Company Law

Summary

For CA Intermediate

About the Author –

Yogesh Verma is a member of the ICAI and graduate from India's premiere undergraduate college – SRCC, DU
With the aim to provide quality education at affordable price he has started Learnzup.com (Online platform for commerce Students)

Prior to entering into teaching industry – he has worked in KPMG, Royal Bank of Scotland, Nomura, RSM and Luthra & Luthra.

Yogesh Verma
Founder – Learnzup.com

He has taught more than 1000 students freely on You-tube since Nov-16 and more than 10000 students have benefitted in some form or the other through his You-Tube channel – Yogesh Verma.

For CA Intermediate Video Lectures – Visit Learnzup.com (Free account creation and free study group facility for students to interact and ask questions)

Disclaimer – While every effort has been made to provide quality content to the students, though there might be some areas where correction is required. Students are requested to contact the author in case there are any amendments required in this book.

Copyright notice - There are many sections which are taken from study material of ICAI – for such content copyright goes to their respective owner. No part of this book can be reproduced without prior permission of the author.

Credits – ICAI Study Material

Index

Sr. No.	Particulars	Page No.
1	Basic Concepts	3
2	Definitions	9
3	Incorporation of Company	13
4	Acceptance of Deposit	28
5	Registration of Charge	34
6	Management & Administration	39
7	Declaration & Payment of Dividend	72
8	Accounts of Companies	80
9	Audit & Auditors	95
10	Prospectus & Allotment of Securities	112
11	Share Capital & Debentures	127

Note – Practicing Study Material/RTP/Exam Questions Is Must

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

CH-1 COMPANIES ACT, 2013 - BASIC CONCEPTS

There are many ways of doing a business – one can start a sole proprietorship business or can form a partnership firm or a limited liability partnership. However once business grows then it becomes essential to form a company because of various advantages it offers – which we will study later on in this chapter.

In order to form a company there must be some procedure to be followed and after forming a company there has to be some checks in place that company is operating as per applicable rules and regulations. To ensure these concerns Companies Act, 2013 is made which states all rules and regulations to be followed in incorporating a company and to be followed consistently even after the company is incorporated. The provisions of companies act are given a section number – each provision has a separate section number.

Let us understand the term "Company".

Company means association of persons for some common objects

As per Prof. Haney – A company is an artificial person created by law having separate entity, with perpetual succession and common seal.

Sec 2(20) of the companies act 2013 – Company means a company incorporated under this act or under any previous company law.

Applicability of Companies Act 2013 – Section 1

Applicable to whole of India

Law is applicable to

- Every company incorporated under this act or under any previous company law
- Insurance company
- Banking company
- Electricity company
- Other company governed by any special act – e.g. State road transport corporation
- Notified **body corporates** – like NHAI, RBI, SEBI

Sec 2(11) Body corporates or corporation includes a company incorporated outside India but does not include –

1) A cooperative society
2) Any other body corporate (not being a company as defined in this act which Central Govt. (CG) may specify)

Note - All companies are body corporates but all body corporates are not companies

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Characteristics of A Company

1) **Separate Legal Entity –** A company is an artificial person having a personality which is distinct from the members constituting it. Company can be sued (court le jana) in its own name by its members as well as outsiders even if a shareholder virtually owns the entire share capital. The **company is a separate legal entity in the eyes of law and is different from its members (Co. apne members se alag hoti hai)**

Case Law – Salomon v/s Salomon & Co. Ltd.

S was a boot manufacturer; he formed a limited company consisting of his wife and a daughter and his four sons as the shareholders all of whom subscribed for one share of £1 each.
S sold his business to the company for £ 38,782. Soon the company ran into difficulties and the financial position was then –
10000 secured debentures of £1 each (issued by Salomon to himself)
20000 fully paid shares of £1 each
Cash £8782
And some £8000 unsecured creditors
Debenture holders appointed a receiver as company went into liquidation and at that time total assets were £6050
Trade creditors demanded whole of company's asset on the ground that the company was a mere agent for Salomon and they are entitled to their payment of their debt in priority to debenture holders (which were issued to Salomon only)

Court rejected these contentions and held that a company on registration has its own existence or personality separate from its members

Case Law – Lee v/s Lee Air Farming Limited

Company formed by Mr. Lee for the purpose of aerial top dressing (fertilizers ko farmland ke upar aircraft se daalna)
Mr. Lee held all shares in the company except 1 share
He voted himself as managing director and also got himself appointed as chief pilot on a salary.
Accidently he killed himself in a plane crash while working for the company

Mrs. Lee (wife of Mr. Lee) went to the company to demand compensation under workmen compensation act but company & Insurance company both denied the compensation citing that Mr. Lee cannot be a worker of the co. - as the same person cannot be employer and employee at the same time.

Mrs. Lee then went to the court against Lee Air Farming Limited where the court held that Mr. Lee and his company was distinct person which had entered into a contractual relationship under which he became the chief pilot and a servant of the company.

In his capacity of managing director - he could on behalf of the company give himself orders. The relationship between himself, as a pilot and the company was that of servant and master.

Lee was a separate person from the company he formed and his widow was held entitled to get the compensation.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

2) **Experience of A Shareholder Is Counted As Experience of A Company –** In case new company formed by merger of 2 or more companies then the experience of merged companies shall become the experience of the resulting company.

Case law New Horizons Ltd V/s Union of India
N ltd applied for a tender but was not accepted by the Tender Evaluation Committee on the ground that co. had nothing on record to show that it had the technical experience required to qualify for tender.

The supreme court held that --- Once it is proved that N ltd is a joint venture – the experience of its various constituents namely Thomas Press India Ltd , Living Media India Ltd., World Media Ltd. and Integrated Information Pvt. Ltd. should be taken into consideration, if the Tender evaluation committee had adopted the approach of a prudent business man.

3) **Limited Liability –** Liabilities of members are limited subject to the following exception:

Company limited by shares - Liability of members is limited upto the amount unpaid on shares held by them in a company limited by shares.

Company limited by guarantee - members liability limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up.

Unlimited company - All members jointly & severally liable for all the debts and liabilities of the company.

4) **One Man Company –** A company where almost entire share capital is held by one person but is still be treated as separate from its members.

5) **Perpetual Succession –** Infinite life – company never dies, members may come and go but company can go on forever.

6) **Separate Property –** Member is not the owner of property of the company either during its existence or it's winding up.

Macaura v/s Northen Assurance Company Limited

A person was holder of almost all of the capital of a timber company and was also a substantial creditor.
However he insured the timber owned by company in his own name. The timber got destroyed by fire however insurance company denied the claim on the ground that timber was owned by the company and not by the person who insured so the insurance company is not liable.

If company had taken the insurance for its assets then co. would be entitled for the compensation.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

7) **Transferability of Shares –** Capital of the company are divided into shares and shares are movable property which can be freely transferred from one person to another in the manner provided by article or association of the company.

8) **Common Seal –** It acts as an official signature of the company and needs to be affixed on share certificate, power of attorney, deeds of contract entered by company and all other documents specified by company in its AOA.

9) **Capacity To Sue And Be Sued –** a company being a body corporate, can sue and be sued in its own name.

10) **Contractual Right –** company being a separate person can enter contracts for its business in its own name.

11) **Limitation On Company's Action –** Company cannot go beyond the powers of its charter – i.e. the Memorandum of Association (MOA discussed later in book). The objects of the company are defined in MOA within which company needs to act.

12) **Separate Management –** Members can derive profit from the company without worrying about its management as company can be administered and managed by its own managerial personnel.

13) **Termination of Existence –** Company is created by law and its existence can be terminated by operation of law i.e. by means of winding up.

Is company a citizen – Though company is regarded as a legal person but it is not a citizen – same conclusion provided by Supreme Court in case of State Trading Corporation of India Ltd. v/s Commercial Tax Officer.

However company is resident where it is incorporated or where generally its meetings are held for taking key business decisions.

Lifting of Corporate Veil

Company is a separate person and its members are separate hence there is a veil (*mask/cover/parda*) between the two but when corporate veil is used for an unjust purpose, the courts have lifted the veil of corporate personality and have held the person behind the veil to be guilty & liable -- this doctrine is known as lifting of corporate veil.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Lifting of Corporate Veil Under Judicial Interpretations (Not In New Course)

1) To Determine The Character Of The Company i.e. To Find Out Whether Co. Is Enemy Or Friend: It is true that, unlike a natural person, a company does not have mind or conscience; therefore, it cannot be a friend or foe. It may, however, be characterised as an enemy company, if its affairs are under the control of people of an enemy country (country with which we have a war). For this purpose, the Court may examine the character of the persons who are really at the helm of affairs of the company – Case Law ***Daimler Co. Ltd. vs. Continental Tyre & Rubber Co.***

2) To Protect Revenue/Tax:
(i) Where corporate entity is used to evade or circumvent tax, the Court can disregard the corporate entity and held persons behind the co. liable.

(ii) In ***[Dinshaw Maneckjee Petit],*** it was held that the company was not a genuine company at all but merely the assessee himself disguised under the legal entity of a limited company. The assessee earned huge income by way of dividends and interest. So, he opened few companies and purchased their shares in exchange of his income by way of dividend and interest. This income was transferred back to assessee by way of loan. The Court decided that the private companies were a sham (false) and the corporate veil was lifted to decide the real owner of the income.

3) To Avoid A Legal Obligation: Where it was found that the sole purpose for the formation of the company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction.

Workmen of Associated Rubber Industry ltd., v. Associated Rubber Industry Ltd.: The facts of the case are that "A Limited" purchased shares of "B Limited" by investing a sum of INR 4,50,000. The dividend in respect of these shares was shown in the profit and loss account of the company, year after year. It was taken into account for the purpose of calculating the bonus payable to workmen of the company.
The co. then T/F shares of B Ltd to its subsidiary C Ltd to reduce its profits as dividend would then be received by its subsidiary resulting in lower payment of bonus. Supreme court held that the new company so formed had no assets of its own except those transferred to it by the principal company, with no business or income of its own except receiving dividends from shares transferred to it by the principal company and serving no purpose except to reduce the gross profit of the principal company so as to reduce the amount paid as bonus to workmen.

4) Formation Of Subsidiaries To Act As Agents: A company may sometimes be regarded as an agent or trustee of its members, or of another company, and may therefore be deemed to have lost its individuality in favour of its principal. Here the principal will be held liable for the acts of that company.

In the case of ***Merchandise Transport Limited vs. British Transport Commission (1982)***, a transport company wanted to obtain licences for its vehicles, but could not do so if applied in its own name. It, therefore, formed a subsidiary company, and the application for licence was made in the name of the subsidiary. The vehicles were to be transferred to the subsidiary company. Held, the parent and the subsidiary were one commercial unit and the application for licences was rejected.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

5) Company Formed For Fraud/Improper Conduct Or To Defeat Law: Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent law, to defraud creditors or to avoid legal obligations.

[Gildford Motor Co. vs. Horne]

Horne was formerly a managing director of the Gilford Motor Co Ltd. His employment contract stipulated not to solicit customers of the company if he were to leave employment of the co. Horne was fired, thereafter he set up his own competing business but receives a notice in this regard so he formed a company JM Horne & Co Ltd, in which his wife and a friend called Mr Howard were the sole shareholders and directors. The court held that the company was a device to allow Horne to circumvent the employment agreement, hence lifted the corporate veil.

Lifting of Corporate Veil Under Companies Act 2013

In the following situations – Corporate Veil will be lifted

1) **False or Incorrect Information By Company –** where co. incorporated by furnishing any false or incorrect information or by suppressing any material fact or information in any of the documents Sec 7(7)

2) **Winding Up To Defraud Creditors –** where it appears to tribunal that business is carried out to defraud creditors then it may declare persons personally liable who were responsible for defrauding creditors. Sec 339(1)

3) **Issued Prospectus To Defraud Applicants –** then director, promoter, expert or person authorised to issue prospectus will be personally responsible Sec 35(3)

4) **Acceptance Of Deposits To Defraud Depositors –** where company fails to repay the deposit or interest thereon as per sec 74 and it is proved that deposit had been accepted to defraud the depositors or for a fraudulent purpose – every officer of the co. who was responsible for the acceptance of such deposit shall be personally responsible without any limitation of liability Sec 75(1)

5) **Report Made By Inspector That Fraud Has Taken Place In The Co.** and due to such fraud any director, KMP, other officer has taken any undue advantage or benefit, the CG may file an application to tribunal and tribunal may held such director or KMP personally liable Sec 224(5)

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

CH-2 DEFINTIONS

Definitions are generally given in section 2 of every act and is applicable for the entire act. That is wherever these words are used in the act - it will have the same meaning as provided under section 2 – however if the same word has a different meaning in some chapter of the companies act then only for that chapter instead of Sec 2 – specific definition given in that chapter would be applicable.

Important Definitions

1) **Associate company -** means a company in which the other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

2) **"Significant influence"** means control of **at least twenty per cent** of total voting power, or control of or participation in business decisions under an agreement.

3) **"Document"** includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form.

4) **Register of companies** means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act.

5) **Registrar** means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering companies and discharging various functions under this Act.

