

**COMPANIES ACT 2013**  
**&**  
**DRAFT RULES UNDER**  
**CHAPTER XI & XII**

**CS. P.SRIRAM**  
**-PROWIS CORPORATE SERVICES**

# APPLICABILITY

<b>COMPANIES ACT 1956</b>	<b>COMPANIES ACT 2013</b>
<p>Chapter II</p> <ul style="list-style-type: none"><li>▪ Constitution of Board of Directors</li><li>▪ Disqualification of Directors</li><li>▪ Restriction on minimum No of Directors</li><li>▪ Vacation of Office by Directors</li><li>▪ Meetings of Board</li><li>▪ Boards Power &amp; Restriction</li><li>▪ Political contribution/ Sole selling Agents</li><li>▪ Register of Directors/ Disclosure of Interest</li></ul>	<p><b>Chapter XI</b> – Appointment &amp; Qualification of Directors</p> <p><b>Chapter XII</b> – Meetings of Board &amp; its Powers</p>
<p><b>Sec.252 to 307 (except Sec 267/ 269)</b></p> <p><b>Sec.318 to 321</b></p> <p><b>Sec.388</b></p>	<p><b>Sec.149-195</b></p> <p><b>Draft Rules 11.1 to 11.15</b></p> <p><b>Draft Rules 12.1 to 12.16</b></p>

# **CHAPTER XI**

## **APPOINTMENT & QUALIFICATION**

### **OF DIRECTORS**

#### **SEC.149-172**

# SECTION 149

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>•Section 149 : Board of Directors :</li><li>•Company shall have a maximum of 15 Directors. May appoint more than 15 after passing Special Resolution.</li></ul>	<b>NA</b>
<ul style="list-style-type: none"><li>•<b>Sec.149(1) Women Director</b></li><li>•Applicable for Class / Classes of Companies as may be prescribed</li></ul>	<ul style="list-style-type: none"><li>•<u>Rule 11.1 : One Women Director on Board :</u></li><li>•<u>Listed – within 1 year</u></li><li>•<u>Public Company- within 3 Years</u></li><li>•<u>Paid Up Share Capital - 100 cr (or)</u></li><li>•<u>300 Crs Turn Over</u></li><li>•<b><u>Comment :</u></b></li><li>•Not Clear when capital / turn over is reduced.</li></ul>

# SECTION 149

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>•<b>Sec 149(3) Resident Director</b> : stays in India for a total period of 182 days in the preceding calendar year.</li><li>•Applicable to all Company</li><li>•<b>Comments :</b></li><li>•No timeline prescribed for compliance .</li></ul>	<b>NA</b>
<ul style="list-style-type: none"><li>•<b>Sec.149(4) Independent Directors :</b></li><li>•Listed Co : 1/3<sup>rd</sup> &amp;</li><li>•Applicable for Class / Classes of Companies as may be prescribed</li><li>•(Contd....)</li></ul>	<ul style="list-style-type: none"><li>•<b><u>Rule 11.2 :</u></b></li><li>•Public Company-</li><li>•Paid Up Share Capital - 100 cr (or)</li><li>•300 Crs Turn Over</li><li>•Loans/ Borrowings/ Debentures/ Deposits exceeding 200 Crs</li></ul>

# SECTION 149

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>•To comply within 1 year from the date of notification of the rules.</li><li>•ID not entitled to any stock option except to receive remuneration by way of fee or reimbursement and profit related commission as may be approved by the members.</li><li>•ID to hold office upto five consecutive years and eligible for re-appointment on passing special resolution and disclosure in Board's Report.</li></ul> <p>(Contd....)</p>	<ul style="list-style-type: none"><li>•In case of any fall in limits above, the ID shall continue till tenure.</li><li>•<b>Comments :</b><ul style="list-style-type: none"><li>•ID tenure not clear as Non – Rotational</li><li>•Higher no of ID for class of companies governed by different statute.</li></ul></li><li>•Rule 11.3 : Qualification of ID : similar to Clause 49 of Listing Agreement .</li></ul>

