>▪ Directors shall spends the reasonable time for consideration of affairs of the company</li> <li>▪ To prevent concentration of economic power in the hand of few person</li> </ul>
<b>Applicability</b>	To all the director including alternate director
<b>Maximum number of directorship for any director</b>	<ul style="list-style-type: none"> <li>▪ No person, after the commencement of this Act, shall hold office as a director, <u>including any alternate directorship</u>, in more than twenty companies at the same time:</li> <li>▪ The maximum number of public companies in which a person can be appointed as a director shall not exceed ten.</li> <li>▪ The directorship in public company include the directorship in public company and their holding and subsidiary company.</li> <li>▪ The company may by special resolution fix a lesser number for the directorship [ u/s 165(2)]</li> </ul>
<b>Directorship exceed the limit before commencement of the act</b>	If number of directorship for any director exceed the limit [ 20 number] before commencement of this act, he shall within 1 year from such commencement choose the company in which he want to continue as director subject to the limit prescribed u/s 165. Resign from other company of office
<b>Effectiveness of the resignation letter</b>	<ul style="list-style-type: none"> <li>▪ The resignation so made u/s 165 shall be effective <b><i>from the date of dispatch</i></b> of such resignation</li> <li>▪ The director so resigned cannot act as director in more than specified number of company <ul style="list-style-type: none"> <li>a. After dispatching his resignation, or</li> <li>b. After expiring of 1 year from the commencement of this act whichever is earlier</li> </ul> </li> </ul>
<b>Consequences of contravention of section 165</b>	Where a person accept an appointment in contravention of section 165(1), he shall be punishable with fine which shall not be less than 5000/-may extend to 25000/-per day <b>from the first</b> during the default continue.

### Issues

<b>1</b>	<p><b>Can member if want be permitted to impose any restriction on maximum number of director ?</b> The member of company by passing special resolution, specify any lesser number of companies in which a director of the company may act as director.</p>
----------	---

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

2	<b>Section is not applicable to Small share holder director :</b> As per Rule 7(8) of company ( Appointment and Qualification of director ) Rule ,2014 , a small share holder director cannot continue as director (SSH) in more than 2 companies at the same time
3	<b>Intimation of choice about the company he want to continue as director or resign shall be made to the registrar having jurisdiction in respect of each such company</b>
4	<b>Effectiveness of the resignation so made u/s 165(3) -</b> from the date of dispatch of resignation to the company concerned
5	<b>Restriction on director to comply with section 165 : No director shall act in more than a specified number of company</b> <ol style="list-style-type: none"> <li>After dispatching the resignation</li> <li>After the expiry of the one year from the commencement of this act.</li> </ol> <p>Which ever is earlier</p>

### Section 166. Duties of Director

1	<b>Director shall act in accordance with the article of the company</b>
2	A director of a company shall act in good faith in order to <b><u>promote the objects of the company</u></b> for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment
3	A director of a company shall exercise his duties with <b><u>due and reasonable care</u></b> , skill and diligence and <b><u>shall exercise independent judgment</u></b> .
4	<b>Conflict of interest :</b> A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
5	A director of a company shall not achieve or attempt to achieve <b><i>any undue gain or advantage</i></b> either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
6	<p><b>A director of a company shall not assign his office and any assignment so made shall be void.</b></p> <p><b><i>Ex: Mr. A MD of Murthy (p)Ltd assigned his office to his son Mr. B. whether this assignment is permissible. Will your answer will vary ,if Mr. A write an agreement to make Mr. B director in his place after his death. If AOA empowered director to appoint successor , will your answer vary</i></b></p> <p><b><i>Ans : Assignment of office u/s 166</i></b></p> <p><b><u>Answer to the first part of the question :</u></b></p> <p><b><i>Provision : As per the provision of section 166 (6)of company act 2013, it is the duty of the director not to assign his office to any person. Assignment of office of</i></b></p>

	<p><i>director is void</i></p> <p><b>Case :</b> Me A the MD of Murthy Limited want to assigned his office to Mr B his son</p> <p><b>Decision :</b> Based on the provision of section 166, he above assignment shall not be valid.</p> <p><b><u>Answer to the second part of the question :</u></b></p> <p><b>Provision :</b> Assignment of office of director means , the direct is live, he has assumed the office of directorship, but the responsibility with respect to that office is carried on by some other person to who such assignment is made</p> <p><b>Case :</b> In the second part of question, Mr. A written an agreement for appointing his son as director after his death in his place.</p> <p><b>Decision :</b> The above situation is not falling under the preview of assignment, hence, provision of section 166(6) can not apply. However Mr. A is not permitted to make agreement to appoint his son as director after his death, because after his death , it would considered as casual vacancy of director office . section 161(4) is applicable where such vacancy shall be filled by share holder or director as per the prescribed provision.</p> <p><b><u>Answer to the third part of the question</u></b></p> <p><b>Provision :</b></p> <ul style="list-style-type: none"> <li>▪ as per section 166(1) Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company</li> <li>▪ A director of a company shall not assign his office and any assignment so made shall be void u/s 166(6)</li> </ul> <p><b>Interpretation :</b> As per case of <b><i>Oriental rental metal pressing private limited Vs. B.K.thakoor</i></b> If AOA empowered to managing director to appoint successor after his death, it is not considered as assignment of office. Based on the duty casted on section 166(1) i.e. director can act according to AOA</p> <p><b>Decision :</b> based on the above interpretation, it is permitted to managing director do appoint his son as his successor</p>
<b>Contravention</b>	<p>If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.</p>

### Case analysis :

Is Director be duty bound to attend all the board meeting?

Vacation of office of director [Section 167]



### A. Ground for vacation

1	<p><b><u>Contravention of section 164 :</u></b></p> <ol style="list-style-type: none"><li>1. He is found to be of unsound mind by a Court of competent jurisdiction</li><li>2. He applies to be adjudicated an insolvent;</li><li>3. He is adjudged an insolvent;</li><li>4. He is convicted by a Court of any offence involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months or seven year</li></ol> <p>Note- He shall vacate the office even though he has gone for appeal against the order</p> <p><b><i>Ex: Mr. A is sentenced for imprisonment for a period of 3 year by a court for committing crime of misuse of company property and causing the loss or damage to company. Mr. A file an appeal with high court. Whether provision of vacancy of director u/s 167 will be effective.</i></b></p> <p><b><i>Ans :<u>Vacancy of office of directorship</u></i></b></p> <p><b><i>Provision :</i></b> Where any director is convicted for an offence involving moral turpitude or otherwise, and sentenced for an imprisonment not less than 6 months . Such director shall vacant the office of directorship. Any appeal made by that director shall not entitle himself to continue his office.</p> <p><b><i>Case:</i></b> Mr. A convicted u/s 167 and cause the vacancy of directorship. He has filled the appeal with high court</p> <p><b><i>Decision :</i></b> Based on the above provision , Mr. B shall vacant his office, even though he has appealed against the order of imprisonment.</p> <ol style="list-style-type: none"><li>5. He fails to pay any call in respect of shares of the company held by him, whether alone or jointly with others, within six months from the last date fixed for the payment of the call</li></ol>
2	<p><b><u>Contravention of section 184 :</u></b></p> <ol style="list-style-type: none"><li>1. He acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;</li><li>2. He fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184</li></ol> <p><b><u>Provision of section 167 read with 184:</u></b></p> <p>Office of director shall vacate where</p> <ul style="list-style-type: none"><li>❖ He failed to disclose his concern and interest in the contract and arrangement in which he is interested, or</li><li>❖ He participate in the meeting , voted at the meeting for a contract or arrangement where he is interested</li></ul>
3	<p><b><u>Other ground</u></b></p>



	<p>1. He absents himself from all the meetings of the Board of Directors held during a period of twelve months <b><u>with or without</u></b> seeking leave of absence.</p> <p><b>Ex: Mr. A director of XYZ Ltd, due to his health problem, applied the leave to the company for a period of 15 months. Whether provision of section 167 is applicable</b></p> <p><b>Ans: <u>Vacancy of office of directorship</u></b></p> <p><b>Provision :</b> As per the section 167 of company act 2013, a director ,who make himself absent from all the board meeting held during a period of 12 months, whether with or without seeking leave of absence. he shall vacate his office as director</p> <p><b>Case :</b> Mr. A the director of XYZ Ltd applied for leave for 15 months due to his health problem.</p> <p><b>Decision :</b> Based on the above provision, irrespective of the reason/cause of absence, whether with or without seeking the leave of absence, such director shall vacate the office.</p> <p>2. He becomes disqualified by an order of a court or the Tribunal</p> <p>3. He is removed in pursuance of section 169</p> <p><i>Having been appointed a director by virtue of his holding any office or other employment in the holding , subsidiary or associate company he ceases to hold such office or other employment in that company</i></p>
<b>Consequences 167(2)</b>	<p>(a) Automatic vacation of the office of director</p> <p>(b) If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications given u/s 167(1),</p> <ul style="list-style-type: none"> <li>▪ Imprisonment - for a term which may extend to one year</li> <li>o</li> <li>▪ Fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or Both.</li> </ul>
<b>Other Provision</b>	<p>1. <b>Who shall fill the vacancy when section 167 get attracted to all director u/s 167(3):</b> the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.</p> <p>2. No disqualification can be waived by CG.</p> <p>3. No compensation to the director vacating the office.</p> <p>4. Private company may through its AOA add any ground for vacation of director u/s 167(4).</p>

## Resignation of director [Section 168 ]

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

<b>What it deals</b>	Section 168 deals with resignation of director , which implies that, director is at his discretion want to leave the organisation
<b>Provision</b>	<b>Section 168 of company act 2013 and Rule 15,16 of companies ( Appointment and qualification) Rule 2014</b>
<b>How Director can resign</b>	<ul style="list-style-type: none"> <li>▪ <b>Step 1 :Director to company</b> - Director shall give a notice in writing to the company and the Board about his Resignation</li> <li>▪ <b>Step 2:Company to ROC</b>- company shall intimate the Registrar about the resignation in such manner, within 30 days from receipt of such notice DIR 12 and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company. [ <b>Section 168(1)</b>]. It also to be post in website.</li> <li>▪ <b>Step 3 : Director to ROC</b> -Director shall also forward a copy of his resignation along with detailed reasons in form no DIR 11 to the Registrar within thirty days of resignation in such manner as may be prescribed.[ <b>proviso to section 168(1)</b>] [ <b>Rule 16</b>]</li> </ul>
<b>Effective of Resignation</b>	<b>Effectiveness of Resignation [Section 168(2)]</b> The resignation of a director shall take effect from <ul style="list-style-type: none"> <li>✓ The date on which the notice is received by the company or</li> <li>✓ The date, if any, specified by the director in the notice, <b>whichever is later</b></li> </ul>
<b>liability of the resigned director</b>	The director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.[ <b>proviso to section 168(2)</b> ]
<b>Who and how the vacancy to be filled</b>	The vacancy so caused due to the resignation shall considered as casual vacancy u/s 161(4), to be filled up by the BOD in the manner as prescribed in that section.
<b>Where all the director resigned/ vacate from the company</b>	Where all the directors of a company resign from their offices u/s 168, or vacate their offices under section 167, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general 1meeting.

### Removal of directors [ Section 169 ]

<b>Applicability</b>	To all the company i.e. both public and private company
<b>Basic condition</b>	<ul style="list-style-type: none"> <li>▪ Removal by ordinary resolution in the GM.</li> <li>▪ Article cannot ask for the special resolution for removal of director</li> <li>▪ Section 169 is the statutory right of the memorandum, that cannot be</li> </ul>

	taken away from them even by MOA or AOA or by any contract
<b>Procedure</b>	<p><b>Step 1 : Special notice to be issued :</b> A special notice shall be required of the intention to remove the director or to appointment some other person in his place [( section 169(1))]</p> <p><b>Step 2 : Copy to all member and director who is going to b removed :</b> On receipt of notice ,company shall forthwith send a copy to all the member and the concerned director</p> <p><b>Step 3 : Right to be heard :</b> The director shall have right to be heard on the resolution at the meeting</p> <p><b>Step 4 : Director power to give representation :</b> The director sought to be remove, can make an representation in writing against and request company to notify it to the member { section 169(4)}</p> <p><b>Step 5 : Sending representation to all member and to be read out at meeting :</b> Company is duty bound to send such representation to the share holder. If the representation is not sent to the member because they were received too late or because of company default, director may required that representation to be read out in the general meeting. However, such representation shall not be read out, if on the application of the member or aggrieved party ,Tribunal satisfied that, right conferred by this sub section has been abused and to secured needless publicity for defamatory matter.{ proviso to section 169(4)}</p> <p><b>Step 6: Passing resolution for removal :</b> An ordinary resolution to that effect to remove that director shall be passed at GM</p>
<b>Other provision</b>	<ul style="list-style-type: none"> <li>▪ Vacancy to be treated as casual vacancy u/s 169(7)</li> <li>▪ Director removed not to be appointed or reappointed to BOD { proviso to u/s 169(7)}</li> <li>▪ Claim for compensations for the damages for termination of appointment as a director u/s 169(8)</li> </ul>
<b>Feature of notice u/s 169(2)</b>	<ol style="list-style-type: none"> <li>a. Required for removal of director</li> <li>b. Given before AGM/EGM.</li> <li>c. Only member can be given to company at least 14 days before the AGM/EGM</li> <li>d. Signed by member holding <b>not less than 1% of total voting power</b> or member holding paid up share capital of Rs 5lakh.</li> <li>e. Company to member- 7 days before the meeting.</li> <li>f. No deposit is required at the time of giving special notice for removal</li> </ol>

## Chapter-XII Board Meeting and its Power

*(Provision Applicable Section 173 to 195 of company Act 2013 and Company (board meeting and its power) Rule 2014*

### Section 173 Meetings of Board

#### No of BM u/s 173(1)

No of BM	OPC	Other than OPC
	<ul style="list-style-type: none"> <li>▪ <b>Where only one director</b> : not required hold board meeting[ <b>proviso to section 173(5)</b>]</li> <li>▪ <b>Where there is more than one director</b> : At least one BM in each half of a calendar year i.e. 2 BM in a year</li> <li>▪ <b>Gap between two BM</b> : Shall not be less than 90 days</li> </ul>	<p><b>First BM</b> : Within 30 days from the DOI( First BM) and at least 4 BM shall be made in every year</p> <p><b>Subsequent BM</b> :</p> <ul style="list-style-type: none"> <li>▪ <b>No of BM</b> : At least 4 BM in a calendar year</li> <li>▪ <b>Interval</b> : not more than 120 days shall intervene in between two BM{ <b>Gap &lt;= 120 days</b> }</li> </ul>
<b>Applicability</b>	For all the company	
<b>Exemption</b>	The Central Government may, by notification, direct that the provisions of this sub-section shall not apply in relation to any class or description of companies or shall apply subject to such exceptions, modifications or conditions as may be specified in the notification.	