6) **Unlimited company** means a company not having any limit on the liability of its members;

7) **Voting right** means the right of a member of a company to vote in any meeting of the company or by means of postal ballot.

8) **Sweat equity shares** means such equity shares as are issued by a company to its **directors or employees** at a **discount** or for consideration, **other than cash**, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

9) **Expert** includes an engineer, a **Valuer**, a **Chartered Accountant, a Company Secretary, a Cost Accountant** and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force.

10) **Officer** includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

11) Member, in relation to a company, means—

(i) The **subscriber to the memorandum** of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members even if the subscription money has not been paid to the company;

(ii) Every **other person who agrees in writing** to become a member of the company and whose name is entered in the register of members of the company;

(iii) Every **person holding shares of the company** and whose name is entered as a beneficial owner in the records of a depository.

11) Key managerial personnel, in relation to a company, means—

(i) the Chief Executive Officer **(CEO)** or the managing director or the manager;
(ii) the company secretary **(CS)**;
(iii) the whole-time director **(WTD)**;
(iv) the Chief Financial Officer **(CFO)**;
(v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and
(vi) such other officer as may be prescribed;

12) Public company means a company which—

(a) is not a private company; and
(b) has a minimum paid-up share capital as may be prescribed (currently not yet prescribed)

Note - A private company which is subsidiary of a public co. will be deemed to be public co.,

13) Private company means a company having a minimum paid-up share capital as may be prescribed (currently not prescribed), and which by its articles,—

(i) **restricts** the right to **transfer** its shares;
(ii) except in case of One Person Company, **limits** the number of its **members** to **two hundred**:
iii) prohibits any invitation to the public to subscribe for any securities of the company;

Notes –

a) Joint members will be treated as one member +
b) Persons who are in the employment of the company; + who were members & were in the employment of the company but now have ceased to be in employment - shall not be included in the number of members.

The requirement of having a minimum paid up share capital shall not apply to a section 8 company in both public & pvt. co. (provided it has not defaulted in filing financial statements or annual return)

14) Small company means a company, other than a public company,—

(i) **paid-up share capital** of which does **not exceed fifty lakh** rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; **and**

(ii) **turnover** of which as per profit and loss account for the immediately **preceding financial year** does **not exceed two crore** rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Holding company or a subsidiary company; section 8 co. or a company/body corporate governed by any special Act – cannot be a small company.

15) Subsidiary company or **Subsidiary**, in relation to any other company (that is to say the holding company), **means a company in which the holding company** -

(i) **controls** the composition of the Board of **Directors**; or
(ii) exercises or **controls more than one-half** of the total **voting power** either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed. (maximum 2 layers i.e. subsidiary ki subsidiary tak hi ho sakti hai – however in limit of 2 subsidiary do not count wholly owned [100%] subsidiary)

Explanation—For the purposes of this clause,—

Holding co. can control a company directly or through any of its other subsidiaries

The composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

16) Government company means any company in which **not less than 51% of the paid-up share** capital is held by the **Central Government**, **or** by any **State Government** or Governments, or partly by the Central Government and partly by one or more State Governments, **and includes** a company which is a **subsidiary company of such a Government company.**

17) Financial statement in relation to a company, includes -
(i) a **balance sheet** as at the end of the financial year;
(ii) a **profit and loss** account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
(iii) **cash flow statement** for the financial year;
(iv) a statement of **changes in equity**, if applicable; and
(v) any **explanatory note** annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv)

Provided that the financial statement, with respect to One Person Company, small company, dormant company and private co. (if such pvt. co. is a start up), may not include the cash flow statement;

18) Financial year, in relation to any company or body corporate, means the **period ending on the 31st day of March every year**, and where it has been **incorporated** on or **after the 1st day of January** of a year, the period ending on the **31st** day of **March** of the **following year**.

However if a company is subsidiary/associate of a foreign co. and is required to prepare consolidated accounts outside India then on application made to central government, differeny financial year may be permitted.

Existing company or body corporate shall comply with this provision within a period of two years from such commencement.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

19) **Net worth** means the **aggregate** value of the **paid-up share** capital and all **reserves** created **out of** the **profits**, **securities premium** account and **debit or credit** balance of **profit and loss** account, **after deducting** the aggregate value of the **accumulated losses**, **deferred expenditure** and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

20) Relative Sec 2(77), with reference to any person, means anyone who is related to another, if—
(i) they are members of a Hindu Undivided Family;
(ii) they are husband and wife; or
(iii) one person is related to the other in such manner as may be prescribed;

Rule 4 given in the Companies (Specification of Definitions Details) Rules, 2014 provides of the List of Relatives in terms of Clause (77) of section 2 –

(1) Father including step-father
(2) Mother including step-mother
(3) Son including step-son.
(4) Son's wife
(5) Daughter
(6) Daughter's husband
(7) Brother including step-brother
(8) Sister including the step-sister

21) Related party, with reference to a company, means—
(i) a director or his relative;
(ii) a key managerial personnel (KMP) or his relative;
(iii) a firm, in which a director, manager or his relative is a partner;
(iv) a private company in which a director or manager or his relative is a member or director;
(v) a public company in which a director and manager is a **director and holds along with his relatives**, more than **two per cent** of its paid-up share **capital**;
(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act (except when given in professional capacity).

(viii) any body corporate which is-
(A) a holding, subsidiary or an associate company of such company;
(B) a subsidiary of a holding company to which co. is also a subsidiary; or
(C) an investing company or the venturer of the company;

Explanation.- For the purpose of this clause, "the investing company or the venturer of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

CH-3 INCORPORATION OF COMPANY

Before incorporating a company, let us first understand the types of companies which can be formed.

Types of Companies

1) **Public Company** – Min. 7 members required – they use word “Ltd” at the end of their name
2) **Private Company** – Min. 2 members required – they use word “Pvt Ltd” at the end of their name
3) **One Person Company** – 1 person required (but he/she needs to specify one nominee who will take over the company in case of his/her death or incapacity to contract). Further nominee can be changed anytime.

*Further the above companies can be limited (that is liability of members is limited upto the share capital taken by them or guarantee provided by them) or it can be unlimited (members have unlimited liability – however it is generally not found in India).

* Govt. co. are not required to put Pvt. Ltd. or Ltd. if they have not defaulted in filing its financial statements or annual return.

If number of members in public or private falls below the prescribed limit and company doesn’t correct the same within 6 months then on expiry of 6 months every member of the company who is aware of this fact shall be severally liable (can also be sued severally) for the payment of whole debts of the company taken after those 6 months.

Before we go futher let’s understand how company works – Company is a separate entity where owner invest money (share capital) and directors/top level management takes care of the business.
Liability of the owner is limited to the share capital taken by him [E.g. Mr A invested 10 Lakhs in ABC ltd. then maximum amount Mr. A can lose if company fails is 10 Lakhs].

However in most of the companies the majority shareholder becomes director of the company to controls the affairs of the company – like Mukesh Ambani is a majority shareholder and also managing director of Reliance Industries Ltd.

To make any decision – Board meeting of directors, General meetings of members are held – and resolutions (ordinary >50% agree or special >75% agree) are passed therein to ensure majority person agreed on the same.

Further various details about the company like its name, object, registered place, authorised share capital and liability of the members are written a document called Memorandum of Association (MOA) – This document is publicly available and it is presumed that anyone dealing with the company has a knowledge of details provided in MOA.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Further every company has its internal rules and regulations (between members & company) – This information is written in a document called articles of association (AOA) and is not publicly available.

Steps For Company Incorporation (Done Online Now A Days)

1) Obtain a digital signature certificate of directors/subscribers – this is required to verify the documents filed (instead of signature - digital signatures are used)

2) Obtain director's identification number (DIN) for directors – This is director's ID

3) Get the name of your company approved by MCA- done online

4) File documents with registrar –
    a. Memorandum of Association (MOA) and Article of Association (AOA) duly signed by subscibers to MOA
    b. Declaration by person who is engaged in the formation of the company (advocate, practicing CA/CS/CMA) and by person named in the AOA (directors/manager/ secretary) that all requirements of this act and rules in respect of registration & incidental matter have been complied with
    c. Declaration that all the subscribers have paid the amount for shares agreed to be taken by them
    d. Declaration from Susbscribers to MOA and first directors in AOA – that –
        i. he is **not convicted** of any offence **in** promotion/**formation of any company**
        ii. he has not been found guilty of any fraud or of any breach of duty to any company under companies act during the last five years and
        iii. that all the documents filed with the Registrar for registration of the co. contain correct and complete information which is true to the best of his knowledge and belief;
    e. The **address for correspondence** till its registered office is established;
    f. Particulars (such as name, surname, address, nationality, DIN) of first directors and every subscriber to the MOA
    g. Interest of first directors in other firm/body corporate along with their consent to act as a director of the company

5) Registar shall register all the documents and information in the register and based on those documents shall issue a Certificate of incorporation (COI)

6) Company will be allotted a corporate identification number (CIN) on their COI

* Note company shall maintain and preserve copies of documents and information filed with ROC - at its registered office

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Consequences of Furnishing False/Incorrect Information/Suppression of Material Facts

1) **During Incorporation Process –** Person who is aware of this fact – liable for action or fraud u/s 447
2) **Post Incorporation –** After incorporation if it is proved that co. formed on the basis of incorrect information or by suppressing material information in any document/declaration filed then promoters/first directors and person making the declaration shall be liable for action for fraud u/s 447.

Further Tribunal may on an application made to it and after being satisfied can pass an order for -

a) Name removal
b) Winding up
c) Unlimited Liability
d) Change of MOA/AOA (if in public interest of interest of co./members/creditors)
e) Any other order as it may deems fit

Provided before making any such order:

1) The co. shall be given a reasonable opportunity of being heard and
2) The tribunal shall take into consideration, the transactions **entered** into by the company

Simplified Proforma For Incorporating Company Electronically (SPICe)

The Ministry of Corporate Affairs (MCA) has taken various initiatives for ease of doing business. In a step towards easy setting up of business, MCA has simplified the process of filing of forms for incorporation of a company through Simplified Proforma for incorporating company electronically.

One Person Company (OPC) – One Member Company

Use the word "One Person Company" below the name of the such company

1) Every OPC should provide a nominee name in MOA
2) Nominee should give his consent – filed with ROC at the time of incorporation
3) Nominee can withdraw his consent later on
4) Member of OPC may change nominee anytime – inform the Co. & Co. informs the ROC
5) Change of nominee name is not treated as change of MOA
6) Only natural person who is Indian citizen and resident of India (>=182 days stay in previous FY) can become member or nominee of OPC
7) One person can become member of only one OPC and one person can be nominee of maximum one OPC – If any person becomes member of 2 OPC (1 he is already, another he becomes because of being nominee) – then correct this within 182 days.
8) Minor cannot become member/nominee of OPC
9) OPC cannot be converted into section 8 co. (charitable co.), however OPC can be converted into pvt or pub. co. but only after 2 years of incorporation or
   If its capital >50Lakhs or avg. turnover > 2crores.
10) OPC cannot carry out non-banking financial investment activities

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Section 8 Company

Companies with charitable objective are granted certain exemptions from the companies act – however to incorporate a section 8 company - license from central government (CG) is required.

Benefits available – Can call general meeting of members by giving 14 days' notice instead of 21 days + Requirement of minimum no. of directors, independent directors doesn't' apply.
No need to constitute nomination & remuneration committee and shareholders relationship committee.

For what charitable objectives section 8 co. can be incorporated ?

To promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc. Such company intends to **apply its profit in promoting its objects** and **prohibiting** the payment of any **dividend** to its members.

Section 8 company are limited liability company but not required to put word pvt ltd. or ltd. in their name.

After obtaining the license – Application can be made to ROC for registering a section 8 company – ROC then registers the company under this act.

Following points to be noted related to section 8 company –
1) A firm may be its member
2) Cannot alter MOA or AOA except with CG approval (powers deleated to ROC)
3) It can convert into company of any other kind by pasing a special resolution at general meeting

Revocation of License of Section 8 Co. By Central Govt. (Powers Delegated To Regional Director) - When?

1. Co. contravenes any condition which was put while issuing license or
2. Where affairs of the co. are conducted fraudulently or
3. Violated the object of the co. or
4. Prejudicial to the interest of the co. or

CG will give a written notice for revolation of licence an opportunity of being heard to the company and if it deems fit – can cancel the license – ROC then shall put the word "Pvt Ltd" or "Ltd" on its name.

If license is revoked then if it is in the public interest – CG can order winding up of the company or order its amalgamation with another section 8 co. with similar object. However before making any order opportunity of being heard will be given to the company.

If wound up or dissolved – then asset remaining after paying all debts will be transferred to another sec 8 co. with similar object – subject to the conditions put by the Tribunal.
Alternatively proceeds may be transferred to insolvency & bankruptcy fund.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Penalty for contravention of provision under this section – Fine 10 Lakhs to 1 Crore on company + Its directors/officer in default imprisonment <= 3 years or fine 25K to 25Lakhs or both

Effects of Registration of The Company Section 9

1) From the date of incorporation, the co. becomes a legal person separate from the incorporators; and there comes into existence a **binding contract** between the **company** and its **members** as evidenced by the MOA & AOA.

