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**The Companies Act, 2013**  
**45 Sections notified on 12th September, 2013**  
**and made applicable by ICAI for CA (Final) Nov. 2014 Exams**

**1.1 Punishment for failure to distribute dividends (Sec. 127)**

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| <b>Sec. 127</b>            | <ul style="list-style-type: none"> <li>→ Where a dividend has been declared by a company</li> <li>→ but has not been paid or</li> <li>→ the warrant in respect thereof has not been posted</li> <li>→ within 30 days from the date of declaration to any shareholder entitled to the payment of the dividend,</li> <li>→ every director of the company shall,</li> <li>→ if he is knowingly a party to the default,</li> <li>→ be punishable with imprisonment which may extend to 2 years and with fine which shall not be less than Rs. 1,000 for every day during which such default continues</li> <li>→ and the company shall be liable to pay simple interest at the rate of 18% per annum during the period for which such default continues:</li> </ul>  |
| <b>Proviso to Sec. 127</b> | <ul style="list-style-type: none"> <li>→ Provided that no offence under this section shall be deemed to have been committed:—</li> <li>(a) → where the dividend could not be paid               <ul style="list-style-type: none"> <li>→ by reason of the operation of any law;</li> </ul> </li> <li>(b) → where a shareholder has given directions to the company regarding the payment of the dividend               <ul style="list-style-type: none"> <li>→ and those directions cannot be complied with</li> <li>→ and the same has been communicated to him;</li> </ul> </li> <li>(c) → where there is a dispute               <ul style="list-style-type: none"> <li>→ regarding the right to receive the dividend;</li> </ul> </li> <li>(d) → where the dividend has been lawfully adjusted by the company               <ul style="list-style-type: none"> <li>→ against any sum due to it from the shareholder; or</li> </ul> </li> <li>(e) → where, for any other reason,               <ul style="list-style-type: none"> <li>→ the failure to pay the dividend or to post the warrant within the period under this section</li> <li>→ was not due to any default on the part of the company.</li> </ul> </li> </ul> |

**1.2 Central Government to prescribe accounting standards (Sec. 133)**

- The Central Government may prescribe
- the standards of accounting or any addendum thereto,
- as recommended by the Institute of Chartered Accountants of India,
- constituted under section 3 of the Chartered Accountants Act, 1949,
- in consultation with and after examination of the recommendations made by
- the National Financial Reporting Authority.

**1.3 Appointment of additional director, alternate director and nominee director (Sec. 161)**

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| <b>Sec. 161(1)</b>                   | <ul style="list-style-type: none"> <li>→ The articles of a company may confer on its Board of Directors</li> <li>→ the power to appoint any person,</li> <li>→ other than a person who fails to get appointed as a director in a general meeting,</li> <li>→ as an additional director</li> <li>→ at any time</li> <li>→ who shall hold office</li> <li>→ up to</li> <li>→ the date of the next AGM or</li> <li>→ the last date on which the AGM should have been held,</li> <li>→ whichever is earlier.</li> </ul>    |
| <b>Sec. 161(2)</b>                   | <ul style="list-style-type: none"> <li>→ The Board of Directors of a company may,</li> <li>→ <del>if so authorised by its articles or by a resolution passed by the company in general meeting,</del></li> <li>→ appoint a person,</li> <li>→ <del>not being a person holding any alternate directorship for any other director in the company,</del></li> <li>→ to act as an alternate director</li> <li>→ for a director</li> <li>→ during his absence for a period of not less than 3 months from India:</li> </ul> |
| <b>First Proviso to Sec. 161(2)</b>  | <ul style="list-style-type: none"> <li>→ Provided that no person shall be appointed as an alternate director</li> <li>→ for an independent director</li> <li>→ <del>unless he is qualified to be appointed as an independent director under the provisions of this Act;</del></li> </ul>   |
| <b>Second Proviso to Sec. 161(2)</b> | <ul style="list-style-type: none"> <li>→ Provided further that an alternate director shall not hold office</li> <li>→ for a period longer than that permissible to the director in whose place he has been appointed</li> <li>→ and shall vacate the office</li> <li>→ if and when the director in whose place he has been appointed returns to India:</li> </ul>  |
| <b>Third Proviso to Sec. 161(2)</b>  | <ul style="list-style-type: none"> <li>→ Provided also that if the term of office of the original director is determined</li> <li>→ before he so returns to India,</li> <li>→ any provision for the automatic re-appointment of retiring directors</li> <li>→ in default of another appointment</li> <li>→ shall apply to the original, and not to the alternate director.</li> </ul>  |
| <b>Sec. 161(3)</b>                   | <ul style="list-style-type: none"> <li>→ Subject to the articles of a company,</li> <li>→ the Board may appoint any person</li> <li>→ as a director nominated by</li> <li>→ any institution in pursuance of the provisions of any law for the time being in force or</li> <li>→ of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company.</li> </ul>  |
| <b>Sec. 161(4)</b>                   | <ul style="list-style-type: none"> <li>→ In the case of a public company,</li> <li>→ if the office of any director appointed by the company in general meeting</li> <li>→ is vacated before his term of office expires in the normal course,</li> <li>→ the resulting casual vacancy may,</li> <li>→ in default of and subject to any regulations in the articles of the company,</li> <li>→ be filled by the Board of Directors</li> <li>→ at a meeting of the Board.</li> </ul>                                      |

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| <b>Proviso to Sec. 161(4)</b> | <ul style="list-style-type: none"> <li>→ Provided that any person so appointed shall hold office</li> <li>→ only up to the date up to which the director in whose place he is appointed</li> <li>→ would have held office if it had not been vacated.</li> </ul> |
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#### 1.4 Appointment of directors to be voted individually (Sec. 162)

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| <b>Sec. 162(1)</b> | <ul style="list-style-type: none"> <li>→ At a general meeting of a company,</li> <li>→ a motion for the appointment of two or more persons as directors of the company</li> <li>→ by a single resolution</li> <li>→ shall not be moved</li> <li>→ unless a proposal to move such a motion</li> <li>→ has first been agreed to at the meeting</li> <li>→ without any vote being cast against it.</li> </ul> |
| <b>Sec. 162(2)</b> | <ul style="list-style-type: none"> <li>→ A resolution moved in contravention of sub-section (1)</li> <li>→ shall be void,</li> <li>→ whether or not any objection was taken when it was moved.</li> </ul>  |
| <b>Sec. 162(3)</b> | <ul style="list-style-type: none"> <li>→ A motion for</li> <li>→ approving a person for appointment, or</li> <li>→ for nominating a person for appointment as a director,</li> <li>→ shall be treated as a motion for his appointment.</li> </ul>  |

#### 1.5 Option to adopt principle of proportional representation for appointment of directors (Sec. 163)

- Notwithstanding anything contained in this Act,
- the articles of a company
- may provide for
- the appointment of not less than 2/3rd of the total number of the directors of a company
- in accordance with the principle of proportional representation,
- whether by the single transferable vote or by a system of cumulative voting or otherwise
- and such appointments may be made once in every 3 years
- and casual vacancies of such directors shall be filled as provided in sub-section (4) of section 161.