# SECTION 149

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>•Not to hold office for more than two consecutive terms, but can be appointed after expiry of three years from the date of cessation.</li><li>•<b>Sec. 149 (6)</b> : ID meaning : Similar to Listing Agreement</li></ul>	<ul style="list-style-type: none"><li>•<b>Additional Requirement :</b></li><li>•Boards report u/s 134 ( 217 of CA 1956) to include statement that in its opinion the ID possess the requisite skill as required.</li></ul>

# SECTION 150

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>•Sec. 150 Manner of selection of ID and maintenance of databank :</li><li>•ID <b>may</b> be selected from DataBank</li><li>•Responsibility lies with Company</li><li>•To be approved in General Meeting</li><li>•Explanatory Stmt to GM shall indicate justification for such appointment</li><li>•Sec.150(4) Central Govt may prescribe manner/ procedure for selection of ID</li></ul>	<ul style="list-style-type: none"><li>•Rule 11.4 :<ol style="list-style-type: none"><li>1. Databank ( any body/ institute/ association) to be authorised by CG.</li><li>2. Placed in MCA website or other website</li><li>3. prescribes details to be made available in Databank.</li><li>4. person desired to make application in form 11.1</li><li>5. Fee can be charged</li></ol></li></ul>



# SECTION 151

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>•<b>Sec. 151 <u>Appointment of Small Share holders :</u></b></li><li>•<b>A Listed Co may</b> have 1 Director elected by Small Shareholders in manner / terms as may be prescribed</li><li>•Small Shareholder – holding Nominal value of <b>not more than 20000 or such other sum as may be prescribed</b></li></ul>	<ul style="list-style-type: none"><li>•<b>Rule 11.5 : Small Shareholders Director</b></li><li>•Listed Co – Suo moto or on notice of :</li><li>•<b>NOT LESS THAN 500 or 1/10<sup>th</sup> OF THE TOTAL NO OF SHAREHOLDER WEL</b></li><li>•Such SSD shall be considered as ID if criteria met with .</li><li>•Not liable to retire by rotation.</li><li>•Tenure not to exceed 3 consecutive yrs and not eligible for reappointment.</li><li>•Directorship ceases if he ceases to be SS/ disqualification u/s 164 &amp; 167 ( vacation)</li><li>•Cannot be SSD more than 2 Companies at the same time.</li></ul>

# SECTION 151

COMPANIES ACT 2013	DRAFT RULES
NA	<ul style="list-style-type: none"><li>•<b>Comments :</b></li><li>•Practical difficulty in obtaining data.</li> <li>•Such data to be available on request / on website</li> <li>•intention of having SSD to be made within 14 days before meeting with request from Shareholders</li> <li>•Voting if defeated – not explained</li> <li>•Sale /purchase of shares after nomination.</li></ul>

# SECTION 152

<b>COMPANIES ACT 2013</b>	<b>DRAFT RULES</b>
<ul style="list-style-type: none"><li>•<b>Sec.152 Appointment of Directors :</b></li><li>•Sec. 152 (5) Consent in the manner prescribed</li></ul>	<ul style="list-style-type: none"><li>•Rule 11.6 Consent in writing in Form 11.2</li><li>•To file consent in Form no. 11.8</li></ul>

# SECTION 153

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>•<b>Sec.153 Application for Allotment of DIN :</b></li><li>•Individual to make application in Form &amp; manner prescribed</li></ul>	<ul style="list-style-type: none"><li>•<b>Rule 11.7 :</b> Form prescribed</li><li>•<b>Rule 11.9 : Cancellation / Deactivation of DIN</b></li><li>•<b>CG/ RD / Officer Authorised by RD can deactivate/ cancel in case of</b></li><li>•Duplication / wrongful manner/ death etc ( similar to MCA Notification on DIN Amendment Rules Mar 2013)</li><li>•<b>Rule 11.10 :</b> Intimation of changes in DIN ( similar to DIN 4 )</li></ul>

# SECTION 160

COMPANIES ACT 2013	DRAFT RULES
<p><b>•Sec.160 Right of person other than Retiring Director to stand for Directorship :</b></p> <ul style="list-style-type: none"><li>•Increased deposit amount to Rs. 100,000 which is refundable when he is appointed or even when he gets more than 25% of the total valid votes cast either on show of hands or on poll on such resolution shall be refunded</li><li>•Company to inform members in prescribed manner about the Candidature .</li><li>•Section 160 applicable to all Companies ( earlier U/s 257 of CA applies to Public only)</li></ul>	<p><b>•Rule 11.11 :</b> Similar to Sec 257 of CA 1956 except for serving individual notice to members by electronic mode if opted.</p>

# SECTION 161

## COMPANIES ACT 2013

## DRAFT RULES

### **\* Section 161 : Appointment of Additional/ Alternate/ Nominee Director – New Provn.**

•Person appointed as Alternate Director cannot be an Alternate Director for any other Director in such company.

