

COMPANIES BILL 2012

CS. P.SRIRAM
-PROWIS CORPORATE SERVICES

CHAPTER UNDER COMPANIES BILL 2012

SL.NO	CHAPTER UNDER COMPANIES BILL 2012	CLAUSES
1	CHAPTER I : PRELIMINARY : Short Title , Extent, Commencement and Application Definitions	<i>Clauses 1& 2</i>
2.	CHAPTER II : Incorporation of Company and Matters Incidental Thereto	<i>Clauses 3 to 22</i>
3.	CHAPTER III : Prospectus and Allotment of Securities Part I : Public Offer Part II : Private Placement	<i>Clauses 23 to 42</i>
4.	CHAPTER IV : Share Capital and Debentures	<i>Clauses 43 to 72</i>
5.	CHAPTER V : Acceptance of Deposit by Companies	<i>Clauses 73 to 76</i>
6.	CHAPTER VI : Registration of Charges	<i>Clauses 77 to 87</i>
7.	CHAPTER VII : Management and Administration	<i>Clauses 88 to 122</i>
8.	CHAPTER VIII : Declaration and Payment of Dividend	<i>Clauses 123 to 127</i>

CHAPTER I

Commencement : Govt. can enforce provisions of the Bill at different points of time.

Applicability : Applicable to Companies or Body Corporate in case of absence of provisions in Special Statute .

95th Clause - Terms not defined here should also be referred to in SCRA/SEBI/Depositories Act

New Key Definitions :

SL.NO	NEW DEFINITION	CLAUSE
1	“Associate Company “	2(6)
2	“Accounting Standard”	2(7)
3	Authorised Capital	2(8)
4.	Books of Accounts/Books & Paper	2(13)/2 (12)
5.	CEO & CFO	2(18) & 2(19)
6.	Employee Stock Option (Modified – may also be granted to Directors, holding and Subsidiary of the Company	2 (37)
7.	Control – Also include Sh.Hol/Mgt. rights or share hol. Agreement or voting agreements or in any manner	2(37)

SL.NO	NEW DEFINITION	CLAUSE
8.	Company Liquidator – person appointed up tribunal (W.Up)/Panel of Professionals (Vol/Crs. W.Up)	2(23)
9.	Financial Statement	2(40)
10.	Financial Year (Modified)	2(41)
11.	Free Reserves(Modified)	2(43)
12.	Global Depository Receipt & Indian Depository Receipt	2(44) & 2(48)
13.	Independent Director	2(47) / 149(5)
14.	Key Managerial Personnel	2(51)
15.	Officer in Default (Modified) includes Share Transfer Agents, Registrars, Merchant Bankers, CFO, KMP, Directors attending BM and receiving Minutes	2(60)

SL.NO	NEW DEFINITION	CLAUSE
16.	One Person Company	2(62)
17.	Postal Ballot	2(65)
18.	Private Limited Company (Modified – Number increased from 50 to 200 & Acceptance of deposit from persons other than members, directors and relatives has been dispensed with)	2(68)
19.	Promoter	2(69)
20.	Related Party	2(76)
21.	Small Company	2(85)
22.	Subsidiary Company (Modified- Layer & dispensed with Sec.4(7) of CA, 1956	2(87)
23.	Whole Time Director	2(94)

CHAPTER II : INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

ONE PERSON COMPANY : (OPC)

Clause 3(1) (C)

- To subscribe for memorandum & comply with the requirements
- To indicate the name of the other person (in case of Subscribers death)
- Can change the name of such other person
- In case the name is obtained by incorrect information, the same can be withdrawn or if incorporated the Company will be directed to change the name or take action for striking off or make petition for winding up.

Memorandum: (Section 13, 14, 20 & 23)

- Bifurcation of object clause into main, ancillary and other objects has been dispensed with.

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO(COND..)

Articles Clause 5 (Section 26,27,28,29)

Entrenchment Provisions :

- Implies to provide more restrictive procedure than passing a Special resolution for altering the Articles.
e.g) the Article could mandate that certain provisions can be altered only if agreed by all the members.
- Registrar to be informed about such provisions

Incorporation of Companies - Clause 7 (Section 30,15,33)

- Affidavit from each subscriber and First Director to the effect that they are not convicted of offence in connection with Company, for the preceding 5 years and document filed with the Registrar is correct and complete.

