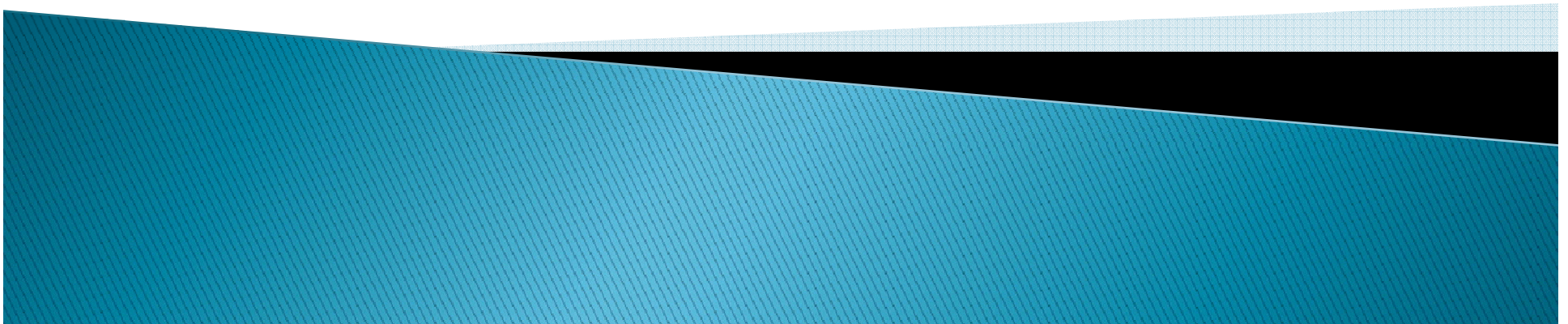


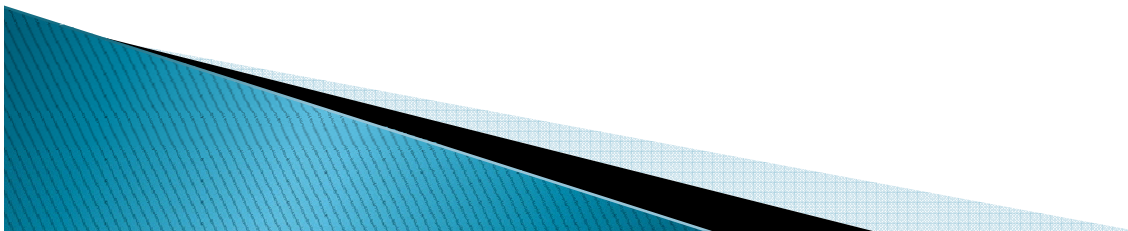
# Companies Act , 2013

## chapter XXIX

By  
CS Monica Suri  
Faculty, corporate Trainer & Corporate Consultant  
Amity University

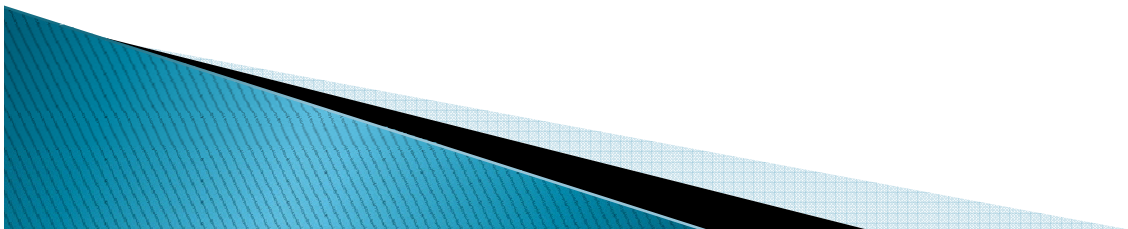


- ▶ CHAPTER XXIX.....
- ▶ MISCELLANEOUS PROVISIONS .....
- ▶ SECTIONS 447 TO 470.....



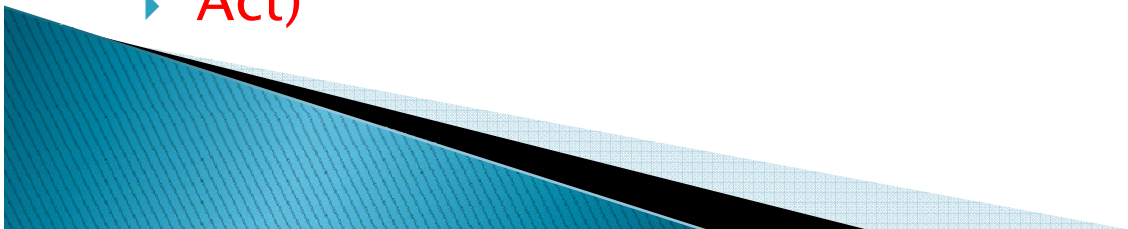
# COMPANY SECRETARIES.... THE GOVERNANCE PROFESSIONALS

- ▶ **De-facto Chief Governance Officer of the Company.**
- ▶ **provisions of pre-certification of e-forms, certification of annual returns, representation services before Tribunals, internal audit, valuation, voluntary liquidation, etc. have catapulted practising company secretaries as governance professionals and opened up opportunities for them to many value added services.**
- ▶ **Need to do **competency mapping** so that we could have cutting edge to our services.**
- ▶ **Time to make Global Presence.**



# DEALING WITH FRAUD

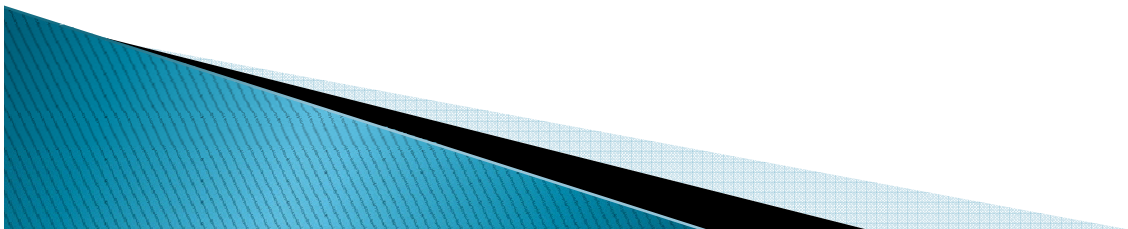
- ▶ The 2013 Act deals extensively on the issue of fraud (section 447 of the 2013 Act) and has for the first time defined fraud specifically as:
- ▶ Fraud can be intentional or unintentional
- ▶ “Fraud in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss”
- ▶ Act)



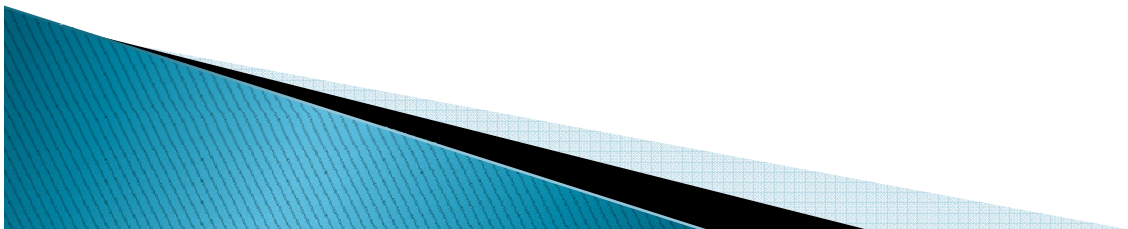
- ▶ CASES / SITUATIONS

- ▶ **\_Satyam Fiasco**

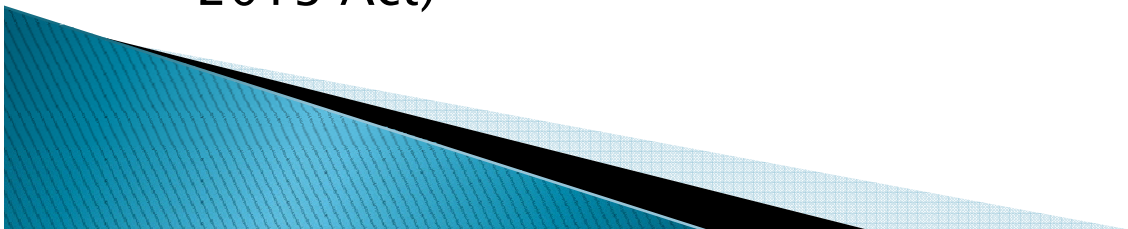
- ▶ **Sahara Deposits Scam**



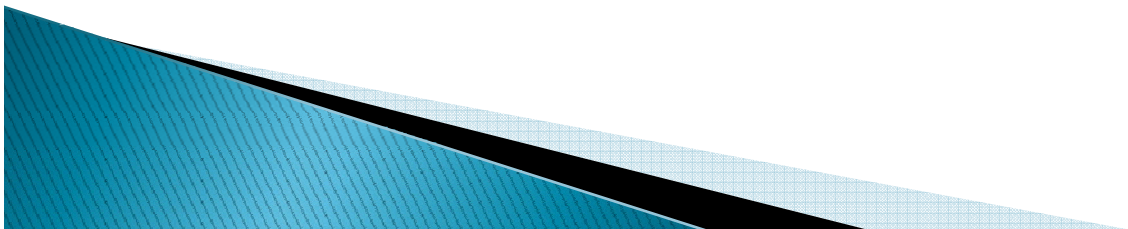
- ▶ The term, 'wrongful gain' means gain by unlawful means of property to which the person gaining is not legally entitled and 'wrongful loss' means the loss by unlawful means of property to which the person losing is legally entitled [Explanation to section 447 of the 2013 Act].
- ▶ Further, the penalties as prescribed under this section are as follows:
- ▶ Imprisonment for a term of not less than six months, but which may extend to 10 years
- ▶ Fine not less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud
- ▶ Also, where the fraud in question involves public interest, the term of imprisonment shall not be less than three years