•Appointment of Nominee Director included., nominated by FI/ By virtue of Agreement / Govt Shareholding / any other person to represent its interest.

•A Person who fails to get appointed in GM cannot be appointed as Addln Director in BM.

**\* This Section came into effect on 12<sup>th</sup> September, 2013**

NA

## SECTION 162

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>•Section 162: Appointment of Directors to be voted individually.</li><li>•Applicable to all Companies</li></ul> <p>* This Section came into effect on 12<sup>th</sup> September, 2013</p>	<p><b>NA</b></p>

## SECTION 163

COMPANIES ACT 2013	DRAFT RULES
<p><b>* Section 163: Option to adopt principle of Proportional Representation for appointment of Directors (Sec 265 of CA 1956 0 – No change except that it is:</b></p> <ul style="list-style-type: none"><li>•Applicable to all Companies</li></ul> <p><i>* This Section came into effect on 12<sup>th</sup> September, 2013</i></p>	<p><b>NA</b></p>



# SECTION 164

## COMPANIES ACT 2013

## DRAFT RULES

•Section 164 Disqualification for Appointment of Director (Sec. 202/274 & 283 (2) of CA 56) – New Proviso:

**Additional Disqualifications:**

- Any Director convicted & sentenced for 7 yrs or more debarred to act as Director.
- He is convicted of the offence dealing with related party transaction u/s 188 at any time during last preceding 5 yrs.
- He has not obtained DIN
- Sec274(1) (g) of CA 1956 retained as Sec.164(2) subject to modification that it shall **apply to all companies.**
- Power of Centl Govt to remove certain disqualification has been dispensed with.

NA

# SECTION 165

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>•Section 165 : Number of Directorship (Sec 276-279 of CA 1956)</li><li>•Maximum no of Directorship (all cos) including Alternate Directorship is 20</li><li>•In Public Companies – 10 ( This includes Private Co which is a Holding or Subsidiary of a Public Co)</li><li>•Members by Spl Resln restrict lesser number of Companies.</li><li>•Directors to choose option of Companies to fall within the prescribed ceiling within One Year from the date of commencement of this Act.</li><li>•Penalty: 5000-25000 per day.</li></ul>	<p>NA</p>

# SECTION 166

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>•Section 166 : Duties of Directors :</li><li>•Duties of Directors defined</li><li>•<b>Shall</b> act in good faith, in accordance with AoA, exercising of duties</li><li>•<b>Shall not</b> involve in conflict of interest, undue gain etc.</li></ul>	<p style="text-align: center;"><b>NA</b></p>

# SECTION 167

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>•Section 167 : Vacation of Office :</li><li>•Additional Grounds :<ul style="list-style-type: none"><li>•Absents himself for continuous 12 mths with/ without seeking LOA</li><li>•Contravention / failure to disclose relating to entering into contracts/ arrangements in which he is directly/ indirectly interested.</li></ul></li><li>•Failure to obtain qualification shares removed.</li></ul>	<p>NA</p>

# SECTION 168

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>•Section 168 : Resignation of Directors</li><li>•New Provision</li><li>•Resignation shall effect :</li><li>•Date of Notice (or)</li><li>•Date if any specified in Notice w.e.later</li><li>•The Director <b><u>shall also</u></b> forward copy of resignation with reason within 30days</li><li>•Fact of resignation to be mentioned in the Board Report in immediately following General Meeting.</li><li>•Director shall be liable even after resignation for offences occurred during tenure.</li></ul>	<ul style="list-style-type: none"><li>•Rule 11.12 : to File form within 30 days and to post on website</li><li>•Director <b><u>May also</u></b> forward copy of resignation with reason within 30days</li><li>•Comments :</li><li>•Seems like Resignation to be filed by Company and the Resigned Director with Registrar of Companies apart from Company's requirement to file the same.</li></ul>