2) It has **perpetual existence** until it is dissolved by liquidation or struck out of the register.

3) A **shareholder** who buys shares, does **not buy any interest in the property of the company** but in certain cases a writ petition will be maintainable by a company or its shareholders

4) A company may purchase shares of another company and thus become a controlling company – however each co. will remain a separate person

5) Even if **entire share capital** has been contributed by the **Central Govt.** and all its shares are held by the **President of India** and other officers of the CG – it does not make a company an agent either of the President or the CG.

Memorandum of Association (MOA) Section 2(56)

It is the base document for the formation of the company and alongwith the AOA and is regarded as the Constitution of the Company.

All the contents of MOA & AOA needs to be in compliance of the Companies Act and other applicable legislations. Company law is superior than MOA & AOA.

Section 6 states that MOA or AOA cannot override the provision of the act but if any other section specifically mentions that article is superior then we will treat it accordingly for the matters contained in that section.

Why MOA Is Registered With ROC

1) It **contains** the **object** for which the company is formed and therefore identifies the possible scope of its operations beyond which its actions cannot go.

2) It **enables shareholders, creditors** and all those who deal with company to **know** what its **powers** are and what activities it can engage in.

3) A memorandum is a **public document** under Section 399. Consequently, **every person** entering into a contract with the company is **presumed to have the knowledge** of the conditions contained therein

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

4) The shareholders must know the purposes for which his money can be used by the company and what risks he is taking in making the investment.

Co. cannot depart from provisions of MOA and cannot enter into a contract or engage in any trade or business which is beyond the power confessed on it by MOA. If it does so, it would be ultra vires the company and is void.

Contents of MOA - Clauses

1) Name Clause – Name of the Co. with last word as "Ltd." for public co. and "Pvt. Ltd." for private Co. – however section 8 company is exempt from using Ltd/Pvt Ltd.

2) Domicile Clause - State in which registered office of the co. is situated – co. has to submit the details of registered office together with verification of registered office <=30 days of incorporation. If ROC has the reason to believe that co. is not carrying on any business – he may order physical verification of registered office of the co. and can order removal of name of the co.

3) Object of the company and any matters necessary in furtherance thereof

4) Liability of members of the co. (whether ltd. or unlimited) – If ltd. then whether –

a. **Limited by shares –** Amount of authorised share capital and its division thereof into shares of fixed amount and no. of shares subscribers to MOA agreed to take – member's limited will be limited upto the amount unpaid on shares held by member

b. **Limited by guarantee** – Amount which each member undertakes to contribute –

   i. To assets of the co. in the event of its winding up – for debts incurred by the co while he is a member or within 1 year after he ceases to be a member

   ii. To costs, charges and expenses of winding up and

   iii. For adjustment of the rights of the contributories among themselves

5) Subscription Clause – File MOA and AOA signed by susbcribers to ROC

*Instead of making a new MOA & AOA – Standard format can be picked as given in Schedule I of the companies act.

Provisions Related To Company's Name

Name contained in MOA–

1) Shall not be Identical or resembles to the name of any existing company registered under companies act
2) Its use should not constitute an offence under any law for the time being in force
3) It should not be **undersirable** in the opinion of central government (power delegated to ROC)

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Name is considered undesirable if –

1) Any word or expression which is likely to give the impression that the company is in anyway **connected with**, or having the patronage of, the CG/SG/Local authority/Corporation constituted by CS/SG under any law for the time being in force.
2) Such word or expression, as may be **prescribed –** however with approval of CG can be used

Companies (Incorporation) Rules, 2014 –

Rule 8B - Following words cannot be used without CG approval - Board; Commission; Authority; Undertaking; National; Union; Central; Federal; Republic; President etc.

Requirements IRDA/RBI/SEBI/MCA to be complied with – If the proposed name includes Insurance, Bank, Stock Exchange, Venture Capital, Asset Management, Nidhi, Mutual Fund etc..

Rule 9 - Reservation of Name

A person may make apply for reserving the name of the proposed company or new name of existing company to ROC – in such form and manner & with such fee as may be prescribed
Based on application – ROC shall reserve the name –

1) For 21 days from date of its approval (in case of new company formation) and
2) For 60 days from date of its approval (in case application is made for change of name of the existing company)

Note - If it is found the name reservation is applied by furnishing wrong/incorrect information then –

1) If co. has not been incorporated – reserved name shall be cancelled – person who has made application liable to penalty upto 1 Lakh
2) If company has been incorporated – ROC after giving the co. opportunity of being heard -
    a. Either direct the co. to change its name within 3 months, after passing ordinary resolution or
    b. Strike off the name from register of companies or
    c. Make petition for winding up of the co

Cases where company has to change its name

1) **If company registered with a name which is identical** (in the opinion of CG) with the name of existing co. then CG may direct the co. to change its name and co. has to change the name <=3 months of such direction by passing an ordinary resolution.

2) **When holder of a trademark - make an application to CG** that name of the co. is too identical with his/her registered trademark. For this application can be made <= 3years of incorporation of co/ change of name of the co. and if CG finds it identical to existing registered trademark – it may direct the co. to change its name. Co. then has to change its name <= 6 months of such direction by passing an ordinary resolution.

Doctrine of Ultra Vires

Anything done by co. which is done in contravention of its MOA is ultra vires and is void – i.e. it does not binds the co. - The company cannot make it valid, even if every member assents to it. Co. or contracting party cannot sue on it. (cannot go in court).

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

This rule is meant to **protect** shareholders and the creditors of the company

However If any act is ultra vires the AOA , then company can alter its AOA to make it valid – If act is ultra vires (beyond the powers of) directors only, the shareholders can ratify it.

Case law Ashbury Railway Carriage and Iron Co. Ltd. vs Riche

The company entered into a contract with M/s. Riche, a firm of railway contractors to finance the construction of a railway line in Belgium. On subsequent repudiation (cancellation) of this contract by the company on the ground of its being ultra vires, Riche brought a case for damages on the ground of breach of contract, as according to him the words "general contractors" in the objects clause gave power to the company to enter into such a contract and, therefore, it was within the powers of the company. More so because the contract was ratified by a majority of shareholders.

Judgement - The term "general contractor" was interpreted to indicate as the making generally of such contracts as are connected with the business of mechanical engineers.

The Court held that if every shareholder of the company had been in the room and had said, "That is a contract which we desire to make, which we authorise the directors to make", still it would be ultra vires. The shareholders **cannot ratify** such a contract, as the contract was ultra vires the objects clause, which by Act of Parliament, they were prohibited from doing.

Alteration of MOA Section 13

1) **Name Clause –** Changing name of the company requires special resolution and approval of central govt. (powers are delegated to ROC) – however no approval necessary for adding/deleting the word "Private". Once name is changed a new incorporation certificate is issued by ROC. Old name should be also be written as "former name XXXX" for 2 years after name change is effected.

   Where co. change its name or obtains a new name then within 15 days from such change – it shall inform ROC by giving a notice along with order of CG – ROC then make necessary changes in the register, certificate of incorporation & MOA.

   In case of default – Penalty –
   Co. – 1000 per day till default continues and
   Officer in default 5000 to 1 Lakhs

2) **Domicile Clause –** This clause mentions the state in which company is incorporated and in order to change the state – approval of CG (powers are delegated to regional director) is required – CG shall dispose of the application of change of place < 60 days however before passing the order CG may satisfy itself that-
   a) the alteration has the **consent** of the **creditors**, **debenture-holders** and other persons **concerned** with the company, or
   b) the sufficient provision has been made by the company either for the due **discharge** of all its debts and obligations, or
   c) adequate **security** has been provided for such discharge.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Special resolution with approval of CG filed with ROC of each state and
ROC of the state where office is shifted shall issue a fresh certificate of incorporation within 30 days of receiving confirmation.
Further change of registered office can happen -

Within same city – Only board resolution is required – notice to be given to ROC within 30 days of resolution.

Within same state (from one city to another city) – Special resolution required and notice to ROC to be given within 30 days of passing the resolution

Within same state (from one ROC's jurisdiction to another) – Special resolution required + permission of regional director – RD shall confirm within <=30days from receipt of application and co. shall file the confirmation to ROC <=60 days of the date of confirmation, ROC then certify the registration <=30days from date of filing of such confirmation.

Default in above provisions – company & officer in default penalty 1000 per day upto 1 Lakhs

3) **Object Clause –** Company which raise money from public generally specifies the object for which it will be used but if later on after raising the money co. change its object to apply unutlized amount on something else then co. first needs to pass a special resolution through postal ballot (courier) and
    a. Publish details of resolution in newspaper (one regional and one English) + place on co. website if any and
    b. Promoters/controlling shareholders should give dissenting shareholders (who do not agree for object change) an opportunity to exit

*ROC shall then register alternation in MOA and certify registration <=30 days of date of filing special resolution

4) **Liability/Capital Clause –** Special resolution required to change this clause. Further any alteration in MOA (by a co. limited by guarantee & not having share capital) which intends to give a person right to participate in the divisible profits of the co. otherewise than as a member (bina member hokar bhi) is void

Sec 15 - Every alteration made in MOA or AOA shall be noted in every copy of MOA or AOA. If a company makes any default in complying with the states provisions then co. & its defaulting officer shall be liable to a penalty of 1000 for every copy of MOA or AOA issued without alteration.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Article of Association [AOA] Section 5

Contents of AOA –

(1) Article of association of a company contains internal **rules and regulation** for the management of the company.

(2) Inclusion of matters: A company may also include such **additional matters** in its articles as may be considered necessary for its management.

(3) Entrenchment (difficult banana/rokna from making changes): Usually an AOA may be altered by passing special resolution but entrenchment makes it more difficult to change it. So entrenchment means making something more protective.

AOA may states that some conditions or procedures which are more restrictive than special resolution which needs to be applied to make a change in a particular clause of AOA.

The provisions for entrenchment shall only be made on formation of a company

If entrenchment provisions are to be inserted after the incorpoaration then

a) **In case of private co. –** Amendment in AOA should be agreed by all the members of the company &
b) **In the case of a public co. -** Amendment in AOA should be done by a special resolution

Where the AOA contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

(4) There are certain standard formats of AOA given in schedule I in forms specified in **Tables, F, G, H, I and J (as may be applicable to such co.)** – company may adopt all or any of the regulations contained in the model AOA.

(5) Company registered after the commencement of this Act: All the regulaions of model AOA will apply to the company unless a contrary provision appear in the company's own AOA.

(6) Section not apply on company registered under any previous company law: Nothing in this section shall apply to the AOA of a company registered under any previous company law, unless amended under this Act.

Doctrine of Indoor Management

This doctrine states that person dealing with the co. cannot be assumed to have knowledge of internal problems of the company. He can simply assume that all internal proceedings are as per documents submitted with the Registrar of Companies.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Stakeholders are entitled to take it for granted that necessary meetings were held and resolutions therein were passed properly.

However "Doctrine of Constructive Notice" protects a company against outsiders, however the **doctrine of indoor management** protects outsiders against the actions of a company. This doctrine is a possible safeguard against the possibility of abusing the doctrine of constructive notice.

Basis For Doctrine of Indoor Management

1) What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but not know the information he/she is not privy (party) to.

2) The company could escape creditors by denying the authority of officials to act on its behalf.

Exceptions to Doctrine of Indoor Management (Applicability of doctrine of constructive notice) - In these cases company is not liable -

1) **Knowledge of irregularity:** In case this 'outsider' has **actual knowledge** of irregularity within the company, the benefit under the rule of indoor management would no longer be available. In fact, he/she may well be considered part of the irregularity**.**

2) **Negligence:** If, with a minimum of effort, the irregularities within a company could be discovered, the benefit of the rule of indoor management would not apply. The protection of the rule is also not available where the party does not make proper inquiry.s

3) **Forgery:** The rule does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgeries committed by its officers.

Effect of Memorandum And Articles [Section 10]

It binds the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member.

It means that, on the basis of MOA and AOA:
a) Company is liable to members
b) Members are liable to company
c) But normally members are not liable to each other
All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company. [For example a company can recover call in arrear from a member as forcefully as it is recovering loan due]

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Alteration of Articles [Section 14]

AOA is subordinate to MOA and MOA is subordinate to companies act – so they can't contradict the provisions of their higher authority.

Matters as to which the memorandum is silent can be dealt with by the alteration of article

To alter AOA – special resolution is required
For conversion of companies –

1) **Pvt. to public** – Just remove restrictions put for private companies – it will automatically becomes a public company
2) **Public to private** – special resolution not valid unless approved by an order of central government.

However old application for conversion pending before tribunal shall be disposed in accordance with old company law.

File Alteration – Every alteration (& copy of order of CG) needs to be filed with ROC with printed copy of altered AOA <=15 days – upon which ROC shall register the same

Once alteration is registered, it will be valid as if it was originally contained in the AOA.

Every **alteration** made in articles of a company shall be **noted in every copy** of the articles, as the case may be

Penalty for default – Company & every officer in default shal be liable 1000 per copy of AOA issued (without alteration).

