

# Provisions of the Companies Act 2013 Relevant to the Statutory Audit of Companies

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## What is a Small Company?

### **Definition of a Small Company – Section 2(85)**

A Small company is a company which is not a public company and which is not a subsidiary or a holding company whose:-

- Paid up capital  $\leq$  4 cr. and
- Turnover is  $\leq$  40 cr.

## Exemptions available to Small Companies, OPCs, Dormant Companies & Private Companies

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- Notification No GSR 464 E dated 05 th June 2015- All Private Companies
- Notification No GSR 583 E dated 13 th June 2017- All OPC's, Small Companies, Dormant Companies and Private companies which are startups.

## Share Capital

### Section 56 - Transfer and Transmission of securities

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- Share transfer shall be registered only if it is supported by a proper instrument of transfer , signed by both the transferor and transferee and duly stamped along with the share certificate within 60 days of its execution.
- We need to ensure that the share transfer is executed in Form SH 4 giving full details of the number of shares transferred along with the distinctive numbers and the consideration to be paid for the transfer.
- The stamp duty to be paid is 0.015 % of the consideration .
- Transfer of shares does not require a valuation report from a Registered Valuer .
- The company is empowered to register a transmission of shares on receipt of intimation by the person to whom such right has been transmitted.

## Section 62 - Further Issue of Share Capital

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(a) In case of an increase in the subscribed capital through a further issue of shares such shares should be offered in the same proportion to the existing share-holders.

- Rights shares will come under this category.
- The existing share-holders to whom the offer has been made may renounce the right in favour of any other person
- If the time limit expires or if the existing share-holder declines to accept the offer the board of directors may dispose those shares in such manner as is not disadvantageous to the share-holders of the company.

(b) Employee Stock options through a special resolution

(c) to any other person authorized by a special resolution if the price of the shares has been determined by a valuation report by a registered valuer.- Preferential Allotment

## Section 63 - Bonus Shares

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- Bonus shares may be issued by capitalization of reserves:-
  - (1) its free reserves
  - (2) Securities Premium Account
  - (3) Capital Redemption Reserve Account

## Section 63 - Bonus Shares

### Conditions:

- (1) Authorised by its Articles of Association
- (2) Recommended by the Board and authorized in a General Meeting
- (3) Not defaulted in repayment of interest and principal on Fixed Deposits taken or debt securities issued by the company.
- (4) Not defaulted in employee dues like PF ESI etc.,
- (5) Partly paid shares have been fully paid up prior to bonus issue
- (6) Capitalisation of reserves cannot be out of revaluation reserve

Section 56, Section 62 & Section 63 – updation in Share-holders register, minutes of board of directors etc., to

## Secured Loans - Long term and Short term borrowings

### Section 77 - Duty to register charges

- It is the duty of every company creating a charge on its assets tangible or intangible / situated in India or outside India to register the charge within a period of 30 days of creation of the charge. This is done in Form CHG 1
- If application is made to the Registrar , registration of the charge may be done within a period of 60 days on payment of additional fee.
- If not registered within the said extended period, then register within a further period of 60 days with ad valorem fees.
- Further if registration is not done within 120 days the company may seek additional time under section 87.

## Secured Loans - Long term and Short term borrowings

### Section 77 - Duty to register charges

- Section 87 pertains to condonation of delay by Central Government where they may grant additional time for filing the registration, modification or satisfaction of charge if they are satisfied that the delay was accidental or due to inadvertence .
- Registration of the charge may also be done by the person in whose favour the charge was created in case the company fails to register the charge.
- The same provisions apply for Modification of charge also .

### Section 82 - Company to report satisfaction of charge

- On Satisfaction of the charge ie repayment of the Secured Loan the satisfaction of the charge has to be registered within 30 days in Form CHG4

## Index of Charges

### Ministry Of Corporate Affairs

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#### Index of Charges

Sr. No	SRN	Charge Id	Charge Holder Name	Date of Creation	Date of Modification	Date of Satisfaction	Amount	Address	Whether charge registered by other entity	Asset Holder Name
1	XXXXXX	XXXXXX	State Bank of India	16/10/2008	-	08/12/2014	25,00,000	XXXXXX	No	-

## Unsecured Loans - Section 73

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- A Private Limited Company can accept loans and deposits from its directors or relatives of a director. This will fall within the purview of an exempted deposit and the Acceptance of Deposit Rules will not apply.
- However Form DPT 3 has to be filed with the Registrar of Companies showing the exempted deposit.
- A declaration has to be obtained from each director who has lent money to the company that the money has not been given from borrowed sources.