# SECTION 169

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>•Section 169 : Removal of Directors :</li><li>•No change except spl notice can be given by member who satisfy the numerical / shareholding criteria.</li><li>•<u>Spl Notice ( Sec190 of CA 1956) Sec 115 of CA 2013 :</u></li><li>•Members holding 1% of TVP or Shares of Rs.5 lakhs (value) - <b>New Provision</b></li></ul>	<p style="text-align: center;"><b>NA</b></p>

# SECTION 170

## COMPANIES ACT 2013

- **Section 170 : ( Sec. 303 of CA, 1956)**
- Register containing Particulars of Directors/ KMP as may be prescribed.
- Accordingly form to be filed for CEO/ CFO among others.
- To mention about securities held by them / holding/ subsidiary/ subsidiary of company's holding / associate company

## DRAFT RULES

- **Rule 11.14 : Register of Directors & KMP :**
  - Particulars like DIN, Occupation, Date of BM, Office of Director/ KMP held in other body corporate, Membership No of ICSI.
  - In addition , to mention about securities held by them / holding/ subsidiary/ subsidiary of company's holding / associate company relating to no./ description/ date of acquisition/ disposal/pledged shares etc.
- **Rule 11.15 : Return containing particulars of Directors & KMP :**
  - To file Form 11.8 in case of change in appointment of Director / KMP

# SECTION 171

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>•Section 171 : Members' right to Inspect</li><li>•Power to compel inspection moved from CLB to ROC.</li></ul>	NA



# SECTION 172

<b>COMPANIES ACT 2013</b>	<b>DRAFT RULES</b>
<ul style="list-style-type: none"><li>•Section 172 : Punishment for contravention of Chapter XI</li><li>•Company &amp; every officer of the company – Rs. 50,000 to Rs. 5 lakhs</li></ul>	<p>NA</p>

**CHAPTER XII**  
**MEETINGS OF BOARD**  
**&**  
**ITS POWERS**  
**SEC.173-195**

# SECTION 173

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>• <b>Section 173 : Meeting of Board</b></li><li>• Within 30 days of incorporation to hold BM</li><li>• Gap between two BM – 120 days applicable to all Companies</li><li>• CG may notify any modification on the above</li> <li>• Section 173(2) Video Conferencing/ other audio visual means as prescribed- similar to the existing circular .</li></ul>	<ul style="list-style-type: none"><li>• <b>Draft Rules similar to General Circular No.28 of 2011 dated 20<sup>th</sup> May, 2011 except certain new aspects cited herein</b></li><li>• Intimation for participation- 3 days prior to meeting unless waived off by chairperson</li><li>• Venue of meeting as scheduled in meeting.</li><li>• Video recording shall form part of sectl record &amp; to be preserved ( no period specified)</li><li>• Draft Minutes to be circulated within 7 days in writing/ by e-mode &amp; to be approved within 7 days &amp; entered in the minutes book</li><li>• Matters not to be dealt in VC :</li> <li>• Approval of Annual Financial Statement</li><li>• Board Report</li></ul>

# SECTION 173

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>•<b>Section 173(3): Meeting of Board</b></li><li>•Not less than 7 days Notice for BM. ( Hand Delivery/ Post/ E-mode)</li><li>•Minimum 1 ID, if any shall be present</li><li>•In the absence to be approved by 1 ID later.</li><li>•<b>Section 173 (5)</b></li><li>•OPC / Small Co/ Dormant Co to have one BM in each half CY ( Gap not less than 90 days)</li><li>•OPC with 1 Director not required to comply.</li></ul>	<p style="text-align: center;"><b>NA</b></p>

## SECTION 174

<b>COMPANIES ACT 2013</b>	<b>DRAFT RULES</b>
<ul style="list-style-type: none"><li>•Section 174 : Quorum for Meeting : Participation through VC counted for quorum.</li><li>•Inability to convene meeting due to Quorum requirement treated as non- compliance</li></ul>	<p style="text-align: center;"><b>NA</b></p>