INCORPORATION OF COMPANY AND MATTERS

- Declaration in the prescribed form by the professional engaged on formation of the company **AND Director/Manager/Secretary - that all requirements complied with.**
- Deliberate false information by person shall be responsible for Fraud under Clause 447
- Any person may challenge the validity of the COI before the Tribunal if found for furnishing false information. COI is the conclusive evidence removed.
- Proof of Identity of Subscribers & Directors required

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO(COND..)

Formation of Companies with Charitable Objects – Clause 8 (Section 25)

- ❖ OPC can also be a company under clause 8
- ❖ Firm can be a member
- ❖ Activities such as Sports, education, research, protection of environment and Social Welfare have been specifically added (earlier this was under any other useful object)
- ❖ Even Alteration of AoA requires approval of CG
- ❖ Tribunal can order Amalgamation/ Winding up, Proceeds can be credited to Rehabilitation & Insolvency Fund U/s.269

Commencement of Business – Clause 11 (Section 149)

- ❖ Declaration by both Public and Private Companies that subscription money has been received
- ❖ Confirmation with Registrar of verification of its registered office
- ❖ If no declaration by Director and Registrar believes that business not commenced within 180 days from the date of incorporation, then the name can be removed from the list.
- ❖ Even Private Companies also included in the ambit

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO(COND..)

Registered Office of the Company – Clause 12 (Section 146,147&17A)

- To print CIN / Telephone No, Fax, Email, Website
- In case of change of name, old name to be printed for 2 years
- One person company to mention specifically
- Intimation of Change in registered office within 15 days
- Verification of registered office within 30 days (in the manner prescribed)
- Company to have registered office within 15days from the date of incorporation

Alteration of Memorandum - Clause 13 (Section 16,18,21)

- ❖ Company raised money from IPO and still unutilized money cannot change the objects for which mentioned in prospectus unless Special resolution passed and published in newspaper.
- ❖ Dissenting shareholders to be given opportunity to exit
- ❖ Approval of Central Govt not required for change in name even though addition or deletion of word Public or Private to the name.
- ❖ Time limit of 60days for disposal of application by CG for shifting from one state to other state

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERE TO (COND..)

Articles of Association – Clause 14 (Section 31)

- Conversion of Public Company into OPC with approval of Tribunal.
- Conversion of Private Company into OPC or vice versa without any approval
- Alteration to be filed within 15 days
- Conversion of Public Company into Private requires approval of Tribunal.
- No approval for conversion of Private into Public and no requirement to file Statement in lieu of Prospectus at the time of conversion.

Rectification of Name – Clause 16 (Section 22)

- Registered Trademark owner to file rectification of name within 3 years (earlier 5 years)

CHAPTER III : PROSPECTUS & ALLOTMENT OF SECURITIES

PUBLIC OFFER & PRIVATE PLACEMENT CLAUSE 23 (NEW PROVISION)

The Bill provides the manner in which the securities can be issued by both Public and Private.

- Public may issue securities through Prospectus, Private Placement , Rights Issue/ Bonus Issue
- Private may issue securities by way of Rights / Bonus/ Private Placement
- Compliance of provisions of this Part and Part II

PROSPECTUS & ALLOTMENT OF SECURITIES

CIVIL LIABILITY FOR MISSTATEMENT IN PROSPECTUS - CLAUSE 35

- Civil Liability also extended to experts

ACTION TO BE TAKEN BY AFFECTED PERSONS - CLAUSE 37 / CLAUSE 245 (New)

- For Misstatement in Prospectus
- For inducing another person to invest

PUNISHMENT FOR PERSONATION (CLAUSE 38)

- Court can order disgorgement of gain and deposit the proceeds in IEPF

ALLOTMENT OF SECURITIES (CLAUSE 39) Corresponding to Section 75 of CA,1956

- Scope widened to all Securities
- Return of allotment to all Securities

CLASS ACTION – CLAUSE 245 (NEW)

- Members / Depositors / Class of them
- File application before Tribunal seeking orders
- Restraining certain acts (to declare resolution, altering MoA & AoA as void etc)
- To claim damage/ compensation/demand action against Company/ Directors/ Auditors (including Firm) / Expert/ Advisors for unlawful/ wrongful act
- May seek compensation from Audit Firm. Liability is of the firm and not the company.
- Requisite number of members – With Share capital – 100 members or such % of total number of members which ever is less as may be prescribed
- In case of Company not having Share capital – $1/5^{\text{th}}$ of the total number of members.
- Not applicable to Banking Company