- ▶ The provisions of this section have a significant impact and there are various areas across the 2013 Act, which will lead a person to be liable under this section. Some of these areas are as follows:  
Where a person furnishes any **false or incorrect particulars of any information or suppresses any material information in relation to incorporation of a company filed with the ROC** [section 7(5) and (6) of the 2013 Act] ( BALANCE SHEET )
- ▶ In case of the formation of the company with charitable purpose, where it is proved that the affairs of the company were conducted fraudulently – every officer in default [section 8(11) of the 2013 Act]
- ▶ Where a prospectus, issued, circulated or distributed includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorises the issue of such prospectus [section 34 of the 2013 Act]
- ▶ Fraudulently inducing persons to invest money (section 36 of 2013 Act)



- ▶ Personation for acquisition, etc. of securities (section 38 of the 2013 Act)
- ▶ Where any depository or depository participant, has transferred shares with an intention to defraud a person (section 46(6) of the 2013 Act)
- ▶ **Failure to repay the deposit or a part thereof or any interest thereon, within the time limits as applicable**, and where it is proved that such deposits were accepted with intent to defraud the depositors or for any fraudulent purpose (section 75 of the 2013( **Sahara Case**))



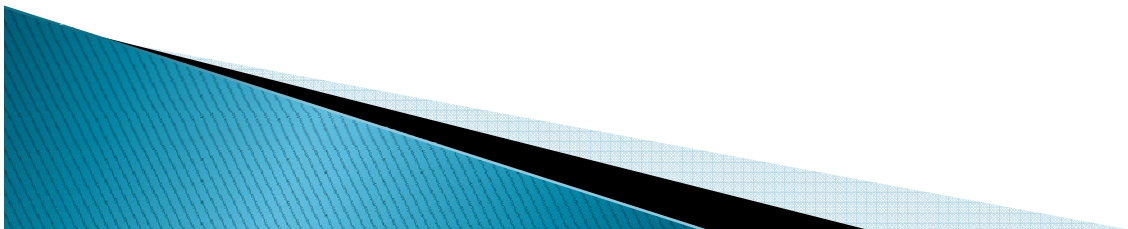


# Punishment for fraud.

▶ Section 447

Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable *with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount* involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment *shall not be less than three years.*

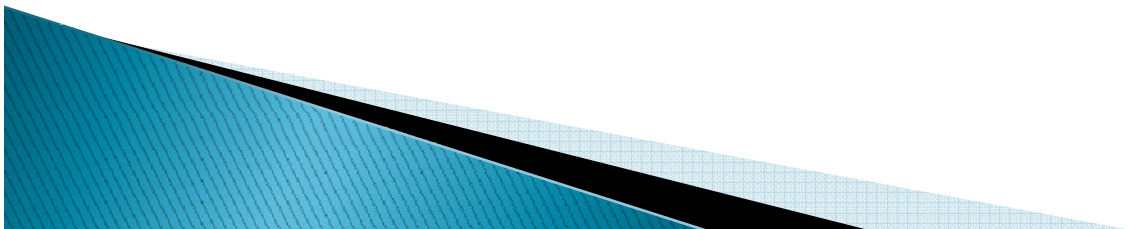


▶ *Explanation.*—For the purposes of this section—

(i) "fraud" in relation to affairs of a company or any body corporate, includes any **act, omission, concealment of any fact or abuse of position** committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

(ii) "wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;

(iii) "wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled.



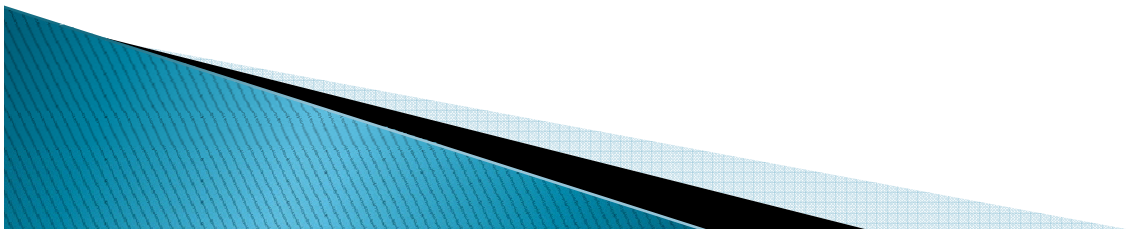
# Punishment for false statement.

## SECTION 448

Save as otherwise provided in this Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made there under, any person makes a statement,—

- (a) which is false in any material particulars, knowing it to be false; or
- (b) which omits any material fact, knowing it to be material,

he shall be liable under section 447.



# Punishment for false evidence.

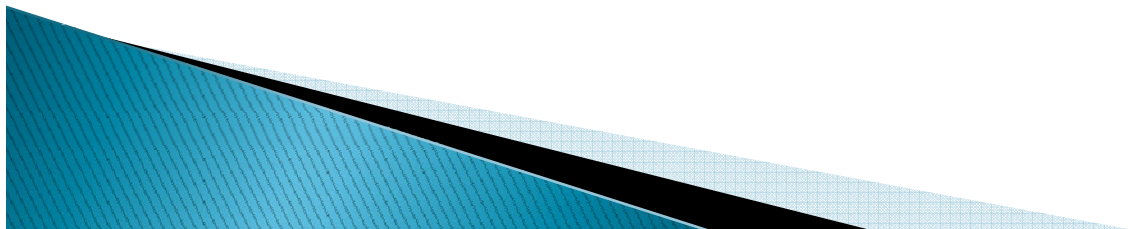
## Section 449

Save as otherwise provided in this Act, if any person intentionally gives false evidence—

(a) upon any examination on oath or solemn affirmation, authorised under this Act; or

(b) in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act,

he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten lakh rupees.



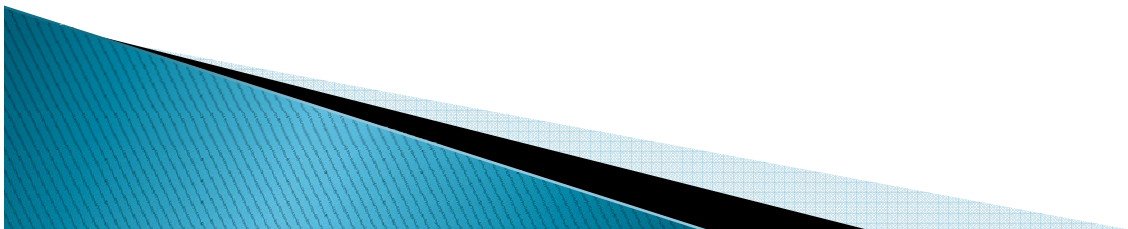
# Punishment where no specific penalty or punishment is provided

## Section 450

If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder,

or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted,

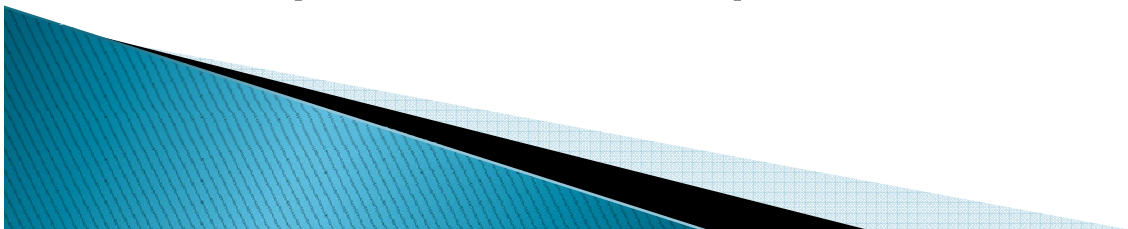
and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.



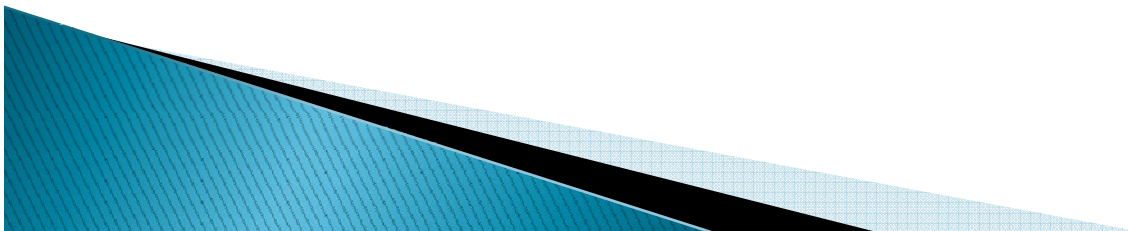
# Punishment in case of repeated default.

## Section 451

If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.



