<u>LIABILITY OF DIRECTORS UNDER THE COMPANIES ACT, 1956</u>

<u>POSITION OF DIRECTOR</u>

The directors are the custodian of the interests of the shareholders. Their position is fiduciary vis-à-vis the Company. The directors must exercise their power for the benefit of the Company. There exists a relationship of a trustee and trust between the directors and the shareholders of the Company. The directors have been held trustees of the assets of the Company and in many cases the courts have directed them to reimburse the loss to the Company, where it was found that directors have applied the Company's money in payment of an improper commission. Each section also specifies the penalty to be paid in case of default, imprisonment or both.

The strictness with which the courts view the responsibility and the sacredness of the trust reposed in the directors had been emphasized in many cases. Their position has further changed in the era of **Corporate Governance to the extent that the directors have to protect the interests of not only the shareholders but also other stakeholders.**

In this article an attempt is made to define the extent and scope of liabilities of Directors viz. Managing Director, Working Director and an ordinary Director under the Companies Act, 1956.

<u>Liabilities of Directors</u>

The liabilities of the directors vary according to the status of the Company i.e. whether the Company is private or public. But in all cases in discharging the duties of his position, he must act honestly, carefully and without any negligence. The various liabilities of directors under the companies Act, 1956 may be summarised as under:

1. Filing of various documents with Registrar of Companies :-

Under the provisions of the Companies Act, 1956, every company is required to file Annual Return and Balance Sheet, every year. However, various other Forms and Returns are required to be filed with the concerned Registrar of Companies, from time to time, under the applicable provisions of the Act. **The brief details of some important forms and documents inter alia are as under:**

1. Annual Return within 60 days of the annual general meeting.
2. Balance Sheet within 30 days of laying the accounts at the annual general meeting.
3. Return of Allotment of Shares in Form No. 2 within 30 days of Allotment of shares.
4. Change in Directors / Secretary (Appointment / Re-appointment /Cessation/ Resignation etc.) In Form No. 32 within 30 days of such change.
5. Registration of certain resolutions and agreements u/s 192 in Form No. 23 within 30 days of passing of such resolutions etc.
6. Creation & modification of charges in Form No. 8 and Satisfaction of charges in Form No. 17 , within 30 days of creation, modification and satisfaction respectively.

2. Holding of various Meetings under Companies Act, 1956:-

Since the Company is a Separate Legal Entity, the decisions are taken in democratic way. Decisions in case of a Company are taken at two levels i.e. decisions by Board of Directors and Decisions by the Members in General Meetings.

Board Meeting

i At least one meeting in every 3 calendar months and at least four such meetings shall be held every calendar year.
ii Notice of every meeting shall be given in writing to every director.
iii The Board of Directors is entitled to exercise all such powers and to do all such acts and things as the Company is authorised to exercise and do. However, it shall not exercise any power or do any act or thing which is directed or required, whether by this or any other Act or by the Memorandum and Articles of Association or otherwise, to be exercised or done by the company in general meeting.
iv To disclose the interest, if any, in any business item of the meeting.
v To discuss activities of the Company and business plans.

It is the duty of director of the Company to attend the meeting of Board of Directors of the Company and to participate in the business items thereat.

Annual General Meeting

i Every Company shall in each year hold an Annual General Meeting.
ii There should not be a gap of more than 15 months between two Annual General Meetings.
iii 21 days clear notice to all the members of the company should be given.
iv The Ordinary Business at the AGM involves adoption of Audited Accounts of the Company, Appointment of Directors liable to retire by rotation (only in case of Limited Companies), declaration of dividend, if any and to appoint Auditors and to fix their remuneration.

It is the duty of director of the Company to attend the Annual General Meeting of the Company and to reply the queries raised by the members to their satisfaction.

Extra-ordinary General Meeting

The Meeting of the members of the Company other than the Annual General Meeting is called an Extra-ordinary General Meeting. A Company may call as may as Extra-ordinary General Meetings in a year, as required for obtaining consent of members of the Company for business items thereat, in compliance with the provisions of the Companies Act, 1956.

3. Maintenance of Statutory Books under Companies Act, 1956:-

As per the provisions of the Companies Act, 1956, every Company is required to maintain various statutory books under various provisions of the companies Act, 1956 and it is the responsibility of director to maintain the same in compliance with the various provisions. The details of such books are as under:

1. **Minutes Book**: for Board meeting and General meetings separately u/s 193.
2. **Register of Members** : showing name, address and occupation of each member, the share held including the distinctive numbers, the amount paid on the shares etc. u/s 150/151
3. **Register of interested Directors etc.** : showing the required particulars u/s 301
4. **Register of Directors, Managing Directors and Secretary** : showing the required particulars about them etc. u/s 303
5. **Register of Directors, Managing Directors and Secretary Shareholding**: showing the required details about shareholding etc. u/s. 307.
6. **Register of Charges:** showing the particulars of charges on the assets of the company u/s 143.
7. **Register of Investments** showing particulars of investment u/s 49/ 372A.
8. **Register of Transfer of Shares:** along with details relating to the transferor and the transferee and the No. of shares transfer etc.