CRITERIA OF PRIVATE PLACEMENT- CLAUSE 42 (SECTION 67)

Offer / Invitation is

- to select group of persons
- other than by way of Public Offer
- through issue of Private Placement Letter
- is made to not more than 50 in a Financial Year
- Excludes : ESOP/ QIB
- No fresh offer / invitation before the earlier is completed/ allotted/ abandoned / withdrawn.
- Only Cheque
- Allotment to be made within 60 days from receipt of money (or) Repay within 15 days of expiry of 60 days along with Interest at 12 % per annum from 60th day.

CRIETERIA OF PRIVATE PLACEMENT (CONTD.....)

- Money received should be in a separate bank account and shall be utilized only for adjustment against allotment of securities and for repayment of monies where company is unable to allot securities.
- Only to the person to whom the money has been received.

Similar to Issue of Preferential allotment of shares to **Unlisted Public Companies (Preferential Allotment) Amendment Rules, 2011.**

By this, even Private Companies to comply with the provisions , which was earlier required to be complied by Public companies ony.

Penalty: Amount involved/***Two Crores*** w.e.h & refund of all monies.

No provision regarding the application money accepted before the enforcement of this act.

CHAPTER IV : SHARE CAPITAL & DEBENTURES

CLAUSE 47- VOTING RIGHTS : (SECTION 87)

No distinction between Cumulative & Non Cumulative Preference Shareholders in Dividend is not paid for 2 years, they shall have the right to vote.

VARIATION OF SHAREHOLDERS RIGHTS CLAUSE 48 (SECTION 106,107)

- If variation of rights by one class of shareholders affects the other class, then consent of 3/4th of **such other class of shareholders shall also be obtained**
- Filed with ROC within 30 days from the date of order of the Tribunal

APPLICATION OF PREMIUM RECEIVED ON ISSUE OF SHARES : CLAUSE 52 (SECTION 78)

Certain class of Companies as may be prescribed and whose financial statements comply with Accounting Standard can utilize the Share Premium Account only for following purpose :

- In paying up unissued equity shares of the company to be issued to members of the company
- Writing off expenses or commission paid or discount allowed on issue of equity shares
- For purchase of its own shares or other securities

By the above , certain companies cannot adjust the preliminary expenses with the Securities Premium Account .

SHARE CAPITAL & DEBENTURES (CONTD..)

PROHIBITION ON ISSUE OF SHARES AT DISCOUNT – CLAUSE 53 (SECTION 79)

Company cannot issue shares at Discount other than Sweat Equity

ISSUE AND REDEMPTION OF PREFERENCE SHARES – CLAUSE 55 (SECTION 80)

- Preference Shares redeemable after 20 years for Infrastructural Projects
- Subject to redemption of % of Preference Shares at annual basis
- Infrastructural Projects defined under Schedule VI eg. Transportation, telecommunication, petroleum, housing.
- If company not in position to redeem / pay dividend then company can use the proceeds of fresh issue of preference shares by
- Consent of 3/4th Shareholders
- Approval of Tribunal

SHARE CAPITAL & DEBENTURES (CONTD..)

TRANSFER & TRANSMISSION OF SHARES - CLAUSE 56 (SECTION 108,109,110,113 & 109(B)

- Scope widened to include Securities
- Instrument for transfer of shares shall be deposited with the company within 60 days of the execution
- In case of delay in deposit, company can register subject to Indemnity
- (Revalidation Dispensed)

TIME PERIOD FOR ISSUE OF SHARE CERTIFICATE

- Fresh upon incorporation – 2 months (implies money to be brought in within 2 months)
- Allotment of Shares – 2 months (earlier – 3 months)
- Transfer & Transmission of Shares – 1 month (earlier – 2 months)
- Allotment of Debentures – 6 months
- Earlier, CLB can extend time till 9 months which is not available now as it will cause practical difficulty.

SHARE CAPITAL & DEBENTURES (CONTD..)