**Section 452– Section 460....  
Relating to non disclosures and others**



# Punishment for wrongful withholding of property.

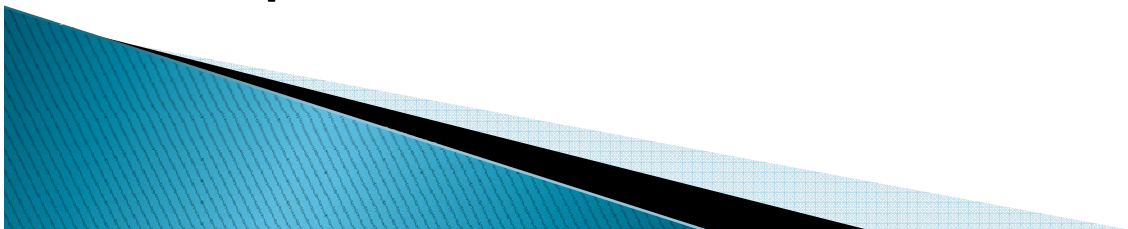
## Section 452

(1) If any officer or employee of a company—

(a) wrongfully obtains possession of any property, including cash of the company; or

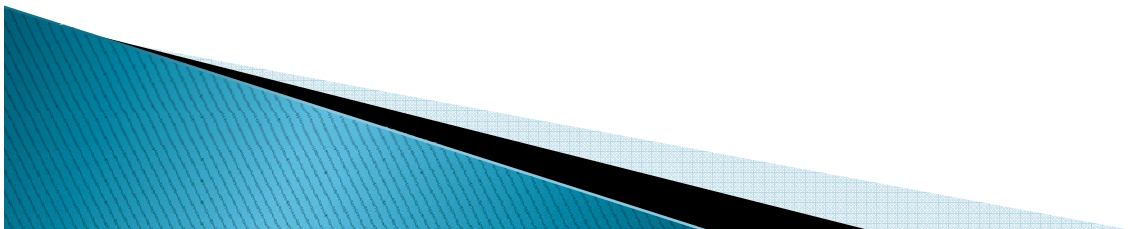
(b) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act,

he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.





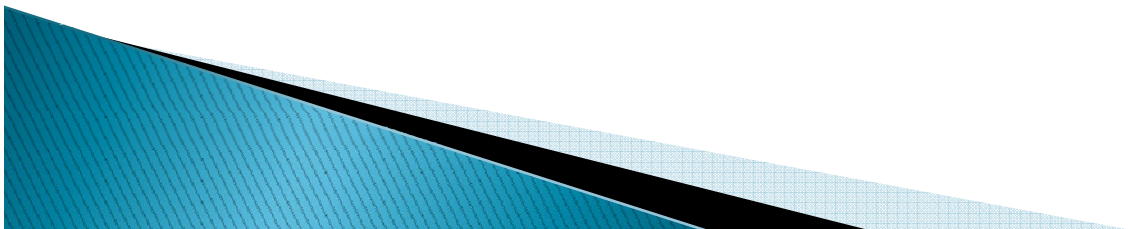
- ▶ The Court trying an offence under subsection (1) may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from *such property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



# Punishment for improper use of "Limited" or "Private Limited"

## Section 453

- ▶ If any person or persons trade or carry on business under any name or title, of which the word "Limited" or the words "Private Limited" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with limited liability, or unless duly incorporated as a private company with limited liability, as the case may be, *punishable with fine which shall not be less than five hundred rupees but may extend to two thousand rupees for every day for which that name or title has been used.*



# Adjudication of penalties

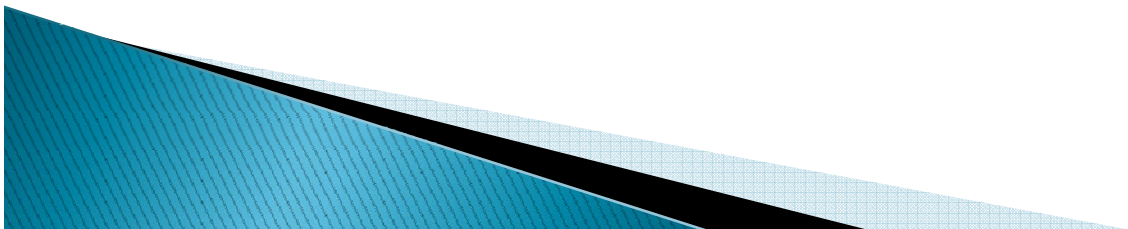


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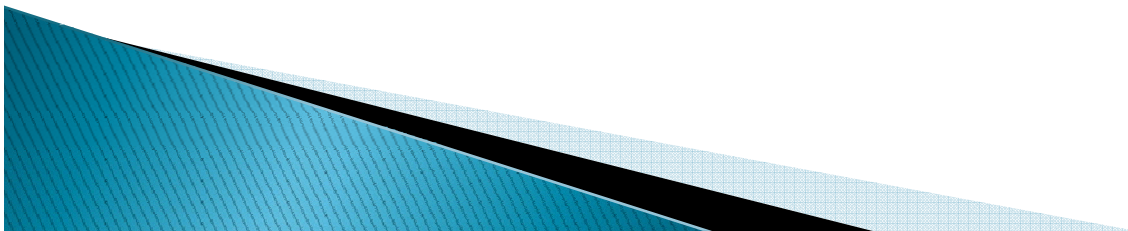
## ▶ Section 454.

- (1) The Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government, **not below the rank of Registrar**, as adjudicating officers for adjudging penalty under the provisions of this Act in the manner as may be prescribed.
- (2) The Central Government shall while appointing adjudicating officers, specify their jurisdiction in the order under sub-section (1).
- (3) The adjudicating officer may, by an order impose the penalty on the company and the officer who is in default stating any non-compliance or default under the relevant provision of the Act.

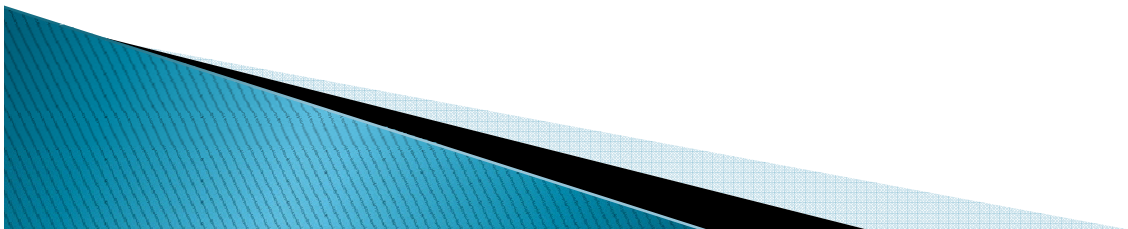
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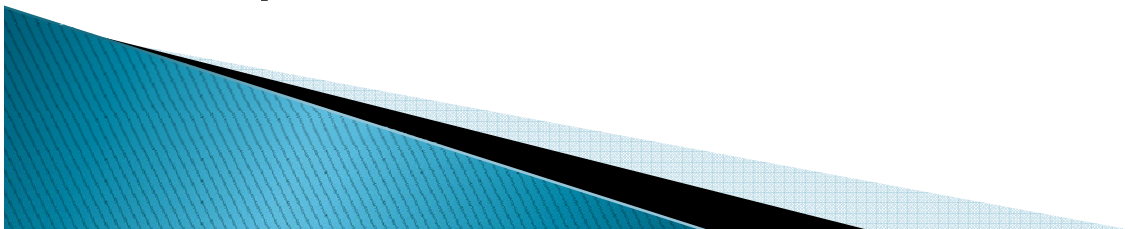
- ▶ (4) The adjudicating officer shall, before imposing any penalty, give a reasonable opportunity of being heard to such company and the officer who is in default.
- ▶ (5) Any person aggrieved by an order made by the adjudicating officer under sub-section (4) may prefer an appeal to the **Regional Director** having jurisdiction in the matter



- ▶ 6) Every appeal under sub-section (5) shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person and shall be in such form, manner and be accompanied by such fees as may be prescribed.
- ▶ (7) The Regional Director may, after giving the parties to the appeal an opportunity of being heard, pass such order as he thinks fit, confirming, modifying or setting aside the order appealed against.



- ▶ (8) (i) Where company does not pay the penalty imposed by the adjudicating officer or the Regional Director within a period of ninety days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.
- ▶ (ii) Where an officer of a company who is in default does not pay *the penalty within a period of ninety days from the date of the receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both*



# Dormant company

## Section 455

Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

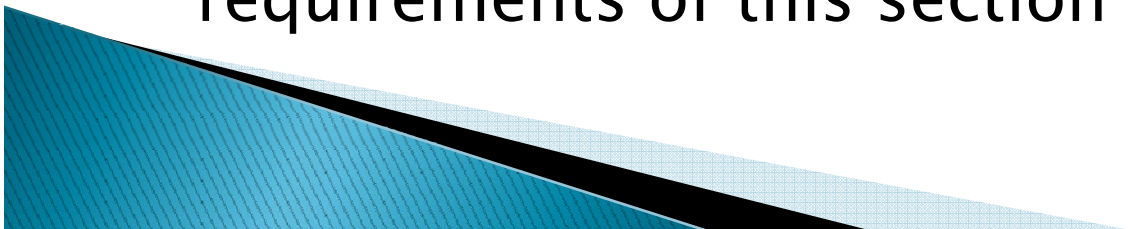
*Explanation.*—For the purposes of this section,—

- (i) "inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;
- (ii) "significant accounting transaction" means any transaction other than—
  - (a) payment of fees by a company to the Registrar;
  - (b) payments made by it to fulfil the requirements of this Act or any other law;
  - (c) allotment of shares to fulfil the requirements of this Act; and
  - (d) payments for maintenance of its office and records.

- ▶ (2) The Registrar on consideration of the application allow the status of a dormant company to the applicant and issue a certificate in such form as may be prescribed to that effect.
  