#### 1.6 Defects in appointment of directors not to invalidate actions taken (Sec. 176)

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| <b>Sec. 176</b>            | <ul style="list-style-type: none"> <li>→ No act done by a person</li> <li>→ as a director</li> <li>→ shall be deemed to be invalid,</li> <li>→ notwithstanding that it was subsequently noticed</li> <li>→ that his appointment</li> <li>→ was invalid by reason of any defect or disqualification or</li> <li>→ had terminated by virtue of any provision contained in this Act or in the articles of the company:</li> </ul> |
| <b>Proviso to Sec. 176</b> | <ul style="list-style-type: none"> <li>→ Provided that nothing in this section shall be deemed to give validity to any act done by the director</li> <li>→ after his appointment has been noticed by the company</li> <li>→ to be invalid or to have terminated.</li> </ul>  |

**1.7 Restrictions on powers of Board****(Sec. 180)****Sec. 180(1)**

- The Board of Directors of a company
- shall exercise the following powers
- only with the consent of the company
- by a special resolution,
- namely:—
  - (a) → to sell, lease or otherwise dispose of
    - the whole or substantially the whole of the undertaking of the company or
    - where the company owns more than one undertaking,
    - of the whole or substantially the whole of any of such undertakings.
    - Explanation.
    - For the purposes of this clause,—
      - (i) → “undertaking” shall mean
        - an undertaking in which the investment of the company exceeds
        - 20% of its net worth as per the audited balance sheet of the preceding financial year or
        - an undertaking which generates 20% of the total income of the company during the previous financial year;
      - (ii) → the expression “substantially the whole of the undertaking” in any financial year shall mean
        - 20% or more of the value of the undertaking
        - as per the audited balance sheet of the preceding financial year;
  - (b) → to invest otherwise in trust securities
    - the amount of compensation received by it
    - as a result of any merger or amalgamation;
  - (c) → to borrow money,
    - where the money to be borrowed,
    - together with the money already borrowed by the company
    - will exceed aggregate of its paid-up share capital and free reserves,
    - apart from temporary loans obtained from the company’s bankers in the ordinary course of business:
      - Provided that the acceptance by a banking company,
      - in the ordinary course of its business, of deposits of money from the public,
      - repayable on demand or otherwise,
      - and withdrawable by cheque, draft, order or otherwise,
      - shall not be deemed to be a borrowing of monies
      - by the banking company within the meaning of this clause.
    - Explanation.
    - For the purposes of this clause,
    - the expression “temporary loans” means
      - loans repayable
      - on demand or
      - within 6 months from the date of the loan
      - such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character,
      - but does not include loans raised for the purpose of financial expenditure of a capital nature;
  - (d) → to remit, or give time for the repayment of,
    - any debt due from a director.

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| <b>Sec. 180(2)</b> | <ul style="list-style-type: none"> <li>→ Every special resolution passed by the company in general meeting</li> <li>→ in relation to the exercise of the powers referred to in clause (c) of sub-section (1)</li> <li>→ shall specify the total amount</li> <li>→ up to which monies may be borrowed by the Board of Directors.</li> </ul>  |
| <b>Sec. 180(3)</b> | <ul style="list-style-type: none"> <li>→ Nothing contained in clause (a) of sub-section (1) shall affect—</li> <li>→ (a) the title of a buyer or other person</li> <li>→ who buys or takes on lease any property, investment or undertaking as is referred to in that clause,</li> <li>→ in good faith; or</li> <li>→ (b) the sale or lease of any property of the company</li> <li>→ where the ordinary business of the company consists of, or comprises, such selling or leasing.</li> </ul>   |
| <b>Sec. 180(4)</b> | <ul style="list-style-type: none"> <li>→ Any special resolution passed by the company</li> <li>→ consenting to the transaction as is referred to in clause (a) of sub-section (1)</li> <li>→ may stipulate such conditions as may be specified in such resolution,</li> <li>→ including conditions regarding the use, disposal or investment of the sale proceeds</li> <li>→ which may result from the transactions:</li> <li>→ Provided that this sub-section shall not be deemed to authorise the company</li> <li>→ to effect any reduction in its capital</li> <li>→ except in accordance with the provisions contained in this Act.</li> </ul> |
| <b>Sec. 180(5)</b> | <ul style="list-style-type: none"> <li>→ No debt incurred by the company</li> <li>→ in excess of the limit imposed by clause (c) of sub-section (1)</li> <li>→ shall be valid or effectual,</li> <li>→ unless the lender proves</li> <li>→ that he advanced the loan in good faith and</li> <li>→ without knowledge that the limit imposed by that clause had been exceeded.</li> </ul>   |

### 1.8 Company to contribute to bona fide and charitable funds, etc. (Sec. 181)

- The Board of Directors of a company
- may contribute to bona fide charitable and other funds:
- Provided that prior permission of the company in general meeting shall be required for such contribution
- in case any amount the aggregate of which,
- in any financial year,
- exceed 5% of its average net profits for the 3 immediately preceding financial years.

### 1.9 Prohibitions and restrictions regarding political contributions (Sec. 182)

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| <b>Sec. 182(1)</b> | <ul style="list-style-type: none"> <li>→ Notwithstanding anything contained in any other provision of this Act,</li> <li>→ a company,</li> <li>→ other than</li> <li>→ a Government company and</li> <li>→ a company which has been in existence for less than 3 financial years,</li> <li>→ may contribute any amount directly or indirectly to any political party:</li> </ul> |
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| <b>First Proviso to Sec. 182(1)</b>  | <ul style="list-style-type: none"> <li>→ Provided that the amount referred to in sub-section (1) or, as the case may be, the aggregate of the amount which may be so contributed by the company in any financial year</li> <li>→ shall not exceed 7.5% of its average net profits</li> <li>→ during the 3 immediately preceding financial years:</li> </ul>   |
| <b>Second Proviso to Sec. 182(1)</b> | <ul style="list-style-type: none"> <li>→ Provided further that no such contribution shall be made by a company</li> <li>→ unless a resolution authorising the making of such contribution is passed</li> <li>→ at a meeting of the Board of Directors</li> <li>→ and such resolution shall,</li> <li>→ subject to the other provisions of this section,</li> <li>→ be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.</li> </ul>  |
| <b>Sec. 182(2)</b>                   | <ul style="list-style-type: none"> <li>→ Without prejudice to the generality of the provisions of sub-section (1),—</li> <li>(a) → a donation or subscription or payment <ul style="list-style-type: none"> <li>→ caused to be given by a company on its behalf or on its account</li> <li>→ to a person who,</li> <li>→ to its knowledge,</li> <li>→ is carrying on any activity which,</li> <li>→ at the time at which such donation or subscription or payment was given or made,</li> <li>→ can reasonably be regarded as likely to affect public support for a political party</li> <li>→ shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;</li> </ul> </li> <li>(b) → the amount of expenditure incurred, directly or indirectly, by a company <ul style="list-style-type: none"> <li>→ on an advertisement in any publication,</li> <li>→ being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like,</li> <li>→ shall also be deemed,— <ul style="list-style-type: none"> <li>(i) → where such publication is by or on behalf of a political party, <ul style="list-style-type: none"> <li>→ to be a contribution of such amount to such political party, and</li> </ul> </li> <li>(ii) → where such publication is not by or on behalf of, <ul style="list-style-type: none"> <li>→ but for the advantage of</li> <li>→ a political party,</li> <li>→ to be a contribution for a political purpose.</li> </ul> </li> </ul> </li> </ul> </li> </ul> |
| <b>Sec. 182(3)</b>                   | <ul style="list-style-type: none"> <li>→ Every company shall disclose in its profit and loss account</li> <li>→ any amount or amounts contributed by it to any political party during the financial year to which that account relates,</li> <li>→ giving particulars of the total amount contributed and the name of the party to which such amount has been contributed.</li> </ul>   |
| <b>Sec. 182(4)</b>                   | <ul style="list-style-type: none"> <li>→ If a company makes any contribution in contravention of the provisions of this section,</li> <li>→ the company shall be punishable with fine which may extend to five times the amount so contributed</li> <li>→ and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to 5 times the amount so contributed.</li> </ul>  |
| <b>Explanation to Sec. 182(4)</b>    | <ul style="list-style-type: none"> <li>→ For the purposes of this section, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951.</li> </ul>   |

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| <b>1.10</b> | <b>Power of Board and other persons to make contributions to national defence fund, etc.</b> | <b>(Sec. 183)</b> |
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| <b>Sec. 183(1)</b> | <ul style="list-style-type: none"> <li>→ The Board of Directors of any company or</li> <li>→ any person or authority exercising the powers of the Board of Directors of a company, or of the company in general meeting,</li> <li>→ may,</li> <li>→ notwithstanding anything contained in sections 180, 181 and section 182 or any other provision of this Act or in the memorandum, articles or any other instrument relating to the company,</li> <li>→ contribute</li> <li>→ such amount as it thinks fit</li> <li>→ to the National Defence Fund or any other Fund approved by the Central Government for the purpose of national defence.</li> </ul> |
| <b>Sec. 183(2)</b> | <ul style="list-style-type: none"> <li>→ Every company shall disclose in its profits and loss account</li> <li>→ the total amount or amounts contributed by it</li> <li>→ to the Fund referred to in sub-section (1)</li> <li>→ during the financial year to which the amount relates.</li> </ul>   |