#### How to participate u/s 173(2)

Board meeting may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognizing the participation of the directors and of recording and storing the proceedings of such meetings along with date and time ( **As per rule 3 of (Meeting of Board and its power) Rule 2014.**

**Note:** Central Government may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means.

#### **Rule 3 of (meeting of Board and its power ) Rule 2014 : Procedure**

##### 1. **Notice to Director [ Rule 3(3)]:**

- Notice shall be send by complying the provision of section 173(3)
- Company shall inform in the notice to all the director regarding the option available to them to participate through video conferencing mode or such other

audio visual means

2. **Director choose to attend through video and other audio visual means** : shall give prior communicate /intimate to the chairperson or the company secretary of the company
3. **Validity of such intimation** : Director who are interested may intimate to company at the beginning of the calendar year, which will be valid for one calendar year
4. **Company duty to make necessary arrangement [ Rule 3(2)]**: the chairperson and company secretary shall take due and reasonable care to ensure
  - a. To avoid failure of such video and audio visual means
  - b. To safeguard the integrity of the meeting by ensuring sufficient security and identification procedure
  - c. Availability proper video conference and other audio visual requirement for providing transmission of the communication for effective participation
  - d. To record the participation and preparation of minutes
  - e. The attendance of person for director only
5. **Conducting the meeting by chairperson and company secretary** :
  - a. **Taking a roll call by chairperson** for obtaining details of the director , their location from where they are participating , where all the director are attending through video conferencing[ **Rule 3(4)**]
  - b. **Counting the quorum by company secretary** . director participating through video conference shall considered for counting the quorum
  - c. **Availability of quorum** through out the meeting shall be ensure by chairperson[ **Rule 3()(b)**]
  - d. All meeting , recording ,maintaining the record and registered shall be made in same venue
  - e. **Participating mode** : director shall identify and speak on the business. Such participation shall be disclosed in the minutes [ **Rule 3(8)**]
  - f. **Statutory registered to be placed at meeting for signing** : shall be placed in the same venue and signed by the director present at the meeting physically and director on conference are deemed to have signed in that registered . [ **Rule 3(7)**]
  - g. **Call each agenda by chairperson** : Chairperson shall call for the agenda, the discussion held at the meeting, name of the director voted in favoured or at against or silent [ **Rule 3(11)(a)**]
  - h. **Minutes preparation** : minutes shall be prepared and circulated among all the director within 15 days of the meeting either in writing or in electronic mode[ **Rule 3(12)(a)**]
  - i. **Confirmation from director for the accuracy of the minutes** to be received within 7 days or some reasonable time as decided by board after receipt of draft minutes ,

which shall presumed about their approval [ **Rule 3(12)(b)**

- j. **Maintain the minute** complying with the provision as prescribed under section 118 of company act 2013

**6. Matter not to be considered in the BM by video and other audio visual means [Rule 4]**

- The approval of Annual financial statement
- The approval of Board report
- The approval of Prospectus
- The audit committee meeting for considering the account
- The approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover

**Notice u/s 173(3)**

<b>Definition u/s 173(3)</b>	A meeting of the Board shall <b><i>be called</i></b> by giving <b><i>not less than seven days' notice in writing</i></b> to every director <b><i>at his address registered with the company</i></b> and such notice shall be sent by hand delivery or by post or by <b><i>electronic means</i></b>	
<b>Interpretation</b>	<b>Notice to whom</b>	To Every director
	<b>Period of notice</b>	Not less than seven days' notice in writing. Notice send through telegram, telex and fax is valid as it is in writing.
	<b>To which address</b>	In writing to every director at his address registered with the company
	<b>Manner of sending</b>	Such notice shall be sent by hand delivery or by post or by electronic means
	<b>Shorter notice</b>	<b><u>Proviso to section 173(3)</u></b> , a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that <b><i>at least one independent director</i></b> , if any, shall be present at the meeting Note : <b><u>As per the Second proviso</u></b> , In absence of any such independent director, decision taken at such a meeting be circulated to all the director and will be final only on rectification thereof by at least one independent director .
<b>Consequences u/s 173(4)</b>	Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of twenty-five thousand rupees.	

**Meeting for OPC ,SC,DC u/s 173(5) – No of BM**

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

- At least one meeting of the Board of Directors has been conducted in each half of a calendar year
- The gap between the two meetings shall not be less than ninety days:

**Note :** Provided that nothing contained in this sub-section and in section 174 shall apply to One Person Company in which there is only one director on its Board of Directors.

### Issue

1	<p><b><i>Can lack of quorum at BM be consider as non-compliance of section 173 ?</i></b></p> <ul style="list-style-type: none"> <li>❖ The provisions of section 173 shall not be deemed to have been contravened merely by reason of the fact that a meeting of the Board which had been called in compliance with the terms of that section could not be held for want of a quorum.</li> <li>❖ The same concept shall not be applicable when meeting is adjourned due to any reasons other than the Lack of quorum.</li> </ul>
2	<p><b><i>Can resolution by Circular be considered as compliance of section 173 ?</i></b> The interpretation of section 173 implies the holding of meeting , Hence resolution passed by circulation shall not be deemed as if meeting is held. Hence the compliance of section 173 cannot be understood.</p>
3	<p><b><i>Can BM be held in foreign ?</i></b></p> <p>As act does not have restriction on the timing, date and place, where the BM to be held hence BM can be convene at any place where director feel convenient to held. However the intention of holding BM at foreign shall not be so malafide</p>

### Section 174 The quorum for a meeting of the Board

Meaning	Quorum refers the Minimum requisite number of director , who are going to constitute the valid meeting .	
provision	<p><b>Quorum of BM</b></p>	<p><b>1/3rd of total strength, or 2 director, which is higher.</b></p> <p><b>Note :</b></p> <ul style="list-style-type: none"> <li>➤ <b>Meaning of total strength :</b> “total strength” means the total strength of the Board of directors of a company as determined in pursuance of this Act, after deducting there from the number of the directors, if any, whose places may be vacant at the time and</li> <li>➤ <b>“Interested director”</b> means any director whose presence cannot, by reason of section , count for the purpose of forming a quorum at a meeting of the Board, at the time of the discussion or vote on any matter</li> <li>➤ Any fraction of a number shall be rounded off as one;</li> <li>➤ <b>“ Total strength”</b> shall not include directors whose places</li> </ul>



		are vacant.
	<b>Quorum for OPC</b>	<b>Where there is only one director:</b> Provision of quorum does not arise, as because there is no requirement of holding BM. <b>Where more than 2 director :</b> 1/3 <sup>rd</sup> or 2 , whichever is higher
	<b>Manner of attending</b>	The participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum.

## Issues:

1	<b><u>Where no of director reduce than the requisite quorum 174 (2) :</u></b> The continuing directors may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting for that effect.
2	<b><u>Where the interested Director exceed or equal to 2/3rd of total strength u/s 174(3) :</u></b> The number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time. <b>Note :</b> Explanation to section 173(3) state that , “interested director” means a director within the meaning of sub-section (2) of section 184.
3	<b><u>When Quorum is not present at the BM u/s 174 (4) :</u></b> Where at any BM, Quorum is lacking , AOA must be given regard whether it has any clause for that, otherwise the meeting shall automatically stand adjourned to the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place.
4	<b><u>Can larger quorum be made ?</u></b> Section 174 used the word the higher of 1/3rd and 2 . the interpretation of which state that The section not forbid to a company to fix a higher number of directors as quorum through its Article
5	<b><u>Do the quorum is required to be present throughout the meeting or availability of quorum at the commencement of the meeting would consider enough?</u></b> Quorum is not only required to be available at the commencement of the meeting but also throughout the meeting , because <ul style="list-style-type: none"> <li>✓ The transaction are undertaken at the meeting for consideration and passed the necessary resolution as required with the voting from the directors.</li> <li>✓ Hence for validating any transaction at BM, there must be proper notice, quorum and resolution. Provision of quorum must be judged at every time for every transaction.</li> <li>✓ Therefore, quorum should be present before transacting any business.</li> </ul> <b>Note:</b> As consideration of Interested and non interested director is required for determining the quorum at BM, hence Quorum for BM to be present at the Every transaction at the meeting i.e. Quorum required to be Jaudged before every transaction



## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

	start.
<b>6</b>	<p><b><i>Can invalid Quorum prejudice to the outsider?</i></b></p> <p>According to the rule of indoor management, outsider are in the absence of the knowledge to the quorum, entitles to assume that domestic affairs have properly complied with. Hence unless fact is not interpreted otherwise, invalid quorum can not fall prejudice to the outsider.</p>

### Section 175: Resolution passed by circulation :

<b>Logic</b>	Generally, it is not viable to convene the meeting all the time for passing any resolution or taking any decision. Hence sometime situation would become so urgent to pass the resolution immediately or otherwise but, it would not permit time to convene meeting and passed.	
<b>Provision</b>	<b>Who can pass</b>	It is passed by the Board or by a committee thereof by circulation,
	<b>How to be circulated</b>	The resolution has been circulated in draft, together with the necessary papers, if any by (a) Hand delivery (b) Post (c ) Courier (d) Such electronic means
	<b>To Whom</b>	The resolution along with the necessary paper shall be circulated <ul style="list-style-type: none"> <li>- To all the directors, or</li> <li>- To all the members of the committee,</li> <li>- Then in India to their address as registered with company</li> </ul>
	<b>Approval provision</b>	The resolution shall be approved by the <b>majority</b> of the member or director <b>who are entitle to vote</b> on the resolution
	<b>Can business be put directly at BM and pass the resolution</b>	Proviso to section 175(1), if 1/3rd of the total number of director for the time being decided that the resolution shall be passed at BM, then chairman shall put such business to b
	<b>Minute to be prepared</b>	Minutes shall be prepared in the subsequent meeting of Board or committee respectively
<b>Issue</b>	<b>When the Date, which shall considered as the resolution is passed in case of resolution by circulation :</b> the date on which last of the director out of the number of director who are required to approve the resolution shall be taken to	

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

be the date , in which the resolution is said to be passed .

### Chairman for Board meeting

Provision Applicable	There is no provision in the company act 2013 for chairperson ( Chairman). However, it is guided by <b>Regulation 70 of Table F</b>
function	<ul style="list-style-type: none"><li>a. To preserve order at the meeting and Conduct deliberation in an orderly manner</li><li>b. To Ensure that meeting is convened and properly conducted</li><li>c. To ensure that Business transaction is in accordance with the AOA and MOA</li><li>d. Sense of meeting is properly and accurately ascertained</li></ul>
Appointment	<p>Regulation 70 of table F shall be complied with for appointment and other related provision</p> <p><b>How appointment is made :</b></p> <ul style="list-style-type: none"><li>▪ Chairman may be appointed by the BOD for a fix period. He is called chairperson of board . However</li><li>▪ Where such chairman is not appointed or such chairman is not present within 5 minutes after the schedule time for holding meeting, then director present shall choose among them self one as chairman of the meeting. He is called chairperson of board meeting</li></ul> <p><b>Who can be appointed as chairman :</b></p> <ul style="list-style-type: none"><li>▪ Normally any director can be appointed as chairman in BM irrespective of whether having holding share or not.</li><li>▪ Director whether executive or non executive can be appointed as chairman</li><li>▪ Proxy cannot be appointed as chairman of B</li></ul>
Voting power	<ul style="list-style-type: none"><li>▪ Casting vote is a vote within the power of chairman , to be exercise at his discretion in the interest of company, in the case of equality of vote</li><li>▪ The power of casting vote can be exercised by chairman , only if prescribed in Article [ <b>Fire stone tyre &amp; Rubber Co. Vs. Synthetic and Chemical limited</b>]</li><li>▪ Where company regulation 68 of table F, chairperson can exercise casting vote , provided he is the chairperson of Board not the Board meeting i.e. Chairperson of board meeting shall not have power to exercise casting vote [ <b>Ramjilal Baisiwal Vs. Baiton Cable limited</b>]</li></ul>

### Section 176: Validity of the act of the director

Provision	Act done by the director shall be valid, notwithstanding that it may afterwards be
-----------	--

	<p>discovered that</p> <ul style="list-style-type: none"> <li>✓ his appointment was invalid by reason of any defect or disqualification or</li> <li>✓ his appointment was terminated by virtue of any provision contained in this Act or in the articles because it would be considered as irregular exercise by regular director which is rectifiable i.e. <b><i>Bonafide act of de facto director</i></b></li> </ul> <ol style="list-style-type: none"> <li>i. Act done by director shall not be considered as valid, where Appointment is illegal, because it would be considered as there is no appointment at all.</li> <li>ii. Provided that nothing in this section shall be deemed to give validity to any act done by the director, where <ul style="list-style-type: none"> <li>- After his appointment, it has been noticed by the company to be invalid or to have terminated.</li> <li>- Appointment is illegal</li> <li>- Act of director is ultra virus to the company act 2013</li> </ul> <p>Because it is not the irregular exercise of the act, but the exercise of the act by a person who is not competent to act i.e</p> </li> </ol>
--	---

### Section 177 Audit Committee

<b>Meaning</b>	Audit committee has recognized as a corporate governance body in India, who provide number of mandatory recommendation to board for incorporation for achievement of objective of company.
<b>Applicability-section 177(1)</b>	<p><b>Under section 177(1) and rule 7:</b></p> <p>Following are the company shall establish a committee so called Audit committee –</p> <ul style="list-style-type: none"> <li>▪ Every listed company</li> <li>▪ Any other company which is <ol style="list-style-type: none"> <li>i. Public company having paid up share capital of 10 crore or more</li> <li>ii. Public company having turnover of 100 crore or more.</li> <li>iii. Public company having aggregate Outstanding loan or borrowing or debenture or deposit exceeding 50 crore or more</li> </ol> </li> </ul> <p><b>Note</b></p> <ul style="list-style-type: none"> <li>❖ Outstanding loan or borrowing or debenture or deposit of the last audited financial statement shall be considered for the above purpose</li> <li>❖ The above company shall establish a vigil mechanism for their director and employee to report their genuineness and grievance ( Vigil is a period of</li> </ul>

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

	time when people remain quietly in a place i.e no body shall consider be permanent in their stand and position. Every body is subject to some period and falling under the requirement of reporting the irregularities )
<b>Composition u/s 177(2)</b>	<p>Audit committee shall consist of :</p> <ul style="list-style-type: none"> <li>▪ <b>Minimum member</b> : A minimum of three director</li> <li>▪ <b>Independent director</b> : Majority.</li> <li>▪ <b>Capability of member and chairman</b> : Majority of audit member including chairman shall have ability to understand the financial statement.</li> <li>▪ <b>Reconstitution of AC for company having AC on the date of commencement of this act</b>: As per section 177(3), Audit committee of a company which exist before the commencement of this act shall be reconstituted within one year of such commencement in accordance with 177(2) of this act.</li> </ul>
<b>Rule 7</b>	<p><b>Rule 7 state that Audit committee shall considered the matter in the following manner</b></p> <ul style="list-style-type: none"> <li>▪ Where any of the member of Audit committee is under conflict of interest : he shall be excluded while considering such matter.</li> <li>▪ In normal , DOB will nominate one director who shall play the role of audit committee</li> </ul>
<b>Function u/s 177(4)</b>	<ul style="list-style-type: none"> <li>▪ The recommendation for appointment, remuneration and terms of appointment of auditors of the company;</li> <li>▪ Review and monitor the auditor's independence and performance, and effectiveness of audit process;</li> <li>▪ Examination of the financial statement and the auditors' report thereon;</li> <li>▪ Approval or any subsequent modification of transactions of the company with related parties</li> <li>▪ Scrutiny of inter-corporate loans and investments</li> <li>▪ Valuation of undertakings or assets of the company, wherever it is necessary</li> <li>▪ Evaluation of internal financial controls and risk management systems;</li> <li>▪ Monitoring the end use of funds raised through public offers and related matters</li> </ul>
<b>Power u/s 177(5)</b>	<ul style="list-style-type: none"> <li>❖ As per section 177(5), The Audit Committee may call for the comments of the auditors about <ul style="list-style-type: none"> <li>▪ Internal control systems,</li> <li>▪ The scope of audit,</li> <li>▪ The observations of the auditors and</li> <li>▪ Review of financial statement before their submission to the Board</li> </ul> </li> </ul>

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

	<p>and</p> <ul style="list-style-type: none"> <li>May also discuss any related issues with the internal and statutory auditors and the management of the company.</li> </ul> <p>❖ As per section 177(6) The Audit Committee shall have authority to investigate into any matter in relation to the items u/s 177(4) (Function ) or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information obtained in the records of the company.</p>
<b>Other</b>	<p>❖ The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote u/s 177(8)</p> <p>❖ The Board's report u/s 134(3) shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons there for u/s 177(8).</p> <p>❖ Every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed u/s 177(9)</p>

### Section 178 : Nomination Committee, Remuneration Committee, Stakeholder relation committee

Particular	Nomination and remuneration Committee	Stake holder relation Committee
<b>Applicability</b>	For every listed company and such other class or classes of companies, as may be prescribed	The company which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year
<b>Who will appoint</b>	By BOD	<b>By BOD</b>
<b>Composition</b>	<ul style="list-style-type: none"> <li>three or more non-executive directors out of which not less than one-half shall be independent directors</li> <li>The chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration</li> </ul>	<ul style="list-style-type: none"> <li>✓ a chairperson ,who shall be a non-executive director and</li> <li>✓ such other members as may be decided by the Board.</li> </ul>

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

	Committee but shall not chair such Committee.	
<b>Function</b>	a) shall identify persons who are qualified to become directors ,Senior management b) shall carry out evaluation of every director's performance c) Formulating policy for <ul style="list-style-type: none"> <li>✓ determining qualifications, positive attributes and independence of a director</li> <li>✓ remuneration for the directors, key managerial personnel and other employees</li> </ul>	The Stakeholders Relationship Committee shall consider and resolve the grievances of security holders of the company.