## Books of Account, Financial Statements Board Report & Filing of Annual Return

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### Books of Account - Section 128

- Books of Account shall be kept at the Registered Office of the company. If Board of directors decide to keep the books at another place, the company shall intimate the Registrar of Companies of that address within 7 days
- Books may be kept in electronic mode
- Books of account have to be retained for a period of not less than 8 years or if the company has been incorporated for less than 8 years from the date of incorporation

## Financial Statements - Section 129

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- The Financial statements shall give a true and fair view of the state of affairs of the company, shall comply with the Accounting Standards and shall be prepared in Schedule III
- At every Annual General Meeting the Board of directors shall lay before such meeting financial statements for the financial year
- Where the company has subsidiaries , Consolidated Financial Statements shall also be prepared in addition to the Standalone Financial Statements and the Standalone and Consolidated Financial Statements shall be laid before the AGM.
- Subsidiary shall include associate company and joint venture.
- Where there is a deviation from the Accounting Standards, The Company shall disclose the deviation, reason for the deviation and the financial impact of the deviation.

## Definitions

### Subsidiary Company - Section 2(87)

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- Subsidiary company means a company in which the holding company
- Controls the composition of its Board of Directors ; or
- Exercises control of more than half of the total share capital either on its own or together with one or more subsidiaries.

### Associate - Section 2(6)

- Means a company in which another company has significant influence but which is not a subsidiary of that company and includes a Joint Venture Company.
- Significant influence means control of atleast 20 % of the voting power.

## Financial Year - Section 2(41)

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- Means the period ending on 31st March of every year and where the company has been incorporated on or after 1st January, 31st March of the following year.

## Financial Statements, Board Report - Section 134

- The financial statements have to be approved by the board of directors, before they are signed on behalf of the board by atleast two directors for submission to the auditors for their report thereon.
- Auditors report shall be attached to the financial statements
- The Board report containing such information as is specified in subsection (3) like Directors Responsibility Statement, No of meetings of the board, explanation on every qualification/ adverse remark/reservation/disclaimer by the auditor in his report or the Company secretary in his report shall be attached to the financial statements.

## Copy of Financial Statements to be filed with the Registrar - Section 137

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- A copy of the Financial Statements including Consolidated Financial Statements duly adopted by the members at the Annual General Meeting of the Company shall be filed with the Registrar within 30 days of the AGM along with all the documents required to be attached with it .
- Where the financial statements are not adopted at the AGM provisional financial statements may be filed with the Registrar within 30 days of the AGM and subsequently when the financial statements are adopted at the adjourned AGM they may be filed with the ROC within 30 days of that date.



## Annual Return - Section 92

- Every company shall prepare an Annual Return containing such particulars as prescribed under the Act in Form MGT 7 for large companies and MGT 7A ( Abridged ) for OPC's and Small companies.
- The return has to be filed with the ROC within 60 days from the AGM / due date to conduct the AGM of the company.
- Non compliance for a period of three consecutive years will result in the directors of the company getting disqualified u/s 164 and they cannot be appointed either in that company or any other company for a period of 5 years from the disqualification.

<b>CIN</b>	XXXXXXXXXXXX
<b>Company Name</b>	XXXXXXXXXXXXXXXX
<b>ROC Name</b>	ROC Ernakulam
<b>Registration Number</b>	XXXXXXX
<b>Date of Incorporation</b>	XXXXXXX
<b>Email Id</b>	XXXXXXXXXX
<b>Registered Address</b>	XXXXXXXXXX-
<b>Address at which the books of account are to be maintained</b>	
<b>Listed in Stock Exchange(s) (Y/N)</b>	No
<b>Category of Company</b>	Company limited by shares