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| <b>1.11</b> | <b>Loans to directors, etc.</b> | <b>(Sec. 185)</b> |
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| <b>Sec. 185(1)</b>                | <ul style="list-style-type: none"> <li>→ Save as otherwise provided in this Act,</li> <li>→ no company shall,</li> <li>→ directly or indirectly,</li> <li>→ advance any loan,</li> <li>→ including any loan represented by a book debt,</li> <li>→ to any of its directors or to any other person in whom the director is interested or</li> <li>→ give any guarantee or provide any security in connection with any loan taken by him or such other person:</li> </ul>   |
| <b>Proviso to Sec. 185(1)</b>     | <ul style="list-style-type: none"> <li>→ Provided that nothing contained in this sub-section shall apply to —</li> <li>(a) → the giving of any loan to a managing or whole-time director — <ul style="list-style-type: none"> <li>(i) → as a part of the conditions of service extended by the company to all its employees; or</li> <li>(ii) → pursuant to any scheme approved by the members by a special resolution; or</li> </ul> </li> <li>(b) → a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.</li> </ul> |
| <b>Explanation to Sec. 185(1)</b> | <ul style="list-style-type: none"> <li>→ For the purposes of this section,</li> <li>→ the expression "to any other person in whom director is interested" means —</li> <li>(a) → any director <ul style="list-style-type: none"> <li>→ of the lending company, or</li> <li>→ of a company which is its holding company</li> <li>→ or any partner or relative of any such director;</li> </ul> </li> <li>(b) → any firm in which any such director or relative is a partner;</li> <li>(c) → any private company of which any such director is a director or member;</li> </ul>   |



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|                    | <p>(d) → any body corporate<br/>→ at a general meeting of which not less than 25% of the total voting power<br/>→ may be exercised or controlled by any such director, or by two or more such directors, together; or</p> <p>(e) → any body corporate,<br/>→ the Board of directors, managing director or manager, whereof<br/>→ is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.</p>  |
| <b>Sec. 185(2)</b> | <p>→ If any loan is advanced or a guarantee or security is given or provided<br/>→ in contravention of the provisions of sub-section (1),<br/>→ the company shall be punishable with fine<br/>→ which shall not be less than five lakh rupees<br/>→ but which may extend to twenty-five lakh rupees,<br/>→ and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person,<br/>→ shall be punishable with imprisonment<br/>→ which may extend to six months or<br/>→ with fine which shall not be less than five lakh rupees<br/>→ but which may extend to twenty-five lakh rupees, or with both.</p> |

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| <b>1.12</b> | <b>Restriction on non-cash transactions involving directors</b> | <b>(Sec. 192)</b> |
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| <b>Sec. 192(1)</b> | <p>→ No company shall enter into an arrangement by which —</p> <p>(a) → a director of the company or its holding, subsidiary or associate company or<br/>→ a person connected with him<br/>→ acquires or is to acquire assets<br/>→ for consideration other than cash,<br/>→ from the company; or</p> <p>(b) → the company acquires or is to acquire assets<br/>→ for consideration other than cash,<br/>→ from such director or person so connected,</p> <p>→ unless prior approval for such arrangement is accorded by a resolution of the company in general meeting<br/>→ and if the director or connected person is a director of its holding company,<br/>→ approval under this sub-section shall also be required to be obtained by passing a resolution in general meeting of the holding company.</p> |
| <b>Sec. 192(2)</b> | <p>→ The notice for approval of the resolution<br/>→ by the company or holding company<br/>→ in general meeting under sub-section (1)<br/>→ shall include the particulars of the arrangement<br/>→ along with the value of the assets involved in such arrangement<br/>→ duly calculated by a registered valuer.</p>   |
| <b>Sec. 192(3)</b> | <p>→ Any arrangement entered into<br/>→ by a company or its holding company<br/>→ in contravention of the provisions of this section<br/>→ shall be voidable at the instance of the company<br/>→ unless —</p>   |

- (a) → the restitution of any money or
  - other consideration which is the subject matter of the arrangement
  - is no longer possible and
  - the company has been indemnified by any other person for any loss or damage caused to it; or
- (b) → any rights are acquired bona fide for value and
  - without notice of the contravention of the provisions of this section by any other person.

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| <b>1.13</b> | <b>Prohibition on forward dealings in securities of company by director or key managerial personnel</b> | <b>(Sec. 194)</b> |
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| <b>Sec. 194(1)</b>                | <ul style="list-style-type: none"> <li>→ No director of a company or any of its key managerial personnel shall buy</li> <li>→ in the company, or</li> <li>→ in its holding, subsidiary or associate company—           <ul style="list-style-type: none"> <li>(a) → a right to call for delivery or               <ul style="list-style-type: none"> <li>→ a right to make delivery</li> <li>→ at a specified price and within a specified time,</li> <li>→ of a specified number of relevant shares or a specified amount of relevant debentures; or</li> </ul> </li> <li>(b) → a right, as he may elect,               <ul style="list-style-type: none"> <li>→ to call for delivery or to make delivery</li> <li>→ at a specified price and within a specified time,</li> <li>→ of a specified number of relevant shares or a specified amount of relevant debentures.</li> </ul> </li> </ul> </li> </ul> |
| <b>Sec. 194(2)</b>                | <ul style="list-style-type: none"> <li>→ If a director or any key managerial personnel of the company</li> <li>→ contravenes the provisions of sub-section (1),</li> <li>→ such director or key managerial personnel shall be punishable</li> <li>→ with imprisonment for a term which may extend to 2 years or</li> <li>→ with fine which shall not be less than Rs. 1 Lakh but which may extend to Rs. 5 Lakh, or</li> <li>→ with both.</li> </ul>   |
| <b>Sec. 194(3)</b>                | <ul style="list-style-type: none"> <li>→ Where a director or other key managerial personnel</li> <li>→ acquires any securities in contravention of sub-section (1),</li> <li>→ he shall,</li> <li>→ subject to the provisions contained in sub-section (2),</li> <li>→ be liable to surrender the same to the company and</li> <li>→ the company shall not register the securities so acquired in his name in the register, and</li> <li>→ if they are in dematerialised form,</li> <li>→ it shall inform the depository not to record such acquisition and</li> <li>→ such securities, in both the cases, shall continue to remain in the names of the transferors.</li> </ul>  |
| <b>Explanation to Sec. 194(3)</b> | <ul style="list-style-type: none"> <li>→ For the purposes of this section,</li> <li>→ "relevant shares" and "relevant debentures"</li> <li>→ mean shares and debentures of the company</li> <li>→ in which the concerned person is a whole-time director or other key managerial personnel or</li> <li>→ shares and debentures of its holding and subsidiary companies.</li> </ul>   |