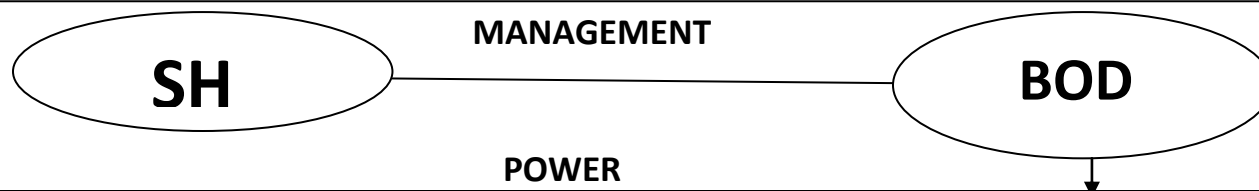
### ***Consequences of contravention of Section 177 and 178***

**Company :** Fine : Which shall not be less than Rs 1,00,000/- but which may extend to Rs 5,00,000/-

### **Every officer :**

- ✓ **Imprisonment :** For a term which may extend to one year or
- ✓ **Fine :** Which shall not be less than Rs 25000/- but which may extend to Rs 1,00,000/- or with both

### **Section 179: Power of Board**

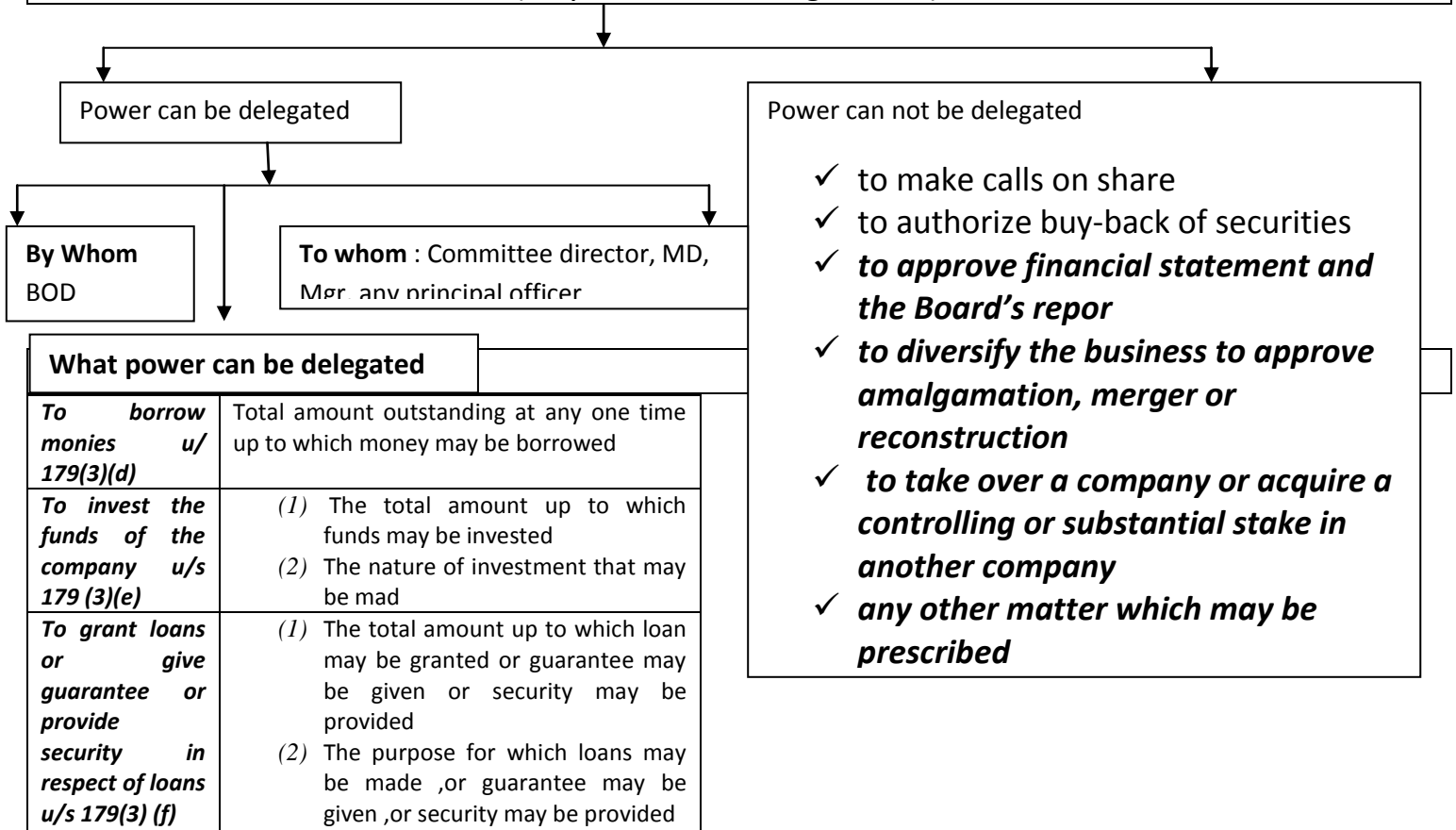


- ❖ The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things (i.e Power to be exercise, Act to be done and thing to be done ), as the company is authorized to exercise and do(u/s 179(1)
- ❖ 1st proviso to section 179(1) state that power to be exercise as prescribed u/s 179(1) shall be in accordance with the
  - ✓ Provision of company act
  - ✓ Memorandum and Article of Association
  - ✓ Any regulation of any other act
  - ✓ Regulation made by share holder on that behalf
- ❖ As per section 179(2), No regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

❖ **What board will not exercise:** As per 2nd proviso of section 179(1), Board shall not exercise any power or do any act or thing which is directed or required, to be exercised or done by the company in general meeting.

- ✓ under this Act ( provision of company act )or
- ✓ by the memorandum or
- ✓ by articles of the company or
- ✓ otherwise,( any other law or regulation )



### Restriction on the power of the BOD [ Section 180]

S.180(1)(a)	<p><i>To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.</i></p> <p><b>Not applicability of section 180(1)(a) :</b></p> <ul style="list-style-type: none"> <li>▪ The title of a buyer or other person who buys or takes on lease any property, investment or undertaking as is referred to in that clause, in good faith, or</li> <li>▪ The sale or lease of any property of the company where the ordinary business of the company consists of, or comprises, such selling or leasing.</li> </ul> <p><b>Undertaking</b> – undertaking shall mean an undertaking in which the investment of the</p>
-------------	--



## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

	company <b>exceeds twenty per cent.</b> of its net worth as per the audited balance sheet of the preceding financial year The words expression “ <b>substantially the whole of the undertaking</b> ” in any financial year shall mean 20% or more of the value of the undertaking as per the audited balance sheet of the preceding FY
S.180(1)(b)	<b>To invest otherwise in trust securities</b> the amount of compensation received by it as a result of any merger or amalgamation

S.180(1)(c)	<p><i>To borrow money, where the money to be borrowed, together with the money already borrowed by the company exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business.</i></p> <div style="text-align: center;"> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">COMPANY</div> <div style="margin: 10px auto; width: 100px; text-align: center;">↓</div> <div style="border: 1px solid black; padding: 10px; width: fit-content; margin: 0 auto;"> Company <b>loan</b> along with proposed loan &gt; PUSC + FR </div> <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <div style="border: 1px solid black; padding: 10px; width: 40%;"> <b>YES – BOD should get Shareholder prior consent for making such loan</b> </div> <div style="border: 1px solid black; padding: 10px; width: 40%;"> <b>NO – BOD can by passing resolution at BM only</b> </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="border: 1px solid black; padding: 10px; width: 45%;"> <b>LOAN not include :</b>            =&gt; Loan made In the ordinary course of its business repayable on demand or otherwise            =&gt; <b>Example:</b> Short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character,         </div> <div style="border: 1px solid black; padding: 10px; width: 45%;"> <b>Loan include :</b>             Loans raised for the purpose of financial expenditure of a capital nature;         </div> </div> <p><b><u>Other provision :</u></b></p> <ul style="list-style-type: none"> <li>❖ Every special resolution passed by the company in general meeting in relation to the exercise of the powers make loan u/s 180(1)(c ) Shall specify the total amount up to which monies may be borrowed by the Board of Directors u/s 180(2).</li> </ul> </div>
-------------	--

S.180(1)(d)	<b>To remit, or give time for the repayment of, any debt due from a director</b>
-------------	--

### Contribution to charitable and other fund – Section 181

<b>Who will contribute</b>	<b>BOD</b>
<b>Contribution to whom</b>	To <i>bona fide charitable and other funds:</i>

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

<b>Law Requirement</b>	If the contribution in aggregate in any financial year, <b><i>exceed five per cent of its average net profits</i></b> for the three immediately preceding financial years. <b><i>Prior permission of the company in general meeting</i></b> is required
------------------------	---

### Political contribution [ Section 182]

<b>Applicable</b>	<ul style="list-style-type: none"> <li>▪ <b>Company can not give political contribution :</b> <ol style="list-style-type: none"> <li>a. Government company and</li> <li>b. a company which has been in existence for less than three financial years</li> </ol> </li> <li>▪ Company can give political contribution : other than above ( Non government company having existence three or more year</li> </ul>
<b>Maximum limit for contribution</b>	<ul style="list-style-type: none"> <li>▪ <b>Nature of limit :</b> Maximum</li> <li>▪ <b>Period of contribution :</b> Contribution shall be limited in any financial year</li> <li>▪ <b>Limit :</b> The aggregate of the amount which may be so contributed by the company <b>in any financial year</b> shall not exceed <b>7.5%</b> of its average net profits during the <b>three</b> immediately preceding financial years:</li> </ul>
<b>Other legal requirement</b>	<p><b>BOD Approval:</b> As per 2nd proviso to section 182(1), BOD shall pass a resolution at the meeting authorizing for making such contribution.</p> <p><b>Discloser requirement in P/L Account :</b> As per section 182(3), Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year to which that account relates,</p> <ol style="list-style-type: none"> <li>(1) giving particulars of the total amount contributed and</li> <li>(2) the name of the party to which such amount has been contributed.</li> </ol>
<b>Consequences</b>	<p><b>Company</b> - Fine - Which may extend to five times the amount so contributed, and</p> <p><b>Every officer –</b></p> <ul style="list-style-type: none"> <li>▪ Imprisonment - For a term which may extend to six months ,and</li> <li>▪ Fine - which may extend to five times the amount so contributed.</li> </ul>

### Section 184 Disclosure of interest by director

<b>Applicability</b>	To all companies , whether public and private
<b>What is interested u/s 184 (2)</b>	<p>Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—</p> <ol style="list-style-type: none"> <li>(1) <b>with a body corporate</b> in which <ul style="list-style-type: none"> <li>▪ such director or such director in association with any other director, <b>holds more than two per cent. shareholding</b> of that body</li> </ul> </li> </ol>

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

	<p>corporate, or</p> <ul style="list-style-type: none"> <li>Such Director is a promoter, manager, Chief Executive Officer of that body corporate or</li> </ul> <p>(2) <b>with a firm or other entity</b> in which, such director is a partner, owner or member, as the case may be, shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed</p>
<b>Duty of director to disclose the interest</b>	Every director shall disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals <b>which shall include</b> the shareholding, in such manner as may be prescribed
<b>When discloser to be made</b>	<p>(1) At the first meeting of the Board in which he participates as a director and</p> <p>(2) Thereafter at the first meeting of the Board in every financial year or</p> <p>(3) whenever there is any change in the disclosures already made, then at the first Board meeting held after such change</p>
<b>How to disclose</b>	Interest shall be disclosed by giving <b>general notice</b> to the board by the directors
<b>Effect of discloser</b>	<p>a. Not to be consider as quorum</p> <p>b. Not to participate in the discussion</p> <p>c. Not to cast the vote at the meeting in that particular resolution</p>
<b>Not Applicable</b>	<p>As per section 184(5)</p> <ol style="list-style-type: none"> <li><b><i>If any transaction not be taken to prejudice the operation of any rule of</i></b> law restricting a director of a company from having any concern or interest in any contract or arrangement with the company.</li> <li>Where any contract or arrangement entered into or to be entered into between two companies where any of the directors of the one company or two or more of them together <b><i>holds or hold not more than two per cent of the paid-up share capital in the other company</i></b></li> </ol>
<b>If discloser not made</b>	<ul style="list-style-type: none"> <li><b>Treat the contract voidable</b> : The contract shall be voidable at the option of the company u/s 184(3)</li> <li><b>Punishment to director</b> : Every director <ol style="list-style-type: none"> <li>Imprisonment - for a term which may extend to one year or</li> <li>Fine - which shall not be less than fifty thousand rupee?</li> </ol> </li> <li><b>Vacation of office</b> : Vacation of office u/s 167</li> <li><b>Refund of remuneration drawn</b> : Liability to refund all the</li> </ul>

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

	remuneration received as a director after being ceased as director
--	--

### Issues

1	<b>Director got interest after the contract is enter:</b> As per 1st proviso to section 184(2) if the director was not interested at the date of that meeting when the contract was so entered. But subsequently got interested, concerned in that contract or proposed contract or arrangement, He shall disclose at the first meeting of the Board meeting held after he becomes so concerned or interested.
2	<b>Validity of the interest disclosed u/s 184 :</b> Any such general notice shall expire at the end of the <u>financial year</u> in which it is given, but may be renewed for further periods of one financial year at a time, by a fresh notice given in the <u>last month</u> of the financial year in which it would otherwise expire.
4	<p><b>Where fact/ interest is know:</b> as per the case of <b>A. Sivasailam Vs. Registrar of company</b> section 184 is not applicable, where</p> <ul style="list-style-type: none"> <li>▪ All director were aware about the interest</li> <li>▪ On an earlier occasion, necessary discloser was made</li> <li>▪ On the explanatory statement, necessary discloser is made to the Share holder.</li> </ul> <p>As per the case law of <b>Suryakanta Gupta Vs Rajram corn product (Punjab) Ltd</b>, Where all the director in BOD are aware about the fact, and there is reasonable reason to belief that the other member of Board have knowledge of the interest of the directors</p>
5	<p><b>Can validity of the contract be challenged where interested person has casted his vote in that resolution.</b></p> <p>No, The vote casted by the interested director shall be void but the resolution passed shall not be invalid. The transaction is voidable at the option of the company [ <b>Movitex Ltd Vs Bulfield</b>]</p> <p><b>However, the resolution can be treated as void one, where exclusion of interested director would result in</b></p> <ul style="list-style-type: none"> <li>▪ Invalid quorum</li> <li>▪ Invalid resolution</li> </ul>