REFUSAL OF REGISTRAITON - CLAUSE 58 (SECTION 111 & 111A)

- Any Contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable contract
- Company to intimate refusal for transfer within 30 days
- Appeal to Tribunal only by Transferee
- Appeal within 60 / 90 days from the date of Instrument delivered to Pvt/ Public Company respectively if no intimation is received
- Appeal within from the date of refusal notice - 30 days in case of Private company & 60 days in case of Public company
- Non Compoundable

ALTERATION OF SHARE CAPITAL BY CONSOLIDATION/ DIVISION - CLAUSE 61

Approval of Tribunal if such Consolidation / Division results in change in Voting Percentage

FURTHER ISSUE OF SHARES – CLAUSE 62 (SECTION 81)

- Applicable to all companies
- ESOP- Special Resolution and other conditions as may be prescribed
- In case of issue of shares to others , valuation report by registered valuer.

SHARE CAPITAL & DEBENTURES (CONTD..)

ISSUE OF BONUS SHARES – CLAUSE 63 (NEW CLAUSE NO SECTION EARLIER)

- Free Reserves/ SP Account / CRR
- No issue of Bonus from Revaluation Reserves
- Authorisation in AOA, BM/ GM , No default on FD, Debt Securities , Statutory Dues to Employees, as may be prescribed
- Cannot be issued in lieu of Dividend (like ICDR)

REDUCTION OF SHARE CAPITAL - CLAUSE 66

- No Reduction of capital is allowed when arrears of Deposits
- Notice by tribunal to CG/ SEBI/ Creditors
- Certificate from Company' s Auditor and compliance with Accounting Standard

CLAUSE 70 & 71

PROHIBITION FOR BUY BACK – CLAUSE 70 (SECTION 77B)

Buy Back even in case of default of repayment of deposit, redemption of debenture etc ***(including dividend)*** provided default is remedied and period of three years lapsed.

DEBENTURES – CLAUSE 71 (SECTION 117, 117A to C, 118, 119)

- Secured Debentures can be issued
- Convertible Debentures (Partly/ fully) can be issued by Special Resolution
- Debenture Trustee not required for offer made to members less than 500 or public

CHAPTER V

ACCEPTANCE OF DEPOSITS BY COMPANIES

ACCEPTANCE OF DEPOSITS BY COMPANIES – CLAUSE 73 (SECTION 58A)

I. Only following Companies can accept deposit **from public**:

a) Banking Companies

b) NBFC

c) Notified companies

d) Public companies having such net worth/ turnover as may be prescribed

Deposit accepted by companies other than mentioned above should repay within 1 year

II. Company not covered above may accept deposit **only from its members subject to** fulfillment of few conditions

a) Resolution at General Meeting

b) Compliance of rules prescribed by RBI

c) Fulfillment of few conditions like issuance of circular to members, credit rating filing circular with ROC within 30 days, depositing 15% of deposits maturing in a FY to Deposit Repayment Reserve Account, certification that the company has not committed any default in repayment of deposits

d) Providing deposit insurance

REPAYMENT OF DEPOSITS ACCEPTED BEFORE COMMENCEMENT - CLAUSE 74

New Provision

- File within 3 months from the date of commencement of the act, the details of deposits remaining unpaid
- Repay deposits with interest within 1 year or the actual due date which ever is earlier
- Tribunal may extend time
- In case of failure , apart from repayment of deposit , fine of not less than 5 crores to company
- imprisonment upto 7 years to the Officer with fine not less than 25 lakhs with maximum of 2 crores or both

ACCEPTANCE OF DEPOSIT FROM PUBLIC BY CERTAIN PUBLIC COMPANIES - CLAUSE 76

Following Conditions to be complied:

- Networth / turnover as prescribed
- Comply with conditions in clause 73(2) (Acceptance of Deposits from its members)
- Comply with rules of CG in consultation with RBI
- Obtain rating from a recognized credit rating agency at the time of invitation of deposit from public. (every year)
- Company to create charge within 30 days on its assets of an amount of deposits accepted in favor of the deposit holders.

CHAPTER VI CHARGES - CLAUSE 77 TO 87

REGISTRATION OF CHARGES - CLAUSE 77 TO 87

- Exhaustive Definition (inclusive definition in CA , 1956)
- Clause does not specify the list of events
- Time limit for registration of charges changed from 30 to 270 days i.e extension of further time to be made to CG.
- No separate provision for registration of charges in respect to Debentures

APPLICATION FOR REGISTRATION OF CHARGE – CLAUSE 78 (SECTION 134)

- In case of failure to file charges then charge holder in whose favor the charge has to be registered may apply to the Registrar for registration
- Registrar can give notice to company and if company not responding within 14 days Registrar can register.