Note – Any member may demand (upon payment of fee) - MOA, AOA, Agreement/Resolution u/s 117 – not embodied in MOA & AOA

Company & officer in default has to supply the above within 7 days of the request otherwise 1000 penalty for each day upto 1 lakhs

Labeling of Company

Every company shall—

1) Affix its name and address (in legible letters) of its registered office on the outside of every office or place in which its business is carried on,it should also be in the language used in that locality
2) Have its name engraved in legible characters on its common seal, if any;
3) Get its name, address of its registered office and the Corporate Identity Number along with telephone number, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and
4) Have its **name** printed on hundies, promissory notes, bills of exchange and such other **documents** as may be prescribed:

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Process of Conversion of Company From One Class To Another Class of Co. Sec 18

1) Alter AOA & MOA
2) File application with ROC – and ROC after satisfying himself shall close the former registeration and issue a fresh certificate of incorporation
3) Company's debt, liabilities etc. shall have no impact on account of conversion

Subsidiary Company Not To Hold Shares In Its Holding Company [Sec 19]

No company shall, either by itself or through its nominees, hold any shares in its holding company &
No holding company shall allot or transfer its shares to any of its subsidiary companies and
Any such allotment or transfer of shares of a company to its subsidiary company shall be **void**:

Company which does not have shares – consider that as interest of its members

However in below situation subsidiary co. can hold shares in holding co.

a) Where the subsidiary company holds such shares as the **legal representative** of a deceased member of the holding company; or

(b) where the subsidiary company holds such shares as a **trustee**; or

(c) where the subsidiary company is a shareholder even before it became subsidiary co. to the holding co.

However, the subsidiary company can vote under clause (a) & (b) above.

E.g. A Ltd. has invested 51% in the shares of PQR Pvt. Ltd. on 31 March 2020. PQR Pvt. Ltd. have been holding 2% equity of A Ltd since 2011. PQR Pvt. Ltd. can continue to hold 2% share in its holding co but cannot increase its equity beyond that 2% on or after 31 March 2020.

Commencement of Business Etc. [Section 10A]

Company cannot commence its business unless –

1) A **declaration** is filed by a director within a period of **180 days** of the date of incorporation of the company in such form and verified by practing CA/CS or CMA, with the **Registrar** that every subscriber to the memorandum has **paid** the value of the shares agreed to be taken by him on the date of making of such declaration – and

2) The company has filed with the Registrar a **verification of its registered office** as provided in sub-section (2) of section 12.

Co. requiring any approval of sectoral regulators like RBI/SEBI etc.. then their approval shall also be attached with the declaration.

In case of default – Penalty – On co. 5000 and on every officer in default – 1000 for each day till default continues upto 1 lakh

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Service of Documents [Section 20]

Once company is registered then any communication (serving documents) -

1) By ROC to Company is done through -

a. Registered post
b. Speed post
c. Courier service
d. Leaving it at registered office
e. Means of such electronic or other form

2) By company to ROC or to its members is done through –

a. Post
b. Registered post
c. Speed post
d. Courier
e. Delivering at office or address
f. By such electronic mode as may be prescribed

Courier means where proof of delivery is provided

However, a member may request for delivery of any document through a **particular mode**, for which he shall pay such **fees** as may be determined by the company in its annual general meeting

Nidhi co. only required to serve notice to those member who hold more than INR 1000 face value or > 1% of total paid up share capital of the Nidhi co. whichever is less. For informing other shareholders Nidhi co. can publish notice in newspaper (which is widely circulated in the district where registred office is situated) and put the same on its notice board.

Note – In case of delivey by post – such service shall be deemed to have been effected –

1) **In case of notice of meeting** – at expiration of 48 hours after letter containing same is posted; and
2) **In any other case –** at the time the letter would be delivered in the ordinary course of post

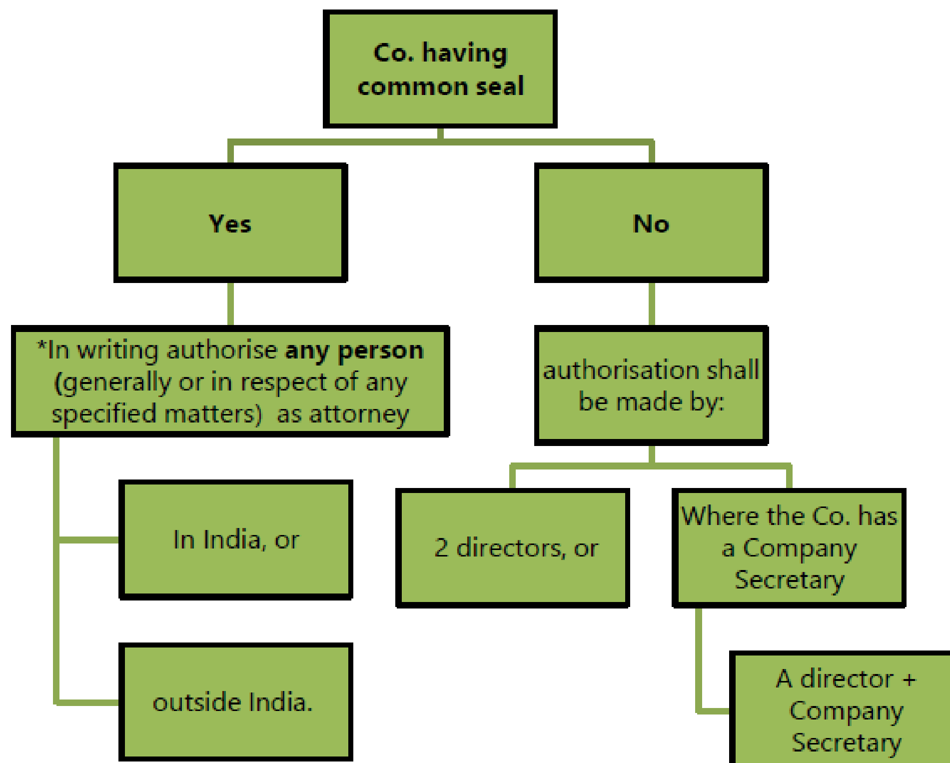
As per section 21 documents, proceedings, contracts can be authenticated by –

1) Any key managerial personnel
2) An officer or employee of the co. duly authorized by the board in this behalf

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Execution of Bill of Exchange, Promisory Note, Hundi Etc.

A company may or may not have a common seal – where it has then it has to affix the same for specified matters, execution of deeds on behalf of the company.



© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Ch-4 ACCEPTANCE OF DEPOSIT BY COMPANIES [Companies (Acceptance of Deposits) Rules, 2014]

Sec 2(31) Deposit includes money received by way of -
- Deposit
- Loan
- In any other form

Repayment of deposit is time-bound + It can by either secured or unsecured

Sec 2(1)(d) Depositor means –
- Any member of private or public company who has deposited money with his company or
- Any person (whether or not a member) who has deposited money with a public company

This means private companies cannot accept deposit from the public

Who can accept deposit from Public [Eligible Company] Sec 76(1) Rule 2(1)(e)
Should be a public co. + Net worth >= 100 crore or Turnover >=500 crore + Consent of members by special resolution passed in General meeting + Submit copy of special resolution with ROC

Note – If deposit is within the limits specified u/s 180(1)(c) then ordinary resolution can be passed instead of special resolution.
Sec 180(1)(c) – BOD can borrow upto paid up share capital + free reserves -- amount greater than that requires special resolution

Exempted Companies [No restriction on deposits] - Proviso to Sec 73(1)
Banking company, NBFC, housing finance company, other companies as specified by central government in consultation with RBI

Amount Not Considered As Deposit – Rule 2(1)(C) – Companies (Acceptance of Deposits) Rules, 2014

1. **Amount received from -** CG/SG/LA/Statutory Corporation/foreign government/banks or public financial institutions as loan/another company/as commercial paper/director of co. or director's relative in case of pvt. co./ employee <=annual salary as non-interest bearing security deposit

2. Amount received from any other source whose repayment is guaranteed by CG/SG

3. Subscription amount received from issue of any security (If security not allotted <= 60 days then <=15 days refund the amount otherwise it will be treated as deposit)

4. Issue of bonds/debentures which are
    a. Either compulsorily convertible into shares <= 10 years or
    b. Secured by first charge on company's tangible assets + value of bonds/debentures <=FMV of the assets on which charge is created

5. Amount received from issue of non-convertible debentures which are listed on recognised stock exchange
6. Amount accepted by Nidhi/Chit fund company/other collective investment scheme

7. Amount brought by promoters or their relatives as unsecured loan on a stipulation (condition) put by any lending institution/bank – this exemption is granted till the loan of financial institution/bank is repaid

8. >=25 Lakh received by a start-up by way of convertible note (which is convertible into equity shares on occurrence of specified events / Repayable <= 5 years). Note - Amount should be received in single tranche (single payment)

9. Amount received in course of business –
   a. Advance for supply of goods/service should be adjusted <=365 days – however if legal dispute is going on for this advance then condition of 365 days is not applicable
   b. Security deposit for the performance of contract
   c. Advance received for warranty service / future service
   d. Consideration for an immovable property/advance for capital goods
   e. Advance for subscription towards publications

Hindi - Ye paisa company ko milega to deposit nahi maana jayega and no compliance required which are mentioned in this chapter

Provisions Regarding Acceptance of Deposit (From Members By Any Company Or From Public By Only Eligible Public Company)

Passing a resolution Sec 73(2) – Special resolution required if deposit is to be taken from the public – however if <= limit u/s 180(1)(c) then ordinary resolution can be passed

A circular in form of an advertisement in form DPT 1 is to be made and a copy to be submitted to ROC at least 30 days before the issue of ad (should be signed by majority directors) Sec 73(2)(b) +
Company **shall** publish the advertisement in one English + one vernacular language newspaper which should have a wide circulation in the state in which registered office of the co. is situated (however if deposit taken from members then company may publish it in newspaper)

The above ad in the circular is valid at the earliest of –
   a. <= 6 months from the closure of the FY in which it is issued or
   b. Date on which FS are laid before the company in AGM/date on which AGM should have been held

Fresh circular is required to be issued in each succeeding financial year for inviting deposits during the FY

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

If deposit to be taken from only members then circular is to be issued to members by registered post with acknowledgment due or by speed post or electronic mode + Circular should contain a statement showing [Position of the co., credit rating obtained, total no. of depositors & deposit amount due from any previous deposits] Sec 73(2)(a) +
A certificate from statutory auditor of the company shall be attached in form DPT-1 stating that the company has not committed any default in the repayment of deposits or in payment of any interest. If company had committed any default then certificate attached in form DPT 1 should state that co. had made good the default (sab theek kar diya) + period of 5 years has lapsed since the date of making good the default. Sec 73(2)(e)

Eligible company accepting deposit from public – compulsorily required to obtain rating (should not be less than the rating for FD prescribed for NBFC in their act), from a recognized credit rating agency (e.g. CRISIL, ICRA) – rating to be obtained every year during the tenure of the deposit and a copy should be sent each year to ROC in form DPT 3 -- Rule 3(8)

Company giving security for deposits should <= 30 days of acceptance of deposit should create a charge on its assets (tangible assets only) + amount of charge (FMV assessed by registered valuer) >= deposit amount
Charge shall be in favour of the deposit holders (trustee for the depositors)

Tenure of Deposit – Minimum 6 months to maximum 36 months
Less than 6 months allowed only when company has a short term requirement +

1) Such deposit shall not exceed 10% of the [aggregate paid up share capital + free reserves & securities premium account] and
2) Such deposits are repayable only on or after 3 month from the date of such deposit/ renewal of deposit

Maximum amount of deposit including deposit outstanding Rule 3(4) –

1) **Private Co. + Eligible Government Co. -** Maximum 35%
2) **Eligible Public Co.** –
    a. From Members – Max 10%
    b. From Others – Max 25%

% to be checked on [Aggregate of its paid up share capital +free reserves & securities premium]

Maintenance & using the amount of deposit repayment reserve account Sec 73(2)(c) – At least 20% of the deposits maturing next year should be deposited in a separate bank a/c with scheduled bank <=30/4/FY.
Rule 13 – amount so deposited shall not be used by the company for any purpose other than repayment of deposits. Further this amount should not fall below 20% at any time during the FY.

The provisions regarding issuing circular, maintaining deposit repayment reserve & limit for maximum amount of deposit -- NA to these private companies –

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Private co. which is not a subsidiary or associate of any other company + has not defaulted in repayment of any borrowing +its borrowings from bank or financial institutions or body corporate <= [lower of 200% of paid up share capital or 50 crore] **or**
Pvt. Company which is a start-up company (upto 5 years from date of incorporation) **or**
Specified IFSC companies.

These companies can take deposits from its member upto it's (paid up share capital + free reserves + securities premium account) and can file DPT 3 instead of DPT 1

Rate of Interest Rule 3(6) – Interest rate on deposit cannot exceed maximum rate of interest or brokerage prescribed by RBI in case of NBFC for acceptance of deposit. Further no brokerage shall be paid to any person except the person who is required by the company to solicit on its behalf and through whom deposits are actually procured.