### Loan to Director [Section 185 read with Rule 10]

<b>Provision u/s 185(1)</b>	<p>Save as otherwise provided in this Act, no company shall, <u>directly or indirectly</u>, <b>advance any loan</b>, including any loan represented by a book debt, to any of its directors or to <u>any other person</u> in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person</p>
-----------------------------	--

# SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

What section deal	<div> <div>Company</div> <div>Loan , Guarantee and Securities,</div> <div>Specified Person</div> <div>Directly or Indirectly</div> </div>	
Who are considered under any other person [ Explanation to 185]	(a)	<div> <div>Company - X Ltd</div> <div>Mr. P, Director of X Ltd</div> <div>Director of Holding company of X Ltd</div> </div> <p><b>L/G/S to Director of lending company or of a company which is its holding company</b></p>
	(b)	<div> <div>X Ltd - Company</div> <div>Mr. R – Relative of director</div> </div> <p><b>L/G/S to relative of such Director . Relative u/s 2(77) of company act 2013</b></p>
	(c)	<div> <div>X Ltd - Company</div> <div>PQRS firm- where director 'P' or his relative is partner</div> <div>Mr. R and Mr. S the partner of Mr. P</div> </div> <p><b>A firm in which any such director or relative is a partner, or to any of his partner</b></p>
	(d)	<div> <div>X Ltd - Company</div> <div>Y Pvt. Ltd where Mr. P is director or member</div> </div> <p><b>To a private company of which any such director is director or member</b></p>
	(e)	<div> <div>X Ltd - Company</div> <div>MN LLP where 25% or more voting power is exercised by Mr. P</div> </div> <p><b>A body corporate at general meeting of which 25% or more voting power is exercised by any such director or by two or more such director</b></p>
	(f)	<div> <div>X Ltd – Company</div> <div>Vista Ltd , which is managed with the direction and instruction of Mr.P</div> </div> <p><b>A body corporate , the board or managing director and ,manager where of, is accustomed to act in accordance with the direction of the board or any director of the lending company</b></p>
<p><b>Note : Body corporate u/s 2(11) : “body corporate” or “corporation” includes a company incorporated outside India, but does not include</b></p>		

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

	<p>a) a co-operative society registered under any law relating to co-operative societies; and</p> <p>b) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf</p>		
<b>Applicability</b>	<b>Particular applicable</b>	<b>Loan</b> Loan to above specified person	<b>Guarantee</b> Guarantee given/ security provided to above specified person
	<b>Not applicable</b>	<p>=) Giving of any loan to MD or WTD as part of the condition of service extended by the company to all its employee and</p> <p>=) Loan is given with Pursuance to any Scheme approved by the member by special resolution</p> <p>=) Any loan provided, guarantee given and security provided by banking company interest on such loan is charged at a rate not less than bank rate declared by RBI.]</p>	<p>=) Made by holding company for any loan to its wholly owned subsidiary company [ <b>Rule 10</b> ]</p> <p>=) Where such loan is to be utilized by the subsidiary company for its principal business activity [ <b>Rule 10</b> ]</p>
<b>Contravention</b>	<ul style="list-style-type: none"> <li>▪ <b>The company</b> - shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees,</li> <li>▪ <b>The director or the other person</b> to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with <ul style="list-style-type: none"> <li>✓ <u>Imprisonment</u> - which may extend to six months or</li> <li>✓ <u>Fine</u> which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or</li> <li>✓ <u>Both</u>.</li> </ul> </li> </ul>		

### Other Issues

<b>1</b>	<b>Government Companies' Directors</b>
<b>2</b>	<b>Advances Given( Salary Advance or any other advance to employee )Ex : salary advance to the Wife of the Managing director who is employee of that organization</b>

4	if any flat is sold to director on installment basis or on credit terms
5	Housing Loans to M.D. and Whole-Time Director

## Book debt :

- As per section 295 state loan include any book debt from its inception where as in section 185 of company act 2013, any loan represented as book debt . it implies that each and every transaction with director and any person with whom director is interested shall be considered from the point of section 188 and 185.
- Any credit extension to director shall be viewed from the point of section 185 and 188
- As per case of **Pennwalt India Ltd Vs. ROC** , Bombay high court held that whether a transaction is loan or not to be considered from the following point
  - a. Surrounding circumstance
  - b. Relationship company and the person which whom company entered in to transaction
  - c. Nature of transaction in case that is book debt

## Loan and investment by company [Section 186 read with Rule 11, 12, 13]

### Procedure of inter-corporate loan and investment

- a) Matter to be consider in the board meeting u/s 186(5)
- b) Unanimous Resolution to be passed in the BM
- c) Convening EGM
- d) Specific notice for the EGM to be given ( Notice along with Explanatory statement)
- e) Postal ballot for the listed company
- f) Approval by special resolution in GM
- g) Filling form with ROC
- h) Inform stock exchange as per listing agreement
- i) Rate of interest not less than the RBI rate
- j) Approval of Financial institutions
- k) No default of section 58A
- l) Maintain ace of register

<b>Provision u/s 186(1)</b>	<i><u>Without prejudice to the provisions contained in this Act, a company shall unless otherwise prescribed, make investment through not more than two layers of investment companies</u></i>
<b>Interpretation</b>	<ol style="list-style-type: none"> <li>1. The word without prejudice to the provision contents in this act implies that, this section does not stand prejudice against any provision of this section i.e. it will not prevent from implementation of any provision.</li> <li>2. Unless otherwise prescribed i.e. it implies provision has some exception, where even investment through more than 2 layers</li> </ol>



	<p>investment companies are permitted</p> <p>3. 2 layers investment companies :</p> <p><b>EX: A Ltd invested in B Ltd . B Ltd invested in C Ltd. Here in after C Ltd is restricted to invest further more as C Ltd is the company be considered as company 2 layer investment company.</b></p> <p>The concept of this provision can better be understandable from case of Sharada Chit fund case, west Bengal.</p>
<b>Exception to such prohibition [proviso to section 186(1)]</b>	<p>Proviso to section Provided that the provisions of this sub-section shall not affect,</p> <ul style="list-style-type: none"> <li>a) a company from acquiring any other company incorporated <b>in a country outside India</b> if such other company has investment subsidiaries beyond two layers as per the laws of such country</li> <li>b) a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements <b>under any law or under any rule or regulation framed under any law</b> for the time being in force.</li> </ul>
<b>What section deals</b>	Loan , investment made or guarantee given , or security provided by company to another company and Acquisition of share and security
<b>Scope of section 186</b>	<p>As per section 186(2), it considered the following transaction</p> <ul style="list-style-type: none"> <li>a) directly or indirectly give any loan to any person or other body corporate;</li> <li>b) directly or indirectly give any guarantee or provide security in connection with a loan to any other body corporate or person; and</li> <li>c) directly or indirectly acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,</li> </ul>
<b>Not applicability</b>	<p>In the following situation, section 186 shall not be applicable</p> <ul style="list-style-type: none"> <li>a) A banking company in ordinary course of its business.</li> <li>b) An insurance company in the ordinary course of its business.</li> <li>c) A housing finance company in ordinary course of its business</li> <li>d) A company established with the object of financing industrial enterprises</li> <li>e) A company established with the object of providing infrastructural facility.</li> <li>f) In investment made in share allotted in pursuance of section 81(1)(a).</li> <li>g) A company whose principal business is the acquisition of share, stock, debenture or other securities.</li> <li>h) A holding company in its wholly owned subsidiary.</li> </ul>
<b>Limit and Approval by</b>	<p>✓ <b>Ceiling limit u/s 186(2)</b> : The ceiling limit on making loan, investment, guarantee, or security is higher of the following:</p>

Share holder	<p>B. 60% of the aggregate of paid-up share capital and free reserves of the company.</p> <p>C. 100% of free reserves of the company.</p> <p>Paid up capital shall include paid up equity share capital as well as paid up Preference share capital.</p> <p>✓ <b>Where the ceiling limit is exceeded:</b></p> <ul style="list-style-type: none"> <li>▪ Previous authorization by a special resolution is required.</li> <li>▪ <b>Time of passing special resolution:</b> <ul style="list-style-type: none"> <li>➤ Special resolution is required prior to making any inter corporate loan, investment, guarantee or security.</li> <li>➤ It would be sufficient compliance , f such special resolution is passed within 1 year from the date of notification of this section [ Rule 13 ]</li> </ul> </li> <li>▪ <b>Manner of passing special resolution:</b> <ul style="list-style-type: none"> <li>i. Whether annual general meeting or extraordinary general meeting</li> <li>ii. However, the special resolution shall be passed by postal ballot, if the following 2 conditions are satisfied: <ul style="list-style-type: none"> <li><i>a</i> Company is a listed company.</li> <li><i>b</i> The proposed business relates to making of any inter corporate loan, guarantee, or security.</li> </ul> </li> </ul> </li> </ul> <p>✓ <b>Where the ceiling limit is not exceeded</b> - SR is not required to be passed. Discloser shall be made with hat respect in the financial statement as provided u/s 186</p>
Exception- No requirement of SR	<p>In the following case, Special resolution is not required to be passed [ Rule 11]</p> <ul style="list-style-type: none"> <li>a) Loan is given by company to its wholly owned subsidiary or joint venture</li> <li>b) Guarantee given or security provided by company to its wholly owned subsidiary or joint venture</li> <li>c) Acquisition is made by holding company by way of subscription, purchase or otherwise</li> </ul>
Disclosure requirements in notice of special resolution	<ul style="list-style-type: none"> <li>i) The specific limits</li> <li>ii) The particulars of other body corporate in which investment is proposed to be made or loan, guarantee, or security is proposed to be given.</li> <li>iii) Purpose of making loan, investment, guarantee, or security.</li> <li>iv) Specific sources of funding.</li> </ul>

	v) Other relevant details.
<b>Approval of the Board u/s 186(5)</b>	<p>Every inter-corporate loan and investment has to be supported by the board approval. The feature of Board approval given as follows:</p> <ol style="list-style-type: none"> <li><b>Resolution passed at a Board meeting:</b> resolution by circulation is not permitted to passed BR u/s 186</li> <li><b>Power to make inter corporate loans and investments cannot be delegated :</b> Provision of Delegation of power u/s 179 is not applicable in this situation</li> <li><b>Nature of resolution to be passed : Prior</b> Unanimous approval</li> <li>No requirement of special</li> </ol>
<b>Approval of financial institution</b>	<p><b>Approval of Public Financial Institution:</b></p> <ul style="list-style-type: none"> <li>✓ As per section 186(5) No loan or investment shall be made or guarantee or security given by the company unless prior approval of the public financial institution referred to in section 4A, where any term loan is subsisting, is obtained.</li> <li>✓ The prior approval is required even if the loan agreement does not specify any such condition or not.</li> <li>✓ The expression 'Public Financial Institution' has been defined under Sec.4A and includes ICICI, IFCI, IDBI, LIC and UTI.</li> <li>✓ As per proviso to section 186(5),</li> </ul> <p><b><i>Prior approval of a public financial institution shall not be required</i></b> , Where</p> <ul style="list-style-type: none"> <li>• The aggregate of <ol style="list-style-type: none"> <li>The loans and investments so far made,</li> <li>The amounts for which guarantee or security so far provided to or in all other bodies corporate,</li> <li>Along with the investments, loans, guarantee or security proposed to be made or given</li> </ol> <b>Does not exceed the limit prescribed under this section 186(2).</b> </li> <li>• <b><i>If there is no default in repayment of loan installments or payment of interest thereon</i></b> as per the terms and Conditions of such loan to the public financial institution..</li> </ul>
<b>Register for Loan and investment by company</b>	<p><b><i>Maintainace of register u/s 186(9):</i></b> Every company giving loan, guarantee or providing security and making investment shall maintained a register containing the following particular :</p> <ol style="list-style-type: none"> <li>Name of the Body corporate.</li> <li>The amount, terms and the purpose of the investment or loan or security or guarantee.</li> <li>The date on which the investment and loan has been made</li> </ol>

	<p>d) The date on which guarantee or security has been provided in connection with the loan</p> <p>e) The particular of the loan, guarantee, security and investment shall be recorded in the register within 7 days from the date of making such loan , guarantee, security and investment</p> <p><b>Place of keeping the register u/s 186(10) :</b></p> <p>a) The register shall be kept in registered office and</p> <p>b) The register so kept shall be open for the inspection u/s 186(10)(a)</p> <p>c) The copies of the register separately may be obtained by any member on payment of prescribed fees.</p> <p>d) Extract may be taken by member there from on making payment of certain fee u/s 186(10)(b).</p>
Others	<p>❖ <b>Default in compliance of provision of Public deposit [section of 58A and 58AA] :</b> The company which is in default in complying in the provision of public deposit, is prohibited from making any inter-corporate loan, till the default is made good u/s 186(8)</p> <p>❖ <b>Discloser in financial statement :</b> The company shall disclose to the member in the Financial statement</p> <ol style="list-style-type: none"> <li>The full particular of the loan given , investment made and guarantee given or security provided , and</li> <li>The purpose for which the loan or guarantee or security is proposed to be utilized by the recipients about the loan , guarantee and investment made u/s 186(4)</li> </ol> <p>❖ <b>Application of section 180 :</b> in case of inter-corporate loan and investment , apart from the applicability of section 186, section 180 shall get attracted.</p> <p>❖ <b>Rate of interest :</b> company shall not give loan u/s 186 at a rate lower than the prevailing yield of one year , 3 years,5 years ,10 years Government security closest to the tender of loan</p>
Consequences	<p><b>The non compliance of the said above section may have following consequences</b></p> <ul style="list-style-type: none"> <li>➤ The Company – Shall be liable to fine , which shall not be less than Rs 25,000/- but which may extend to Rs 5,00,000/-</li> <li>➤ <b>Every Officer in default</b> <ul style="list-style-type: none"> <li>▪ <b>Imprisonment</b> - For a term which may extend to 2 years.</li> <li>▪ <b>Fine</b> - Which shall not be less than Rs 25,000/- but which may extend to Rs.500, 000/-</li> </ul> </li> <li>➤ All persons who are knowingly parties to any contravention shall be</li> </ul>

	<p>liable jointly and severally to the Company for:</p> <ul style="list-style-type: none"> <li>▪ Repayment of the loan,</li> <li>▪ Making good the sum which the Company may have been called upon to pay on account of the guarantee given or the securities provided by such Company.</li> </ul> <p>➤ Transaction in violation of Sec.186 is void and ineffective.</p>
--	--

### Note : Section 186 Vs Section 179

<b>Particular</b>	<b>Section 186</b>	<b>Section 179</b>
<i>Nature of Board Resolution</i>	<i>Unanimous resolution, if exceeds the Prescribed limit</i>	<i>Ordinary resolution</i>
<i>Provision deals</i>	<i>Loan from one company ( Public/private) to any Body corporate i.e Giving loan , guarantee, security directly or indirectly by a company to any body corporate</i>	<i>General power of BOD for making any loan , giving any guarantee or security in connection with loan</i>
<i>Nature of power</i>	<i>Overriding power on section 179</i>	<i>Normal power</i>
<i>Delegation</i>	<i>Is not permitted</i>	<i>Is permitted</i>
<i>Share holder consent</i>	<i>Required SR by SH at GM if exceed the prescribed limit u/s 186</i>	<i>Not required</i>
<i>Approval of PFI</i>	<i>Required if earlier L/G/S along with proposed L/G/S exceeds the prescribed limit as given u/s 186(2)</i>	<i>Not required</i>

### Section 188 : Related party transaction

#### Section 2(76) define the word related parties :

- 1) a director or his relative  
**Ex: The director s Mr. A, Mr. B, Mr. C and their relatives are the related parties to X Ltd**
- 2) a key managerial personnel or his relative.
- 3) a firm, in which a director, manager or his relative is a partner
- 4) a private company in which a director or manager is a member or director
- 5) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital
- 6) anybody 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
- 7) any person on whose advice, directions or instructions a director or manager is accustomed to act:
- 8) such other person as may be prescribed refers :
  - (i) Holding companies (ii) Subsidiary company (iii) Associate company (iv) Fellow subsidiaries
  - (v) Holding companies directors, or KMP or their relative