**1.14 Prohibition on insider trading of securities (Sec. 195)**

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| <b>Sec. 195(1)</b>                | <ul style="list-style-type: none"> <li>→ No person</li> <li>→ including any director or key managerial personnel of a company</li> <li>→ shall enter into insider trading:</li> </ul>  |
| <b>Proviso to Sec. 195(1)</b>     | <ul style="list-style-type: none"> <li>→ Provided that nothing contained in this sub-section shall apply</li> <li>→ to any communication required</li> <li>→ in the ordinary course of business or profession or employment or</li> <li>→ under any law.</li> </ul>  |
| <b>Explanation to Sec. 195(1)</b> | <ul style="list-style-type: none"> <li>→ For the purposes of this section,—</li> <li>(a) → "insider trading" means— <ul style="list-style-type: none"> <li>(i) → an act of <ul style="list-style-type: none"> <li>→ subscribing, buying, selling, dealing or</li> <li>→ agreeing to subscribe, buy, sell or deal in any securities</li> <li>→ by any director or key managerial personnel or any other officer of a company</li> <li>→ either as principal or agent</li> <li>→ 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</li> </ul> </li> <li>(ii) → an act of counselling about procuring or communicating <ul style="list-style-type: none"> <li>→ directly or indirectly</li> <li>→ any non-public price-sensitive information</li> <li>→ to any person;</li> </ul> </li> </ul> </li> <li>(b) → "price-sensitive information" means any information <ul style="list-style-type: none"> <li>→ which relates, directly or indirectly, to a company and</li> <li>→ which if published is likely to materially affect the price of securities of the company.</li> </ul> </li> </ul> |
| <b>Sec. 195(2)</b>                | <ul style="list-style-type: none"> <li>→ If any person contravenes the provisions of this section,</li> <li>→ he shall be punishable</li> <li>→ with imprisonment for a term which may extend to 5 years or</li> <li>→ with fine which shall not be less than Rs. 5 lakh</li> <li>→ but which may extend to Rs. 25 Crore or</li> <li>→ 3 times the amount of profits made out of insider trading, whichever is higher, or</li> <li>→ with both.</li> </ul>   |

**1.15 Compensation for loss of office of managing or whole-time director or manager (Sec. 202)**

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| <b>Sec. 202(1)</b> | <ul style="list-style-type: none"> <li>→ A company may make payment</li> <li>→ to a managing or whole-time director or manager,</li> <li>→ but not to any other director,</li> <li>→ by way of compensation for</li> <li>→ loss of office, or</li> <li>→ as consideration for retirement from office or</li> <li>→ in connection with such loss or retirement.</li> </ul> |
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| <b>Sec. 202(2)</b>            | <p>→ No payment shall be made under sub-section (1) in the following cases, namely:—</p> <p>(a) → where the director resigns from his office<br/>→ as a result of the reconstruction of the company, or of its amalgamation with any other body corporate or bodies corporate,<br/>→ 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;</p> <p>(b) → where the director resigns from his office<br/>→ otherwise than on the reconstruction of the company or its amalgamation as aforesaid;</p> <p>(c) → where the office of the director is vacated<br/>→ under sub-section (1) of section 167;</p> <p>(d) → where the company is being wound up,<br/>→ whether by an order of the Tribunal or voluntarily,<br/>→ provided the winding up was due to the negligence or default of the director;</p> <p>(e) → where the director has been guilty of fraud or breach of trust<br/>→ in relation to,<br/>→ or of gross negligence in or gross mismanagement of,<br/>→ the conduct of the affairs of the company or any subsidiary company or holding company thereof; and</p> <p>(f) → where the director has instigated,<br/>→ or has taken part directly or indirectly in bringing about,<br/>→ the termination of his office.</p> |
| <b>Sec. 202(3)</b>            | <p>→ Any payment made to a managing or whole-time director or manager in pursuance of sub-section (1)</p> <p>→ shall not exceed</p> <p>→ the remuneration which he would have earned</p> <p>→ if he had been in office for the remainder of his term</p> <p>→ or for 3 years,</p> <p>→ whichever is shorter,</p> <p>→ calculated on the basis of the average remuneration actually earned by him</p> <p>→ during a period of 3 years immediately preceding the date on which he ceased to hold office, or</p> <p>→ where he held the office for a lesser period than 3 years, during such period:</p>  |
| <b>Proviso to Sec. 202(3)</b> | <p>→ Provided that no such payment shall be made to the director in the event of the commencement of the winding up of the company,</p> <p>→ whether before or at any time within 12 months after,</p> <p>→ the date on which he ceased to hold office,</p> <p>→ if the assets of the company on the winding up, after deducting the expenses thereof,</p> <p>→ are not sufficient to repay to the shareholders the share capital,</p> <p>→ including the premiums, if any, contributed by them.</p>   |
| <b>Sec. 202(4)</b>            | <p>→ Nothing in this section shall be deemed to prohibit</p> <p>→ the payment to a managing or whole-time director, or manager,</p> <p>→ of any remuneration</p> <p>→ for services rendered by him to the company in any other capacity.</p>   |

**1.16 Application of Act to foreign companies (Sec. 379)**

- Where not less than 50% of the paid-up share capital,
- whether equity or preference or partly equity and partly preference,
- of a foreign company
- is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate,
- such company shall comply with
- the provisions of this Chapter and
- such other provisions of this Act as may be prescribed
- with regard to the business carried on by it in India
- as if it were a company incorporated in India.

**1.17 Display of name, etc., of foreign company (Sec. 382)**

Every foreign company shall —

- (a) → conspicuously exhibit
  - on the outside of every office or place where it carries on business in India,
  - the name of the company and the country in which it is incorporated,
  - in letters easily legible in English characters,
  - and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate;
- (b) → cause the name of the company and of the country in which the company is incorporated,
  - to be stated in legible English characters
  - in all business letters, billheads and letter paper, and in all notices, and other official publications of the company; and
- (c) → if the liability of the members of the company is limited,
  - cause notice of that fact—
    - (i) → to be stated in every such prospectus issued and in all business letters, bill-heads, letter paper, notices, advertisements and other official publications of the company,
      - in legible English characters; and
    - (ii) → to be conspicuously exhibited on the outside of every office or place where it carries on business in India,
      - in legible English characters
      - and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situate.

**1.18 Service on foreign company (Sec. 383)**

- Any process, notice, or other document
- required to be served on a foreign company
- shall be deemed to be sufficiently served,
- if addressed
- to any person whose name and address have been delivered to the Registrar under section 380 and
- left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode.

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| <b>1.19</b> | <b>Debentures, annual return, registration of charges, books of account and their inspection</b> | <b>(Sec. 386)</b> |
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- For the purposes of the foregoing provisions of this Chapter,—
- (a) the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation;
- (b) the expression "director", in relation to a foreign company,
- includes any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act; and
- (c) the expression "place of business" includes a share transfer or registration office.

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| <b>1.20</b> | <b>Annual Report on Government Companies</b> | <b>(Sec. 394)</b> |
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- Sec. 394(1)** → Where the Central Government is a member of a Government company,
- the Central Government shall cause an annual report on the working and affairs of that company to be —
  - (a) → prepared within three months of its annual general meeting
    - before which the comments given by the Comptroller and Auditor-General of India and the audit report is placed under the proviso to sub-section (6) of section 143; and
  - (b) → as soon as may be after such preparation,
    - laid before both Houses of Parliament
    - together with a copy of the audit report and comments upon or supplement to the audit report, made by the Comptroller and Auditor-General of India.

- Sec. 394(2)** → Where in addition to the Central Government,
- any State Government is also a member of a Government company,
  - that State Government shall cause a copy of the annual report prepared under sub-section (1)
  - to be laid before the House or both Houses of the State Legislature
  - together with a copy of the audit report and the comments upon or supplement to the audit report referred to in sub-section (1).

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| <b>1.21</b> | <b>Power of CG to direct companies to furnish information or statistics</b> | <b>(Sec. 405)</b> |
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- Sec. 405(1)**
- The Central Government may, by order,
  - require companies generally, or
  - any class of companies, or any company,
  - to furnish such information or statistics
  - with regard to their or its constitution or working,
  - and within such time, as may be specified in the order.

- Sec. 405(2)**
- Every order under sub-section (1) shall be published in the Official Gazette
  - and may be addressed to companies generally or to any class of companies, in such manner, as the Central Government may think fit
  - and the date of such publication shall be deemed to be the date on which requirement for information or statistics is made on such companies or class of companies, as the case may be.