Filing application form for making deposits Rule 10 – Company will accept the deposit only when an application is submitted by the intending depositor. The application shall contain a declaration made by the intending depositor to the effect that the deposit is not being made out of any money borrowed by him from any other person.

Deposit in Joint names Rule 3(2) – If depositor desires then deposit can be made in joint names (Max 3 joint holders allowed e.g. A,B & C jointly deposited 1 Lakh in a company) – Further it may be accepted with or without these clauses :

a) "Jointly" Clause – Repayment on maturity to be made to all parties A,B & C or the survivor
b) "Either or Survivor" Clause – Repayment can be made to either of the three A or B or C or the Survivor
c) "First Name or Survivor" Clause – Repayment made to the first named person
d) "Anyone or Survivor" Clause – Repayment of deposit can be made as discussed in case of Either or Survivor

Deposit Receipt Rule 12 - <= 21 days of receipt of deposit/renewal of deposit, the company is required to furnish a deposit receipt to the depositor or his agent. The receipt shall be signed by the duly authorized officer and state the date of deposit, name & address of depositor, amount of deposit, rate of interest and maturity date

Nomination – Every depositor may nominate any person at any time. The nominee shall be the person to whom his deposits shall vests in the event of his death.

Register of deposit Rule 14 – Every co. accepting deposit shall maintain one or more separate registers for deposits accepted or renewed at its registered office. Following particulars shall be entered separately in the case of each depositor:

Name, address, PAN of the depositor, particulars of nominee, deposit receipt no., date & amount of each deposit, duration of deposit, rate of interest, mandate & instructions for payment of interest/non-deduction of TDS, due date of payment of interest, particulars of security or charge created, any other relevant particulars.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

The entries shall be made within 7 days from the date of issuance of the receipt duly authenticated by a director or secretary of the company or by any other officer authorised by BOD for this purpose.
Register shall be preserved for >= 8 years from the FY in which latest entry is made.

Repayment of deposit & interest – should be as per terms & conditions

Application to tribunal if the company fails to repay – If co. fails to repay the deposit or part thereof or any interest thereon – the depositor concerned may apply to tribunal for an order directing the co. to pay the sum due or for any loss or damage incurred by him as a result of such non-payment. **Sec 73(4)**

Premature repayment of deposits – If after the expiry of 6 months but before the maturity, if a depositor requests for premature repayment then interest can be paid 1% less than the actual rate.

Premature closure of deposit to earn higher interest – Depositor can take the benefit of higher interest rate by renewing the deposit before its actual maturity – however company will pay the higher interest only if deposit is renewed for a period higher than the unexpired period.

Filing Return on deposit - A duly audited return of deposit to be filed in DPT-3 (containing particulars as on 31st March of every year) shall be filed with ROC <= 30th June

Disclosure in FS - Public co. to disclose in its financial statement by way of note about money received from its directors. Private company to disclose the money received from directors or relatives of directors.

In case company fails to repay deposit on maturity – 18% p.a. penal interest needs to be paid for the overdue period. Rule 17

No right to alter – Company has no right to alter any of the terms and conditions of the deposit, deposit trust deed ad deposit insurance contract which may prove detrimental to the interest of depositors.

Punishment for contravention – If any company inviting deposits or any other person contravenes any of the 'deposit rules' for which no punishment is prescribed in the act then the company and every officer-in-default shall be punishable as under:

1) With fine extendable to five thousand rupees and
2) In case of contravention continues then further fine upto 500 for every day during which the contravention continues

Appointment of trustee for depositors by company – A written consent of trustee is to be obtained by the company for their appointment + company should mention in the circular that consent of trustees have been received.
Deposit trust deed is executed in form DPT-2 at least 7 days before issuing the circular in the form of advertisement.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Following person cannot be appointed as trustee – If he/she -

a) is a director, KMP, officer or employee of the company or of its holding, subsidiary or associate company or a depositor in the company
b) is indebted to the company, or its subsidiary or its holding or associate company or any other subsidiary of such holding co.
c) has any material pecuniary relationship (relating to money) with the company
d) has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon
e) is related to any person specified in clause (a)

No trustee for the depositors shall be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors (if company is required to appoint independent director then at least one independent director) present at a meeting of the board.

Punishment For Contravention of Section 73 or Section 76 or Fails To Repay Interest or Deposit

For company – Fine at least 1 crore or twice the amount of deposit, whichever is lower
It may extend to 10 crore

For officer in default – Imprisonment which may extend to 7 years and with fine which shall not be less than 25 Lakh rupees but which may extend to 2 crore rupees.
If done wilfully to deceive the company or shareholder then section 447 (punishment of fraud) also applicable

Sec 74 Repayment of Deposit Accepted Before Commencement of Companies Act, 2013

a) File with ROC <=3 months from commencement of co. act or from the date on which such payments are due – A statement of all deposits accepted by the company & sums remaining unpaid + interest payable thereon
b) Repay <=3 years from commencement of act or <=expiry of the period for which deposits were accepted, whichever is earlier

If company is paying regular interest (without default) then it will be deemed that clause (b) has been complied with

Company may file application to Tribunal to extend the time period for repayment of deposit and depending on company's financial position tribunal may allow such extension

If provisions not followed then punishment mentioned in above paragraph shall apply (1 crore waali)

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

CH-5 REGISTRATION OF CHARGES [Companies (Registration of Charges) Rules, 2014]

Sec 2(16) Charge is:

- An interest or lien
- Created on the property or assets of a company or any of its undertakings or both as security
- Includes a mortgage

Lien is a rightful possession of a debtor's property until debt is discharged

Company take loan from banks/financial institutions (who take some of the company's asset as security so that if company fails to pay the debt then they can sell the asset to recover their dues)

The security taken banks/financial institutions is called a charge which needs to be submitted to ROC because then it will become public information and anyone can check before providing any other loan in future.

Types of charge

1) **Fixed charge –** created on permanent assets like land, building, machinery etc. identified at the time of creation of charge. E.g. mortgage (can be created by deposit of title deeds instead on proper mortgage) – company can use the assets however can only sell the assets with prior permission of the charge holder

2) **Floating charge –** Created on fluctuating assets which are fluctuating in nature like raw material, stock in trade, debtors etc. E.g. hypothecation (a charge created on movable assets) – company is free to deal with the assets which are floating charge however if company violates any terms or goes into liquidation then floating charge crystalizes (which means it becomes fixed and is available for realization)

Duty to register charges [Section 77]

Charge created before 2-Nov-18	Charge created on or after 2-11-18
Register charge <= 30 days of creation If not registered then register (ROC may allow) <= 300 days of creation on payment of additional fees	Register charge <= 30 days If not registered then register (<=next 30 days with additional fees
If not registered in 300 days then register <= 6 months from 2-Nov-18 with additional fees (different fees for different companies are prescribed)	If not registered in above 60 days then register <= 60 days with advalorem fees

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

For seeking extension of time, the company is required to make an application to the ROC in the prescribed form. It should be supported by a declaration from the company signed its CS or director that such belated filing shall not adversely affect the rights of any other intervening creditors of the company. ROC will first satisfy himself that co. had sufficient cause for not filing the particulars and instrument of charge within original period of 30 days, only then he will allow registration of charge within extended time period. **Rule 4**

Note – Charge may be created either within or outside India. Further the assets on which charge is created can be situated within or outside India.

Who can register charge?

1) **Company –** It is duty of the company to create a charge on its assets (Situated in or outside India) on MCA 21 (ROC)

2) **Charge holder –** If company fails to register a charge created <= 30days then the person in whose favour charge is created can get the charge registered by filing an application to ROC. On receipt of their application, the ROC shall give a notice to the company and if no objection is received, ROC shall allow such registration <= 14 days after giving notice to the co. & on payment of prescribed fee. On registration of charge, applicant shall be entitled to recover the amount of any fee from the company- Sec 78

3) **Purchaser –** If company purchased an asset on which charge was already created then it has to register the charge in its own name (need to inform registrar). The earlier charge should get vacated and in its place a new charge will be registered by co. which has acquired it - Sec 79(a)

To register a charge all the particulars of the charge is filed in prescribed form with copy of the instrument duly signed by company & charge holder < = 30 days of charge creation + prescribed fees

The instrument (creating charge) filed with ROC is duly verified as follows - Rue 3(4) -

1) **Property situated in India (whether wholly or partly) –** Copy shall be verified by a certificate issued under the hand of any director or CS of the co. or an authorized officer of the charge holder
2) **Property situated wholly outside India –** Copy shall be verified by a certificate issued either:
    a. Under the seal, if any, of the company or
    b. Under the hand of the director or company secretary of the co. or an authorized officer of the charge holder or
    c. Under the hand of some person other than the company who is interested in the mortgage or charge

Upon registration of charge ROC shall issue Form CHG-2 to the co. & the person in whose favour charge is created Sec 77(2)

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

The certificate issued by ROC will act as conclusive evidence that the requirements of Chapter VI & the rules made thereunder as to registration of creation of charge have been complied with.

This instrument creating a charge shall be preserved for a period of 8 years from the date of satisfaction of charge by the company. Further register of charge and the instrument of charges should be maintained by company and should be open for inspection during business hours.

Third proviso to section 77(1) – Rights of lender or charge-holder shall not get affected and shall remain as they were before the actual registration. (i.e. rights acquired from the date of creation of charge) even if charge is actually registered within the extended period.

If charge is created but not registered then it will not be taken into account by the liquidator/other creditors at the time of winding up/liquidation. Sec 77(3) & 77(4)

Sec 79(b) - Modification of charge (i.e. there is change in terms & conditions or change in extent of charge etc.) to be registered by the company in accordance with Sec 77

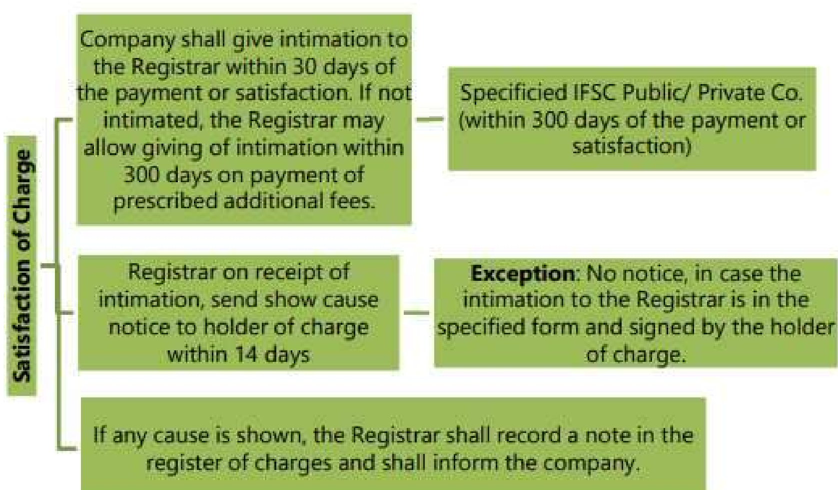
Other examples of modification –

1) Enhancing or decreasing the limits of charge
2) Changing terms or conditions of existing charge through an agreement
3) Change in rate of interest (other than bank rate)
4) Change in repayment schedule of loan (NA on working loans repayable on demand)
5) Partial release of charge

Where particulars of modification of charge are registered under Sec 79, the ROC shall issue a certificate of modification of charge in Form CHG-3. This will act as conclusive evidence that all requirements for modification of charge has been complied with – Rule 6

Once a charge is registered it will be deemed that any person acquiring such property/asset have the notice of the charge from the date of registration of charge. If a person purchase the asset/acquire interest in the asset without checking that a charge already exists on such asset in the register of ROC then company wouldn't be liable for any loss incurred by such person - Sec 80

<u>Satisfaction of Charge Section 82</u>



If no cause is shown by the charge holder – ROC shall order entering of a memorandum of satisfaction in the register of charges kept by him and in case charge is satisfied in full then ROC shall issue a certificate of registration of satisfaction of charge in form no. CHG - 5

Making entries of satisfaction without intimation from the company – Sec 83

With respect to any charge if an evidence is shown to the satisfaction of ROC that the debt secured by charge has been paid or satisfied in whole or part or that part of the property/undertaking charged has been released from the charge or has ceased to form part of the company's property/undertaking then he may enter in the register of charges a memorandum of satisfaction that:

- The debt has been satisfied in whole or in part, or
- The part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking

ROC shall inform the affected parties <=30 days of making the entry in register of charges
In case charge is satisfied in full, ROC shall issue a certificate of registration of satisfaction of charge in form no. CHG-5

Intimation of appointment of receiver or manager Sec 84

- If any person obtains an order for the appointment of a receiver or a person to manage the property which is subject to a charge, or
- If any person appoints such receiver or person under any power contained in any instrument

He shall give notice of such appointment to the company and to the ROC along with copy of the order/instrument <=30days from passing the order or making the appointment

On payment of fee, ROC shall register the particulars of the receiver, person or instrument in the register of charges.
On ceasing to hold such appointment – again a notice to company & ROC to be given and in turn ROC shall register such notice.