#### Note – 1 Relative u/s 2 (77)

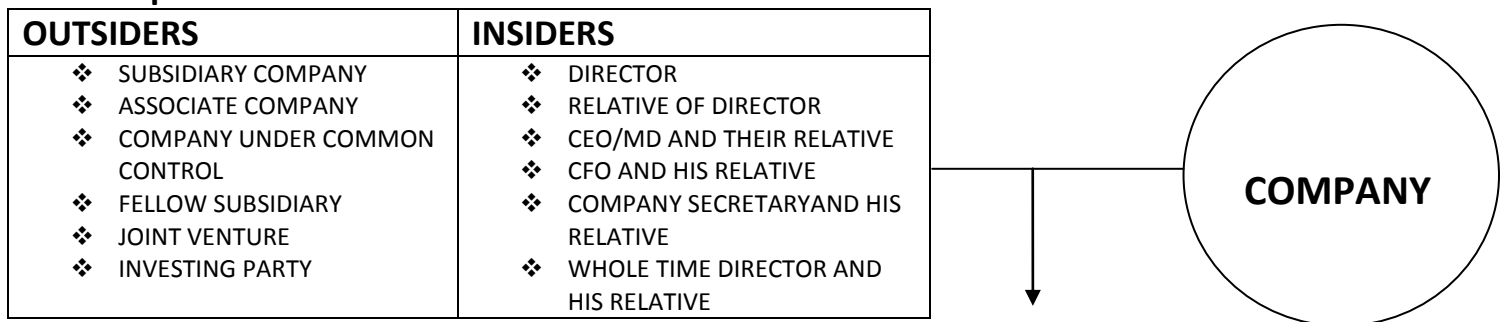
## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

- 1) they are members of a Hindu Undivided Family
- 2) Husband and wife
- 3) Father including step Father
- 4) Mother including step mother
- 5) Sons including step sons and son's wife
- 6) Daughter ( **Not including the step daughter** )
- 7) Daughter husband
- 8) Brother including step brother( **Brother's wife not considered**)
- 9) Sister including step sister ( **Sister husband not considered**)

**Note – 2 KMP u/s 2(51)** : “key managerial personnel”, in relation to a company, means

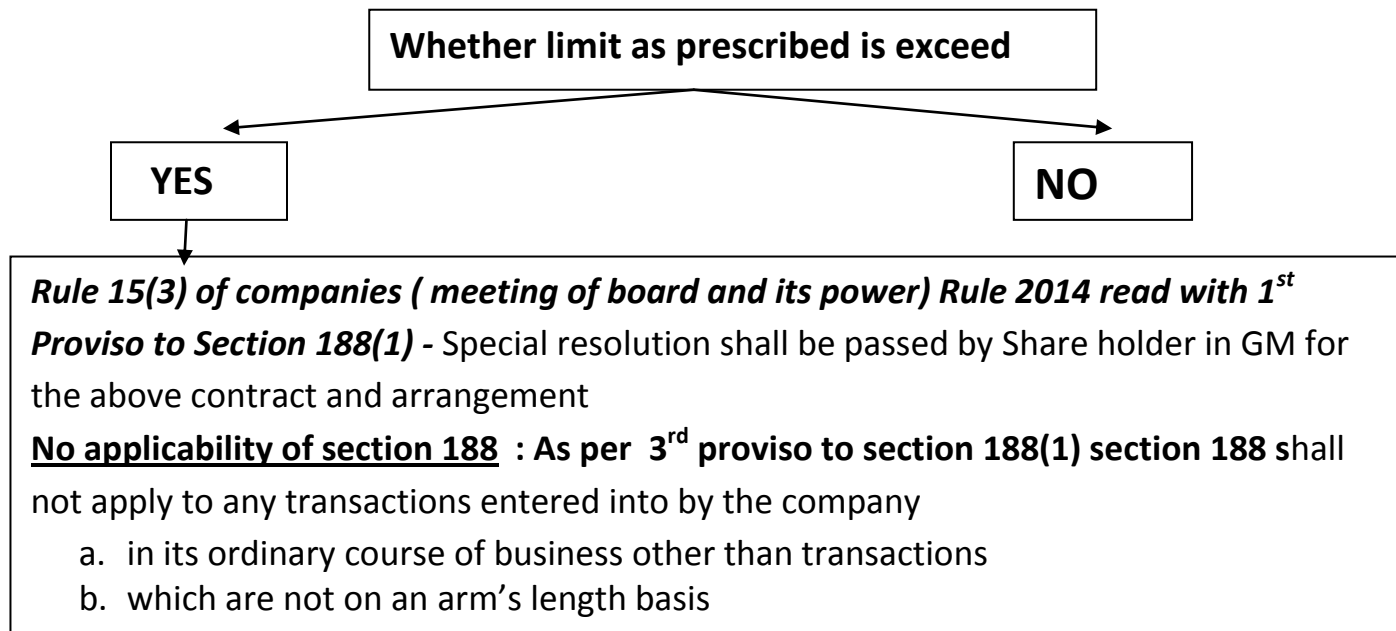
- (i) the Chief Executive Officer or the managing director or the manager
- (ii) the company secretary (iii) the whole-time director (iv) the Chief Financial Officer; and
- (v) such other officer as may be prescribed

### Related parties



### Every contract or arrangement between company and related party

Sl No	Transaction	Limit
1	sale, purchase or supply of any goods or materials [ Section 188(1)(a)]	> 25% of the annual turnover
2	selling or otherwise disposing of, or buying, property of any kind [ Section 188(1)(b)]	> 25% of the annual turnover
3	leasing of property of any kind [ Section 188(1)(c)]	
4	availing or rendering of any services [ Section 188(1)(d)]	exceeding 10% of Net worth
5	appointment of any agent for purchase or sale of goods, materials, services or property [ Section 188(1)(e)]	exceeding 10% of net worth or exceeding 10% of turnover
6	such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company [ Section 188(1)(f)]	exceeding 250000 rupee
7	underwriting the subscription of any securities or derivatives thereof, of the company [ Section 188(1)(g)]	> 1% of Net worth.



### LEGAL REQUIREMENT U/S 188

- 1) Consents from board by passing resolution in Board meeting only
- 2) Discloser of require agenda as per Rule 15 of companies (meeting of board and its power) Rule 2014
  - a. Name of the related parties and the nature of relationship
  - b. Nature, duration, particular of contract and arrangement
  - c. Material terms of a contract or arrangement including the value, if any
  - d. Any advance paid or received from the contract or arrangement
  - e. Whether all the factor relevant to the contract have been consider, if not the details of factor not considered with rational for not considering those factor.
  - f. Any other information relevant or important for board to take a decision on the proposed transaction.

### Discloser in Board report :

- Every contract and arrangement u/s 188(10) shall be disclosed in board report to the share holder along with the justification for entering with those transaction and contract.
- As per Rule 8(2) of companies ( Accounts) Rule 2014, the particular of contracts and arrangement with related parties shall be in form of AQC 1.

### If any contract or arrangement entered without consent of the board u/s 188(3) :

- **Consequences :**
  - 1) **Voidable contract** : Such contract or arrangement shall be voidable at the option of the Board [ **Section 188(3)**]



- 2) **Director Indemnify to company** : if the contract or arrangement is with a related party to any director, or is authorized by any other director, the directors concerned shall indemnify the company against any loss incurred by it [ **Section 188(3)**]
- 3) **Company may proceed against the director** : company may proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement [ **section 188(4)**]
- 4) **Punishment u/s 188(5) : Punishment are given below**

Particular	Listed company	Unlisted company
<b>Imprisonment</b>	<b>May extend to 1yrs</b>	<b>Not there</b>
<b>Fine</b>	<b>25000-500000</b>	<b>25000-500000</b>
<b>Both</b>	<b>Yes</b>	<b>Not required</b>

### As per revised Clause 49

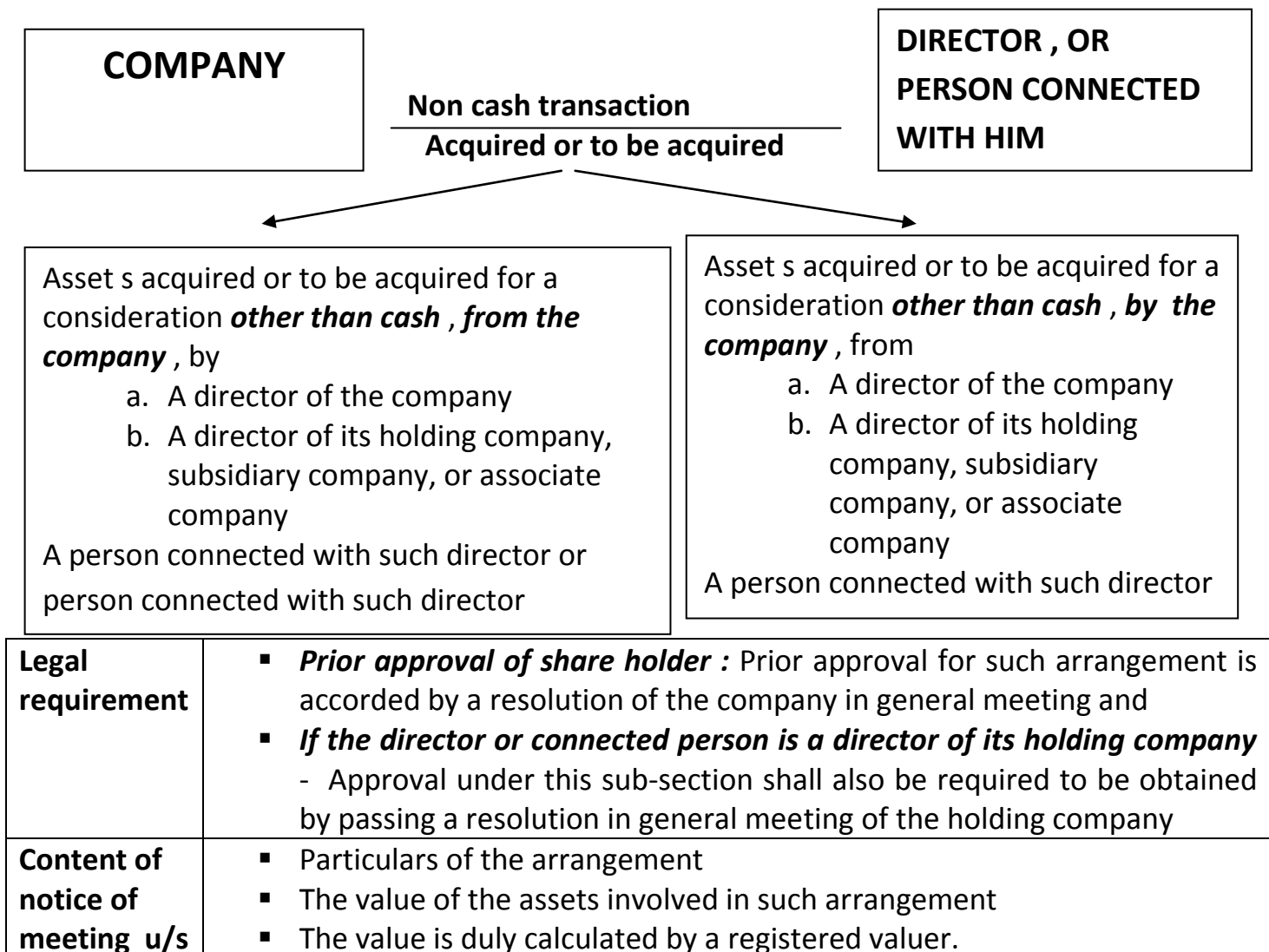
- ❖ Related party transaction means transfer of resources, services or obligation between a company and related party ,regardless of whether a price is charged.
- ❖ A person is consider as related, if one arty has the ability to control the other party or exercise significant influence over the other party, directly or indirectly, in making financial and operating decision
- ❖ Every company shall formulate a policy on the materiality of related transaction for dealing with related party transaction.
- ❖ Transaction with related party shall considered as material ,if the transaction whether individual or aggregate with previous year transaction exceed 5% of annual turnover or 25% of Net worth of the company as per the last audited FS of the company, which ever is higher
- ❖ Any related party transaction required the
  - a) prior approval of Audit committee
  - b) SR at GM
  - c) Discloser with respect to details of related party transaction with compliance report
  - d) Discloser f related party police in website.

### Register of contract or arrangement in which director are interested [Section 189 ]

<b>Applicable</b>	To all companies	
<b>Register</b>	Every company shall keep one or more registers giving separately for the contract and or arrangement	
<b>Contents of register</b>	(1)The particulars of all contracts or arrangements with respect to section 184( discloser of interest by director) or (2)The particulars of all contracts or arrangements with respect to section 188 ( Related party transaction )	
<b>Legal requirement</b>	<b>Where to be kept</b>	At registered office

	<b>where to be placed</b>	After entering the particular in the register shall placed before next Board meeting .
	<b>Who shall signed</b>	By all the director
	<b>Discloser by director</b>	Every director or key managerial personnel shall, within a period of thirty days of his appointment, or relinquishment of his office, as the case may be, disclose to the company relating to his concern or interest in the other associations which are required to be included in the register under that sub-section or such other information relating to himself as may be prescribed.
	<b>Inspection of such register</b>	It is open for the inspection at register office in business hour.
	<b>To placed at AGM</b>	Register to be produced at AGM, it shall be open and accessible during the continuance of the meeting
<b>Not applicable</b>	<p>(1) For the sale, purchase or supply of any goods, materials or services if the value of such goods and materials or the cost of such services does <b>not exceed five lakh rupees</b> in the aggregate in any year or</p> <p>(2) By a <b>banking company</b> for the <b>collection of bills</b> in the ordinary course of its business.</p>	
<b>Rule 16 of companies ( Meeting of board and its power) Rule 2014</b>	<ul style="list-style-type: none"> <li>❖ Register shall be maintained in form no MBP 4</li> <li>❖ The particular of the company or companies or bodies corporate in which director himself , together with any other director hold 2% or less of the paid up share capital shall not required to entered in the register.</li> <li>❖ The entries in the register shall be authenticated by the company secretary of the company or by any other person authorized by the board for this purpose</li> <li>❖ Register shall be kept at register office</li> <li>❖ The register shall be keptd permanently and under custody of the company secretary of the company or any other person authorized by Board for this purpose.</li> <li>❖ The company shall provide extract from that register to a member of the company on his request within 7 days from the date of his request.</li> </ul>	
<b>Consequences</b>	Every director who fail to comply with this section shall be punishable with fine of Rs 25000/-	

## Section 192: Restriction on non-cash transactions involving directors



<b>192(2)</b>	
<b>Consequences of contravention</b>	<p>Any arrangement entered into by a company or its holding company in contravention of the provisions of this section shall be voidable at the instance of the company</p> <p><b>Exception :</b></p> <ul style="list-style-type: none"> <li>(1) The restitution of any money or other consideration which is the subject matter of the arrangement is no longer possible and</li> <li>(2) the company has been indemnified by any other person for any loss or damage caused to it; or</li> <li>(3) Any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.</li> </ul>

### **Section 194: Prohibition on forward dealings in securities of company by director or key managerial personnel.**

- ❖ No director of a company or any of its key managerial personnel shall buy in the company, or in its holding, subsidiary or associate company
- i) A right to call for delivery or a right to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures; or
- ii) A right, as he may elect, to call for delivery or to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures.
- ❖ **Consequences of contravention :**
  - Director or key managerial personnel –
    - ✓ **Imprisonment** – Which may extend to two years or
    - ✓ **Fine** - Which shall not be less than one lakh rupees but which may extend to five lakh rupees, or
    - ✓ **with both**
  - Be liable to surrender the same to the company and the company shall not register the securities so acquired in his name in the register, and
  - **if they are in Dematerialized form :** It shall inform the depository not to record such acquisition and Such securities, in both the cases, shall continue to remain in the names of the transferors.