- [Sec. 405(3)]** → For the purpose of satisfying itself that any information or statistics furnished by a company or companies in pursuance of any order under sub-section (1) is correct and complete,

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|                    | → the Central Government may by order require such company or companies to produce such records or documents in its possession or allow inspection thereof by such officer or furnish such further information as that Government may consider necessary.  |
| <b>Sec. 405(4)</b> | → If any company fails to comply with an order made under sub-section (1) or subsection (3),<br>→ or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect,<br>→ the company shall be punishable with fine which may extend to Rs. 25,000 and<br>→ every officer of the company who is in default, shall be punishable with imprisonment for a term which may extend to 6 months or with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 3,00,000, or with both. |
| <b>Sec. 405(5)</b> | → Where a foreign company carries on business in India,<br>→ all references to a company in this section shall be deemed to include references to the foreign company in relation, and only in relation, to such business.   |

| 1.22                              | NCLT   | (Sec. 407 to 414) |
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| <b>Sec. 407</b>                   | → In this Chapter, unless the context otherwise requires,—<br>(a) "Chairperson" means the Chairperson of the Appellate Tribunal;<br>(b) "Judicial Member" means a member of the Tribunal or the Appellate Tribunal appointed as such and includes the President or the Chairperson, as the case may be;<br>(c) "Member" means a member, whether Judicial or Technical of the Tribunal or the Appellate Tribunal and includes the President or the Chairperson, as the case may be;<br>(d) "President" means the President of the Tribunal;<br>(e) "Technical Member" means a member of the Tribunal or the Appellate Tribunal appointed as such. |                   |
| <b>Sec. 408</b>                   | → The Central Government shall, by notification, constitute,<br>→ with effect from such date as may be specified therein,<br>→ a Tribunal to be known as the National Company Law Tribunal<br>→ consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary,<br>→ to be appointed by it by notification,<br>→ to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force.  |                   |
| <b>Sec. 409 (1)</b>               | → The President shall be a person<br>→ who is or has been a Judge of a High Court for 5 years.   |                   |
| <b>Sec. 409 (2)</b>               | → A person shall not be qualified for appointment as a Judicial Member unless he—<br>(a) is, or has been, a judge of a High Court; or<br>(b) is, or has been, a District Judge for at least 5 years; or<br>(c) has, for at least 10 years been an advocate of a court.   |                   |
| <b>Explanation to Sec. 409(2)</b> | → For the purposes of clause (c),<br>→ in computing the period during which a person has been an advocate of a court,<br>→ there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he become an advocate.  |                   |

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| <b>Sec. 409 (3)</b> | <p>→ A person shall not be qualified for appointment as a Technical Member unless he—</p> <p>(a) has, for at least 15 years been a member of the Indian Corporate Law Service or Indian Legal Service out of which at least 3 years shall be in the pay scale of Joint Secretary to the Government of India or equivalent or above in that service; or</p> <p>(b) is, or has been in practice as a chartered accountant for at least 15 years; or</p> <p>(c) is, or has been, in practice as a cost accountant for at least 15 years; or</p> <p>(d) is, or has been, in practice as a company secretary for at least 15 years; or</p> <p>(e) is a person of proven ability, integrity and standing having special knowledge and experience, of not less than 15 years, in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies; or</p> <p>(f) is, or has been, for at least 5 years, a presiding officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947.</p> |
| <b>Sec. 410</b>     | <p>→ The Central Government shall, by notification, constitute, with effect from such date as may be specified therein,</p> <p>→ an Appellate Tribunal to be known as the National Company Law Appellate Tribunal</p> <p>→ consisting of a chairperson and such number of Judicial and Technical Members, not exceeding 11, as the Central Government may deem fit,</p> <p>→ to be appointed by it by notification,</p> <p>→ for hearing appeals against the orders of the Tribunal.</p>   |
| <b>Sec. 411 (1)</b> | <p>→ The chairperson shall be a person</p> <p>→ who is or has been a Judge of the Supreme Court</p> <p>→ or the Chief Justice of a High Court.</p>   |
| <b>Sec. 411 (2)</b> | <p>→ A Judicial Member shall be a person</p> <p>→ who is or has been a Judge of a High Court or</p> <p>→ is a Judicial Member of the Tribunal for 5 years.</p>   |
| <b>Sec. 411 (3)</b> | <p>→ A Technical Member shall be a person of proven ability, integrity and standing</p> <p>→ having special knowledge and experience, of not less than 25 years,</p> <p>→ in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies.</p>   |
| <b>Sec. 412 (1)</b> | <p>→ The President of the Tribunal and the chairperson and Judicial Members of the Appellate Tribunal,</p> <p>→ shall be appointed after consultation with the Chief Justice of India.</p>   |
| <b>Sec. 412 (2)</b> | <p>→ The Members of the Tribunal and the Technical Members of the Appellate Tribunal</p> <p>→ shall be appointed on the recommendation of a Selection Committee</p> <p>→ consisting of —</p> <p>(a) Chief Justice of India or his nominee — Chairperson;</p> <p>(b) a senior Judge of the Supreme Court or a Chief Justice of High Court — Member;</p> <p>(c) Secretary in the Ministry of Corporate Affairs — Member;</p> <p>(d) Secretary in the Ministry of Law and Justice — Member; and</p> <p>(e) Secretary in the Department of Financial Services in the Ministry of Finance — Member.</p>   |



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| <b>Sec. 412 (3)</b>                   | → The Secretary, Ministry of Corporate Affairs shall be the Convener of the Selection Committee.   |
| <b>Sec. 412 (4)</b>                   | → The Selection Committee shall determine its procedure for recommending persons under sub-section (2).  |
| <b>Sec. 412 (5)</b>                   | → No appointment of the Members of the Tribunal or the Appellate Tribunal shall be invalid merely by reason of any vacancy or any defect in the constitution of the Selection Committee.   |
| <b>Sec. 413 (1)</b>                   | → The President and every other Member of the Tribunal shall hold office as such for a term of 5 years from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of 5 years.                 |
| <b>Sec. 413 (2)</b>                   | → A Member of the Tribunal shall hold office as such until he attains, —<br>(a) in the case of the President, the age of 67 years;<br>(b) in the case of any other Member, the age of 65 years:  |
| <b>First Proviso to Sec. 413 (2)</b>  | → Provided that a person who has not completed 50 years of age<br>→ shall not be eligible for appointment as Member:   |
| <b>Second Proviso to Sec. 413 (2)</b> | → Provided further that the Member may retain his lien with his parent cadre or Ministry or Department, as the case may be,<br>→ while holding office as such for a period not exceeding 1 year.   |
| <b>Sec. 413 (3)</b>                   | → The chairperson or a Member of the Appellate Tribunal shall hold office as such<br>→ for a term of 5 years<br>→ from the date on which he enters upon his office,<br>→ but shall be eligible for re-appointment for another term of 5 years. |
| <b>Sec. 413 (4)</b>                   | → A Member of the Appellate Tribunal shall hold office as such until he attains,—<br>(a) in the case of the Chairperson, the age of 70 years;<br>(b) in the case of any other Member, the age of 67 years:                                     |
| <b>First Proviso to Sec. 413 (4)</b>  | → Provided that a person who has not completed 50 years of age<br>→ shall not be eligible for appointment as Member.   |
| <b>Second Proviso to Sec. 413 (4)</b> | → Provided further that the Member may retain his lien with his parent cadre or Ministry or Department, as the case may be,<br>→ while holding office as such for a period not exceeding 1 year.   |
| <b>Sec. 414</b>                       | → The salary, allowances and other terms and conditions of service of the Members of the Tribunal and the Appellate Tribunal<br>→ shall be such as may be prescribed.  |
| <b>Proviso to Sec. 414</b>            | → Provided that neither the salary and allowances nor the other terms and conditions of service of the Members<br>→ shall be varied<br>→ to their disadvantage after their appointment.  |

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| <b>1.23</b> | <b>Offences to be non cognizable</b> | <b>(Sec. 439)</b> |
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| <b>Sec. 439 (1)</b> | → Notwithstanding anything in the Code of Criminal Procedure, 1973,<br>→ every offence under this Act<br>→ except the offences referred to in sub-section (6) of section 212<br>→ shall be deemed to be non-cognizable within the meaning of the said Code.   |
| <b>Sec. 439 (2)</b> | → No court shall take cognizance of any offence under this Act<br>→ which is alleged to have been committed by any company or any officer thereof,<br>→ except on the complaint in writing of the Registrar, a shareholder of the company,<br>→ or of a person authorised by the Central Government in that behalf: |