SATISFACTION OF CHARGE – CLAUSE 82

Can be intimated within an additional period of 270 days on payment of additional fees.

CHAPTER VII MANAGEMENT & ADMINISTRATION

Clause 92: Annual Return (Section 159-162)

Additional Disclosures in the Annual Return viz.,

Principal Business activities, Holding, Subsidiary, Associate company, Other Securities, KMP,
Remuneration to Directors/KMP (*Repetitive*)

Board/Committee meeting details, Penalties imposed on company/directors,
compounding details/Details as may be prescribed

Annual return Information Upto the date of closure of Financial Year

Time Limit : 30 days (additional 270 days with penalty) after which other fine/
imprisonment etc.,

ANNUAL RETURN

CERTIFICATION OF ANNUAL RETURN

- Certain companies with Paid up/Turnover as prescribed to be mandatorily certified by PCS.
- Fine for wrong certifications to PCS
- AR can be certified by only one Director & CS (if no CS by PCS)
- AR in case of OPC/Small Co., - By CS or one Director.

Clause 93 (New Provision)

LISTED COMPANIES – Should file return with Registrar w.r.t. change in the number of shares held by Promoters & Top ten share holders of such company within 15 days.

Clause 94 (Section 163/158)

Can keep other than RO of the company where 1/10th of share holders reside.

CLAUSE 96 & 101

Clause 96: ANNUAL GENERAL MEETING: (Section 166)

- No need to hold AGM for OPC
- First AGM to be held within 9 months for closure of First FY
- Business hours (9 am to 6 pm) – for Holding AGM
- AGM can now be held on Public Holiday not National Holiday as declared by CG (Now it is Jan. 26, Oct.2 & Aug.15)

Clause 101 Notice of meeting (Section 171/172)

- Notice of GM may also be sent through the electronic mode
- Should also be sent to Directors
- 21 Clear days (not Just 21 days)
- May be called in shorter notice with 95% consent (INCL. AGM)

CLAUSE 102 & 103 (SECTION 173 & 174)

CLAUSE 102: STATEMENT TO BE ANNEXED WITH NOTICE

- Explanatory Statement should specify interest of Director/manager/KMP & their relatives to enable the members to understand the MEANING/SCOPE & IMPLICATIONS of the said business.
- In case of non disclosure and resulting benefit/profit to such person and such person should hold the benefit in trust and compensate the co.,

CLAUSE 103: QUORUM OF MEMBERS

Public Company

Quorum	No. of Members
FIVE (5)	Not More than One Thousand
FIFTEEN (15)	Not More than Five Thousand
THIRTY (30)	More than Five Thousand

CLAUSE 110 & 117

CLAUSE 110: POSTAL BALLOT (SECTION 192 A)

- Now extended to all companies (whether Listed or Unlisted)
- Any resolution can be passed except ordinary business & business in respect of which director or auditors have a right to be heard at the meeting.

Clause 117 :RESOLUTION & AGREEMENT TO BE FILED (Section 192)

- Following New resolution will also to be filed with ROC in Addition to CA 56 :
- Issue of securities whether in or outside India
- Borrow monies/Invest funds/grant loans/give guarantee/provide security
- TO APPROVE FINANCIAL STATEMENT & DIRECTORS REPORT
- To diversify the business/to approve amalgamation, merger, reconstruction
- To takeover a company

CLAUSE 118,120 TO 122

Clause 118: MINUTES (SEC.193, 194, 195, 197)

- To be maintained for every class of share holders/Creditors
- To follow Secretarial Standards on Minutes of GM/BM
- Tampering of Minutes punishable with imprisonment and fine.

CLAUSE 120 : (NEW) Maintenance & Inspection of documents in Electronic Form

CLAUSE: 121 - (NEW) REPORT ON AGM

Listed company to prepare a Report (to be prescribed) on AGM and file with ROC within 30 days.