<b>Subcategory of the Company</b>	Non-government company
<b>Class of Company</b>	Private
<b>ACTIVE compliance</b>	ACTIVE Compliant
<b>Authorised Capital (Rs)</b>	XXXXXXXX
<b>Paid up Capital (Rs)</b>	XXXXXXXX
<b>Date of last AGM</b>	30/09/2024
<b>Date of Balance Sheet</b>	31/03/2024
<b>Company Status</b>	Active
<b>Jurisdiction</b>	
<b>ROC (name and office)</b>	ROC Ernakulam
<b>RD (name and Region)</b>	RD, Southern Region

## Appointment of Auditors - Section 139

- Every company shall appoint an individual or a firm as its auditors at the 1<sup>st</sup> Annual General Meeting who shall hold office until the conclusion of the 6<sup>th</sup> AGM and thereafter until the conclusion of every 6<sup>th</sup> AGM.
- Before such appointment written consent has to be obtained from the auditor and a certificate that he satisfies the criteria u/s 141.
- Registrar has to be intimated within 15 days of appointment of the auditor in Form ADT-1.
- Listed companies and certain classes of companies require rotation of auditors, ie if the auditor is an individual he cannot be reappointed after his term of 5 years. If it is a firm the firm cannot be reappointed after 2 terms of 5 consecutive years.

## Classes of companies requiring rotation of auditors would be

- Unlisted Public Company – Share Capital  $\geq 10$  cr.
- Private Company – Share Capital  $\geq 50$  Cr.
- Public & Private companies having borrowings from Banks / Public Deposits  $\geq 50$  Cr.

## Qualification/Disqualification of Auditors - Section 141

- Auditor has to be a Chartered Accountant or a firm of Chartered Accountants or an LLP.
- Following Entities/ Persons cannot be appointed as auditors of the company
- Body Corporate
- An officer or an employee of the company or a relative is an officer employee or Key Managerial Personnel.
- He or his relative or partner holds securities in the company or its subsidiary or of its holding or associate .

## Qualification/Disqualification of Auditors - Section 141

- He or his relative or partner is indebted to the company for a sum in excess of Rs. 500,000/-
- He or his relative or partner has a business relationship with the company/subsidiary/associate
- He is convicted of fraud by a court and a period of 10 years has not passed.
- If he renders any service specified u/s 144 directly or indirectly:
  - Accounting and book keeping services
  - Internal Audits
  - Actuary Services
  - Design and implementation of financial systems
  - Investment advisory services
  - Rendering of outsources financial services
  - Management services

## Annual General Meeting - Section 96

- Every company other than OPC shall hold a meeting of its members specifying it as its Annual General meeting every year.
- The gap between two AGMs should not be more than 15 months.
- The first AGM of the company can be held within a period of 9 months from the date of closure of books of accounts of the company and subsequently the AGM should be held within 6 months of closure of books of the company.
- AGM should be held during business hours on any day not being a national holiday at the registered office or any other place within the city where the registered office is situated
- For unlisted company AGM can be held in any other location if consent is received from all members in advance
- 21 clear days notice has to be given before the date of the AGM .
- AN AGM can be held with lesser notice if consent is received from not less than 95 % of the members entitled to vote .

- Notice should be issued to members, directors and auditors of the company
- Quorum for the meeting (Section 103) , In case of a Public Company having:

No of Members	Quorum
<1000	5 members personally present
<1000 upto 5000	15 members personally present
>5000	30 members personally present

In Case of a Private Limited company the quorum is 2 members personally present:

- Minutes of the proceedings of the General Body Meeting, Board meetings, to be prepared and signed by the Chairman of the meeting with their pages consecutively numbered. (Section 118)

## Board Meetings - Section 173

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- The first board meeting of the company shall be held within 30 days of incorporation of the company
- Thereafter a company shall hold 4 meeting of the board in a financial year with the gap between 2 consecutive meetings being not more than 120 days.
- In case of an OPC or Small Company or Dormant Company, it will be sufficient compliance if they have one meeting every half year with the gap between two consecutive meetings being not less than 90 days.
- Quorum for a Board meeting shall be 1/3 rd its total strength or 2 directors whichever is higher and participation by video conferencing will also be considered as quorum.(sec 174)