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| <b>First Proviso to Sec. 439 (2)</b>  | <ul style="list-style-type: none"> <li>→ Provided that the court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend,</li> <li>→ on a complaint in writing,</li> <li>→ by a person authorized by the Securities and Exchange Board of India.</li> </ul>   |
| <b>Second Proviso to Sec. 439 (2)</b> | <ul style="list-style-type: none"> <li>→ Provided further that nothing in this sub-section shall apply</li> <li>→ to a prosecution by a company of any of its officers.</li> </ul>   |
| <b>Sec. 439 (3)</b>                   | <ul style="list-style-type: none"> <li>→ Notwithstanding anything contained in the Code of Criminal Procedure, 1973,</li> <li>→ where the complainant under sub-section (2) is the Registrar or a person authorised by the Central Government,</li> <li>→ the presence of such officer before the Court trying the offences shall not be necessary</li> <li>→ unless the court requires his personal attendance at the trial.</li> </ul> |
| <b>Sec. 439 (4)</b>                   | <ul style="list-style-type: none"> <li>→ The provisions of sub-section (2) shall not apply</li> <li>→ to any action taken by the liquidator of a company</li> <li>→ in respect of any offence alleged to have been committed in respect of any of the matters in Chapter XX or in any other provision of this Act relating to winding up of companies.</li> </ul>  |
| <b>Explanation to Sec. 439(4)</b>     | <ul style="list-style-type: none"> <li>→ The liquidator of a company</li> <li>→ shall not be deemed to be an officer of the company</li> <li>→ within the meaning of sub-section (2).</li> </ul>   |

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| <b>1.24</b> | <b>Power of Central Government to appoint company prosecutors</b> | <b>(Sec. 443)</b> |
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- Notwithstanding anything contained in the Code of Criminal Procedure, 1973,
- the Central Government may appoint generally, or for any case, or in any case, or for any specified class of cases in any local area,
- one or more persons, as company prosecutors
- for the conduct of prosecutions arising out of this Act
- and the persons so appointed as company prosecutors shall have all the powers and privileges conferred by the Code on Public Prosecutors appointed under section 24 of the Code.

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| <b>1.25</b> | <b>Appeal against acquittal</b> | <b>(Sec. 444)</b> |
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- Notwithstanding anything contained in the Code of Criminal Procedure, 1973,
- the Central Government may, in any case arising under this Act,
- direct any company prosecutor or authorise any other person either by name or by virtue of his office,
- to present an appeal from an order of acquittal passed by any court,
- other than a High Court,
- and an appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.

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| <b>1.26</b> | <b>Compensation for accusation without reasonable cause</b> | <b>(Sec. 445)</b> |
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- The provisions of section 250 of the Code of Criminal Procedure, 1973
- shall apply mutatis mutandis to compensation
- for accusation without reasonable cause before the Special Court or the Court of Session.

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| <b>1.27</b> | <b>Application of fines</b> | <b>(Sec. 446)</b> |
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- The court imposing any fine under this Act may direct
- that the whole or any part thereof shall be applied in or towards
- payment of the costs of the proceedings, or in or towards the payment of a reward to the person on whose information the proceedings were instituted.

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| <b>1.28</b> | <b>Punishment for fraud</b> | <b>(Sec. 447)</b> |
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| <b>Sec. 447</b> | <ul style="list-style-type: none"> <li>→ Without prejudice to any liability</li> <li>→ including repayment of any debt under this Act or any other law for the time being in force,</li> <li>→ any person who is found to be guilty of fraud,</li> <li>→ shall be punishable with imprisonment for a term</li> <li>→ which shall not be less than 6 months</li> <li>→ but which may extend to 10 years and</li> <li>→ shall also be liable to fine</li> <li>→ which shall not be less than the amount involved in the fraud,</li> <li>→ but which may extend to 3 times the amount involved in the fraud.</li> </ul> |
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| <b>Proviso to Sec. 447</b> | <ul style="list-style-type: none"> <li>→ Provided that where the fraud in question involves public interest,</li> <li>→ the term of imprisonment shall not be less than 3 years.</li> </ul> |
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| <b>Explanation to Sec. 447</b> | <ul style="list-style-type: none"> <li>→ For the purposes of this section —</li> <li>(i) → "fraud" in relation to affairs of a company or any body corporate,</li> <li>→ includes any act, omission, concealment of any fact or abuse of position</li> <li>→ committed by any person or any other person with the connivance in any manner,</li> <li>→ with intent to deceive,</li> <li>→ to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person,</li> <li>→ whether or not there is any wrongful gain or wrongful loss;</li> <li>(ii) → "wrongful gain" means the gain by unlawful means of property</li> <li>→ to which the person gaining is not legally entitled;</li> <li>(iii) → "wrongful loss" means the loss by unlawful means of property</li> <li>→ to which the person losing is legally entitled.</li> </ul> |
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| <b>1.29</b> | <b>Punishment for false statement</b> | <b>(Sec. 448)</b> |
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- Save as otherwise provided in this Act,
- if in any return, report, certificate, financial statement, prospectus, statement or other document
- required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder,
- any person makes a statement,—
  - (a) which is false in any material particulars, knowing it to be false; or
  - (b) which omits any material fact, knowing it to be material, he shall be liable under section 447.

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| <b>1.30</b> | <b>Punishment for false evidence</b> | <b>(Sec. 449)</b> |
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- Save as otherwise provided in this Act,
- if any person intentionally gives false evidence —
  - (a) → upon any examination on oath or solemn affirmation, authorised under this Act; or
  - (b) → in any affidavit, deposition or solemn affirmation,
    - in or about the winding up of any company under this Act, or otherwise
    - in or about any matter arising under this Act,
    - he shall be punishable with imprisonment for a term
    - which shall not be less than 3 years
    - but which may extend to 7 years
    - and with fine which may extend to Rs. 10 Lakh.

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| <b>1.31</b> | <b>Punishment where no specific penalty or punishment is provided</b> | <b>(Sec. 450)</b> |
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| <b>Sec. 450</b> | <ul style="list-style-type: none"> <li>→ If a company or any officer of a company or any other person</li> <li>→ contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted,</li> <li>→ and for which no penalty or punishment is provided elsewhere in this Act,</li> <li>→ the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to Rs. 10,000,</li> <li>→ and where the contravention is continuing one, with a further fine which may extend to Rs. 1,000 for every day after the first during which the contravention continues.</li> </ul> |
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| <b>1.32</b> | <b>Punishment in case of repeated default</b> | <b>(Sec. 451)</b> |
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- If a company or an officer of a company
- commits an offence punishable either with fine or with imprisonment
- and where the same offence is committed for the second or subsequent occasions
- within a period of 3 years,
- then, that company and every officer thereof who is in default
- shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.

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| <b>1.33</b> | <b>Punishment for wrongful withholding of property</b> | <b>(Sec. 452)</b> |
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| <b>Sec. 452 (1)</b> | <ul style="list-style-type: none"> <li>→ If any officer or employee of a company—           <ul style="list-style-type: none"> <li>(a) → wrongfully obtains possession of any property,               <ul style="list-style-type: none"> <li>→ including cash of the company; or</li> </ul> </li> <li>(b) → having any such property including cash in his possession,               <ul style="list-style-type: none"> <li>→ wrongfully withholds it or</li> <li>→ knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act,</li> <li>→ he shall,</li> </ul> </li> </ul> </li> </ul> |
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- on the complaint of the company or of any member or creditor or contributory thereof,
- be punishable with fine
- which shall not be less than Rs. 1 Lakh
- but which may extend to Rs. 5 Lakh.

**Sec. 452 (2)**

- The Court trying an offence under sub-section (1)
- may also order such officer or employee
- to deliver up or refund,
- within a time to be fixed by it,
- any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from such property or cash
- or in default, to undergo imprisonment for a term which may extend to 2 years.