Clause 122 Applicability of Chapter to OPC; (New)

CLAUSE 122 APPLICABILITY OF CHAPTER TO OPC; (NEW)

- The following clauses do not apply to OPC
- Calling EGM/Statement to Notice/Quorum/Chairman
- Proxies/Voting rights/Postal Ballot etc.,
- (Clauses 100 to 111)
- Date on which resolution is communicated by member to company & entered in Minutes shall be the date of meeting
- In case of only one Director date on which the resolution by director is entered in minutes shall be the date of board meeting

CHAPTER VIII

DECLARATION & PAYMENT OF DIVIDEND

DECLARATION & PAYMENT OF DIVIDEND – CLAUSE 123 (SECTION 205)

New

- In case of Loss during current FY (upto last Quarter) – Interim Dividend at the rate not higher than average dividends declared by the company during the preceding 3 Fys
- **Removed: Payment of interest out of capital removed**

Electronic Mode Payment

- Cannot pay dividend if fails to comply with Clause 73 (Prohibition on Acceptance of Deposits), Clause 74 (Repayment of deposits)
- Transfer of % of profits to reserves upon declaration of dividend not mandatory, by discretion transfer any %.

(Not clear on the approval of Shareholders/ Board)

DECLARATION & PAYMENT OF DIVIDEND (CONTD..)

UNPAID DIVIDEND ACCOUNT : CLAUSE 124 (SECTION 205 A)

New:

- Within *90 days* of transfer to Unclaimed dividend account details to be given in the website of the company as well as the CG
- ALL SHARES IN RESPECT OF WHICH UNPAID OR UNCALIMED DIVIDEND TO BE TRANSFERRED TO IEPF.

Penalty increased, Compoundable.

INVESTOR EDUCATION & PROTECTION FUND : CLAUSE 125 (SECTION 205C)

New Categories Added to IEPF A/C.

- a) Amounts/Donations by CG
- b) Amount standing in 205 A/205C of CA 56
- c) Amount received by way of punishment for impersonation for acquisition etc., of Securities
- d) Sale proceeds of fractional shares out of Bonus/Merger & Amalgamation for seven or more years
- e) Redemption amount of preference shares unclaimed for seven or more years

Utilization of Fund

- a) Refund of Unclaimed dividend/matured deposits/debentures, application money
- b) Distribution of disgorged amount to eligible & identifiable applicants for shares/debentures/depositors in accordance with the Court order for disgorgement
- c) Reimbursement of legal expenses in pursuing class action suits under clause 37/245

- Other Notable issues;
- Demand poll is increased to Rs. 5 lacs (Earlier Rs.50000)
- Service of notice – Courier service permitted
- Section 4(7) of CA 56 – Omitted
- Subsidiary Company: more than 50% of the total paid up share capital (equity/preference)

PENAL PROVISIONS-CHAPTER I-VIII

Clause	Penal Provisions			Remarks	Responsibility
	Minimum	Maximum	Imprisonment		
8 - Formation of Companies with Charitable Objects	10Lakhs	1 Crore			Company
	25,000	25Lakhs	Upto 3years	Fine or Imprisonment or Both	Directors & Every Officer
11 - Commencement of Business	NA	5000	NA	Fine	Company
	1000	+1000 for each day in default	NA	Fine	Every Officer
12 - Registered Offices of the Company	1000 for each day in default	1Lakh	NA	Fine	Company & Every Officer
15 - Alteration of Memorandum and Articles to be noted in every Copy	1000 for each copy of Memorandum or Articles Issued	NA	NA	Fine	Company & Every Officer

PENAL PROVISIONS (CONTD...)

Clause	Penal Provisions			Remarks	Responsibility
	Minimum	Maximum	Imprisonment		
16 - Rectification of Name of Company	1000 for each day in default	NA	NA	Fine	Company
	5000	1Lakh	NA	Fine	Every Officer
17 - Copies of Memorandum, Articles , etc., to be given to Members	1000 for each day in default	1Lakh	NA	Fine	Company
33 - Issue of Application forms for Securities	50000 for Each Default	NA	NA	Fine	Company
34 – Criminal Liability for Mis-Statements in Prospectus	Amount Involved in fraud	3times the Amount involved in Fraud	6months - 10years	Fine or Imprisonment or Both	Person Found Guilty
35 – Civil Liability for Mis-Statements in Prospectus	To the extent of Losses or Damages of the Cheated Person	NA		Fine	Person Found Guilty

PENAL PROVISIONS (CONTD...)