## Powers of the Board - Section 179

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- Board of directors can exercise all such powers and do all such acts that the company is authorized to do subject to the Provisions of the Companies Act, Memorandum of Association and Articles of Association.
- Board cannot exercise such powers which have been specifically mentioned in the Memorandum/Articles of Association to be exercised by the members at a General body meeting.
- Specific powers of the board include:-
  - Calls on partly paid shares
  - Authorization of buy back of shares
  - To issue securities including debentures
  - Borrow money on behalf of the company
  - Invest the funds of the company
  - Approve the financial statements and Board report
  - Diversify Business

## Restrictions on the Powers of the Board - Section 180

- The following powers can be exercised by the board only with the consent of the members at a General Meeting through a special resolution:-
- To sell , lease or dispose the whole or substantially the whole of the undertaking of the company or where the company has more than one undertaking , the whole of any such undertaking- Value exceeds 20 % of Net Worth / generates > 20 % of income of the Company.
- To invest otherwise than in Trust securities the amount of compensation received by it as a result of merger or amalgamation
- To borrow money where the money to be borrowed along with existing borrowings exceeds the aggregate of its paid up share capital and free reserves and Securities premium. Money borrowed will not include temporary overdrafts , cash credit etc.,
- To remit or give time for repayment of any debt due from a director

*Note: Section 180 is not applicable to Private Limited Companies vide Notification No GSR 464(E) dated 05<sup>th</sup> June 2015*

## Appointment and Qualification of Directors - Section 149

- Every company shall have a Board of Directors consisting of individuals as directors and shall have :
  - A minimum of three directors in case of a Public Limited Company
  - A minimum of 2 directors in case of a Private Limited Company and one in case of an OPC.
  - A maximum of 15 directors – A company can by special resolution appoint more than 15 directors

Such classes of companies must have atleast one woman director

(1) Listed Companies

(2) Public Limited Companies having paid up capital of 100 cr. or Turnover of 300 Cr. or more.

## Appointment and Qualification of Directors - Section 149

- Every company shall have atleast one director who has stayed in India for a total period of not less than 182 days
- Every listed company and such classes of companies shall have Independent Directors .
- Classes of companies other than listed companies required to have independent directors are :-
  - Public company with Share Capital => 10 cr.
  - Turnover =>100 cr.
  - Outstanding loans =>50 cr.

## Appointment of Directors - Section 152

- If the Articles do not prescribe the first directors of the company , the Subscribers to the Memorandum who are individuals will be deemed to be the first directors of the company.
- Every Director has to have his DIN ( Director Identification number)
- Every person intending to be appointed as a director has to give his consent in Form DIR 2 to the Company and the Company shall file consent with the Registrar within 30 days of his appointment in Form DIR 12.
- Director can be appointed only at a General Meeting unless otherwise provided in the Act.
- In case of a Public limited Company 2/3rds of the directors are liable to retire by rotation and of the 2/3rd , 1/3rd will retire based on tenure of their directorship.
- The company may fill up the vacancy by appointing the retiring director or any other person.

## Appointment of additional director, alternate director and nominee director - Section 161

- The Articles of the Company may confer on its Board of Directors the powers of appointment of an additional director.
- Additional director cannot be a person who failed to get appointed at the General body meeting.
- The Board of Directors may also be authorized by the Articles to appoint an alternate director in place of a director who is absent for a period of more than 3 months from India whose tenure will lapse once the original director returns.
- Additional directors will hold office until the next AGM.
- A director may resign from office by giving notice in writing and copy of his resignation shall also be filed by the company with the Registrar within 30 days in Form DIR-12.
- The Director shall forward copy of resignation with reasons to Registrar in 30 days from date of resignation in Form DIR 11.