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| <b>1.34</b> | <b>Punishment for improper use of "Limited" or "Private Limited"</b> | <b>(Sec. 453)</b> |
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- If any person or persons trade or carry on business under any name or title,
- of which the word "Limited" or the words "Private Limited" or any contraction or imitation thereof is or are the last word or words,
- that person or each of those persons shall,
- unless duly incorporated with limited liability, or
- unless duly incorporated as a private company with limited liability, as the case may be,
- punishable with fine
- which shall not be less than Rs. 500
- but may extend to Rs. 2,000
- for every day for which that name or title has been used.

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| <b>1.35</b> | <b>Protection of action taken in good faith</b> | <b>(Sec. 456)</b> |
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- No suit, prosecution or other legal proceeding shall lie
- against the Government or any officer of the Government or any other person
- in respect of anything which is in good faith done or
- intended to be done in pursuance of this Act or of any rules or orders made thereunder, or
- in respect of the publication by or under the authority of the Government or such officer,
- of any report, paper or proceedings.

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| <b>1.36</b> | <b>Nondisclosure of information in certain cases</b> | <b>(Sec. 457)</b> |
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- Notwithstanding anything contained in any other law for the time being in force,
- the Registrar, any officer of the Government or any other person
- shall not be compelled to disclose to any court, Tribunal or other authority,
- the source from where he got any information which —
  - (a) has led the Central Government to order an investigation under section 210; or
  - (b) is or has been material or relevant in connection with such investigation.

| 1.37                          | Delegation by Central Government of its powers and functions   | (Sec. 458) |
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| <b>Sec. 458(1)</b>            | <ul style="list-style-type: none"> <li>→ The Central Government may,</li> <li>→ by notification,</li> <li>→ and subject to such conditions, limitations and restrictions as may be specified therein,</li> <li>→ delegate any of its powers or functions under this Act</li> <li>→ other than the power to make rules</li> <li>→ to such authority or officer as may be specified in the notification.</li> </ul>  |            |
| <b>Proviso to Sec. 458(1)</b> | <ul style="list-style-type: none"> <li>→ Provided that the powers to enforce the provisions contained in section 194 and section 195 relating to forward dealing and insider trading</li> <li>→ shall be delegated to Securities and Exchange Board</li> <li>→ for listed companies or the companies which intend to get their securities listed</li> <li>→ and in such case, any officer authorised by the Securities and Exchange Board</li> <li>→ shall have the power to file a complaint in the court of competent jurisdiction.</li> </ul> |            |
| <b>Sec. 458(2)</b>            | <ul style="list-style-type: none"> <li>→ A copy of every notification issued under sub-section (1) shall,</li> <li>→ as soon as may be after it is issued,</li> <li>→ be laid before each House of Parliament.</li> </ul>  |            |

| 1.38               | Powers of Central Government or Tribunal to accord approval, etc., subject to conditions and to prescribe fees on applications  | (Sec. 459) |
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| <b>Sec. 459(1)</b> | <ul style="list-style-type: none"> <li>→ Where the Central Government or the Tribunal is required or authorised by any provision of this Act —</li> <li style="padding-left: 20px;">(a) to accord approval, sanction, consent, confirmation or recognition to, or in relation to, any matter; or</li> <li style="padding-left: 20px;">(b) to give any direction in relation to any matter; or</li> <li style="padding-left: 20px;">(c) to grant any exemption in relation to any matter,</li> <li>→ then, the Central Government or the Tribunal may</li> <li>→ in the absence of anything to the contrary contained in that provision or any other provision of this Act,</li> <li>→ accord, give or grant such approval, sanction, consent, confirmation, recognition, direction or exemption,</li> <li>→ subject to such conditions, limitations or restrictions as it may think fit to impose</li> <li>→ and may, in the case of a contravention of any such condition, limitation or restriction,</li> <li>→ rescind or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption.</li> </ul> |            |
| <b>Sec. 459(2)</b> | <ul style="list-style-type: none"> <li>→ Save as otherwise provided in this Act,</li> <li>→ every application</li> <li>→ which may be, or is required to be, made to the Central Government or the Tribunal under any provision of this Act —</li> <li style="padding-left: 20px;">(a) → in respect of any approval, sanction, consent, confirmation or recognition</li> <li style="padding-left: 40px;">→ to be accorded by that Government or the Tribunal to, or in relation to, any matter;</li> <li style="padding-left: 20px;">(b) → in respect of any direction or exemption</li> <li style="padding-left: 40px;">→ to be given or granted by that Government or the Tribunal in relation to any matter; or</li> <li style="padding-left: 20px;">(c) → in respect of any other matter,</li> <li>→ shall be accompanied by such fees as may be prescribed.</li> </ul>   |            |

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| <b>Proviso to Sec. 459(2)</b> | <ul style="list-style-type: none"> <li>→ Provided that different fees may be prescribed</li> <li>→ for applications in respect of different matters or</li> <li>→ in case of applications by different classes of companies.</li> </ul> |
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| <b>1.39</b> | <b>Condonation of delay in certain cases</b> | <b>(Sec. 460)</b> |
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Notwithstanding anything contained in this Act,—

- (a) → where any application required to be made to the Central Government
  - under any provision of this Act
  - in respect of any matter
  - is not made within the time specified therein,
  - that Government may,
  - for reasons to be recorded in writing,
  - condone the delay; and
- (b) → where any document required to be filed with the Registrar
  - under any provision of this Act
  - is not filed within the time specified therein,
  - the Central Government may,
  - for reasons to be recorded in writing,
  - condone the delay.

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| <b>1.40</b> | <b>Annual report by Central Government</b> | <b>(Sec. 461)</b> |
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- The Central Government shall cause
- a general annual report on the working and administration of this Act
- to be prepared and laid before each House of Parliament
- within 1 year of the close of the year to which the report relates.

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| <b>1.41</b> | <b>Power to exempt class or classes of companies from provisions of this Act</b> | <b>(Sec. 462)</b> |
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| <b>Sec. 462 (1)</b> | <ul style="list-style-type: none"> <li>→ The Central Government may</li> <li>→ in the public interest,</li> <li>→ by notification</li> <li>→ direct that any of the provisions of this Act,—           <ul style="list-style-type: none"> <li>(a) → shall not apply to such class or classes of companies; or</li> <li>(b) → shall apply to the class or classes of companies               <ul style="list-style-type: none"> <li>→ with such exceptions, modifications and adaptations</li> <li>→ as may be specified in the notification.</li> </ul> </li> </ul> </li> </ul>         |
| <b>Sec. 462 (2)</b> | <ul style="list-style-type: none"> <li>→ A copy of every notification</li> <li>→ proposed to be issued under sub-section (1),</li> <li>→ shall be laid in draft</li> <li>→ before each House of Parliament, while it is in session,</li> <li>→ for a total period of 30 days</li> <li>→ which may be comprised in one session or in 2 or more successive sessions,</li> <li>→ and if, before the expiry of the session immediately following the session or the successive sessions aforesaid,</li> <li>→ both Houses agree in disapproving the issue of the notification or</li> </ul> |

- both Houses agree in making any modification in the notification,
- the notification shall not be issued or, as the case may be,
- shall be issued only in such modified form as may be agreed upon by both the Houses.