- ▶ (3) The Registrar shall maintain a register of dormant companies in such form as may be prescribed.
  
- ▶ (4) In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.



- ▶ (5) A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed.
- ▶ (6) The Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section



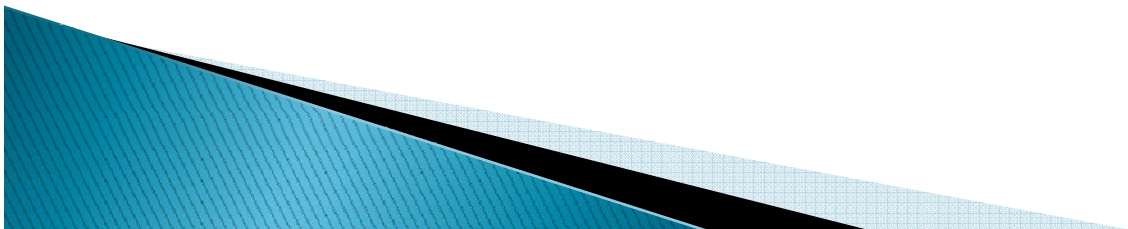
## Protection of action taken in good faith

### Section 456

- ▶ No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder, or in respect of the publication by or under the authority of the Government or such officer, of any report, paper or proceedings.

▶

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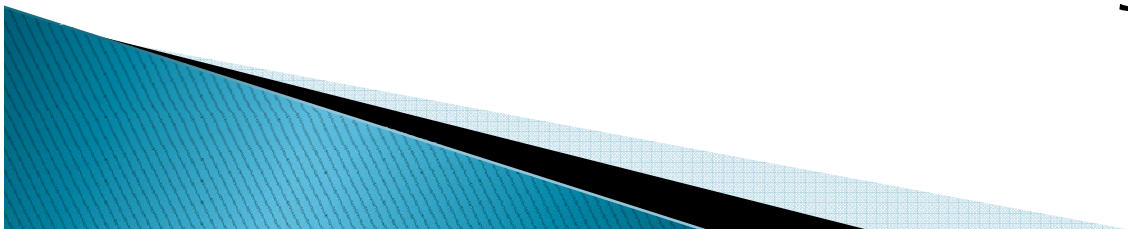


## Non-disclosure of information in certain cases.

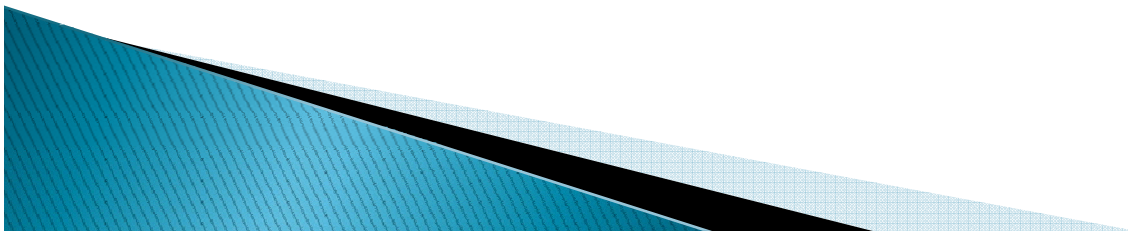
### Section 457

Notwithstanding anything contained in any other law for the time being in force, the Registrar, any officer of the Government or any other person shall not be compelled to disclose to any court, Tribunal or other authority, the source from where he got any information which—

- (a) has led the Central Government to order an investigation under section 210; or
- (b) is or has been material or relevant in connection with such investigation

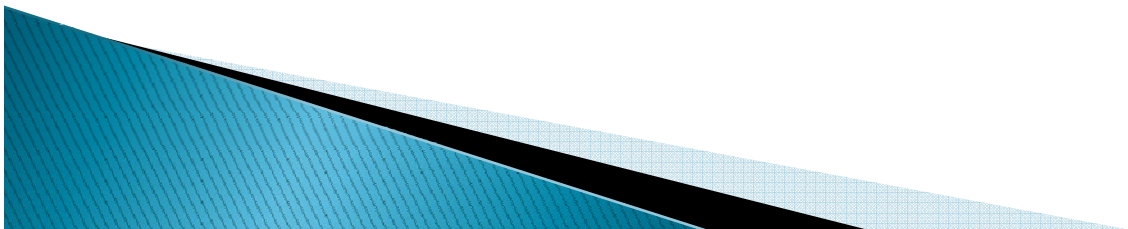


- ▶ QUIZ ROUND..... /
- ▶ FAQ'S FOR LEARNING BETTER.....



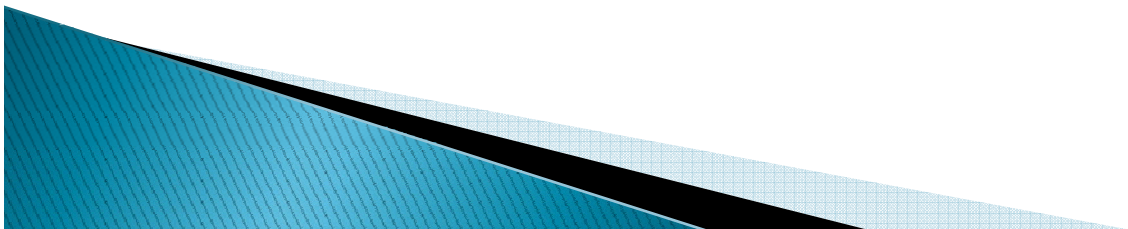
▶ 1.

- ▶ By what time are companies are required to switch over to the new format of Register of Members, Register of Directors and Key Managerial Personnel and their Shareholding?

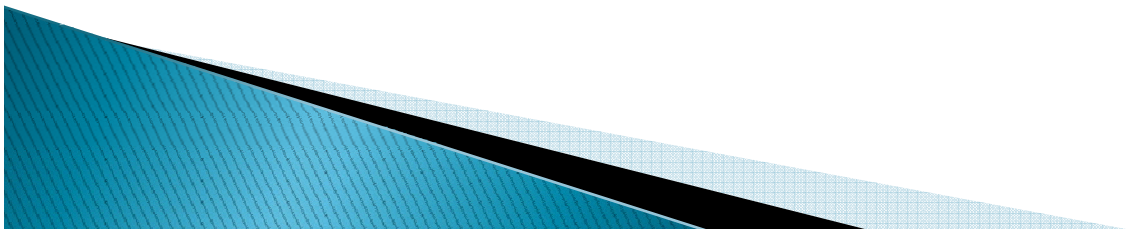


▶ **ANS:**

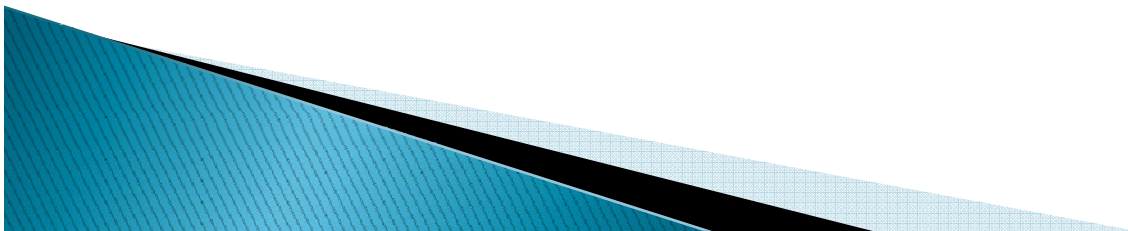
- ▶ As per Rule 3 of the Companies (Management & Administration) Rules, 2014 all the existing companies, registered under the Companies Act, 1956, shall prepare its registers of members as per the provisions of section 88 of the Companies Act, 2013 within a period of 6 months from the date of commencement of Companies (Management & Administration) Rules, 2014.



- ▶ Further after 1st April 2014 all the registers of Directors & KMP shall be prepared as per the provisions of the section 170 of the Companies Act, 2013.
- ▶ *The register of directors & director's shareholding maintained before 1 April, 2014 as per the provisions of the companies Act, 1956 needs not to be converted as per the provisions of the section 170 of Companies Act, 2013.*

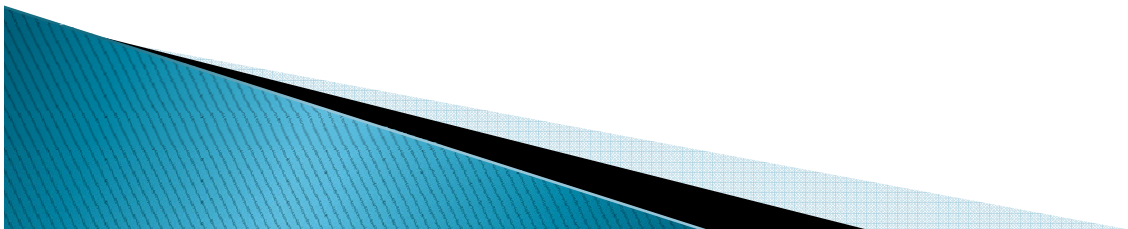


- ▶ Q2
- ▶ The Annual Return for the financial year ended 31st March 2014 is to be filed in which form?