Punishment for contravention Sec 86

If company contravenes any of the provisions relating to the registration of charges or modification or satisfaction of charge then

- Co. shall be punishable with minimum fine of 1 Lakh and maximum fine of 10 Lakhs; and
- Every officer in default shall be punishable with imprisonment maximum upto 6 months or with a fine (min. 25000 max. 1Lakh) or both

If any person wilfully furnishes:

- Any false or incorrect information or
- Knowingly suppresses any material information

Which is required to be registered u/s 77, he shall be liable for action u/s 447 (punishment for fraud)

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Rectification by central government Sec 87 & Rule 12

CG can order rectification of register of charges in the following cases of default:

1) In case of omission in giving intimation to ROC with respect to payment/satisfaction of charge within specified time
2) In of omission or misstatement of any particulars in any filing previously made to ROC. Such filing may relate to any charge or modification of charge or memorandum of satisfaction or other entry u/s 82 or 83

However before directing for rectification on above grounds – CG will satisfy itself that such default was accidental or because of some other sufficient cause or it did not prejudice the position of creditors or shareholder

Upon application being filed by the company/any interested person in form CHG8, CG may –

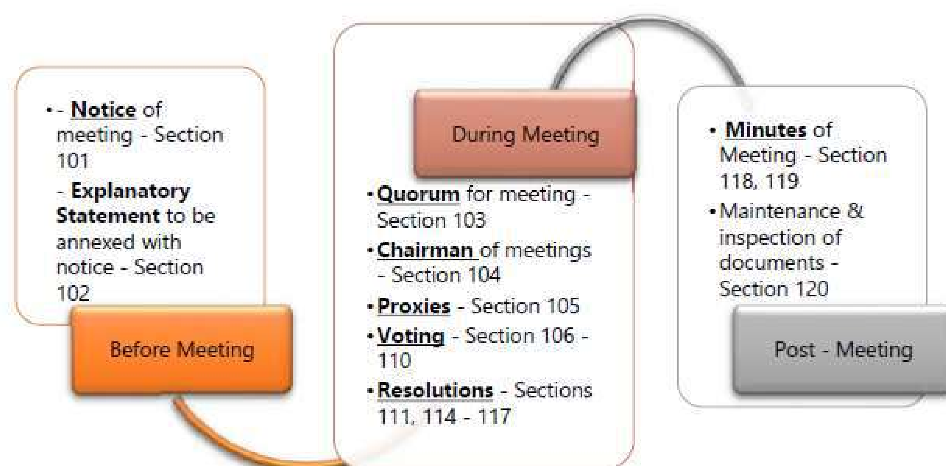
1) Direct extension of time for satisfaction of charge, if such filing is not made <= 300 days from the date of such payment or satisfaction

2) Direct rectification of the omission or misstatement of any particulars, in any filing, previously recorded with ROC with respect to any charge or modification thereof or with any memorandum of satisfaction or other entry made in pursuance of section 82 or sec 83

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Ch-6 MANAGEMENT & ADMINISTRATION SEC 88-122 [Companies (Management & Administration) Rules, 2014]

Pre-Requisite of a Meeting



Notice of A Meeting Sec 101 [Meeting Se Kitne Din Pehle Notice Dena Hota Hai]

In order to properly call a general meeting the notice should be **sent at least 21 clear days** before the meeting, **to** all the members, legal representative of any deceased member or the assignee of insolvent members, the auditors and directors, in writing or electronic mode or other prescribed mode.

For **section 8 company** – instead of 21 days – **14 days'** notice is required

In counting the number of days the **date** on which **notice is served** and the **date of meeting** are **excluded** for sending the notice. A company cannot curtail by its articles of association the requirement of 21 clear days.

As per Rule 18 – The notice may be sent through e-mail as a –
Text or attachment to e-mail or notification providing electronic link or Uniform Resource Locator for accessing such notice

The e-mail shall be **addressed to** the **person** entitled to receive such e-mail **as per the records of the company** as provided by the depository.

Company shall provide an **advance opportunity** at least once in a financial year, **to the member** to **register his e-mail address** [opportunity provided to those members who have not got their email Id recorded].

The **notice** shall be **placed** simultaneously on the **website** of the Company, if any, and on the website as may be notified by Central Government.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Meetings held at shorter notice [when General Meeting can be called at a shorter notice]

If consent, in writing or by electronic mode, is accorded thereto—

In case of AGM	In any other meeting
>=95% of the members entitled to vote	**If co. has share capital** - By members holding >=95% paid up share capital [having voting rights] **If no share capital –** By members holding >=95% of total voting power exercisable at the meeting

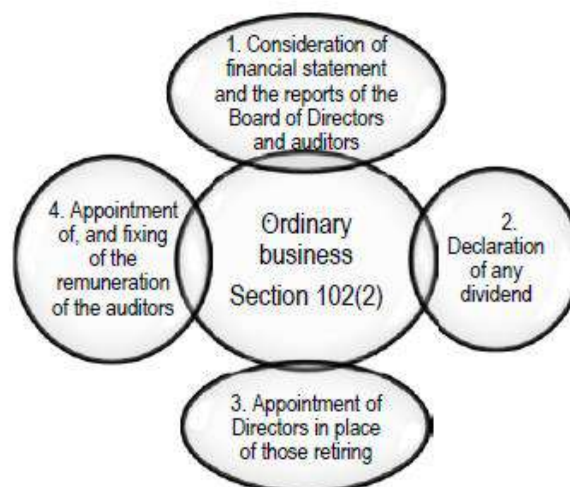
Note - Where any member of a company is entitled to vote only on some resolution or resolutions and not on the others, those members shall be taken into account for the purposes of this sub section in respect of the former resolution and not in respect of the latter.

Contents of the Notice – Section 101(2)

Day, date, hour of the meeting and place of the meeting and shall contain a statement of business to be transacted in that meeting.
It must be issued on the authority of the Board of Directors under the name of an authorised official.

Omission to send notice – Section 101(4)
Any accidental omission to give notice or non-receipt of such notice by any member or other person who is entitled to such notice for any meeting **shall not invalidate the proceedings** of the meeting.
The onus is on the company to prove that the omission was not deliberate.

Types of businesses transacted in general meeting
Ordinary Business & Special Business
Ordinary business are the following business which are transacted at AGM –



In AGM any business transacted except above is a special business
In Extra ordinary general meeting (EGM) all businesses transacted are special business

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Explanatory Statement To Be Annexed To Notice (Section 102)

Where any **special business** is to be transacted at the company's general meeting, then an **'Explanatory Statement'** should be **annexed** to the notice calling such general meeting, which must specify,

a) The nature of concern or interest, financial or otherwise, if any, in respect of each items of—
   i. every director and the manager, if any;
   ii. every other key managerial personnel; and
   iii. relatives of the persons mentioned in sub-clauses (i) and (ii);
b) Any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Proviso to section 102(2) - Where an item of special business which is to be transacted at a meeting of the company relates to or affects any other company, then the extent of shareholding interest in that other company of every promoter, director, manager, and of every key managerial personnel of the first mentioned company shall also be set out in the statement [if the extent of such shareholding is not less than 2% of the paid-up share capital of that company]

In case any item of business refers to any document which is to be considered at the meeting, then the time and place where such document can be inspected should also be specified in the explanatory statement.

An important clause in section 102 of the Act states that in case of **non-disclosure** or insufficient disclosure in any statement made by promoter, director, manager or other key managerial personnel which results into any benefit for themselves or their relatives, then the same **profit derived** shall have to be **compensated by him**.

Penalty for contravention of the provisions of this section
If any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of INR **50,000 or five times** the amount of **benefit** accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, **whichever is higher.**

***Applicability of section 101/102/103/104/105/106/107/109 to Private companies** – Shall apply unless otherwise specified in respective sections or the articles of the company provide otherwise.
Benefit available if it has not committed a default in filing its financial statements under section 137 or annual return under section 92 of the Act

Whether ratification of appointment of Statutory Auditor is an ordinary business –

As per sec 102 – appointment of auditor is an ordinary business
As per sec 139(1) every company appoints auditor who holds office from the conclusion of that meeting to the conclusion of 6th AGM and thereafter till the conclusion of every 6th AGM.

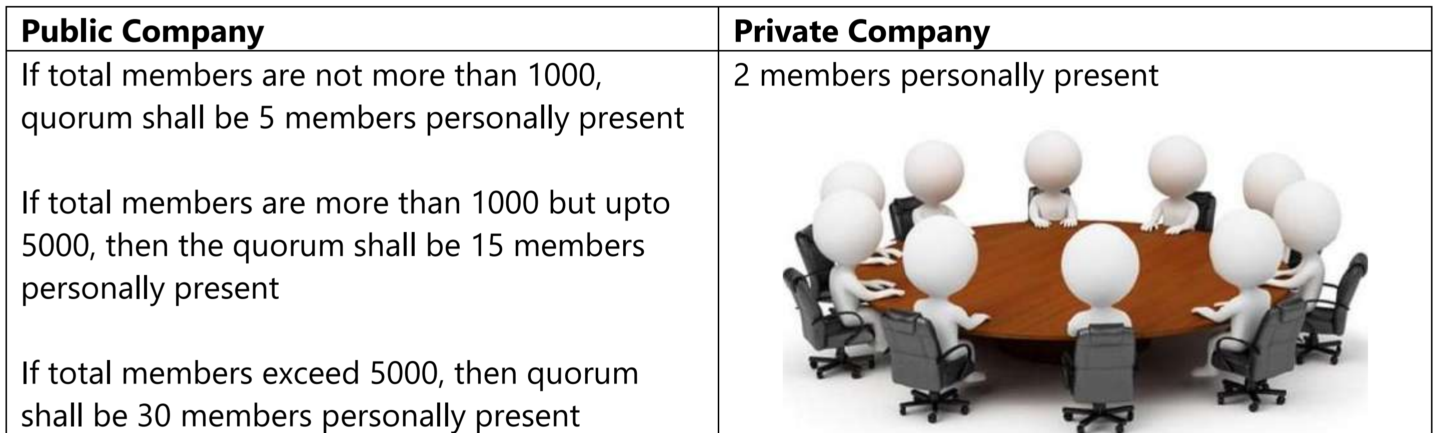
However proviso to sec 139(1) states that at each AGM such appointment needs to be ratified

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Ratification of appointment of statutory auditor is neither an appointment nor reappointment – since appointment has already been made –ratification of continuation will be an ordinary business

Quorum For Meetings [Section 103] – Minimum No. of Members To Be Present In A Meeting

Unless the articles of the company provide for a larger number, the quorum for the meeting shall be as follows–

Public Company	Private Company
If total members are not more than 1000, quorum shall be 5 members personally present If total members are more than 1000 but upto 5000, then the quorum shall be 15 members personally present If total members exceed 5000, then quorum shall be 30 members personally present	2 members personally present 

***Members personally present refer to members entitled to vote on the items of business to be discussed in the meeting**

If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company—

a) The meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine;

b) The meeting, if called by requisitionists under section 100 EGM, shall stand cancelled

Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give **not less than three days'** notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

Where quorum is not present in the adjourned meeting also within half an hour, then the members present [not less than 2] shall form the quorum.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Chairman Of Meeting [Section 104]

Not chairman of the company – in each meeting chairman is appointed only for that meeting

Election of chairman by members: Unless the AOA of the Company otherwise provide, the members, personally present, shall elect among themselves to be the Chairman **by show of hands**.

Demand of poll: If a poll is demanded on the election of the Chairman, the Chairman elected by show of hands shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of poll, and such other elected person shall be the Chairman for rest of the meeting.

Powers of chairman: Chairman of the meeting is the one who **manages the meetings** and **ensures** that the required **decorum** of the meeting is maintained at all times, till the meeting is concluded and post that, **executes the minutes** of the meeting.
The Chairman has *prima facie* authority to **decide all questions** which arise at a meeting and **which require decision** at the time in order to fulfil his duty properly, he must **observe strict impartiality**, even though he must be personally strongly opposed to any matter.

Right to cast casting vote: The Chairman has a casting vote in Board Meetings and general meetings, if specifically empowered by the articles of the Company.

A casting vote means that **in event of the equality of vote** on a particular business being transacted at the meeting, the **Chairman** of the meeting shall have a right **to cast a second vote**. If there is **no provision in the articles** for a casting vote, an ordinary resolution on which there is equality of votes is **deemed to be dropped**.

Proxies [Section 105] Member apne badle kisi aur person ko bhi vote karne ke liye bol sakta hai

Sec 105(1) provides that any member of a company who is entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf. However, a **proxy shall not have the right to speak** at such meeting and **shall not be entitled to vote except on a poll.**

Applicability of the Sec 105(1) - Unless the articles of a company otherwise provide, this sub-section **shall not apply to a company not having a share capital.** CG may also prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy.

A person appointed as **proxy shall act on behalf of such member or** number of **members not exceeding fifty and holding** in aggregate **not more than 10 per cent** of the total **share capital** of the company carrying voting rights. **However**, a member who is **holding more than 10 per**

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

cent of the total share capital of the Company carrying voting rights, **may appoint a single person as a proxy** and such person shall not act as a proxy for any other person or shareholder.

As per Rule 19(3) -The appointment of proxy shall be in the Form MGT – 11.