Directors/Designated Partner							
Details							
DIN/DPIN	XXXXXXXX						
Name of Director/Designated Partner	XXXXXXXX						
List of Associated Companies							
Sr. No	CIN/FCRN	Company Name	Company Status	Designation	Original Date of appointment	Date of Appointment at Current Designation	Date of cessation (if applicable)
1	XXXXXXXXXXXX	XXXXXXXX	Active	Director	12/02/2015	30/09/2015	-



2	XXXXXXX	XXXXXXXX	Active	Additional Director	-	12/02/2015	30/09/2015
List of Associated LLPs							
Sr. No	CIN/LLPIN	LLP Name	LLP Status	Designation	Original Date of appointment	Date of Appointment at Current Designation	Date of cessation (if applicable)

## Disqualification of Directors - Section 164

- A person shall not be appointed as a director if
- He is of unsound mind
- He is an undischarged insolvent
- He has been convicted of any offence with imprisonment of more than 6 months and 5 years has not lapsed from the expiry of the sentence. If he has been imprisoned for a period of 7 years or more he cannot be appointed as a director of any company
- Order disqualifying him has been passed by a court or a tribunal
- He has not paid calls on his shares for a period of 6 months since the last date for the call.
- He has been convicted of an offence dealing with Related party Transactions u/s188 during the last preceding 5 years
- He does not have a DIN number

## Disqualification of Directors - Section 164

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- He is a director of a company which :-
- Has not filed Annual returns and Financial Statements for a continuous period of 3 years
- Has failed to repay deposits or any interest thereon , redeem debentures on their due date , or pay any dividend declared and such failure continues for one year or more.
- Such a person cannot be reappointed as a director in that company or in any other company for a period of 5 years from the date of default.

## Appointment of Managing Director, Whole Time Director & Remuneration - Section 196, Section 197 and Schedule V

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- Managing Director / Whole time director cannot be appointed for a tenure in excess of 5 years.
- He should be above the age of 21 years and below the age of 70 years.( >70 years can be appointed by special resolution)
- Terms and conditions of appointment , remuneration shall be approved by the board of directors and subject to approval of the members at the next General body meeting.
- The above condition is not applicable to a private limited company vide notification no GSR 464(E) dated 05th June 2015.

## Overall Maximum remuneration and remuneration in case of absence of profits or inadequacy of profits.- Section 197 read with Schedule V (Applicable only to Public Limited Companies)

- Total Managerial remuneration payable to all directors including Managing Director/ Whole Time Director shall not exceed 11 % of the profits of the company before Managerial remuneration computed in accordance with section 198.
- If a higher remuneration has to be paid Central Government approval has to be obtained subject to Schedule V
- Remuneration payable to one whole time director should not exceed 5 % of profits and if there is more than one such director 10 % for all of them together.
- Remuneration payable to directors who are not whole time / managing director is 1% if there is a managing director and 3 % if there is no managing director / whole time director
- If in a financial year a company has no profits or if its profits are inadequate remuneration has to be paid in accordance with Schedule V and if it cannot comply Central Government approval is necessary
- Remuneration does not include sitting fees paid to directors for each board meeting.

Profits to be computed in accordance with Section 198 :-

Items to be considered as profits would be:-

Subsidies received by the Government

Items that will be reduced will be:-

Premium on Shares

Profit on sale of forfeited shares

Profit on sale of an undertaking

Profit on sale of immovable property and fixed assets

Surplus in P&L account on measurement of an asset at its fair value

Items that will not be reduced from profits:-

Income taxes

Losses of a capital nature including loss on the sale of an undertaking

- Schedule V lists out the remuneration for different slabs of effective capital as follows:-

Sl No	Where the effective capital is	Limit of yearly remuneration shall not exceed ( WTD)	Limit of yearly remuneration Other Directors
	Negative or less than 5 cr.	60 lakhs	12 lakhs
	5 cr. but less than 100 cr.	84 lakhs	17 lakhs
	100 cr. but less than 250 cr.	120 lakhs	24 lakhs
	250 cr. and above	120 lakhs + .01% of the Effective Capital in excess of 250 cr.	24 lakhs + .01 % of Effective Capital in excess of 250 cr.