# SECTION 175

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>•Section 175 : Passing of resolution by Circulation</li><li>•Sec.289 of CA 1956 – approved by Directors in India, which no longer exist</li><li>•Circular Resolution to be noted in BM</li><li>•If 1/3<sup>rd</sup> of Directors require resln to be decided at BM , the same cannot be passed as CR.</li></ul>	<p>NA</p>

# SECTION 177

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>• <b>Section 177 : Audit Committee ( Sec.292A of CA 1956)</b></li><li>• <b>Similar to Listing Agreement except :</b><ul style="list-style-type: none"><li>• Minimum 3 Directors – Majority to be ID</li><li>• Auditors/ KMP shall have right to attend ACM when it considers Auditors Report</li><li>• Auditors need not attend AC meeting .</li><li>• Audit Committee Chairman need not attend AGM ( <b>differs with LA</b> )</li><li>• Penalty for contravention min. 1 lakh Max 5 lakhs for Company</li><li>• Penalty for contravention min. Rs. 25,000 Max 5 lakhs or Imprisonment for 1 year - for Officer</li></ul></li></ul>	<ul style="list-style-type: none"><li>• <b><u>Draft Rule 12.4 :</u></b></li><li>• <b><u>For Audit/ Nomination/ Remuneration Committee :</u></b><ul style="list-style-type: none"><li>• Applicable to Listed Company</li><li>• Other Class of Company :<ul style="list-style-type: none"><li>• Paid Up Share Capital - 100 cr (or)</li><li>• Loans/ Borrowings/ Debentures/Deposits exceeding 200 Crs</li></ul></li></ul></li><li>• <b><u>Rule 12.5 :</u></b></li><li>• <b><u>Vigil Mechanism :</u></b><ul style="list-style-type: none"><li>• Applicable to Listed Company</li></ul></li></ul>

# SECTION 177

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>• <b>Section 178</b> : Nomination &amp; Remuneration Committee and Stakeholders Relationship Committee</li><li>• <b>New Provision.</b></li><li>• Nomination &amp; Remuneration Committee-</li><li>• 3 or more NED – 1/2 to be ID ( <b>differs with LA – All NE /Chair - ID</b>)</li><li>• Chairman even ED , can be a member but not as chairman of Committee.</li><li>• <b>Stakeholders Relationship Committee :</b></li><li>• <b>Applicability</b> : Company consist of more than 1000- shareholder/ debenture holder/ security holder / Deposit Holder during FY.</li><li>• Contd...</li></ul>	<ul style="list-style-type: none"><li>• Other Class of Company :</li><li>• Companies accepting Public Deposit <b>AND</b></li><li>• Borrowings exceeding 50 Crs (Bank/ FI)</li><li>• Operated by AC ( if any ) or by a Director Nominated by Board</li><li>• <b><u>Comment</u></b> : Borrowing to include other Unsecured Loans</li><li>• Vigil Mechanism made mandatory to listed company which as per LA is a non-mandatory item.</li><li>• Other terms are similar to LA</li></ul>



# SECTION 177

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>• Chairman – NED , other members to be decided by Board.</li><li>•Chairman or authorised member of each of the committee to attend <b>GM</b>.</li><li>•Penalty for contravention min. 1 lakh Max 5 lakhs for Company</li><li>•Penalty for contravention min. Rs. 25,000 Max 5 lakhs or Imprisonment for 1 year - for Officer</li></ul>	<p style="text-align: center;"><b>NA</b></p>

# SECTION 179

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>•Section 179 : Powers of the Board (291 &amp; 292 of CA, 1956)</li><li>•New clauses added and are to be passed only Meetings of Board are :</li><li>•Guarantee/ Financial Statements/ Board Report/ Diversification/ Amalgamation/ Acquisition &amp; <u>other matters as may be prescribed in Rules.</u></li></ul>	<ul style="list-style-type: none"><li>• <u>Rule 12.6 : To be passed by Board Meeting (among other items)</u></li><li>•Political Contribution , Casual Vacancy, entering into JV, commence new business, shifting of plant/factory/ Regd Office, appoint / remove KMP &amp; Senior Management one level below KMP , appoint internal auditor, adopt common seal, disclosure of interest &amp; shareholding, to sell investment held in other company (5% or more of PC &amp; Free Reserves of investee Company), accept public deposit &amp; to approve Quarterly/ Half Yearly/ Annual FS.</li></ul>