As a compliance requirement, **in every notice** calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, there **shall appear** with reasonable prominence **a statement that a member entitled to attend and vote is entitled to appoint a proxy,** or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a **proxy need not be a member**. [Sub- section (2)]

Section 105(4) provides that a **proxy received 48 hours before the meeting** will be **valid** even if the articles provide for a longer period.

The notice of the meeting shall clearly state that the **members** who have **cast their vote by remote e-voting** prior to the meeting may also attend the meeting but **shall not** be entitled to cast their **vote again.**

Section 105(8) provides for **inspection of proxies** during the meeting and within 24 hours before the commencement of the meeting, and the inspection is to be given only during business hours. At least **3 days' notice** in writing is **required** to be given to the company for conducting the inspection.

Penalty for default – If default is made in complying with sub-section (2), every officer of the company who is in default shall be liable to **penalty of five thousand rupees.**

If for the purpose of any meeting of a company**, invitations to appoint a proxy** any person as specified in the invitations are **issued at the company's expense to any member** entitled to have a notice of the meeting and to vote thereat by proxy, every **officer** of the company who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be **punishable with fine which may extend to one lakh rupees.**

For **refusing the inspection** to members at any time during the business hours, the company and every officer who is in default shall be punishable with **fine upto 10,000** and where the contravention is a continuing one, with a further fine upto **1,000 per day of default.**

Offences under this section are compoundable (maaf kiye ja sakte hai/ charges drop kiye ja sakte hai) under section 441 of the Act.

Only a member can be a proxy holder in a company registered under section 8 of the Companies Act, 2013

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Voting [Section 106-109]

The meeting takes place to discuss and decide upon the topics which are important – thus this decision requires consensus of the members attending the meeting. This consensus is reached through voting. The voting in a meeting can take place in the following ways–

- Voting by show of hands – (section 107)
- Voting by electronic means – (section 108)
- Voting by demand of poll – (section 109)
- Voting by Postal Ballot – (section 110)

Restriction On Voting Rights [Section – 106]

This **section overrules the whole act** and provides that the AOA of a company may provide that **no member** shall **exercise** any **voting right** in respect of any share registered in his name on which any amount is due from him on calls or any other **sums payable to the company**, or in regard to which the company has exercised the right of lien. Sec 106(1)

Section 106 (2) also suggests that a company shall not prohibit any member from exercising his voting rights on any other ground except the grounds mentioned in 106(1).

Sec 106(3) – A **member** need not **use** all **his votes** in a uniform manner while voting on a poll. He may exercise his voting right **partly in favour of the motion or partly against the motion.**

Note: Where the articles of the company do not contain any provision restricting the exercise of voting right of member, a member cannot be prevented from voting, even though, calls or other sum payable by him have not been paid or the company has exercised any right of lien over his shares. But, where the articles contain any such provision, and the shares forfeited for non-payment of calls have been re-allotted, the new allotted being liable for the balance remained unpaid on the shares will not be entitled to vote so long as any calls presently payable on the shares remain unpaid.

Voting By Show Of Hands [Section 107]

Unless the voting is demanded by way of poll or by electronic means, the voting should be by way of show of hands in the first instance.

Also, section 107(2) states that the declaration by the Chairman of the meeting in the minutes books shall be the conclusive evidence that the resolution is passed.

An insolvent shareholder so long as he remains in the register of the company as a member, is entitled to exercise his votes which are attributed to his status as member.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Voting Through Electronic Means [Section 108] Rule 20

Requirement for E-Voting - Every company which has **listed its equity shares** on a recognised stock exchange and every company having **not less than one thousand members shall** provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.

Nidhi Company is not required to provide E-voting facility

A member may exercise his right to vote through voting by electronic means on resolutions and the company shall pass such resolutions in accordance with the provisions of this rule

Procedure: The notice of the meeting shall be sent to all the members, directors and auditors of the company either by registered post or speed post; or through electronic means or by courier

The notice shall also be placed (after it is sent to members) on the website of the co. if any and of the agency

The notice of the meeting shall clearly state that –

a) The company is providing facility for voting by electronic means and the business may be transacted through such voting
b) The facility for voting, either through electronic voting system or ballot or polling paper shall also be made available at the meeting and members attending the meeting who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting;
c) The members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not been entitled to cast their vote again

The notice shall -

a) Indicate the **process** and manner for voting by electronic means;
b) Indicate the **time schedule** including the time period during which the votes may be cast by remote e-voting
c) Provide the details about the **login ID**;
d) Specify the **process** and manner for generating or **receiving the password** and for casting of vote in a secure manner

The company shall **publish the notice** by way of an **advertisement**, immediately on completion of dispatch of notices for the meeting but **at least twenty-one days before the date of general meeting**, at least once in a **vernacular newspaper** in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having country-wide circulation, and **specifying** in the said advertisement, inter alia, the **following matters**, namely:-

a) Statement that the business may be transacted through voting by electronic means;
b) The date and time of commencement of remote e-voting;
c) The date and time of end of remote e-voting;
d) Cut-off date

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

e) The manner in which persons who have acquired shares and become members of the company after the dispatch of notice may obtain the login ID and password;
f) The statement that-

    A. Remote e-voting shall not be allowed beyond the said date and time;
    B. The manner in which the company shall provide for voting by members present at the meeting; and
    C. A member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again in the meeting; and
    D. A person whose name is recorded in the register of members or in the register of beneficial owners maintained by the depositories as on the cut-off date only shall be entitled to avail the facility of remote e-voting as well as voting in the general meeting;

g) Website address of the company, if any, and of the agency where notice of the meeting is displayed; and
h) Name, designation, address, email id and phone number of the person responsible to address the grievances connected with facility for voting by electronic means:

Provided that the public notice shall be placed on the website of the company, if any, and of the agency;

Time for opening of e-voting: the facility for remote e-voting shall remain open for **not less than three days** and shall **close at 5.00 p.m.** on the **date preceding the date of the general meeting**;

Option for remote e-voting: The members of the company, holding shares either in physical form or in dematerialized form, as on the cut-off date, may opt for remote e-voting:

Provided that once the vote on a resolution is cast by the member, he shall not be allowed to change it subsequently or cast the vote again:
Provided further that a member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again;

At the end of the remote e-voting period, the facility shall forthwith be blocked:
Provided that **if a company** opts to provide the same electronic voting system as used during **remote e-voting during the general meeting**, the said **facility shall be in operation till all the resolutions are considered** and voted upon in the meeting and may be used for voting only by the members attending the meeting and who have not exercised their right to vote through remote e-voting.

Appointment of scrutinizer: The Board of Directors shall appoint one or more scrutinizer, who may be Chartered Accountant in practice, Cost Accountant in practice, or Company Secretary in practice or an Advocate, or any other person who is not in employment of the company and is a person of repute who, in the opinion of the Board can **scrutinize the voting and remote e-voting process in a fair and transparent manner**:

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Provided that the scrutinizer so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the electronic voting system;
Function of scrutinizer: the scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority

Role of Chairman: The **Chairman** shall, at the general meeting, at the end of discussion on the resolutions on which voting is to be held, **allow voting, with the assistance of scrutinizer**, by use of ballot or polling paper or by using an electronic voting system for all those members who are present at the general meeting but have not cast their votes by availing the remote e-voting facility.

Counting of votes: The **scrutinizer** shall, immediately after the conclusion of voting at the general meeting, first count the votes cast at the meeting, thereafter **unblock** the **votes** cast through remote e-voting in the **presence of at least two witnesses not** in the **employment of the company** and make, **not later than three days** of conclusion of the meeting, a **consolidated scrutinizer's report** of the total votes cast in favour or against, if any, to the Chairman or a person authorized by him in writing who shall countersign the same:

Provided that the Chairman or a person authorized by him in writing shall declare the result of the voting forthwith;

Explanation: It is hereby clarified that the manner in which members have cast their votes, that is, affirming or negating the resolution, shall remain secret and not available to the Chairman, Scrutiniser or any other person till the votes are cast in the meeting.

Access to details: For the purpose of ensuring that members who have cast their votes through remote e-voting do not vote again at the general meeting, the **scrutiniser shall have access**, after the closure of period for remote e-voting and before the start of general meeting, to details relating to members, such as their names, folios, number of shares held and such other information that the scrutiniser may require, who have cast votes through remote e-voting but not the manner in which they have cast their votes:

Maintenance of Register: The scrutiniser shall maintain a register either manually or electronically to record the assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the members, number of shares held by them, nominal value of such shares and whether the shares have differential voting rights;

Safe Custody of register: The register and all other papers relating to voting by electronic means shall remain in the safe custody of the scrutiniser until the Chairman considers, approves and signs the minutes and thereafter, the scrutiniser shall hand over the register and other related papers to the company.

Result on websites: The results declared along with the report of the scrutiniser shall be placed on the website of the company, if any, and on the website of the agency immediately after the result is declared by the Chairman:

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Provided that in case of companies whose equity shares are listed on a recognised stock exchange, the company shall, simultaneously, forward the results to the concerned stock exchange or exchanges where its equity shares are listed and such stock exchange or exchanges shall place the results on its or their website.

Passing of date of resolution: Subject to receipt of requisite number of votes, the resolution shall be deemed to be passed on the date of the relevant general meeting.
Explanation: For the purposes of this clause, the requisite number of votes shall be the votes required to pass the resolution as the 'ordinary resolution' or the 'special resolution', as the case may be, under section 114 of the Act.

Resolution not to be withdrawn: a resolution proposed to be considered through voting by electronic means shall not be withdrawn.

Demand For Poll [Section 109]

Section 109 provides that before or on declaration of result of the voting on any resolution by a show of hands, the Chairman of the meeting on his own, or on demand made by the 'specified' members order for a poll.

Members who can demand for poll –

In case of a company having a **share capital**, by the members present in person or proxy, where allowed, and having not less than **1/10th of the total voting power** or **holding paid up share capital of not less than 5,00,000** or such **higher** amount has been prescribed.

In the case of **any other company**, by any member or members present in person or by proxy, where allowed, and having **not less than 1/10th of the total voting power**

The section further provides that the demand for poll **may be withdrawn** by the persons who made the demand, at any time.

A poll demanded for adjournment of the meeting **or appointment of Chairman** of the meeting shall be **taken forthwith.**

A **poll demanded** on any question other than adjournment of the meeting or appointment of Chairman shall be taken at such time, **not being later than 48 hours** from the time when the demand was made, as the Chairman of the meeting may direct.

Where a poll is to be taken, the Chairman of the meeting shall appoint a scrutinizer for observing the poll process and votes given on poll and to report thereon.

The results of the poll shall be deemed to be the decision of the meeting on the resolution.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

The **Chairman** shall regulate the manner in which the poll shall be taken at the meeting and **appoint** such number of **scrutinizers** as may be necessary.

The duties of a scrutinizer shall be as follows–

- To ensure proper conduct of the polling process;
- To maintain proper records of the poll
- To submit a report to the Chairman of the meeting which shall contain the details of votes cast in the favour and against the resolution; and
- To ensure that the compliance of the provisions of section 109 and Rule 21
- The scrutinizer shall give a report to the Chairman in Form MGT -13 as per Rule 21

The procedure describing the manner in which the Chairman shall get the poll process scrutinized in Rule 21 is as follows –

The Chairman of the meeting shall ensure that –

- The Scrutinizers are provided with the Register of Members, specimen signatures of the members, Attendance Register and Register of Proxies

- The Scrutinizers are provided with all the documents received by the Company pursuant to sections 105, 112 and section 113.

- The Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting; in case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio and the Polling paper shall be in Form No. MGT.12.

- The Scrutinizers shall keep a record of the polling papers received in response to poll, by initialling it.

- The Scrutinizers shall lock and seal an empty polling box in the presence of the members and proxies.

- The Scrutinizers shall open the Polling box in the presence of two persons as witnesses after the voting process is over.

- In case of ambiguity about the validity of a proxy, the Scrutinizers shall decide the validity in consultation with the Chairman.

- The Scrutinizers shall ensure that if a member who has appointed a proxy has voted in person, the proxy's vote shall be disregarded.

- The Scrutinizers shall count the votes cast on poll and prepare a report thereon addressed to the Chairman.

- Where voting is conducted by electronic means under the provisions of section 108 and rules made thereunder, the company shall provide all the necessary support, technical and otherwise, to the Scrutinizers in orderly conduct of the voting and counting the result thereof.

- The Scrutinizers' report shall state total votes cast, valid votes, votes in favour and against the resolution including the details of invalid polling papers and votes comprised therein.

- The Scrutinizers shall submit the Report to the Chairman who shall counter-sign the same.

- The Chairman shall declare the result of Voting on poll. The result may either be announced by him or a person authorized by him in writing.

The scrutinizers appointed for the poll, shall submit a report to the Chairman of the meeting in Form No. MGT.13 and the report shall be signed by the scrutinizer and, in case there is more than one scrutinizer by all the scrutinizer, and the same shall be submitted by them to the Chairman of the meeting within seven days from the date the poll is taken.

Postal Ballot [Section 110]
Shareholders who are unable to attend the meetings, there should a requirement which will enable them to vote by postal ballot for key decisions

Extract of the Act
Notwithstanding anything contained in this Act, a company—
(a) Shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot; and

(b) May, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot.