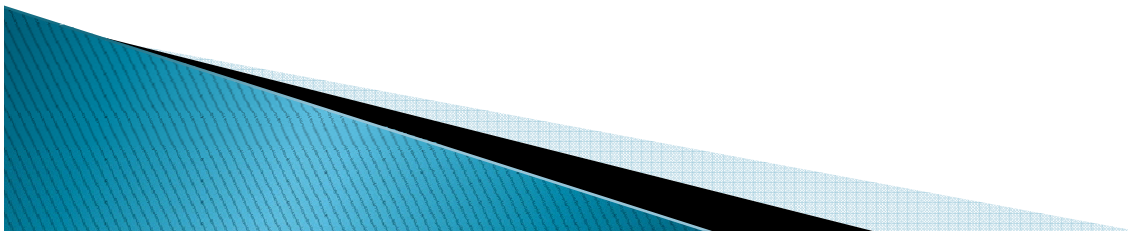




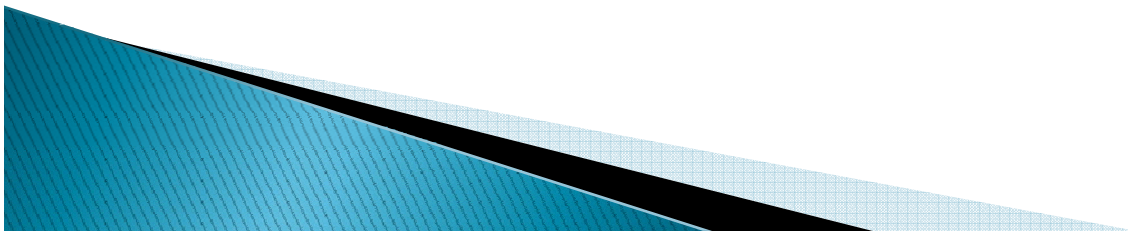
- ▶ Ans.
- ▶ MCA vide General Circular dated 25th June, 2014 clarified that **Form MGT-7 shall not apply to annual returns in respect of companies whose financial year ended on or before 1st April, 2014** and for annual returns pertaining to earlier years. These companies may file their returns in the relevant Form applicable under the Companies Act, 1956.



- ▶ Accordingly, the annual return in terms of section 92 of the Companies Act, 2013 in form MGT. 7 as covered in this guidance note will be applicable for the financial years commencing on or after 1st April, 2014 .



- ▶ Section 458– 470 delegated to Central Government/ Tribunal and others



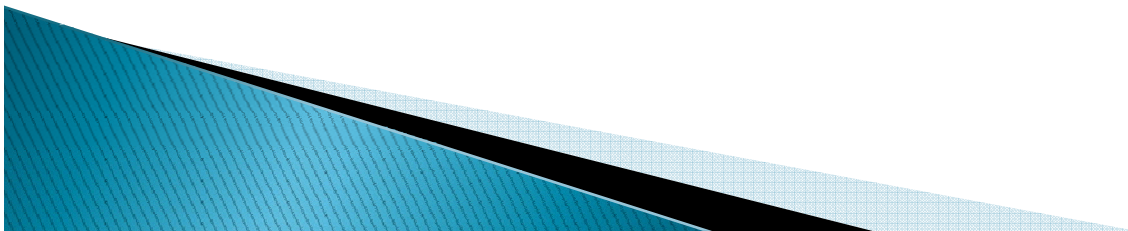
# Delegation by Central Government of its powers and functions.

## ▶ Section 458

- ▶ (1) The Central Government may, by notification, and subject to such conditions, limitations and restrictions as may be specified therein, delegate any of its powers or functions under this Act other than the power to make rules to such authority or officer as may be specified in the notification:
- ▶ **Provided that the powers to enforce the provisions contained in section 194 and section 195 relating to forward dealing and insider trading shall be delegated to Securities and Exchange Board for listed companies or the companies which intend to get their securities listed and in such case, any officer by the Securities and Exchange Board shall have the power to file a complaint in the court of competent jurisdiction.**



(2) A copy of every notification issued under sub-section (1) shall, as soon as may be after it is issued, be laid before each House of Parliament.



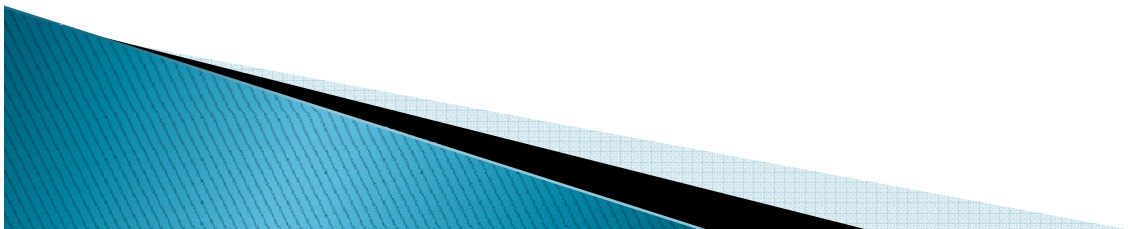
**Powers of Central Government or Tribunal to accord approval, etc., subject to conditions and to prescribe fees on applications.**

## **Section 459.**

(1) Where the Central Government or the Tribunal is required or authorised by any provision of this Act—

- (a) to accord approval, sanction, consent, confirmation or recognition to, or in relation to, any matter; or
- (b) to give any direction in relation to any matter; or
- (c) to grant any exemption in relation to any matter,

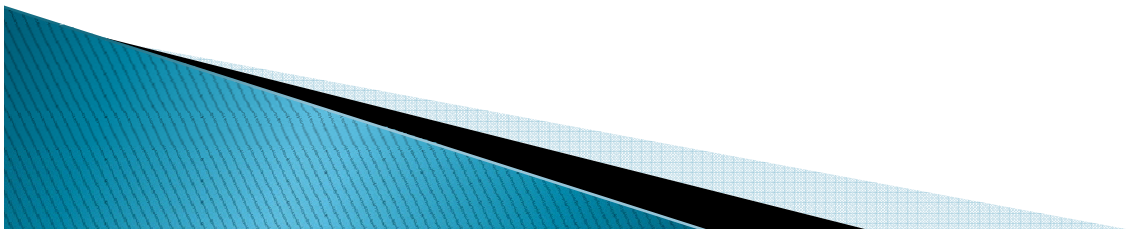
then, the Central Government or the Tribunal may in the absence of anything to the contrary contained in that provision or any other provision of this Act, accord, give or grant such approval, sanction, consent, confirmation, recognition, direction or exemption, subject to such conditions, limitations or restrictions as it may think fit to impose and may, in the case of a contravention of any such condition, limitation or restriction, rescind or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption.



- (2) Save as otherwise provided in this Act, every application which may be, or is required to be, made to the Central Government or the Tribunal under any provision of this Act—
- (a) in respect of any approval, sanction, consent, confirmation or recognition to be accorded by that Government or the Tribunal to, or in relation to, any matter; or
  - (b) in respect of any direction or exemption to be given or granted by that Government or the Tribunal in relation to any matter; or
  - (c) in respect of any other matter

shall be accompanied by such fees as may be prescribed:

**Provided** that different fees may be prescribed for applications in respect of different matters or in case of applications by different classes of companies.

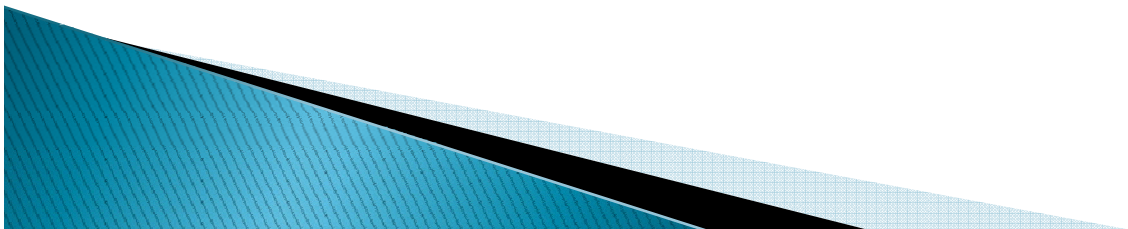


# Condonation of delay in certain cases

## Section 460

Notwithstanding anything contained in this Act,—

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

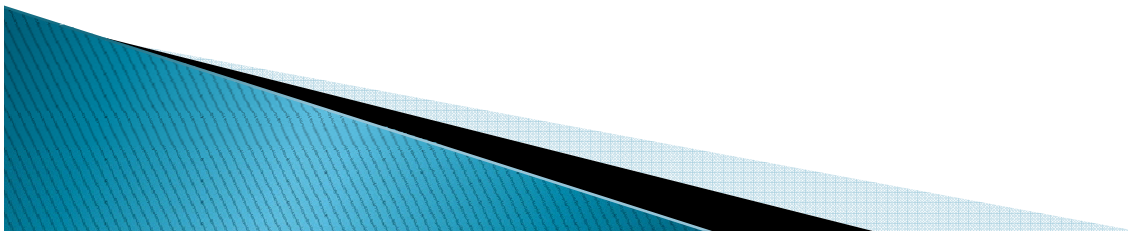




# Annual report by Central Government.

## Section 461

The Central Government shall cause a general annual report on the working and administration of this Act to be prepared and laid before each House of Parliament within one year of the close of the year to which the report relates.