Effective Capital= Paid up share capital

- + Amount standing to the credit of Share Premium Account
- +Reserves and Surplus
- + Long Term Loans
- Investments

## Related Party Transactions - Disclosure of interest by Directors - Section 184

- Every director at the first meeting of the board in which he participates as a director and thereafter at the first meeting in every financial year or where there is a change in the disclosure at the first meeting of the board after the change disclose his concern or interest in any company or body corporate, firm or other association of individuals which shall include the share-holding in such a manner as may be prescribed. (Form MBP - 1)
- Every director who is in any way directly or indirectly concerned or interested in a contract or arrangement to be entered into
  - with a body corporate in which such director holds more than 2 % by himself or along with other directors or
  - With a firm in which he is a partner, owner, member as the case may be
  - Must disclose his interest and not participate in the meeting when the contract is discussed.
  - *With respect to Private companies the directors may participate after disclosure of interest – vide Notification GSR 464(E) dated 05/06/2015*

## Loans to Directors and Investment by Company - Section 185

- No company shall directly or indirectly advance any loan to any of its directors or any person in whom the director is interested.
- Person in whom a director is interested would include -any partner or relative of the Director
- Any firm in which the director or relative is a partner
- A private limited company of which he is a director or a member
- A body corporate in which not less than 25 % of the voting power can be exercised by the director or two or more of them together.
- No company can advance a loan /give a guarantee or provide a security / invest in another company exceeding 60 % of its paid up capital and free reserves & securities premium or 100 % of its free reserves & securities premium, whichever is more, unless a special resolution is passed at the General Meeting and the loan is given for the principal business activities of the borrowing company.

- Exception : A holding company can give a loan to its wholly owned subsidiary or any guarantee or security given by a holding company to its wholly owned subsidiary.
- No loan shall be given at a rate of interest which is lower than the prevailing yield of one year, three year five year or ten year Government Securities closest to the tenure of the loan
- *Private companies are exempted subject to certain conditions vide Notification GSR 464(E) dated 05<sup>th</sup> June 2015.*

#### Related Party Transactions - Section 188

- No company shall enter into a contract or arrangement with a related party unless prescribed procedures are followed for:-
- Sale, purchase of goods
- Selling or Disposing of a property of the company
- Leasing of property
- Availing/Rendering services etc.,

- However if the transactions exceed certain amounts then approval of the members will be required.
- Exception
- Transactions which are at arms length .
- Holding company and subsidiary company transactions where the subsidiaries accounts are consolidated with that of the holding company.
- Arms Length transaction means a transaction between two related parties that is conducted as if they were unrelated so that there is no conflict of interest.

## Corporate Social Responsibility - Section 135

- Every company with
- Net Worth 500 cr. or more or
- Turnover of 1000 cr. or more or
- Net Profit of Rs. 5 cr. or more
- As at the previous financial year
- Shall have a CSR committee of the board with three or more directors atleast one being independent.
- The board has to ensure that the company spends at 2 % of the average net profits of the preceeding three years for CSR.
- If the company fails to spend the aforementioned amount of 2 %, the shortfall shall be transferred to a fund specified in Schedule VII within 6 months of expiry of the Financial Year.

- If any amount is unspent pursuant to an ongoing project it should be transferred to a special bank account named " Unspent Corporate Social Responsibility Account" within 30 days from the end of the financial year ( 30<sup>th</sup> April) and this should be spent on the ongoing project within a period of three years. On the expiry of three years it will be transferred to a fund specified under schedule VII.
- On Going Project means a multi year project with timelines for completion not exceeding three years.
- The board report shall include an Annual Report on CSR activities

## Declaration of Dividend - Section 123

- Dividend can be declared by a company out of profits after providing for depreciation or out of accumulated profits after provision of depreciation.
- The company may transfer such percentage of its profits to reserves as it may consider appropriate.

- Due to inadequacy of profits the company may declare dividend out of reserves
- Subject to the following:-
  - (1)Rate of dividend shall not exceed the average rate of the preceeding three years
  - (2)The total amount to be drawn from reserves shall not exceed 1/10<sup>th</sup> of the paid up capital + free reserves.
  - (3) Balance remaining in the reserves shall not fall below 15 % of paid up share capital.
- Interim dividend can be declared out of current year profits or surplus in profit and loss account but if the company has made losses upto the quarter prior to declaration of interim dividend the rate of dividend cannot be more than the average rate of the preceeding three years.
- Dividend has to be deposited in a separate bank account within 5 days of declaration
- Dividend that has not been paid within 30 days of declaration has to be transferred to Unpaid Dividend Account within 7 days of the expiry of 30 days.
- Amounts remaining unpaid for a period of 7 years will be transferred to Investor Education and Protection Fund.

*THANKYOU*