# SECTION 180

COMPANIES ACT 2013	DRAFT RULES
<p><b>*Section 180 : Restrictions on powers of Board (Sec.293 of CA 1956)</b></p> <ul style="list-style-type: none"><li>•Applicable to all Companies</li><li>•Special Resolution ( earlier Ordinary ResIn)</li><li>•Undertaking has been defined- 20% of the net worth or 20% of total income generated in Prev FY.</li><li>•Substantially whole of Undertaking has been defined – 20% or more of value of undertaking.</li></ul> <p><i>* This Section came into effect on 12<sup>th</sup> September, 2013 – Notification – Clarification issued on 13<sup>th</sup> September 2013</i></p>	<p><b>NA</b></p>

# SECTION 181

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>•Section 181 : Company to contribute to bonafide and charitable funds etc</li><li>•Prior permission in general meeting</li><li>•5% of the average net profit for 3 immediately preceding FY.</li><li>•Applies to all Companies</li><li>•Not Directly relating to the business of the company are not excluded.</li></ul> <p><i>* This Section came into effect on 12<sup>th</sup> September, 2013</i></p>	<p><b>NA</b></p>

## SECTION 182

COMPANIES ACT 2013	DRAFT RULES
<p><b>*Section 182 : Prohibitions and restrictions regarding political contributions ( 293A of CA 1956)</b></p> <ul style="list-style-type: none"><li>•7 ½ % of its average net profit (earlier 5 % ) of the previous 3 FY</li><li>•Disclosure of amount contributed to Political party to be disclosed in P&amp;L ( NOT FOR POLITICAL PURPOSE)</li></ul> <p><i>* This Section came into effect on 12<sup>th</sup> September, 2013</i></p>	<p><b>NA</b></p>

## SECTION 184

<b>COMPANIES ACT 2013</b>	<b>DRAFT RULES</b>
<ul style="list-style-type: none"><li>•Section 184 : Disclosure of Interest by Director (Sec.299 of CA 1956)</li><li>•General Disclosure &amp; Disclosure at the time of entering into Contract/Arrangement is distinct requirement</li></ul>	<ul style="list-style-type: none"><li>•Rule 12.7 :</li><li>•Notice of Disclosure in Form 12.1</li><li>•Notice to be disclosed at the first board of every financial year immediately after date of notice</li><li>•Notice to be preserved for 8 years</li></ul>

# SECTION 185

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>•Section 185 : Loan to Directors ( Sec 295 &amp; 296 of CA 1956 )</li><li>•Applicable to Private Co also.</li><li>•Exemption available to companies whose business is providing loan and interest in not less RBI rate apart from Banking Company.</li><li>•Exempted to MD/ WTD if approved by SR or part of service like any other employee.</li><li>•Imprisonment can be avoided by repayment of loan as CA 1956 but no such provision in Sec 185 of CA 2013</li><li>•Loans to Subsidiary is dealt in Sec 186 of CA 2013 (372A of CA 56).</li><li>•No Approval of CG since prohibited in total.</li></ul> <p><b><u>* This Section came into effect on 12<sup>th</sup> September, 2013</u></b></p>	<p><b>NA</b></p>

# SECTION 186

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>•Section 186: Loan and Investment by Company (Sec. 372A of CA 1956)</li><li>•Applicable to all Companies</li><li>•New Proviso :<ul style="list-style-type: none"><li>•Co can make investment through max. 2 layers of Investment Co., unless prescribed</li><li>•Above shall not affect acquisition outside India if such other co as Investments beyond 2 layers as per law of country &amp; subsidiary co from having investment subsidiary for meeting regulatory requirement.</li></ul></li><li>•Limits : 60% of Paid Up / FR / <b><u>Securities Premium A/c or 100 % of</u></b> / FR</li></ul>	<ul style="list-style-type: none"><li>•<b><u>Rule 12.8</u></b></li><li>•Co regd under Se.12 of SEBI Act 1992 ( Registration of Stock Broker/ Sub Broker/ STA etc ) &amp; covered under Class or classes of companies prescribed cannot take loan/ deposit <b><u>exceeding prescribed limit prescribed under the regulations applicable to such company</u></b></li><li>•Register to be maintained in Form 12.2 &amp; entries within 7 days.</li><li>•Custody of CS or any person authorised by Board.</li></ul>
<p>•(Contd..)</p>	<ul style="list-style-type: none"><li>•Entries in register to be authenticated by CS.</li></ul>