Clause	Penal Provisions			Remarks	Responsibility
	Minimum	Maximum	Imprisonment		
36 – Punishment for fraudulently inducing persons to invest money	Amount Involved in fraud	3times the Amount involved in Fraud	6months - 10years	Fine or Imprisonment or Both (Non Compoundable)	Person Found Guilty
38 – Punishment for personation fro acquisition, etc of securities	Amount Involved in fraud	3times the Amount involved in Fraud	6months - 10years	Fine or Imprisonment or Both	Person Found Guilty
39 – Allotment of Securities by company	1000 for each day in default	1Lakh	NA	Fine	Officer In Default
40 – Securities to be dealt with in Stock Exchanges	5Lakhs	50Lakhs	NA	Fine	Company
	50000	3Lakhs	Upto 1 Year	Fine or Imprisonment or Both	Every Officer

PENAL PROVISIONS (CONTD...)

Clause	Penal Provisions			Remarks	Responsibility
	Minimum	Maximum	Imprisonment		
42 – Offer or Invitation for subscription of securities on Private Placement	NA	2Crore or Amount Involved (whichever is Higher)	NA	Fine	Director and Promoters
46 – Certificate of Shares	5times Face Value of Shares Involved	10times Face Value of Shares Involved or 10Crore	NA	Fine	Company
	Amount Involved in fraud	3times the Amount involved in Fraud	6months - 10years	Fine or Imprisonment or Both	Officer In Default
48 – Variation of Shareholders rights	25000	5Lakhs	NA	Fine	Company
	25000	5Lakhs	Upto 6months	Fine or Imprisonment or Both	Officer In Default
53 – Prohibition on issue of Shares at Discount	1Lakh	5Lakhs	NA	Fine	Company
	1Lakh	5Lakhs	Upto 6months	Fine or Imprisonment or Both	Officer In Default

PENAL PROVISIONS (CONTD...)

Clause	Penal Provisions			Remarks	Responsibility
	Minimum	Maximum	Imprisonment		
56 – Transfer and transmission of securities	25000	5Lakhs	NA	Fine	Company
	10000	1Lakh	Upto 6months	Fine or Imprisonment	Officer In Default
57 – Punishment of Personation of Shareholder	1Lakh	5Lakhs	1 year to 3 years	Fine and Imprisonment	Person Found Guilty
58 – Refusal of registration and appeal against refusal	1Lakh	5Lakhs	1 year to 3 years	Fine and Imprisonment	Person Found Guilty
59 – Rectification of register of members	1Lakh	5Lakhs	NA	Fine	Company
	1Lakh	3Lakhs	Upto 1 year	Fine or Imprisonment or Both	Officer in Default
60 – Publication of Authorised, Subscribed and Paid-up Capital	5000 for each Default	NA	NA	Fine	Officer In Default

PENAL PROVISIONS (CONTD...)

Clause	Penal Provisions			Remarks	Responsibility
	Minimum	Maximum	Imprisonment		
64 – Notice to be given to Registrar for alteration of Share Capital	1000 for each day in Default to 5Lakhs (whichever is less)	NA	NA	Fine	Company & Officer in Default
66 – Reduction of Sharecapital	Amount Involved in fraud	3times the Amount involved in Fraud	6months - 10years	Fine or Imprisonment or Both	Person Found Guilty
	1Lakh	5Lakhs	Upto 2year	Fine or Imprisonment or Both	Defaulter
	5Lakhs	25Lakhs	NA	Fine	Company
67 – Restrictions on Purchase by Company or giving of Loans by it for purchase of its shares	1Lakhs	25Lakhs	NA	Fine	Company
	1Lakh	25Lakhs	Upto 3 year	Fine or Imprisonment or Both	Officer in Default

PENAL PROVISIONS (CONTD...)