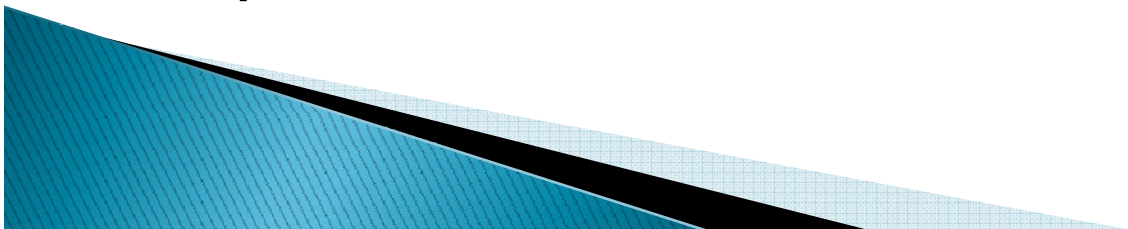
# Power to exempt class or classes of companies from provisions of this Act

## Section 462.

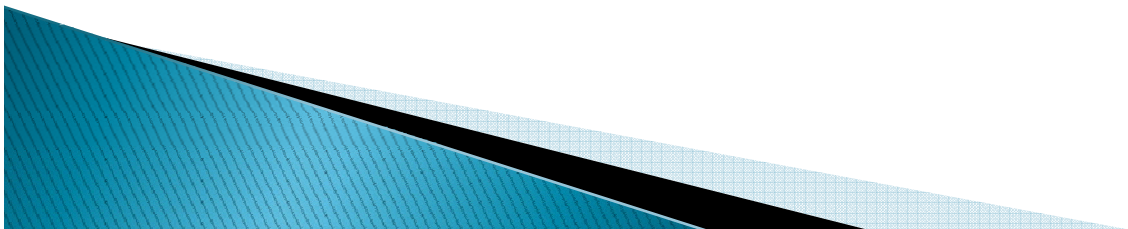
(1) The Central Government may in the public interest, by notification direct that any of the provisions of this Act,—

(a) shall not apply to such class or classes of companies; or

(b) shall apply to the class or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification.



(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.



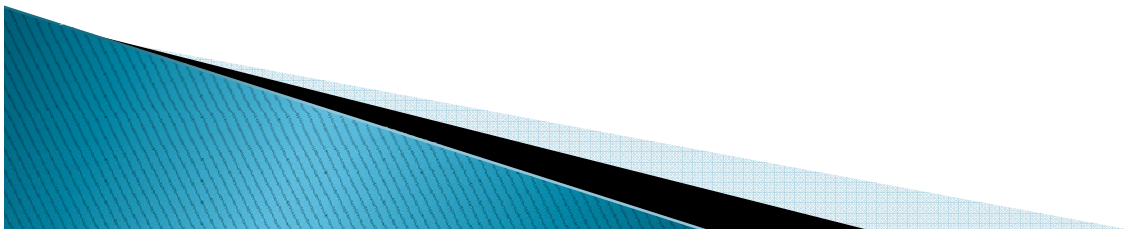
# Power of court to grant relief in certain cases

·  
Section 463.

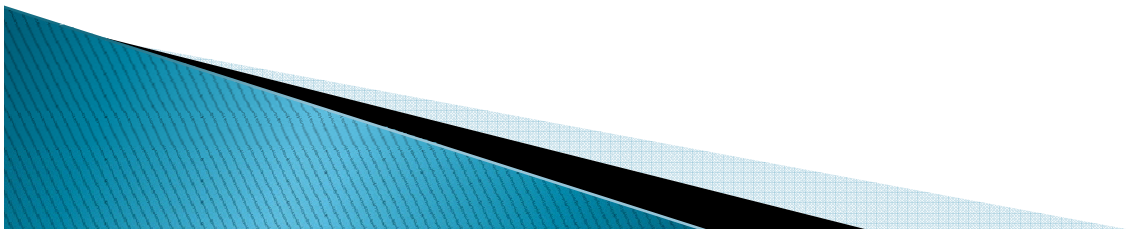
## ▶ CHECKS THE INTENTION

1) If in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, it appears to the court hearing the case that he is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the court may relieve him, either wholly or partly, from his liability on such term, as it may think fit:

Provided that in a criminal proceeding under this sub-section, the court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.

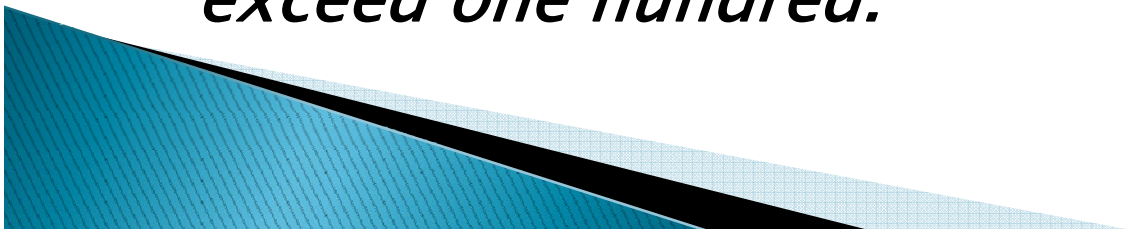


- ▶ (2) Where any such officer has reason to apprehend that any proceeding will or might be brought against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the High Court for relief and the High Court on such application shall have the same power to relieve him as it would have had if it had been a court before which a proceedings against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought under sub-section (1).
- ▶ (3) No court shall grant any relief to any officer under sub-section (1) or sub-section (2) unless it has, by notice served in the manner specified by it, required the Registrar and such other person, if any, as it thinks necessary, to show cause why such relief should not be granted.
- ▶

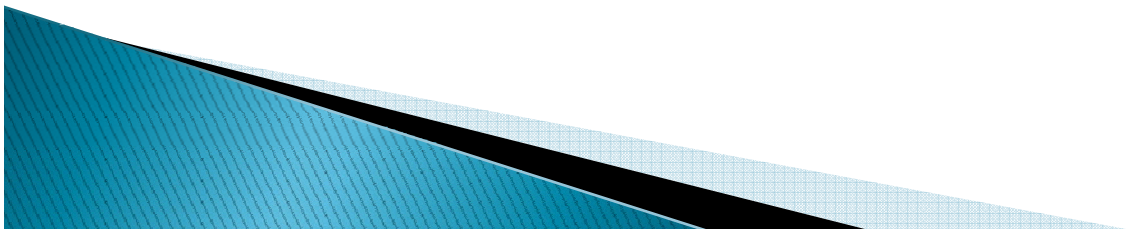


## Prohibition of association or partnership of persons exceeding certain number.

- ▶ Section 464.
- ▶ (1) No association or partnership consisting of more than such number of persons as may be prescribed shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force:
- ▶ Provided that the *number of persons which may be prescribed under this sub-section shall not exceed one hundred.*



- ▶ (2) Nothing in sub-section (1) shall apply to—
- ▶ (a) a Hindu undivided family carrying on any business; or
- ▶ (b) an association or partnership, if it is formed by professionals who are governed by special Acts.
- ▶ (3) Every member of an association or partnership carrying on business in contravention of sub-section (1) shall be punishable with fine which may extend to one lakh rupees and shall also be personally liable for all liabilities incurred in such business.



# Repeal of certain enactments and savings.

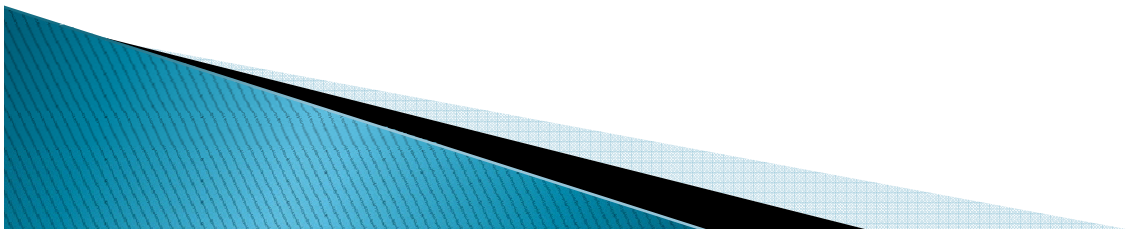
## ▸ Section 465.

- ▶ (1) The Companies Act, 1956 (1 of 1956) and the Registration of Companies (Sikkim) Act, 1961 (Sikkim Act 8 of 1961) (hereafter in this section referred to as the repealed enactments) shall stand repealed:
- ▶ **Provided** that the provisions of Part IX A of the Companies Act, 1956 (1 of 1956) shall be applicable *mutatis mutandis* to a Producer Company in a manner as if the Companies Act, 1956 has not been repealed until a special Act is enacted for Producer Companies:
- ▶ **Provided further** that until a date of notified by the Central Government under sub-section (1) of section 434 for transfer of all matters, proceedings or cases to the Tribunal, the provisions of the Companies Act, 1956 (1 of 1956) in regard to the jurisdiction, powers, authority and functions of the Board of Company Law Administration and court shall continue to apply as if the Companies Act, 1956 has not been repealed:
- ▶ **Provided also** that provisions of the Companies Act, 1956 (1 of 1956) referred in the notification issued under section 67 of the Limited Liability Partnership Act, 2008 (6 of 2009) shall, until the relevant notification under such section applying relevant corresponding provisions of this Act to limited liability partnerships is issued, continue to apply as if the Companies Act, 1956 has not