**Explanation** For the purposes of this section, “relevant shares” and “relevant debentures” mean shares and debentures of the company in which the concerned person is a whole-time director or other key managerial personnel or shares and debentures of its holding and subsidiary companies.

### **Section 195 Prohibition on insider trading of securities.**

- ❖ **What is insider trading :** It refers dealings with un published price sensitive information
  - Dealings means an act of
    - ✓ Subscribing, buying, selling, dealing or agreeing to subscribe, or
    - ✓ buy, sell or deal in any securities by any director or key managerial personnel or any other officer of a company **either as principal or agent** if such director or key managerial personnel or any other officer of the company is reasonably expected to have access to any non-public price sensitive information in respect of securities of company; or
  - ✓ an act of counseling about procuring or communicating directly or indirectly any non-public price sensitive information to any person;
- ❖ **Provision :** No person including any director or key managerial personnel of a company shall enter into insider trading:
- ❖ **Exception :** Any communication required in the ordinary course of business or profession or employment or under any law.
- ❖ **Consequences of contravention u/s 195 (2) :**
  - **Who can fall under this contravention :** Any director or key managerial personnel or any other officer of a company **either as principal or agent**
  - **Punishment :**
    - ✓ Imprisonment - for a term which may *extend* to five years or
    - ✓ Fine - which shall not be less than five profits made out of insider trading, whichever is higher, or
    - ✓ with both.
    - ✓ lakh rupees but which may extend to twenty-five crore rupees or three times the amount of

### Chapter-XIII

#### Appointment and remuneration of managerial personnel

(Provision Applicable Section 196 to 205 of company Act 2013 and Company (Appointment and remuneration of managerial personnel) Rule 2014)

##### Managerial personnel

[section 2(51)]

As per section 2(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, and
- v. Such other officer as may be prescribed.

##### Chief Executive Officer

[ section 2(18)]

**As per section 2(18)** “Chief Executive Officer” means an officer of a company, who has been designated as such by it;

**Managing director**

**[section 2(54)]**

<b>Definition u/s 2(54)</b>	<p><i>As per section 2(54) “managing director” means a director who, <u>by virtue of the articles</u> 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 <u>with substantial powers of management</u> of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.</i></p> <p><i>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</i></p>	
<b>Interpretation</b>	<b>Function based</b>	Person entrusted with the responsibility of managing director shall deem to be the managing director. By whatever name called
	<b>Substantial power</b>	A person shall consider as MD, if he is been given substantial power of management
	<b>Duties and power</b>	MD exercise the power subject to the superintendence, control and direction of board of director
	<b>Power derived from</b>	The power of managing director is created subject to (1) The article of association of the company, or (2) An agreement, or (3) A resolution passed in a general meeting, or (4) A resolution passed by Board of Director
<b>Issue</b>	<b>1</b>	<p><b>Can a Managing director on ceased from being director also cease from Managing director ?</b></p> <p>A person in order to be managing director first must be eligible to a director. Hence all the provision applicable to a director shall also be applicable to MD. Where any managing director is ceased to be director [ disqualified from being director u/s 164]. He shall automatically ceased to be a managing director</p>
	<b>2</b>	<b>Can there be appointed two more than two MD in a company ?</b>

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

		Two or more than two director of a company may be entrusted with substantial power of management. Hence a company may have two or more than two managing director
	<b>3</b>	<b>Whether Managing director be rotational or non rotational ? if rotational , when he will retire?</b> There is no such provision in company act 2013 which restrict any rotational or non rotational director for being managing director. Any director irrespective of whether rotational or non rotational , can be appointed as managing director. Where any rotational director become managing director , he will retire on expiry of the period of rotational director as per section 152(6) of company act 2013 not as per section 196(2) of company act
	<b>4</b>	<b>Can Board of director revoke the power of managing director?</b> As per provision of company act 2013, power of managing director is subject to the superintendence , control and direction of the board. Managing director is subordinate to BOD. From the above, it would not be wrong to say, that BOD can revoke the power given to managing director

### Manager

[section 2(53)]

<b>Definition</b>	<i>As per section 2(53) “manager” means an individual who, <u>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</u></i>
<b>Interpretation</b>	<ul style="list-style-type: none"> <li>▪ “Manager” is distinct from director</li> <li>▪ The word “<b>management of the whole, or substantially the whole</b>”_ refers the whole of affairs can any way be in the hand of two or more person. Hence company cannot appoint two or more manager</li> <li>▪ As per section 196(1), a company is not Permitted to appoint at a time both MD and Manager.</li> <li>▪ However company is permitted at the same time employ manager and Whole time director</li> </ul>

### Whole time Director

[ section 2(94)]

<b>Definition</b>	As per section 2(94) “whole-time director” includes a director in the whole-time employment of the company;
<b>Interpretation</b>	<ul style="list-style-type: none"> <li>▪ It has all such duties, Right and power what a director used to have having been employed under whole time employment in the company.</li> </ul>



## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

	<ul style="list-style-type: none"> <li>▪ A whole time employee appointed as director shall be termed as whole time director. However a person not being an employee, appointed as a director. The used to be considered as ordinary director but not the whole time director.</li> <li>▪ In any company , appointment of whole tie director along with MD or Manager is permitted</li> <li>▪ More than two Whole time director can be appointed in the same company</li> <li>▪ One whole time director can not be appointed in more than one company.</li> </ul>
--	--

**Section 196 read with Section 203 : Appointment of Managing Director, Whole time director and manager**

<b>Applicable</b>	To all companies i.e. both Private and public company
<b>Basic provision</b>	<ul style="list-style-type: none"> <li>▪ <b>Appointment of MD and Manager</b> : No company shall appoint or employ at the same time a managing director and a manager u/s 196(1)</li> <li>▪ <b>Period of office of MD/WTD/Manager</b> : <b>No company</b> shall appoint or re-appoint any person as its managing director, whole-time director or manager for a <b>term exceeding five years</b> at a time u/s 196(2)</li> <li>▪ <b>When reappointment shall be made</b> : No re-appointment shall be made earlier than one year before the expiry of his term.[ 1<sup>st</sup> proviso to section 196(2)]</li> </ul>
<b>Disqualification for MD/WTD/Manager</b>	<p>No company shall appoint or continue the employment of any person as managing director, whole-time director or manager who</p> <ol style="list-style-type: none"> <li>a) is below the age of twenty-one years or has attained the age of seventy years:</li> </ol> <p><b>Note</b> : Appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person;</p> <ol style="list-style-type: none"> <li>b) is an un discharged insolvent or has at any time been adjudged as an insolvent;</li> <li>c) has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or</li> <li>d) has at any time been convicted by a court of an offence and sentenced for a period of more than six months</li> </ol>

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

<b>Mode of appointment</b>	I. By Central government approval    II. By compliance of schedule V
<b>Procedure to be followed</b>	Subject to the provisions of section 197 and Schedule V, the terms and conditions of appointment a managing director, whole-time director or manager shall be appointed and remuneration payable be <ul style="list-style-type: none"> <li>▪ Approved by the Board of Directors at a meeting</li> <li>▪ Approval by a resolution at the next general meeting by share holder of the company subsequent to such board approval</li> <li>▪ Approval by the Central Government in case such appointment is at variance to the conditions specified in that Schedule V</li> </ul>
<b>Provision to notice for BM and GM</b>	1) The terms and conditions of such appointment, 2) Remuneration payable to him, and 3) such other matters including interest, of a director or directors in such appointments, if any
<b>Filling with ROC</b>	As per <b>second proviso t section 196(4) read with Rule 3</b> of company ( Appointment and remuneration of managerial personnel ) Rule 2014, return of appointment to be filed in form no <b>MR 1 within sixty days</b> of such appointment with the Registrar.
<b>Approval from CG</b>	<ul style="list-style-type: none"> <li>▪ Approval of CG is required on variation in compliance of Schedule V for appointment of MD/WTD/manager</li> <li>▪ As per Rule 7 of companies (Appointment and remuneration) Rule 2014, An application shall be made to CG for the approval in form no MR 2 within 90 from the date of appointment.</li> </ul>
<b>Validity of act of director</b>	<b>Subject to the provisions of this Act</b> , where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval <b>shall not be deemed to be invalid</b>

### Appointment of key managerial person

[ section 203 ]

Define KMP	As per section 2(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; and (v) such other officer as may be prescribed;	
Provision	<b>Provision regarding the appointment of KMP are given below</b>	
	<b>Mandatory</b>	As per section 203(1) Read with Rule 8 of company ( Appointment and remuneration of managerial personnel ) rule 2014.

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

	<b>appointment of KMP</b>	<ul style="list-style-type: none"> <li>❖ As per section 203(1) , Every company belonging to such class or classes of companies as prescribed under Rule 8 shall have the following whole-time key managerial personnel               <ul style="list-style-type: none"> <li>a) Managing director, or Chief Executive Officer or manager and in their absence, a whole-time director</li> <li>b) Company secretary; and</li> <li>c) Chief Financial Officer :</li> </ul> </li> <li>❖ As per Rule 8 , class or classes of company means               <ul style="list-style-type: none"> <li>a) Every listed company ,</li> <li>b) Every other public company having paid up share capital <b>10 cr. rupee or more.</b></li> </ul> </li> </ul> <p><b>Mandatory appointment of Whole time company secretary :</b> As per Rule 8A of company ( Appointment and remuneration of managerial personnel ) rule 2014, a company shall have Whole time company secretary , if paid up share capital is Rs. 5 core or more</p>
	<b>Chairman to act as MD or CEO</b>	<ul style="list-style-type: none"> <li>❖ As per 1<sup>st</sup> Proviso to section 203(1), An individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless               <ul style="list-style-type: none"> <li>i. The articles of such a company provide otherwise; or</li> <li>ii. The company does not carry multiple businesses:</li> </ul> </li> </ul> <p><b>Exception : As per second proviso to section 203(1)</b> Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government</p>
	<b>Appointment of KMP by whom</b>	Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment Including the remuneration. [ section 203(2)]
	<b>Vacancy arise in the office of KMP</b>	If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board <b><i>within a period of six months</i></b> from the date of such vacancy [ section 203(4)]
<b>Others</b>	<b>Holding of office in two or more company :</b>	

	<ul style="list-style-type: none"> <li>❖ A whole-time key managerial personnel shall not hold office in more than one company  <b>Exception :</b> In its subsidiary company at the same time</li> <li>❖ A KMP may be a director of any company with the permission of the Board[ 1<sup>st</sup> proviso of section 203(3)]</li> <li>❖ <b>For existing company :</b> Any whole-time key managerial personnel holding office in more than one company at the same time on the date of commencement of this Act, shall, <b><i>within a period of six months from such commencement</i></b>, choose one company, in which he wishes to continue to hold the office of key managerial personnel[ 2<sup>nd</sup> proviso to section 203(3)]</li> </ul>
	<p><b>Appointment of a person as MD where such person already act as MD/manager in other ( one)companies</b></p> <p>As per 3<sup>rd</sup> proviso to section 203, a company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment</p> <ul style="list-style-type: none"> <li>▪ Is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors <b>present at the meeting</b>.</li> <li>▪ Specific notice for such meeting and resolution has been given to all the directors then in India.</li> </ul>
	<p><b>A KMP holding office in more than one company:</b></p> <p><b>A KMP</b> holding office in more than one company at the same time at the time of commencement of the company act</p>
	<p><b>Exercise of Power to appoint or remove KMP:</b></p> <p>As per Rule 8 of companies (meeting of board and its power)Rule 2014 the power to appoint or remove key managerial personal shall be exercised by the board by passing a resolution at the board meeting only.</p>
	<p><b>When CG shall not approve the application :</b></p> <p><b>Situation :</b> The Central Government shall not accord its approval to an application made to it, if it is satisfied that—</p> <ol style="list-style-type: none"> <li>a) the managing or whole-time director or the manager appointed is, in its opinion, not a fit and proper person to be appointed as such or such appointment is not in the public interest; or</li> <li>b) The terms and conditions of the appointment of managing or whole-time director or the manager are not fair and reasonable.</li> </ol> <p><b>Consequences :</b></p> <ol style="list-style-type: none"> <li>a) The person as appointed shall vacate his office (Managing or whole-time director or manager) on the date on which the decision of the Central Government is communicated to the company, and</li> </ol>

	b) if he omits or fails to do so, he shall be punishable with fine which may extend to five thousand rupees for every day during which he omits or fails to vacate such office.
<b>Consequence of contravention u/s 203(5)</b>	<ul style="list-style-type: none"> <li>▪ <b>The company</b> shall be punishable with fine which shall not be less than Rs.1,00,000/- but which may extend to Rs. 5,00,000/-, and</li> <li>▪ <b>Every director and key managerial personnel</b> of the company who is in default shall be punishable with fine which may extend to Rs. 50,000/- ,and</li> <li>▪ <b>Where the contravention is a continuing one</b> : with a further fine which may extend to Rs. 1000/ every day after the first during which the contravention continues.</li> </ul>

### Condition for appointment of MD/WTD/ Manager :

As per section 196(4), MD/ WTD/ Manager shall be appointed with such term and condition Subject to the provisions of section 197 and Schedule V. the procedure of such appointments are given below:

- 1) Notice for convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, [ **1<sup>st</sup> proviso to section 196(4)** ]
- 2) The terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at BM.
- 3) The Board resolution shall be subject to approval by a resolution at the next general meeting of the company and
- 4) Approval of Central Government is required , in case such appointment is at variance to the conditions specified in that Schedule V (***Application for approval for CG shall be made in form no. MR 2 within 90 days from the date of such appointment*** )
- 5) The company shall file with ROC a return in form of MR 1 within 60 days of such appointment [ **2nd proviso to section 196(4)** ]

### Managerial Remuneration [ Section 197 read with Schedule V]

**Section 197 : Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profit**

### Basic of managerial remuneration u/s 197(1):

- **Applicable to** : Public company and private company subsidiary of public company
- **Payment to** : Director, key managerial person and manager, WTD, MD
- **Payment by** : Company
- **Limit** : Total overall remuneration to Directors, key managerial person and manager shall not exceed 11% of the net profit s in respect to a financial year

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

### ▪ Remuneration include :

- ✓ Any rent free accommodation , or any other benefit or amenity in respect of accommodation , free of charge
- ✓ Any other benefit or amenity free of charge or at concessional rate
- ✓ To effect any insurance on the life of or to provide any pension annuity or gratuity for such pension or his spouse or child.

- Exclude sitting fee u/s 197(2), fee for service (fee for attending the meeting of board and committees or for any other purpose) provided in professional capacity [**proviso to 197(5)**]

Payment made up to 11% NP

Payment made – exceed the limit of 11% of

Remuneration exceeding 11% can be paid subject to the following condition: [**1<sup>st</sup> proviso to 197(1)**]

1. It obtain the approval of the central government,
2. Such payment must get authorized at General meeting,
3. Subject to the schedule V

### Remuneration to MD/WTD/managerial as per 2<sup>nd</sup> proviso to 197(1)

**Limit : for MD/WTD/Manager[2<sup>nd</sup> proviso to 197(1)]**

- Where there is one - shall not exceed 5% of the NP
- Where there is more than one – shall not exceed 10% NP

### **Mode of payment u/s 197(6):**

- ✓ Monthly payment
- ✓ Specified % of the profit
- ✓ Partly monthly partly in % in profit

### Remuneration to Director as per 2<sup>nd</sup> proviso to 197(1) **Limit : for director other than MD/WTD/Manager [2<sup>nd</sup> proviso to 197(1)]**

- Where there is MD/WTD/Mgr - shall not exceed 1% of the NP
- Where there is no MD/WTD/Mgr – shall not exceed 3% NP

### **Mode of payment :**

- ✓ Monthly payment – Approval of central government is required.
- ✓ Commission - (a) special resolution for approval of payment. (b) SR is valid for 5years. (c) It can be renewed.