# SECTION 186

## COMPANIES ACT 2013

### •Securities Premium A/c

•Disclosure in the FS about loans/investment/ guarantee & purpose for which loan is proposed to be utilized by recipient

•Co regd. under Se.12 of SEBI Act 1992 ( Registration of Stock Broker/ Sub Broker/ STA etc ) & covered under Class or classes of companies prescribed cannot take loan/ deposit **exceeding prescribed limit.**  
( Refer Rule 12.8)

•Bench mark interest rate on loans (RBI Bank Rate as per CA 1956) should be equal to prevailing yield of 1 yr/ 3 yr/ 5yr or 10 yr Govt Security closest to the tenor of the loan.

## DRAFT RULES

•**Rule 12.10:** Extracts at a fee of Rs.10/- per page to any member.

•**Rule 12.11 (1)** : mentions passing of Spl resln in case of exceeding limits on aggregate of loans/ investments/ guarantees so far made.

•**Rule 12.11 (2)** A resln passed at GM to give guarantee to specify total amount up to which Board is authorised.

# SECTION 186

## COMPANIES ACT 2013

## DRAFT RULES

- WOS not exempted
- Proviso of Sec.372A (1) of CA 1956 extending guarantee without approval .
- Acquisitions made by NBFC regd under RBI Act & whose business is Investment & Lending Activities are exempted.
- Imprisonment can be avoided by repayment of loan as CA 1956 but no such provision in Sec 186 of CA 2013
- Loan included Debentures in CA 1956 but no such provision in Sec 186 of CA 2013
- Sec.186 (12) says CG shall make rules for the purpose of this Sec. ( Refer Rule 12.11 & 12.12)

**NA**

# SECTION 187

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>•Section 187 : Investments of Company to be held in its own name :</li><li>•( Corresponds to Sec.49 of CA 1956)</li><li>•Exemption under Sec.49 of CA 1956 on Qualification shares by Directors in other BC removed</li><li>•Investment made by Co whose principle business is buying &amp; selling.</li></ul>	<p style="text-align: center;"><b>NA</b></p>

# SECTION 188

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>•Section 188 : Related Party Transactions (RPT)</li><li>•Sec.294, 294A,297 &amp; 314 of CA 1956 covered.</li> <li>•Applicable to all Companies.</li><li>•Related party (RP) defined in Sec. 2(6) &amp; term RP include KMP/ Public Co with Shareholding of 2% or more/ BC of which Director/ Manager is <u>Shadow Director</u> .</li> <li>•RPT includes :<ul style="list-style-type: none"><li>•Sale/ Purchase/ leasing of Property</li><li>•Approvals :</li><li>•Within limits as prescribed - Consent of the Board of Directors</li></ul></li> <li>•Contd..</li></ul>	<p style="text-align: center;"><b>NA</b></p>

## SECTION 188

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>•Exceeding Limits – Special Resln. No member to vote if he is interested in the RPT.</li><li>•No requirement of CG Approval.</li><li>•Can be ratified within 3 months from the date of transaction u/s.188</li><li>•<b>Comments</b> : Quorum issues in case of Closely held Companies.</li><li>•Not Applicable to transactions in ordinary course of business other than on Arms length basis.</li><li>•To reported in Boards Report along with justification for contract.</li><li>•Voidable at the option of company</li></ul>	<p style="text-align: center;"><b>NA</b></p>

## SECTION 189

<b>COMPANIES ACT 2013</b>	<b>DRAFT RULES</b>
<ul style="list-style-type: none"><li>•Section 189: Register of Contracts or arrangements in which directors are interested ( Sec 301 of CA 1956 )</li><li>•Entry into Register of Contracts for values exceeding Rs. 5 lakhs only ( Previously Rs.1000)</li><li>•Register to be kept open during AGM Meeting to any person attending the meeting.</li></ul>	<p style="text-align: center;"><b>NA</b></p>