4. Directors as Officers in Default:-

When directors fail to perform their statutory duties under the Companies Act, 1956, they bring themselves within the mischief of the penal provisions of law. Under the Act, directors are generally liable for various acts of omission and commission. The Act defines the term “Officer-in default” under section 5 of the Companies Act, 1956.

In this regard, the provisions of section 621A of the Companies Act, 1956 are important. The defaulting directors may file compounding application to the Regional Director of concerned Region (for defaults having total file amount upto Rs.50,000) and the Company Law Board (for fine amount exceeding Rs.50,000).

In the era of globalisation and liberalisation, it is important for directors to understand their responsibilities and to equip themselves in a better way by professional association of an expert in the field of Company Law, so that they are in a position to discharge their duties with utmost care and caution.

ACCEPTANCE OF PUBLIC DEPOSITS

Public deposits are an important and popular source of raising funds by companies. Section 58 A of the Companies Act, 1956 deals with invitation, acceptance, renewal and acceptance of deposits. No company can invite and accept deposits except in the manner and subject to conditions prescribed by the Central Government in consultation with the Reserve Bank of India.

Meaning:

Deposit means any deposit of money with and includes any amount borrowed by a Company but shall not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India. Nowhere it is written that deposit is unsecured only, and as such we can safely infer that it can be secured also.

PERIOD OF DEPOSIT:

No Company shall accept or renew any deposit which is repayable on demand or on notice or after a period of less than 6 months or more than 36 months from the date of acceptance or renewal of such deposit.

CEILING OF DEPOSIT:

No Company, other than government, shall accept:

i) any deposit against an unsecured debenture or any deposit from a shareholder or any deposit guaranteed by any person who, at the time of giving such guarantee is a director of the Company if the amount of any such deposit together with amount of such other deposits of all or any of the kinds of deposits referred to in this clause and outstanding on the date of acceptance or renewal of such deposit exceeds **10% of the aggregate of the paid-up share capital and free reserves of the Company.**

ii) Any other deposit , if the amount of such deposit together with the amount of such other deposit other than any of the deposits referred to in clause(i), outstanding on the date of acceptance or renewal exceeds **25% of the aggregate of the paid –up share capital and free reserves of the Company.**

No company shall invite or accept or renew any deposit in any form, on a rate of interest exceeding 12.5% per annum .

PRIVATE COMPANY

As per section 3 (iii) (d) of the Companies Act,1956 Private company are prohibited from inviting or accepting of deposits from /to persons other than its members, directors or their relatives. The prohibition extends to accept deposits form members of Public.

Though joint holders are treated as one member, it seems that deposits can be taken from all the joint holders separately. Some of the private limited NBFCs have reportedly started accepting deposits from all joint shareholders. This practice has found to been irregular and violating the NBFC directions on acceptance of public deposits. It has been decided that the deposits accepted by a private limited NBFC from the first named shareholders will only be exempted from the purview of public deposit.

PUBLIC COMPANY

ADVERTISEMENT BEFORE ACCEPTANCE OF DEPOSIT

No company shall invite or accept any deposit except after the publication of an advertisement specifying therein the financial conditions, management structure and other particulars of the Company. Such advertisement should not be necessary for acceptance of deposit from the directors and shareholders of the company. It would be enough if acceptance if acceptance by a company of deposit is made in accordance with the rules made by the Central Government after the consultation.

An advertisement issued is valid until the expiry of 6 month from the date of closure of the financial year in which it is issued or until the date on which the balance sheet is laid before the company in general meeting or where the Annual General Meeting for any year has not been held, latest day on which that meeting should have been held in accordance with the Act. A fresh advertisement shall be made, in each succeeding financial year.

Exemption is provided to public company under Rule (2) (b) to the extend of amount received by a Company from any other Company or can be said other body corporate. Any amount received from an employee of the Company by way of secured deposits.

STATEMENT IN LIEU OF ADVERTISEMENT

Where a company intends to accept deposits with out inviting or allowing or causing any other person to invite , such deposit , shall, before accepting deposits deliver to the Registrar for registration a statement in lieu of advertisement containing all the particulars required to be included in the advertisement.

RETURN OF DEPOSIT TO BE FILED WITH THE REGISTRAR

Every company who accepts deposit from the public shall on or before 30th June, of every year, file with the Registrar a return in the form prescribed and furnish the information contained therein as on 31st March of that year, duly certified by the auditor of the company.

NON BANKING FINANCIAL COMPANY

1. a financial institution which is a company.
2. a company and has as its principal business of receiving of deposits, under any scheme or arrangement or in any other manner, or lending .

The activities of the non-banking companies accepting deposits from public are regulated by the provisions of the Reserve Bank of India. It is mandatory for all NBFCs to obtain a certificate of registration from RBI under section 45-IA of the Reserve Bank of India Act, even if they do not hold / accept deposits from the public.

****PERIOD OF DEPOSIT**

No NBFC shall accept or renew any public deposit, unless such is repayable after a period of 12 months, but not later than 60 months from the date of acceptance or renewal of the deposit.