**For ID :** only in form of commission and fee payable(ID is not entitle for ESOPs) u/s 197(7)

## SCHEDULE V

### basics

- It is applicable for public company
- It is not applicable for ordinary director i.e it is applicable for MD/WTD/Mgr
- This contain the condition of appointment and the provision regarding remuneration payable specifically when there is adequate profit and when there



## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

	<p>is inadequate of profit or Loss</p> <ul style="list-style-type: none"> <li>▪ The schedule V as compliance to the appointment of MD/WTD/Manager- is divided in to three part. These are- <ul style="list-style-type: none"> <li>✓ Part-1 of schedule V - deals with condition of appointment</li> <li>✓ Part-II of schedule V - deals with the remuneration.</li> <li>✓ Part-III of schedule V - deals about the approval in general meeting and signing of for by the statutory auditor or the company secretary</li> </ul> </li> </ul> <p><b>Note</b> -The part I and part II has to be complied with at the time of appointment, where as the part-III shall be complied with as and when it is required.</p> <ul style="list-style-type: none"> <li>▪ Consequences of non-compliance of part-III of the schedule XIII can be as follows : <ul style="list-style-type: none"> <li>a) Appointment is not put up for the approval by GM</li> <li>b) If appointment is not approved in GM</li> <li>c) The appointment shall become a void one</li> </ul> </li> </ul>				
<b>Part 1 Appoi ntme nt</b>	<p>No person shall be eligible for appointment as a managing or whole-time director or a manager (hereinafter referred to as managerial person) of a company unless he satisfies the following conditions, namely:—</p> <table border="1"> <tr> <td><b>(a)</b></td><td> <p>a) He had <b><u>not been sentenced to imprisonment for any period</u></b>, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the following Acts, namely:—</p> <ol style="list-style-type: none"> <li>1) The Indian Stamp Act, 1899 (2 of 1899);</li> <li>2) The Central Excise Act, 1944</li> <li>3) The Industries (Development and Regulation) Act, 1951</li> <li>4) The Prevention of Food Adulteration Act, 1954</li> <li>5) The Essential Commodities Act, 1955</li> <li>6) The Companies Act, 2012</li> <li>7) The Securities Contracts (Regulation) Act, 1956</li> <li>8) The Wealth-tax Act, 1957</li> <li>9) The Income-tax Act, 1961</li> <li>10) The Customs Act, 1962</li> <li>11) The Competition Act, 2002</li> <li>12) The Foreign Exchange Management Act, 1999</li> <li>13) The Sick Industrial Companies (Special Provisions) Act, 198</li> <li>14) The Securities and Exchange Board of India Act, 1992</li> <li>15) The Foreign Trade (Development and Regulation) Act, 1922</li> <li>16) The Prevention of Money-Laundering Act, 2002</li> </ol> </td></tr> <tr> <td><b>(b)</b></td><td> <p>He had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act,</p> </td></tr> </table>	<b>(a)</b>	<p>a) He had <b><u>not been sentenced to imprisonment for any period</u></b>, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the following Acts, namely:—</p> <ol style="list-style-type: none"> <li>1) The Indian Stamp Act, 1899 (2 of 1899);</li> <li>2) The Central Excise Act, 1944</li> <li>3) The Industries (Development and Regulation) Act, 1951</li> <li>4) The Prevention of Food Adulteration Act, 1954</li> <li>5) The Essential Commodities Act, 1955</li> <li>6) The Companies Act, 2012</li> <li>7) The Securities Contracts (Regulation) Act, 1956</li> <li>8) The Wealth-tax Act, 1957</li> <li>9) The Income-tax Act, 1961</li> <li>10) The Customs Act, 1962</li> <li>11) The Competition Act, 2002</li> <li>12) The Foreign Exchange Management Act, 1999</li> <li>13) The Sick Industrial Companies (Special Provisions) Act, 198</li> <li>14) The Securities and Exchange Board of India Act, 1992</li> <li>15) The Foreign Trade (Development and Regulation) Act, 1922</li> <li>16) The Prevention of Money-Laundering Act, 2002</li> </ol>	<b>(b)</b>	<p>He had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act,</p>
<b>(a)</b>	<p>a) He had <b><u>not been sentenced to imprisonment for any period</u></b>, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the following Acts, namely:—</p> <ol style="list-style-type: none"> <li>1) The Indian Stamp Act, 1899 (2 of 1899);</li> <li>2) The Central Excise Act, 1944</li> <li>3) The Industries (Development and Regulation) Act, 1951</li> <li>4) The Prevention of Food Adulteration Act, 1954</li> <li>5) The Essential Commodities Act, 1955</li> <li>6) The Companies Act, 2012</li> <li>7) The Securities Contracts (Regulation) Act, 1956</li> <li>8) The Wealth-tax Act, 1957</li> <li>9) The Income-tax Act, 1961</li> <li>10) The Customs Act, 1962</li> <li>11) The Competition Act, 2002</li> <li>12) The Foreign Exchange Management Act, 1999</li> <li>13) The Sick Industrial Companies (Special Provisions) Act, 198</li> <li>14) The Securities and Exchange Board of India Act, 1992</li> <li>15) The Foreign Trade (Development and Regulation) Act, 1922</li> <li>16) The Prevention of Money-Laundering Act, 2002</li> </ol>				
<b>(b)</b>	<p>He had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act,</p>				



		<p><b>Note:</b> Where the Central Government has given its approval to the appointment of a person convicted or detained under sub-paragraph (a) or sub-paragraph (b) As the case may be, no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval.</p>	
	(c)	He has completed the age of twenty-one years and has not attained the age of seventy years	
	(d)	Where He is a managerial person in more than one company, he draws remuneration from one or more companies subject to the ceiling provided in section V of Part II	
	(e)	<p>He is resident of India :</p> <ul style="list-style-type: none"> <li>▪ Resident in India includes a person who has been staying in India for a continuous period of <b><u>not less than twelve months</u></b> immediately preceding the date of his appointment as a managerial person and who has come to stay in India,—                             <ul style="list-style-type: none"> <li>i. For taking up employment in India; or</li> <li>ii. For carrying on a business or vacation in India.</li> </ul> </li> <li>▪ This condition shall not apply to the companies in Special Economic Zones as notified by Department of Commerce from time to time</li> <li>▪ A person, being a non-resident in India shall enter India only after obtaining a proper Employment Visa from the concerned Indian mission abroad. For this purpose, such person shall be required to furnish, along with the visa application form, profile of the company, the principal employer and terms and conditions of such person's appointment.</li> </ul>	
Part 11 Remuneration	Section 1	<p><b>Remuneration payable by companies having profits:</b></p> <p>Subject to the provisions of section 197, a company having profits in a financial year may pay remuneration to a managerial person or persons not exceeding the limits specified in such section.</p>	
		<p><b>Remuneration payable by companies having no profit or inadequate profit without Central Government approval:</b></p> <p>Where in any financial year during the current tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding higher of the limit given in A And B</p>	
	A.	Where the effective capital is	yearly remuneration payable shall not exceed (Rupees)
		Limit of	

		<table><tr><td>Negative or less than 5 crores</td><td>30 lakhs</td></tr><tr><td>5 crores and above but less than 100 crores</td><td>42 lakhs</td></tr><tr><td>100 crores and above but less than 250 crores</td><td>60 lakhs</td></tr><tr><td>250 crores and above</td><td>60 lakhs plus 0.01% of the Effective capital exceeds Rs. 250 crores</td></tr></table>	Negative or less than 5 crores	30 lakhs	5 crores and above but less than 100 crores	42 lakhs	100 crores and above but less than 250 crores	60 lakhs	250 crores and above	60 lakhs plus 0.01% of the Effective capital exceeds Rs. 250 crores
Negative or less than 5 crores	30 lakhs									
5 crores and above but less than 100 crores	42 lakhs									
100 crores and above but less than 250 crores	60 lakhs									
250 crores and above	60 lakhs plus 0.01% of the Effective capital exceeds Rs. 250 crores									
		<p><b>Note :</b></p> <ul style="list-style-type: none"><li>❖ Each slab be considered for the individual Director</li><li>❖ Provided that the above limits shall be doubled if the resolution passed by the shareholders is a special resolution.</li><li>❖ It is hereby clarified that for a period less than one year, the limits shall be pro-rated.</li></ul>								
		<p><b>B. Managerial person if hold the security in the company :</b></p> <ul style="list-style-type: none"><li>✓ <b>Who hold :</b> by Managerial personnel only.</li><li>✓ <b>How much :</b> Nominal value of rupees five lakh or more as an employee or as a director of the company</li><li>✓ <b>Restriction :</b> he should not be related to any director or promoter at any time during the two years prior to his appointment as a managerial person,</li><li>✓ <b>Remuneration to be drawn :</b> 2.5% of the current relevant profit:</li><li>✓ <b>Condition :</b> If the resolution passed by the shareholders is a special resolution, this limit shall be doubled:</li></ul>								
		<ul style="list-style-type: none"><li>❖ <b>Condition for the payment of remuneration under section 11 , Part 11 of schedule V</b><ul style="list-style-type: none"><li>i) <b>Consent :</b> payment of remuneration is approved by a resolution passed by the Board and, Company u/s 178(1) ,by the Nomination and Remuneration Committee;</li><li>ii) <b>No Default :</b> The company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of <b>thirty days</b> in the preceding financial year before the date of appointment of such managerial person;</li><li>iii) <b>Consent of share holder :</b> A special resolution has been passed at the general meeting of the company for payment of remuneration for a period not exceeding three years;</li><li>iv) <b>Information to be furnished :</b> A statement along with a notice</li></ul></li></ul>								

calling the general meeting is given to the shareholders containing the following information, namely:

- **General Information:**
  - i) Nature of industry
  - ii) Date or expected date of commencement of commercial production
  - iii) In case of new companies, expected date of commencement of activities as per project approved by financial institutions appearing in the prospectus
  - iv) Financial performance based on given indicators
  - v) Foreign investments or collaborations, if any.
- **Information about the appointee:**
  - i) Background details
  - ii) Past remuneration
  - iii) Recognition or awards
  - iv) Job profile and his suitability
  - v) Remuneration proposed
  - vi) Comparative remuneration profile with respect to industry, size of the company, profile of the position and person (in case of expatriates the relevant details would be with respect to the country of his origin)
- **Pecuniary relationship** directly or indirectly with the company, or relationship with the managerial personnel, if any.
- **Other information:**
  - i) Reasons of loss or inadequate profits
  - ii) Steps taken or proposed to be taken for improvement
  - iii) Expected increase in productivity and profits in measurable terms
- **Disclosures:** The following disclosures shall be mentioned in the Board of Director's report under the heading "Corporate Governance", if any, attached to the financial statement:—
  - i) all elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc., of all the directors;
  - ii) details of fixed component and performance linked incentives along with the performance criteria;
  - iii) Service contracts, notice period, severance fees;
  - iv) stock option details, if any, and whether the same has

		been issued at a discount as well as the period over which accrued and over which exercisable.																					
	<b>Section 111</b>	<p><b>Remuneration payable by companies having no profit or inadequate profit without Central Government approval in certain special circumstances:</b> In the following circumstances a company may, <b>without the Central Government approval</b>, pay remuneration to a managerial person <b><u>in excess</u></b> of the amounts provided in Section II above:</p> <table> <tr> <td><b>(a)</b></td><td>Condition</td><td> <p>a) Where all the condition is satisfied</p> <ul style="list-style-type: none"> <li>▪ where the remuneration in excess of the limit specified in Section I or II is paid by any other company and that</li> <li>▪ other company is either a foreign company or</li> <li>▪ has got the approval of its shareholders in general meeting to make such payment, and</li> <li>▪ treats this amount as managerial remuneration for the purpose of section 197 and</li> </ul> </td></tr> <tr> <td></td><td>Inference</td><td>The total managerial remuneration payable by such other company to its managerial persons including such amount or amounts is within permissible limits under section 197.</td></tr> <tr> <td><b>(b)</b></td><td>condition</td><td>Newly Incorporated company</td></tr> <tr> <td></td><td>Inference</td><td> <ul style="list-style-type: none"> <li>▪ The remuneration is up to two times the amount permissible under Section II.</li> <li>▪ The remuneration is paid for a period Seven years from the date of its incorporation of the company</li> </ul> </td></tr> <tr> <td><b>(c)</b></td><td>condition</td><td>The company sick company, under the scheme of revival and rehabilitation</td></tr> <tr> <td></td><td>Inference</td><td> <ul style="list-style-type: none"> <li>✓ The remuneration is up to two times the amount permissible under Section II</li> <li>✓ The remuneration is paid for a period of five years from the date of sanction of scheme of revival,</li> </ul> </td></tr> <tr> <td><b>(d)</b></td><td></td><td>Where remuneration of a managerial person exceeds the limits in Section II but the remuneration has been fixed by the Board for Industrial and Financial Reconstruction or the National Company Law Tribunal</td></tr> </table> <p><b>Condition in addition to the condition given in section 11, part 11 of schedule V:</b></p> <p>i. Except as provided in point (a) of this Section, the managerial person</p>	<b>(a)</b>	Condition	<p>a) Where all the condition is satisfied</p> <ul style="list-style-type: none"> <li>▪ where the remuneration in excess of the limit specified in Section I or II is paid by any other company and that</li> <li>▪ other company is either a foreign company or</li> <li>▪ has got the approval of its shareholders in general meeting to make such payment, and</li> <li>▪ treats this amount as managerial remuneration for the purpose of section 197 and</li> </ul>		Inference	The total managerial remuneration payable by such other company to its managerial persons including such amount or amounts is within permissible limits under section 197.	<b>(b)</b>	condition	Newly Incorporated company		Inference	<ul style="list-style-type: none"> <li>▪ The remuneration is up to two times the amount permissible under Section II.</li> <li>▪ The remuneration is paid for a period Seven years from the date of its incorporation of the company</li> </ul>	<b>(c)</b>	condition	The company sick company, under the scheme of revival and rehabilitation		Inference	<ul style="list-style-type: none"> <li>✓ The remuneration is up to two times the amount permissible under Section II</li> <li>✓ The remuneration is paid for a period of five years from the date of sanction of scheme of revival,</li> </ul>	<b>(d)</b>		Where remuneration of a managerial person exceeds the limits in Section II but the remuneration has been fixed by the Board for Industrial and Financial Reconstruction or the National Company Law Tribunal
<b>(a)</b>	Condition	<p>a) Where all the condition is satisfied</p> <ul style="list-style-type: none"> <li>▪ where the remuneration in excess of the limit specified in Section I or II is paid by any other company and that</li> <li>▪ other company is either a foreign company or</li> <li>▪ has got the approval of its shareholders in general meeting to make such payment, and</li> <li>▪ treats this amount as managerial remuneration for the purpose of section 197 and</li> </ul>																					
	Inference	The total managerial remuneration payable by such other company to its managerial persons including such amount or amounts is within permissible limits under section 197.																					
<b>(b)</b>	condition	Newly Incorporated company																					
	Inference	<ul style="list-style-type: none"> <li>▪ The remuneration is up to two times the amount permissible under Section II.</li> <li>▪ The remuneration is paid for a period Seven years from the date of its incorporation of the company</li> </ul>																					
<b>(c)</b>	condition	The company sick company, under the scheme of revival and rehabilitation																					
	Inference	<ul style="list-style-type: none"> <li>✓ The remuneration is up to two times the amount permissible under Section II</li> <li>✓ The remuneration is paid for a period of five years from the date of sanction of scheme of revival,</li> </ul>																					
<b>(d)</b>		Where remuneration of a managerial person exceeds the limits in Section II but the remuneration has been fixed by the Board for Industrial and Financial Reconstruction or the National Company Law Tribunal																					