# SECTION 190

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>•Section 190: Contract of employment with managing or whole time directors ( Sec 302 of CA 1956 ):</li><li>• Copy of Contract to be kept Reg. off.</li><li>•Not Applicable to Private Company</li><li>•(previously applicable to all )</li><li>•Abstracts U/s 302 of CA 1956 dispensed with .</li><li>•<b>Penalty</b> : Rs.25000 for Company &amp; Rs.50000 for Officer</li></ul>	<p style="text-align: center;"><b>NA</b></p>

# SECTION 191

## COMPANIES ACT 2013

•Section 191 : Payment to Director for loss of Office etc in connection with Transfer of Undertaking, property or shares ( Sec. 320 of CA 1956)

•Particulars as may be prescribed with respect to the payment proposed to be made by such transferee or person to be disclosed to the members of the company & proposal approved in GM.

## DRAFT RULES

- Rule 12.16 Particulars to be disclosed :
- Name, amount proposed to be paid, event due, Date of BM , basis for determining amount , justification, manner/ source of payment, if payment other than cash, consideration by registered valuer .
- Amount compensated to MD/ WTD/ Manager should not exceed limits u/s 202. ( Managerial Remn)
- No such payments (except statutory payments) to MD/WTD/ Manager if company:
- Defaults payment of public deposit/ interest/ redemption of debentures/ liabilities, secured or unsecured, to Bank / FI, dues to IT/VAT/excise/ ST or other tax & other statutory dues to employees/ workmen (not disputed by co)



# SECTION 192

## COMPANIES ACT 2013

## DRAFT RULES

**\*Section 192 : Restriction on non- cash transactions involving directors**

**•New Provision :**

**• Applicable to all companies**

**•No co., shall enter into arrangement by which**

**•Director/ Holding/ subsidiary/ associate/ person connected with him acquires assets from company**

**•Company acquires assets from such Director/ person connected**

**For Consideration other than cash unless –**

**•Prior Appl. by Resolution at GM , Notice to contain particulars, value of assets as calculated by Registered Valuer.**

**•Any arrangement by the company/ holding Company in contravention of this section , voidable at the option of company.**

*\* This Section came into effect on 12<sup>th</sup> September, 2013*

**NA**

# SECTION 193

COMPANIES ACT 2013	DRAFT RULES
<ul style="list-style-type: none"><li>• <b>Section 193</b> :Contract by one person Company</li><li>• <b>New Provision :</b></li><li>• Contract between OPC &amp; Sole Member who is also its Director unless in writing , to be recorded in subsequent BM minutes.</li><li>• Not applicable for business in normal course.</li><li>• To inform Registrar about every contract entered into by the Company and recorded in Minutes , within 15 days from the date of approval of Board of Directors.</li></ul>	<p style="text-align: center;"><b>NA</b></p>

# SECTION 194

COMPANIES ACT 2013	DRAFT RULES
<p><b>•*Section 194 : Prohibition on forward dealings in securities of company by a KMP</b></p> <p><b>•New Provision :</b></p> <ul style="list-style-type: none"><li>• Applicable to all Companies</li><li>•Similar to Insider Trading Regulations.</li><li>•Prohibits Directors/ KMP from buying future contracts in securities of the Company/ Holding / Subsidiary/ Associate Co.</li><li>•Penalty : 2years Imprisonment or Fine Rs.1 lakh to 5 lakhs and also to surrender the shares to the Company and shares shall continue in the name of Transferors.</li></ul> <p><i>* This Section came into effect on 12<sup>th</sup> September, 2013</i></p>	<p><b>NA</b></p>

# SECTION 195

COMPANIES ACT 2013	DRAFT RULES
<p><b>*Section 195 : Prohibition on Insider Trading of Securities</b></p> <p><b>•New Provision:</b></p> <ul style="list-style-type: none"><li>•Applicable to all Companies</li><li>•Prohibits Directors/ KMP from dealing with securities of a company/ from procuring, counselling, communicating about the price sensitive information to any person.</li><li>•Penalty : Punishable with 5 yrs Imp or with fine not less than 5 lakhs extend to 25 crores or 3 times the amount of profit made out of insider trading WEH or both.</li></ul> <p><i>* This Section came into effect on 12<sup>th</sup> September, 2013</i></p>	<p><b>NA</b></p>

**THANK YOU**