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| <b>1.42</b> | <b>Power of court to grant relief in certain cases</b> | <b>(Sec. 463)</b> |
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| <b>Sec. 463 (1)</b>            | <ul style="list-style-type: none"> <li>→ If in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust</li> <li>→ against an officer of a company,</li> <li>→ it appears to the court hearing the case that he is or may be liable</li> <li>→ in respect of the negligence, default, breach of duty, misfeasance or breach of trust,</li> <li>→ but that he has acted honestly and reasonably,</li> <li>→ and that having regard to all the circumstances of the case,</li> <li>→ including those connected with his appointment,</li> <li>→ he ought fairly to be excused,</li> <li>→ the court may relieve him, either wholly or partly, from his liability</li> <li>→ on such term, as it may think fit.</li> </ul> |
| <b>Proviso to Sec. 463 (1)</b> | <ul style="list-style-type: none"> <li>→ Provided that in a criminal proceeding under this sub-section,</li> <li>→ the court shall have no power to grant relief from any civil liability</li> <li>→ which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.</li> </ul>  |
| <b>Sec. 463 (2)</b>            | <ul style="list-style-type: none"> <li>→ Where any such officer has reason to apprehend that any proceeding will or might be brought against him</li> <li>→ in respect of any negligence, default, breach of duty, misfeasance or breach of trust,</li> <li>→ he may apply to the High Court for relief</li> <li>→ and the High Court on such application shall have the same power to relieve him</li> <li>→ as it would have had if it had been a court before which</li> <li>→ a proceedings against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought under sub-section (1).</li> </ul>   |
| <b>Sec. 463 (3)</b>            | <ul style="list-style-type: none"> <li>→ No court shall grant any relief to any officer under sub-section (1) or sub-section (2)</li> <li>→ unless it has,</li> <li>→ by notice served in the manner specified by it,</li> <li>→ required the Registrar and such other person, if any, as it thinks necessary,</li> <li>→ to show cause why such relief should not be granted.</li> </ul>   |

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| <b>1.43</b> | <b>Power of Central Government to amend Schedules</b> | <b>(Sec. 467)</b> |
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| <b>Sec. 467 (1)</b> | <ul style="list-style-type: none"> <li>→ Subject to the provisions of this section,</li> <li>→ the Central Government may,</li> <li>→ by notification,</li> <li>→ alter any of the regulations, rules, Tables, forms and other provisions</li> <li>→ contained in any of the Schedules to this Act.</li> </ul> |
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| <b>Sec. 467 (2)</b> | <ul style="list-style-type: none"> <li>→ Any alteration notified under sub-section (1) shall have effect</li> <li>→ as if enacted in this Act</li> <li>→ and shall come into force on the date of the notification,</li> <li>→ unless the notification otherwise directs:</li> <li>→ Provided that no such alteration in Table F of Schedule I</li> <li>→ shall apply to any company registered before the date of such alteration.</li> </ul>   |
| <b>Sec. 467 (3)</b> | <ul style="list-style-type: none"> <li>→ Every alteration made by the Central Government under sub-section (1)</li> <li>→ shall be laid as soon as may be after it is made</li> <li>→ before each House of Parliament</li> <li>→ while it is in session for a total period of 30 days</li> <li>→ which may be comprised in one session or in 2 or more successive sessions,</li> <li>→ and if, before the expiry of the session immediately following the session or the successive sessions aforesaid,</li> <li>→ both Houses agree in making any modification in the alteration, or</li> <li>→ both Houses agree that the alteration should not be made,</li> <li>→ the alteration shall thereafter have effect only in such modified form or be of no effect, as the case may be;</li> <li>→ so, however, that any such modification or annulment</li> <li>→ shall be without prejudice to the validity of anything previously done in pursuance of that alteration.</li> </ul> |

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| <b>1.44</b> | <b>Powers of Central Government to make rules relating to winding up</b> | <b>(Sec. 468)</b> |
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| <b>Sec. 468 (1)</b> | <ul style="list-style-type: none"> <li>→ The Central Government shall,</li> <li>→ make rules consistent with the Code of Civil Procedure, 1908</li> <li>→ providing for all matters relating to the winding up of companies,</li> <li>→ which by this Act, are to be prescribed,</li> <li>→ and may make rules providing for all such matters, as may be prescribed.</li> </ul>  |
| <b>Sec. 468 (2)</b> | <ul style="list-style-type: none"> <li>→ In particular, and without prejudice to the generality of the foregoing power,</li> <li>→ such rules may provide for all or any of the following matters, namely:— <ul style="list-style-type: none"> <li>(i) as to the mode of proceedings to be held for winding up of a company by the Tribunal;</li> <li>(ii) for the voluntary winding up of companies, whether by members or by creditors;</li> <li>(iii) for the holding of meetings of creditors and members in connection with proceedings under section 230;</li> <li>(iv) for giving effect to the provisions of this Act as to the reduction of the capital;</li> <li>(v) generally for all applications to be made to the Tribunal under the provisions of this Act;</li> <li>(vi) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;</li> <li>(vii) the settling of lists of contributories and the rectifying of the register of members where required, and collecting and applying the assets;</li> <li>(viii) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;</li> <li>(ix) the making of calls; and</li> <li>(x) the fixing of a time within which debts and claims shall be proved.</li> </ul> </li> </ul> |

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| <b>Sec. 468 (3)</b> | <ul style="list-style-type: none"> <li>→ All rules made by the Supreme Court</li> <li>→ on the matters referred to in this section</li> <li>→ as it stood immediately before the commencement of this Act</li> <li>→ and in force at such commencement,</li> <li>→ shall continue to be in force,</li> <li>→ till such time the rules are made by the Central Government</li> <li>→ and any reference to the High Court in relation to winding up of a company in such rules shall be construed as a reference to the Tribunal.</li> </ul> |
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| <b>1.45</b> | <b>Power of Central Government to make rules</b> | <b>(Sec. 469)</b> |
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| <b>Sec. 469 (1)</b> | <ul style="list-style-type: none"> <li>→ The Central Government may,</li> <li>→ by notification,</li> <li>→ make rules</li> <li>→ for carrying out the provisions of this Act.</li> </ul>   |
| <b>Sec. 469 (2)</b> | <ul style="list-style-type: none"> <li>→ Without prejudice to the generality of the provisions of sub-section (1),</li> <li>→ the Central Government may make rules</li> <li>→ for all or any of the matters</li> <li>→ which by this Act are required to be, or may be, prescribed or</li> <li>→ in respect of which provision is to be or may be made by rules.</li> </ul>  |
| <b>Sec. 469 (3)</b> | <ul style="list-style-type: none"> <li>→ Any rule made under sub-section (1)</li> <li>→ may provide that a contravention thereof shall be punishable with fine</li> <li>→ which may extend to Rs. 5,000</li> <li>→ and where the contravention is a continuing one,</li> <li>→ with a further fine which may extend to Rs. 500 for every day</li> <li>→ after the first during which such contravention continues.</li> </ul>   |
| <b>Sec. 469 (4)</b> | <ul style="list-style-type: none"> <li>→ Every rule made under this section and</li> <li>→ every regulation made by SEBI under this Act, s</li> <li>→ hall be laid,</li> <li>→ as soon as may be after it is made,</li> <li>→ before each House of Parliament,</li> <li>→ while it is in session,</li> <li>→ for a total period of 30 days</li> <li>→ which may be comprised in one session or in 2 or more successive sessions,</li> <li>→ and if, before the expiry of the session immediately following the session or the successive sessions aforesaid,</li> <li>→ both Houses agree in making any modification in the rule or regulation or</li> <li>→ both Houses agree that the rule or regulation should not be made,</li> <li>→ the rule or regulation shall thereafter have effect</li> <li>→ only in such modified form or be of no effect, as the case may be;</li> <li>→ so, however, that any such modification or annulment</li> <li>→ shall be without prejudice to the validity of anything previously done under that rule or regulation.</li> </ul> |

| 1.46                           | Power to remove difficulties  | (Sec. 470) |
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| <b>Sec. 470 (1)</b>            | <ul style="list-style-type: none"> <li>→ If any difficulty arises in giving effect to the provisions of this Act,</li> <li>→ the Central Government may,</li> <li>→ by order published in the Official Gazette,</li> <li>→ make such provisions,</li> <li>→ not inconsistent with the provisions of this Act,</li> <li>→ as appear to it to be necessary or expedient for removing the difficulty:</li> </ul> |            |
| <b>Proviso to Sec. 470 (1)</b> | <ul style="list-style-type: none"> <li>→ Provided that no such order shall be made</li> <li>→ after the expiry of a period of 5 years</li> <li>→ from the date of commencement of section 1 of this Act.</li> </ul>   |            |
| <b>Sec. 470 (2)</b>            | <ul style="list-style-type: none"> <li>→ Every order made under this section</li> <li>→ shall,</li> <li>→ as soon as may be after it is made,</li> <li>→ be laid before each House of Parliament.</li> </ul>  |            |

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