		<p>is not receiving remuneration from any other company;</p> <p>ii. No objection certificate is obtained from the creditor and term lenders with respect to the appointment and the remuneration to be paid to those MD/WTd.</p> <p>iii. S No default is there in making payment of the dues to creditor are the deposit holder which are settled on time.</p> <p><b>Where a company in a Special Economic Zone:</b></p> <ul style="list-style-type: none"> <li>▪ <b>Condition :</b> following condition must get complied</li> <li>✓ Company has not raised any money by public issue of shares or debentures in India, and</li> <li>✓ Company has not made any default in India in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in any financial year,</li> <li>▪ <b>Limit on remuneration to be paid :</b> may pay remuneration up to Rs. 2,40,00,000 per annum.</li> </ul>
	<b>Section IV</b>	<p>❖ <b>Perquisites not included in managerial remuneration:</b></p> <p>a) contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Income-tax Act, 1961</p> <p>b) gratuity payable at a rate not exceeding half a month's salary for each completed year of service; and</p> <p>c) Encashment of leave at the end of the tenure.</p> <p>❖ <b>For an expatriate managerial person (including a non-resident Indian):</b> He /She shall be eligible to the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in Section II or Section III</p> <p>a) <b>Children's education allowance:</b> In case of children studying in or outside India, an allowance limited to a maximum of Rs. 12,000 per month per child or actual expenses incurred, whichever is less. Such allowance is admissible up to a maximum of two children.</p> <p>b) <b>Holiday passage for children studying outside India or family staying abroad:</b> Return holiday passage once in a year by economy class or once in two years by first class to children and to the members of the family from the place of their study or stay abroad to India if they are not residing in India, with the managerial person.</p> <p>c) <b>Leave travel concession:</b> Return passage for self and family in accordance with the rules specified by the company where it is proposed that the leave be spent in home country instead of</p>

		anywhere in India.
	<b>Section V</b>	<b>remuneration payable to managerial person in two companies</b> <ul style="list-style-type: none"> <li>❖ First section I, IV to be given regards</li> <li>❖ Remuneration drawn by any managerial person in two company : total remuneration so drawn shall not exceed the maximum permissible limit admissible from any one of the company of which he is the managerial person</li> </ul>
<b>Part III</b>	<b>Provisions applicable to Parts I and II of this Schedule</b> <ol style="list-style-type: none"> <li>1. The appointment and remuneration referred to in Part I and Part II of this Schedule shall be subject to approval by a resolution of the shareholders in general meeting.</li> <li>2. The auditor or the Secretary of the company or where the company is not required to appoint a Secretary, a Secretary in whole-time practice shall certify that the requirement of this Schedule have been complied with and such certificate shall be incorporated in the return filed with the Registrar under sub-section (4) of section 196.</li> </ol>	
<b>Part IV</b>	The Central Government may, by notification, exempt any class or classes of companies from any of the requirements contained in this Schedule.	

## Sitting fee u/s 197(5) and Rule 4 of companies ( Appointment and Remuneration of managerial personnel )Rule

- ❖ **What is sitting fee :** Fee paid to the director for attending the meeting of board and the committee
- ❖ **To whom to be paid :** Sitting fee shall be paid to the ordinary director(NED) only not to the executive director ( MD/WTD/Manager)
- ❖ **How much to be paid :** The amount so to be paid to director is the sum so decided as the board , which shall not exceed Rs 1,00,000/- per meeting of the board or committee thereof.
- ❖ **Sitting fee to independent director/woman director:** shall not be less than the fee payable to other director.
- ❖ **Do sitting fee be paid where company having no profit:** Accrual of sitting fee does not have any link with the profit, it is that of the fee payable to make the director available at the meeting. Hence sitting fee shall be paid even though company has loss.
- ❖ **If AOA of the company prescribed the lesser amount of sitting fee :** The company can paid increasing such limit by altering AOA, however subject to the limit given in section
- ❖ **Meeting is adjourned:** Sitting fee usually paid to NED for attending the Board meeting i.e for being present at meeting, it cannot be means as holding the meeting. Hence, it would not be wrong to pay sitting fee ( sitting expenses and travelling expenses) if meeting is adjourned due to want of Quorum or otherwise.

Other

- ❖ **Refund of excess remuneration drawn u/s 197(9)** : If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company.
- ❖ **Waive of recovery** : The company shall not waive the recovery of any sum refundable unless permitted by the Central Government.
- ❖ **Where there is no profit / inadequate profit** :
  - **Situation** : Company having no profit falling under preview of schedule V
  - **Act** : Increase in remuneration
  - **Provision** : Irrespective of having the provision for the increasing the remuneration in MOA, AOA or agreement or in any resolution, passed in GM shall not have effect unless such increase is
    - ✓ In accordance with the conditions specified in that Schedule and If such conditions are not being complied,
    - ✓ The approval of the Central Government had been obtained.
- ❖ **Discloser of remuneration in Board report** : Every listed company shall disclose in the Board's report, the ratio of the remuneration of each director to the median employee's remuneration and such other details as may be prescribed.
- ❖ Where any insurance is taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel
- ❖ (14) Subject to the provisions of this section, any director who is in receipt of any commission from the company and who is a managing or whole-time director of the company shall not be disqualified from receiving any remuneration or commission from any holding company or subsidiary company of such company subject to its disclosure by the company in the Board's report.
- ❖ If any person contravenes the provisions of this section, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

<b>Recovery of remuneration in certain cases [Section 199]</b>
--

<b>Provision</b>	<i>Without prejudice to any liability incurred under the provisions of this Act or any other law</i> for the time being in force, where a company is required to re-state its
------------------	---



	financial statements due <u>to fraud or non-compliance</u> with any requirement under this Act and the rules made thereunder, the company shall recover from any past or present managing director or whole-time director or manager or Chief Executive Officer (by whatever name called) who, during the period for which the financial statements are required to be re-stated, received the remuneration (including stock option) in excess of what would have been payable to him as per restatement of financial statements
<b>Interpretation</b>	The word <i>Without prejudice to any liability incurred under the provisions of this Act or any other law for the time being in force</i> , used in section 199 implies that recovery under this section is in addition to any other liability under company act 2013 or any other law for the time being in force.
<b>Whose remuneration</b>	Whole-time director or Manager or Chief Executive Officer (by whatever name called)
<b>Which period remuneration</b>	remuneration during the period for which the financial statements are required to be re-stated,

### Section 202 : Compensation for loss of office of managing or whole-time director or manager

or manager,

- ❖ **Who is not falling under this preview** : Any other director( Ordinary director), by way of compensation for loss of office, or as consideration for retirement from office
- ❖ **When payment shall not be made u/s 202(2)** : No payment shall be made in the following cases:
  - a) where the director resigns from his office as a result of the reconstruction of the company, or of its amalgamation with any other body corporate or bodies corporate, and is appointed as the managing or whole-time director, manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation.
  - b) where the director resigns from his office otherwise than on the reconstruction of the company or its amalgamation as aforesaid
  - c) where the office of the director is vacated u/s 167(1)
  - d) where the company is being wound up, whether by an order of the Tribunal or voluntarily, provided the winding up was due to the negligence or default of the director
  - e) where the director has been guilty of fraud or breach of trust in relation to, or of gross negligence in or gross mismanagement of, the conduct of the affairs of the company or any subsidiary company or holding company thereof; and

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

f) where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office.

- ❖ **Amount of compensation u/s 202(3)** : Any payment made to a managing or whole-time director or manager shall not exceed the remuneration which he would have earned if he had been in office for the remainder of his term or for three years, whichever is shorter,

### Note :

- calculation shall be made on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which he ceased to hold office, or where he held the office for a lesser period than three years, during such period:
- Provided that no such payment shall be made to the director in the event of the commencement of the winding up of the company, whether before or at any time within twelve months after, the date on which he ceased to hold office, if the assets of the company on the winding up, after deducting the expenses thereof, are not sufficient to repay to the shareholders the share capital, including the premiums, if any, contributed by them.
- ❖ **Restriction not applicable** : Nothing in this section shall be deemed to prohibit the payment to a managing or whole-time director, or manager, of any remuneration for services rendered by him to the company in any other capacity.

### GENERAL MEETING :

#### Section 96 : Annual general meeting

<b>Meaning AGM</b>	In each year, every company shall convene an Annual general meeting, in addition to any other general meeting. AGM are divided in to two type from their implementation	
<b>Provision</b>	<b>First AGM</b>	<b>Subsequent AGM</b>
	<b>Period city to held the meeting :</b> <ul style="list-style-type: none"><li>❖ Within 9 months from the date of closing of the first financial year</li><li>❖ If company hold its first AGM as stated above , it need not held any AGM in the year of its incorporation. [ 2nd proviso to section 96(1)]</li></ul> <b>Extension:</b> Extension of first AGM is not permissible	<b>Period city to held the meeting :</b> earlier to <ul style="list-style-type: none"><li>❖ End of the year i.e. by 31st December</li><li>❖ Within 6 months from the date of closing of the financial year</li><li>❖ Not more than the 15 months from the date of previous AGM. [1st proviso to section 96(1)]</li></ul> <b>Extension:</b> <ul style="list-style-type: none"><li>❖ Extension of AGM can be made by ROC for 3 months</li></ul>
<b>Other provision</b>	<b>Which company :</b> Every company other than a One Person Company <b>Time/ period/day of calling AGM :</b> <ul style="list-style-type: none"><li>a) Time : During business hours, that is, between 9 a.m. to 6 p.m.</li><li>b) Day : on any day that is not a National Holiday and</li><li>c) Place : shall be held either at the registered office of the company or at some other</li></ul>	

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

	<p>place within the city, town or village in which the registered office of the company is situate:</p> <p>❖ <b>Exemption by CG:</b> Provided that the Central Government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose.</p> <p><b>Note:</b> If the AGM is adjourned due to want of quorum, then the adjourned meeting can be held on public holiday/National holiday.</p>						
<b>Issues</b>	<p><b>Can an AGM be held on national holiday ?</b></p> <ul style="list-style-type: none"> <li>As per section 96 (2) of the Companies Act, 2013 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.</li> <li>A national holiday as said above, has been defined as a day declared as National Holiday by the Central Government.</li> <li>Hence , meeting can not be held on national holiday</li> </ul> <p><b>If any day declared as national holiday after the notice for AGM is issued. Can meeting validly be held on such national holiday ?</b></p> <ul style="list-style-type: none"> <li>No day declared by the Central Government to be a national holiday shall be deemed to be national holiday in relation to any meeting, unless the declaration was notified before the issue of the notice convening such meeting.</li> <li>Based on above provision, the meeting in the given case can validly be held.</li> </ul> <p><b>A company should file its Annual return within 6 months from closing of the financial year</b></p> <ul style="list-style-type: none"> <li>Section 92 (4) states that 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.</li> <li>Based on the above provision, it would be wrong to say that a company shall fill annual return within 6 months from the close of financial year.</li> </ul>						
<b>Power of Tribunal to call AGM u/s 167 of CA 1956</b>	<table border="1"> <tr> <td><b>When</b></td><td>If any default is made in holding the annual general meeting of a company</td></tr> <tr> <td><b>Manner</b></td><td> <p>The Tribunal may, direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal after considering the following :</p> <ul style="list-style-type: none"> <li>Irrespective of any provision under this act. the articles of the company,</li> <li>on the application of any member of the company,</li> </ul> </td></tr> <tr> <td><b>Quorum</b></td><td>one member of the company present in person or by proxy shall be deemed to constitute a meeting.</td></tr> </table>	<b>When</b>	If any default is made in holding the annual general meeting of a company	<b>Manner</b>	<p>The Tribunal may, direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal after considering the following :</p> <ul style="list-style-type: none"> <li>Irrespective of any provision under this act. the articles of the company,</li> <li>on the application of any member of the company,</li> </ul>	<b>Quorum</b>	one member of the company present in person or by proxy shall be deemed to constitute a meeting.
<b>When</b>	If any default is made in holding the annual general meeting of a company						
<b>Manner</b>	<p>The Tribunal may, direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal after considering the following :</p> <ul style="list-style-type: none"> <li>Irrespective of any provision under this act. the articles of the company,</li> <li>on the application of any member of the company,</li> </ul>						
<b>Quorum</b>	one member of the company present in person or by proxy shall be deemed to constitute a meeting.						

### **EXTRA ORDINARY ANNUAL GENERAL MEETING :**

**Extra – ordinary general meeting :** Extra ordinary general meeting can be called by the following :

1. Calling of EGM by board of director on sue Moto [ section 100(1) of company act 2013]
2. Calling of EGM by BOD on members requisition [ section 100(2) and (3) of company act 2013]
3. EGM called and held by the requisitionist on failure of BOD [ section 100(4) to (6) of company act 2013]
4. Power of CLB to call for EGM (u/s 186 of company act 1956)

<b>Who shall</b>	BOD when ever it deems fit, call an extraordinary general meeting of the company based on the
------------------	---

## SEMINAR ON MEETING AND DIRECTOR FOR CMA FINAL

call EGM	requisition made to it	
Who shall send the requisition	<b>Requisite number of person , who can send the requisition for the AGM.</b> a) <u><b>In the case of a company having a share capital :</b></u> Not less than one-tenth of such of the paid-up share capital of the company <b>as on that date</b> carries the right of voting b) <u><b>in the case of a company not having a share capital :</b></u> not less than one-tenth of the total voting power of all the members having on the said date a right to vote,	
When EGM to be called	➤ The Board shall, within <b>twenty-one days</b> from the date of receipt of a valid requisition in regard to any matter, call an EGM. ➤ <b>If not possible</b> , at least EGM shall be <b>not later than forty-five days</b> from the date of receipt of such requisition, ➤ <b>If not held within 45 days</b> , the meeting may be called and held by the requisitionalist themselves <b>within a period of three months</b> from the date of the requisition.[ <b>rule 17</b> of the companies [management and administration) rule 2014]	
Rule 17	<b>Rule 17 of the companies [management and administration) rule 2014</b> <b>Applicable :</b> where the meeting is not convened by the BOD after the application / requisition given by the member on that behalf, Requisitionalist can call an EGM by complying with said Rule. ❖ Notice shall be given to those member whose name is appear in the register of member within 3 days from the date of deposit of notice for convening EGM ❖ Notice shall be given not less than 21 days prior to the date of EGM u/r 17(1) ❖ Notice can be given by Speed post/registered post or through electronic mode. ❖ <b>Signing of notice :</b> by all requisitionalist or by any requisitionalist who is duly autopsied by all ❖ No explanatory statement is required to be given	
Issue	<b>Expenses incurred for calling EGM u/s 100(6)</b>	Any reasonable expenses incurred by the requisitionalist in calling a meeting shall be reimbursed to the requisitionalist by the company and the sums so paid shall be deducted from any fee or other remuneration under section 197(Managerial remuneration ) payable to such of the directors who were in default in calling the meeting
	<b>If Quorum is not present in EGM u/s 103(2) (b)</b>	As per Section 103 (2) (b) of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall <b>stand cancelled</b> .
	<b>Is reason required to mentioned in notice</b>	It is not mandatory for the requisitionalist to disclose reason for proposed resolution to be passed at EGM. [ <b>LIC vs Escort, SC</b> ]
	<b>Required requisition for calling AGM during course of amalgamation</b>	During the course of amalgamation scheme, which is at court proceeding, any requisition given by member for convening EGM shall not be considered as invalid. [ <b>Pravin kantilal vakil vs Mrs Rohini Ramesh , Bom</b> ]

---