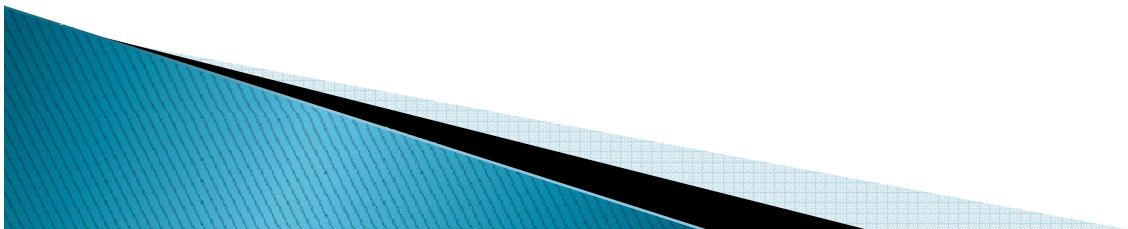


# Repeal of certain enactments and savings.

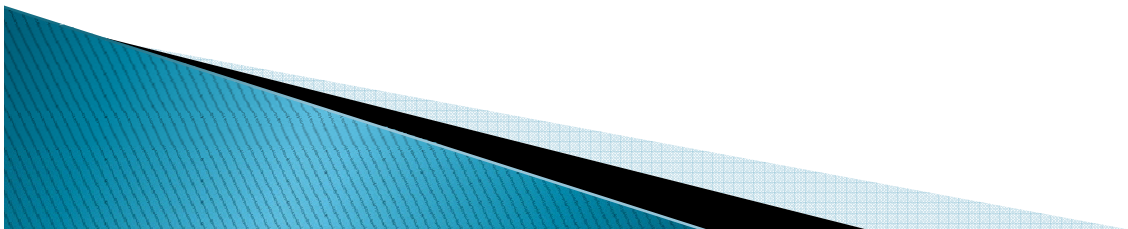
- ▶ (2) Notwithstanding the repeal under sub-section (1) of the repealed enactments,—
- ▶ (a) anything done or any action taken or purported to have been done or taken, including any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;



- ▶ (*b*) subject to the provisions of clause (*a*), any order, rule, notification, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of any repealed enactment shall, if in force at the commencement of this Act, continue to be in force, and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act;
- ▶ ;



- ▶ (c) any principle or rule of law or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not be affected, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in, or from, the repealed enactments



- ▶ (d) any person appointed to any office under or by virtue of any repealed enactment shall be deemed to have been appointed to that office under or by virtue of this Act;
- ▶ (e) any jurisdiction, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not in existence or in force shall not be revised or restored;
- ▶ (f) the offices existing on the commencement of this Act for the registration of companies shall continue as if they have been established under the provisions of this Act;
- ▶ (g) the incorporation of companies registered under the repealed enactments shall continue to be valid and the provisions of this Act shall apply to



- ▶ such companies as if they were registered under this Act;
- ▶ (h) all registers and all funds constituted and established under the repealed enactments shall be deemed to be registers and funds constituted or established under the corresponding provisions of this Act;
- ▶ (i) any prosecution instituted under the repealed enactments and pending immediately before the commencement of this Act before any Court shall, subject to the provisions of this Act, continue to be heard and disposed of by the said Court;
- ▶ (j) any inspection, investigation or inquiry ordered to be done under the Companies Act, 1956 (1 of 1956) shall continue to be proceeded with as if such inspection, investigation or inquiry has been ordered under the corresponding provisions of this Act; and
- ▶ (k) any matter filed with the Registrar, Regional Director or the Central Government under the Companies Act, 1956 (1 of 1956) before the commencement of this Act and not fully addressed at that time shall be concluded by the Registrar, Regional Director or the Central Government, as the case may be, in terms of that Act, despite its repeal.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal of the repealed enactments as if the Registration of Companies (Sikkim) Act, 1961 (Sikkim

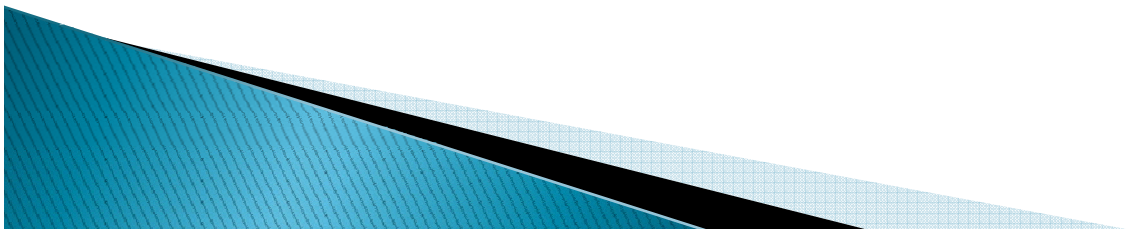
# Dissolution of Company Law Board and consequential provisions



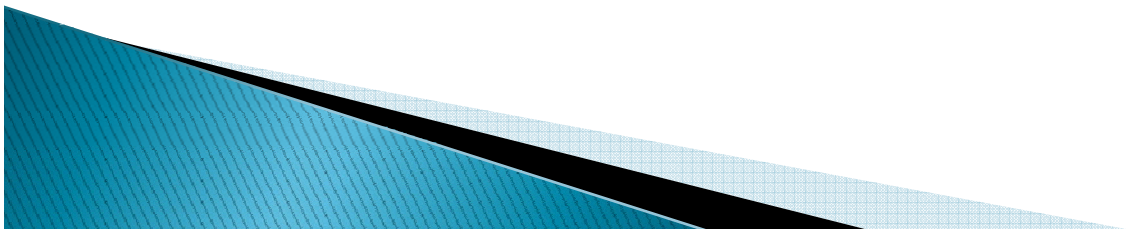
## Section 466

(1) Notwithstanding anything contained in section 465, the Board of Company Law Administration constituted under the Companies Act, 1956 (1 of 1956) (hereafter in this section referred to as the Company Law Board) shall stand dissolved on the constitution of the Tribunal and the Appellate Tribunal:

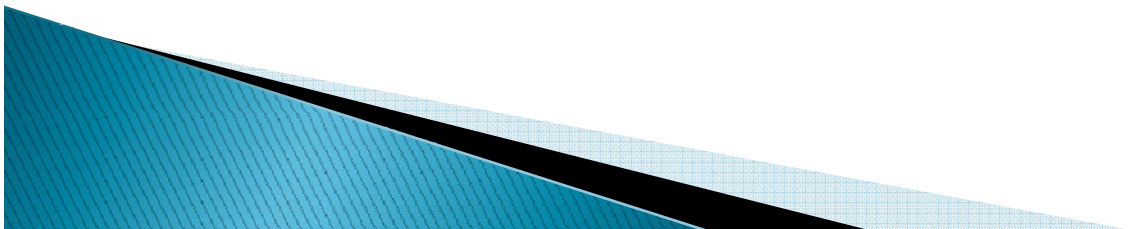
- ▶ **Provided** that until the Tribunal and the Appellate Tribunal is constituted, the Chairman, Vice-Chairman and Members of the Company Law Board immediately before the constitution of the Tribunal and the Appellate Tribunal, who fulfil the qualifications and requirements provided under this Act regarding appointment as President or Chairperson or Member of the Tribunal or the Appellate Tribunal, shall function as President, Chairperson or Member of the Tribunal or the Appellate Tribunal:



- ▶ **Provided further** that every officer or other employee, who had been appointed on deputation basis to the Company Law Board, shall, on such dissolution,—
- ▶ (i) become officer or employee of the Tribunal or the Appellate Tribunal, if he fulfils the qualifications and requirements under this Act; and
- ▶ (ii) stand reverted to his parent cadre, Ministry or Department, in any other case:
- ▶ **Provided also** that every officer and the other employee of the Company Law Board, employed on regular basis by that Board, shall become, on and from such dissolution the officer and other employee, respectively, of the Tribunal or the Appellate Tribunal with the same rights and privileges as to pension, gratuity and other like benefits as would have been admissible to him if he had continued to serve that Board and shall continue to do so unless and until his employment in the Tribunal or the Appellate Tribunal is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the Tribunal or the Appellate Tribunal, as the case may be:

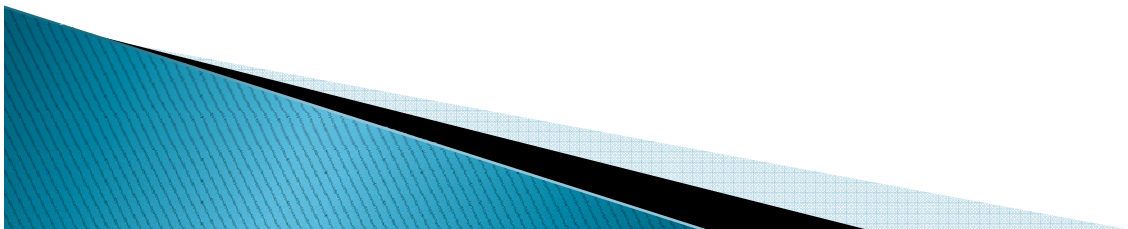


- ▶ **Provided also that notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947) or in any other law for the time being in force, any officer or other employee who becomes an officer or other employee of the Tribunal or the Appellate Tribunal under the preceding proviso shall not be entitled to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, Tribunal or other authority:**





- ▶ **Provided also** that where the Company Law Board has established a provident fund, superannuation fund, welfare fund or other fund for the benefit of the officers and other employees employed in that Board, the monies relatable to the officers and other employees who have become officers or employees of the Tribunal or the Appellate Tribunal shall, out of the monies standing to the credit of such provident fund, superannuation fund, welfare fund or other fund, stand transferred to, and vest in, the Tribunal or the Appellate Tribunal, as the case may be, and such monies which stand so transferred shall be dealt with by the Tribunal or the Appellate Tribunal in such manner as may be prescribed.
  