Clause	Penal Provisions			Remarks	Responsibility
	Minimum	Maximum	Imprisonment		
68 – Power of Companies to purchase its own securities	1Lakh	3Lakhs	NA	Fine	Company
	1Lakh	3Lakhs	Upto 3 year	Fine or Imprisonment or Both	Officer in Default
71 - Debentures	2Lakhs	5Lakhs	Upto 3 year	Fine or Imprisonment or Both	Officer in Default
74 – Repayment of Deposits, etc accepted before commencement of this Act	1crore	10Crore	NA	Fine	Company
	25Lakhs	2Crores	Upto 7years	Fine or Imprisonment or Both	Officer in Default
77 – Duty to register charges	1Lakh	10Lakhs	NA	Fine	Company
	25000	1Lakh	Upto 6months	Fine or Imprisonment or Both	Officer in Default
79 – Section 77 to apply in certain matters	1Lakh	10Lakhs	NA	Fine	Company
	25000	1Lakh	Upto 6months	Fine or Imprisonment or Both	Officer in Default

PENAL PROVISIONS (CONTD...)

Clause	Penal Provisions			Remarks	Responsibility
	Minimum	Maximum	Imprisonment		
82 – Company to report satisfaction of charge	1Lakh	10Lakhs	NA	Fine	Company
	25000	1Lakh	Upto 6months	Fine or Imprisonment or Both	Officer in Default
84 - Intimation of appointment of Receiver or Manager	1Lakh	10Lakhs	NA	Fine	Company
	25000	1Lakh	Upto 6months	Fine or Imprisonment or Both	Officer in Default
85 –Company’s register of Charges	1Lakh	10Lakhs	NA	Fine	Company
	25000	1Lakh	Upto 6months	Fine or Imprisonment or Both	Officer in Default
86 – Punishment for contravention	1Lakh	10Lakhs	NA	Fine	Company
	25000	1Lakh	Upto 6months	Fine or Imprisonment or Both	Officer in Default
88 – Register of members	50000	3Lakhs + 1000 for each day in default	NA	Fine	Company & Officer in Default

PENAL PROVISIONS (CONTD...)

Clause	Penal Provisions			Remarks	Responsibility
	Minimum	Maximum	Imprisonment		
89 – Declaration in respect of beneficial interest in any share	500	1000 + 1000 for each day in default	NA	Fine	Company & Officer in Default
	NA	50000 + 1000 for each day in default	NA	Fine	Defaulter
91 – Power to close Register of Members or Debenture holders or other security holders	5000 for each day register is kept closed	1Lakh	NA	Fine	Company & Officer in Default
92 – Annual Return	50000	5Lakhs	NA	Fine	Company
	50000	5Lakhs	Upto 6months	Fine or Imprisonment or Both	Officer in Default
94 – Place of keeping and inspection of Registers, Returns, etc	Amount of Default + 1000 for each day of default	1Lakh	NA	Fine	Company & Officer in Default

PENAL PROVISIONS (CONTD...)

Clause	Penal Provisions			Remarks	Responsibility
	Minimum	Maximum	Imprisonment		
99 – Punishment for default in complying with provisions of sections 96 to 98	NA	Upto 1Lakh + 5000 for each day in default	NA	Fine	Company & Officer in Default
102 – Statement to be annexed with notice	NA	50000 or 5times the benefitted amount. (whichever is higher)	NA	Fine	Promoter, Director, Mangers or Key Managerial Persons
105 – Proxies	NA	Upto 1Lakh	NA	Fine	Officer Guilty
111 - Circulation of member’s resolution	25000	NA	NA	Fine	Company & Officer in Default
117 – Resolutions and agreements to be filed	5Lakhs	25Lakhs	NA	Fine	Company
	1Lakh	5Lakhs	NA	Fine	Officer in Default & Liquidator
118- Minutes of proceedings of GM, BM and other meeting and resolutions passed by postal ballot	25000	1Lakh	Upto 2years	Fine or Imprisonment or Both	Officer in Default

SECRETARIAL STANDARDS

Following are the list of Secretarial Standards issued by ICSI.

- SS-1 Secretarial Standard on Meetings of the Board of Directors
- SS-2 Secretarial Standard on General Meetings
- SS-3 Secretarial Standard on Dividend
- SS-4 Secretarial Standard on Registers and Records
- SS-5 Secretarial Standard on Minutes
- SS-6 Secretarial Standard on Transmission of Shares and Debentures
- SS-7 Secretarial Standards on Passing Resolutions By Circulation
- SS-8 Secretarial Standards on Affixing of Common Seal
- SS-9 Secretarial Standards on Forfeiture of Shares
- SS-10 Secretarial Standards on Board's Report

THANK YOU