- ▶ (2) The persons holding the offices of Chairman, Vice-Chairman and Members, and officers and other employees of the Company Law Board immediately before the constitution of the Tribunal and the Appellate Tribunal who are not covered under proviso to sub-section (1) shall vacate their respective offices on such constitution and no such Chairman, Vice-Chairman and Members and officers or other employees shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service, if any.



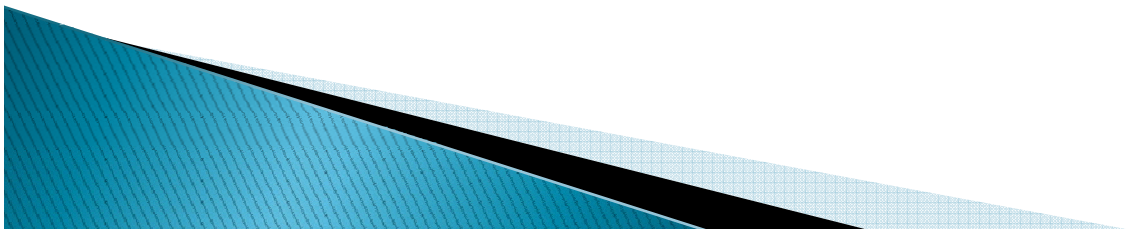
# Power of Central Government to amend Schedules.

## Section 467.

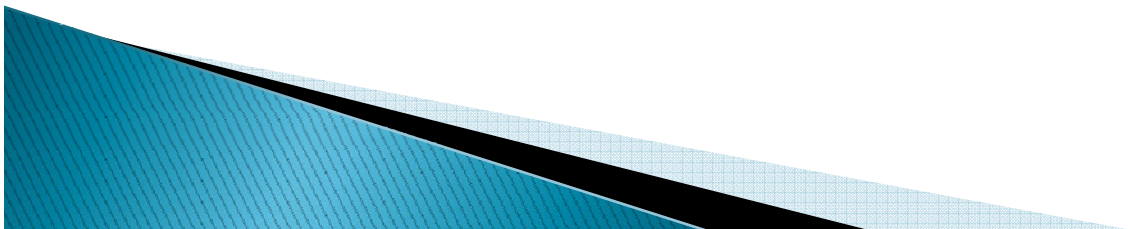
(1) Subject to the provisions of this section, the Central Government may, by notification, alter any of the regulations, rules, Tables, forms and other provisions contained in any of the Schedules to this Act.

(2) Any alteration notified under sub-section (1) shall have effect as if enacted in this Act and shall come into force on the date of the notification, unless the notification otherwise directs:

**Provided** that no such alteration in Table F of Schedule I shall apply to any company registered before the date of such alteration.



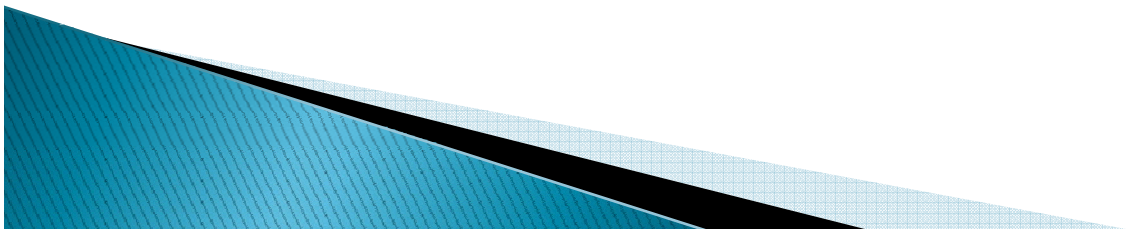
- ▶ (3) Every alteration made by the Central Government under sub-section (1) shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the alteration,
- ▶ or both Houses agree that the alteration should not be made, the alteration shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done in pursuance of the alteration.



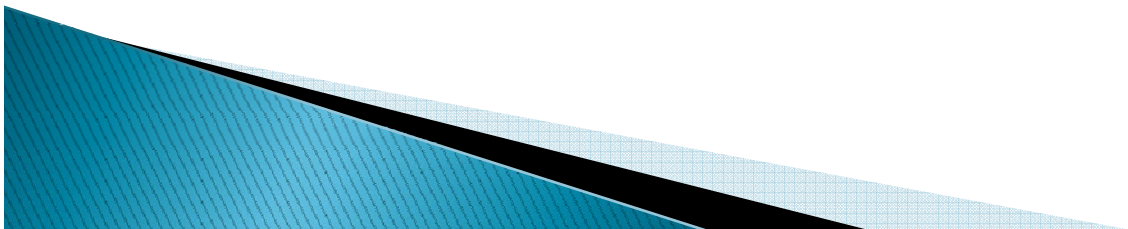
# Powers of Central Government to make rules relating to winding up

## ▶ Section 468.

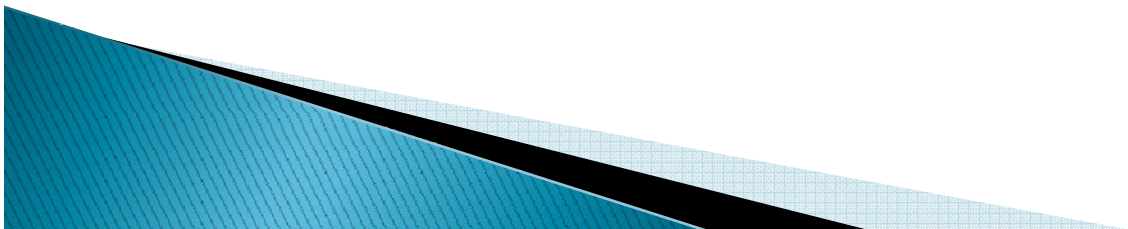
- ▶ (1) The Central Government shall, make rules consistent with the Code of Civil Procedure, 1908 (5 of 1908) providing for all matters relating to the winding up of companies, which by this Act, are to be prescribed, and may make rules providing for all such matters, as may be prescribed.
  
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
  - (i) as to the mode of proceedings to be held for winding up of a company by the Tribunal;
  - (ii) for the voluntary winding up of companies, whether by members or by creditors;
  - (iii) for the holding of meetings of creditors and members in connection with proceedings under section 230;
  - (iv) for giving effect to the provisions of this Act as to the reduction of the capital;



- v) generally for all applications to be made to the Tribunal under the provisions of this Act;
- (vi) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
- (vii) the settling of lists of contributories and the rectifying of the register of members where required, and collecting and applying the assets;
- (viii) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
- (ix) the making of calls; and
- (x) the fixing of a time within which debts and claims shall be proved.



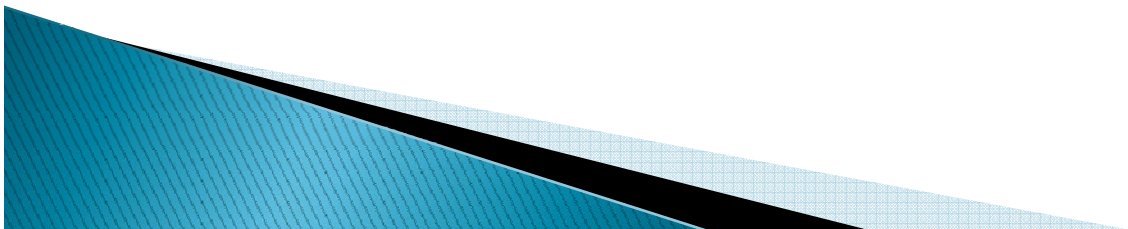
- ▶ (3) All rules made by the Supreme Court on the matters referred to in this section as it stood immediately before the commencement of this Act and in force at such commencement, shall continue to be in force, till such time the rules are made by the Central Government and any reference to the High Court in relation to winding up of a company in such rules shall be construed as a reference to the Tribunal.



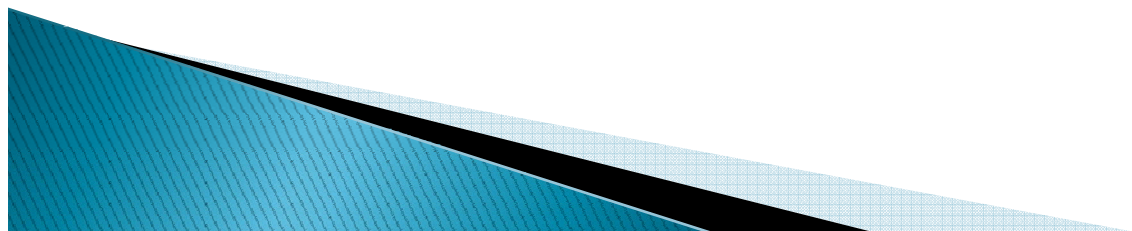
# Power of Central Government to make rules.

## ▶ Section 469.

- (1) **The Central Government may, by notification, make rules for carrying out the provisions of this Act.**
- (2) Without prejudice to the generality of the provisions of sub-section (1), the Central Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provision is to be or may be made by rules.
- (3) Any rule made under sub-section (1) may provide that a contravention thereof shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues.



- ▶ (4) Every rule made under this section and every regulation made by Securities and Exchange Board under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid,
- ▶ both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.





# Power to remove difficulties

## Section 470.

- (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:
- ▶ *Provided that no such order shall be made after the expiry of a period of five years from the date of commencement of section 1 of this Act.*
- (2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