In such manner as may be prescribed, instead of transacting such business at a general meeting.

Provided that any **item of business** required to be transacted by means of postal ballot under **clause (a), may be transacted at a general meeting** by a company which is required to provide the facility to members to vote **by electronic means** under section 108, in the manner provided in that section.

If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

Only those assents/ dissents are to be considered which have been **sent by the members within 30 days** as prescribed in Rule 22. Sec 110 (2) makes a deeming provision that if a resolution is assented by requisite majority of shareholders by means of postal ballot, it shall be deemed to have been passed at a general meeting convened in that behalf.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Manner in which postal ballot shall be conducted is prescribed in Rule 22 -

Where a **company** is required or decides to pass any resolution by way of postal ballot, it shall **send** a **notice** to all the shareholders, **along with a draft resolution** explaining the reasons therefor and requesting them to send their assent or dissent in writing on a postal ballot because postal ballot means voting by post or through electronic means within a period of thirty days from the date of dispatch of the notice.

The notice shall be sent either

(a) By Registered Post or speed post, or
(b) Through electronic means like registered e-mail id or
(c) Through courier service for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period of thirty days.

An **advertisement** shall be published at least once in a **vernacular** newspaper and in **English language** about having dispatched the ballot papers and specifying therein, *inter alia*, the following matters, namely:-

(a) a statement to the effect that the business is to be transacted by postal ballot which includes voting by electronic means;
(b) the date of completion of dispatch of notices;
(c) the date of commencement of voting;
(d) the date of end of voting;
(e) the statement that any postal ballot received from the member beyond the said date will not be valid and voting whether by post or by electronic means shall not be allowed beyond the said date;
(f) a statement to the effect that members, who have not received postal ballot forms may apply to the company and obtain a duplicate thereof; and
(g) Contact details of the person responsible to address the grievances connected with the voting by postal ballot including voting by electronic means.

The **notice of the postal ballot** shall also **be placed on the website** of the company forthwith after the notice is sent to the members and such notice shall remain on such website till the last date for receipt of the postal ballots from the members.

The Board of directors shall appoint one scrutinizer, who is not in employment of the company and who, in the opinion of the Board can conduct the postal ballot voting process in a fair and transparent manner.

The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority.

Postal ballot received back from the shareholders shall be **kept** in the **safe custody of the scrutinizer** and after the receipt of assent or dissent of the shareholder in writing on a postal ballot, **no person shall deface or destroy the ballot paper** or **declare the identity of the shareholder**.

The **scrutinizer shall submit his report** as soon as possible after the last date of receipt of postal ballots but **not later than seven days** thereof;

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

The scrutinizer shall maintain a register either manually or electronically to record their assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the shareholder, number of shares held by them, nominal value of such shares, whether the shares have differential voting rights, if any, details of postal ballots which are received in defaced or mutilated form and postal ballot forms which are invalid.

The postal ballot and all other papers relating to postal ballot including voting by electronic means, shall be under the safe custody of the scrutinizer till the chairman considers, approves and signs the minutes and thereafter, the **scrutinizer shall return the ballot papers** and other related papers or register **to the company who shall preserve such ballot papers** and other related papers or register safely.

The assent or dissent received after thirty days from the date of issue of notice shall be treated as if reply from the member has not been received.

The **results** shall be **declared by placing it**, **along with** the **scrutinizer's report,** on the **website of the company**.
The provisions of rule 20 regarding voting by electronic means shall apply, as far as applicable, *mutatis mutandis* to this rule in respect of the voting by electronic means.

Pursuant to section 110(1)(a), the following items of business shall be transacted only by means of voting through a postal ballot—

(a) Alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum;

(b) Alteration of articles of association in relation to insertion or removal of provisions which, under **sub-section (68) of section 2**, are required to be included in the articles of a company in order to constitute it a private company;

(c) Change in place of registered office outside the local limits of any city, town or village as specified in sub-section (5) of section 12;

(d) Change in objects for which a company has **raised money** from public through prospectus and still has any unutilized amount out of the money so raised under sub-section (8) of section 13;

(e) Issue of shares with differential rights as to voting or dividend or otherwise under sub-clause (ii) of clause (a) of section 43;

(f) Variation in the rights attached to a class of shares or debentures or other securities as specified under section 48;

(g) buy-back of shares by a company under sub-section (1) of section 68;

(h) Election of a director under section **151** of the Act;

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(i) Sale of the **whole** or substantially the whole of an **undertaking** of a company as specified under sub-clause (a) of sub-section (1) of section 180;
(j) Giving loans or **extending guarantee** or **providing security** in excess of the limit specified under sub-section (3) of section **186**:

Important Note

Items required to be **transacted** by means of **postal ballot**, **may be transacted** at a general meeting by a company which is required to provide the facility to members to vote **by electronic means** under section 108, in the manner provided in that section.

Further One Person Companies and other companies having **members upto two hundred are not required to transact any business through postal ballot.**

Circulation Of Member's Resolutions [Section 111]

Members can make use of the administrative machinery of a company for introducing resolutions for consideration at general meeting. Such circumstances are stated below:

(1) Notice to members: A company shall, on requisition in writing of such number of members, as required for calling of EGM (>=1/10th voting power), give notice to all members of any resolution which may properly be moved and is intended to be moved at a meeting; and circulate to members any statement with respect to the matters referred to in proposed resolution or business to be dealt with at that meeting.

(2) Exemption from serving notice: A company shall not be bound under this section to give notice of any resolution or to circulate any statement, unless-

(a) a **copy of the requisition signed** by the requisitionists is **deposited at the registered office** of the company - (i) in the case of a requisition requiring notice of a resolution, **not less than six weeks** before the meeting; (ii) in the case of any other requisition, **not less than two weeks** before the meeting; and

(b) there is **deposited** or tendered with the requisition, a **sum** reasonably sufficient **to meet** the **company's expenses** in giving effect thereto.

Where however, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called on a date within six weeks after the copy has been deposited, the copy, although not deposited within the time required by this subsection, shall be deemed to have been properly deposited for the purposes thereof.

(3) Exception from circulation of any statement: If on the application, either of the company or of any other person who claims to be aggrieved, the **Central Government is satisfied** that rights conferred by section 111 are being abused to secure **needless publicity for defamatory matter**

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

then CG may order the company's cost to be paid in whole or in part by the requisitionists and company would not be required to circulate any of such statement.

(4) Default in contravention of the provision: If any default is made in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable to a **penalty of 25000.**

Representation Of The President & Governors In Meeting of Companies To Which They Are Member [Section 112]

President of India or the Governor of a State, **if he is a member** of a company, **may appoint** such person as he thinks fit to act as his **representative** at any meeting and such other person shall be entitled to **exercise the same rights and powers** including the right to vote to proxy and postal ballot, as the President or, as the case may be, the Governor could exercise as a member of the company.

Section 113 seeks to provide that where a **body corporate is member or creditor/debenture holder** of the company then it **may authorize a person (by a BOD resolution) to act as its representative** in the meeting of the company. The representative shall be entitled to **exercise the same rights and powers** including the right to vote to proxy and postal ballot on behalf of the body corporate which he represents.

Resolutions [Section 114–117]

In lay man's language, a resolution is the **formal decision** of an organization while transacting a business at a meeting. A motion which has obtained the necessary majority vote in favour becomes a resolution. So, in effect there is a difference between the two – Motion and Resolution.

Difference between Motion & Resolution -

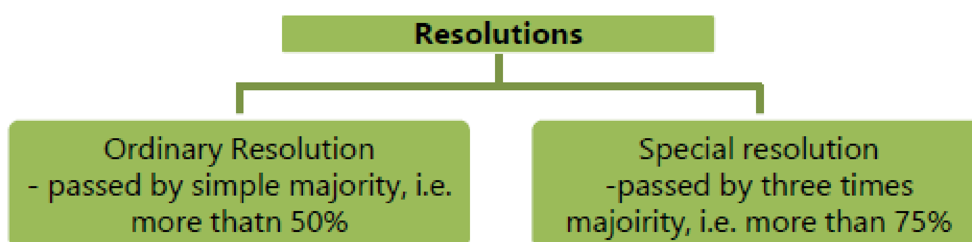
A motion is a proposal, and a resolution is the adoption of such motion duly made.

In general meeting only such motions are proposed which are covered by the agenda

A motion becomes resolution only after requisite majority decides on it

A motion whether it is passed for the closure of discussion or adjournment, etc. can be passed by an ordinary resolution unless there is a specific provisions in the articles.

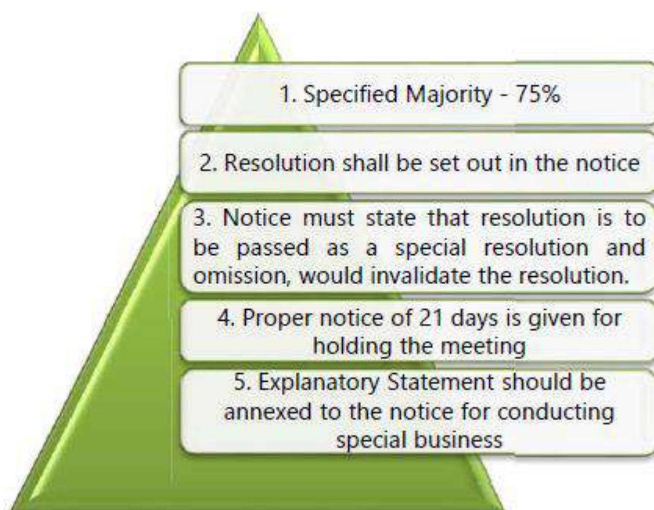
Resolutions are of two types–



© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Section 114 – Ordinary & Special Resolution:

Sec 114(1) - A resolution shall be an ordinary resolution if the votes cast (by any mode) in the favour of the resolution exceeds the votes, if any, cast against the resolution by the members.
Sec 114(2) - A resolution shall be a special resolution, when–



Resolutions Requiring Special Notice [Section 115]

Where any **provision of this act** specifically requires **or articles** of a company so **require** that a **special notice is required for passing any resolution**, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or not less than five lakh rupees paid up share capital. In such a case, the company shall give its members a notice of the resolution in the manner as prescribed in Rule 22.

As per section 115 of the Act, special notice is required in the following cases –
(a) To appoint as auditor a person other than a retiring auditor (Section 140 of the Act);
(b) To stand for directorship by a person other than retiring director 14 days' notice is required under section 160(1) of the Act;
(c) To remove a director under section 169(2) or to appoint a person to fill the vacancy caused by the dismissal of a director under section 169 at the same meeting.

Rule 23– Procedure for special notice -
1. A special notice required to be given to the company shall be **signed**, either individually or collectively by such number of members holding **not less than 1% of total voting power** or **holding** paid up share capital of **not less than 5,00,000** rupees on the date of the notice.

2. The afore-mentioned notice shall be **sent by** members to the company **not earlier than 3 months but at least 14 days before** the date of meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

3. The **company** shall immediately **after receipt** of the notice, **give its members notice of the resolution at least seven days before the meeting**, exclusive of the day of dispatch of notice and day of the meeting, in the same manner as it gives notice of any general meetings.

4. Where it is **not practicable to give the notice** in the same manner as it gives notice of any general meetings, the notice shall be **published** in **English** language in English newspaper and in **vernacular language** in a vernacular newspaper, both having wide circulation in the State where the registered office of the Company is situated and such notice shall also be posted on the website, if any, of the Company.
5. The notice shall be **published at least seven days before** the meeting, exclusive of the day of publication of the notice and day of the meeting.

<u>Resolutions Passed At Adjourned Meeting [Section 116]</u>

The section simply states that where a resolution is passed at an adjourned meeting of–
- A company; or
- The holder of any class of shares in a company; or
- The Board of Directors of a company,

And states that if a meeting is adjourned then the date of passing of the resolution shall be the date on which it is actually passed and not an earlier date.

<u>Resolutions And Agreements To Be Filed [Section 117]</u>

Extract of Act [Section 117(1)]
"A **copy of every resolution or any agreement**, in respect of matters **specified in Sec 117(3)** together with the explanatory statement under section 102, if any, annexed to the notice calling the meeting in which the resolution is proposed, **shall be filed with the Registrar within thirty days** of the passing or making thereof in such manner and with such fees as may be prescribed:

Provided that the copy of every resolution which has the effect of altering the articles and the copy of every agreement referred to in sub-section (3) shall be embodied in or annexed to every copy of the articles issued after passing of the resolution or making of the agreement."

Section 117(3) states that the following resolutions and agreements shall be filed with the ROC in Form MGT – 14 within 30 days of its passing –

1) Special Resolutions

2) Resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;

3) Any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director;

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

4) Resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members.

5) Resolutions requiring a company to be wound up voluntarily passed in pursuance of section 59 of the Insolvency and Bankruptcy Code, 2016.

6) Resolutions passed in pursuance of sec 179(3)

7) Provided that no person shall be entitled under section 399 to inspect or obtain copies of such resolutions;

8) Provided further that nothing contained in this clause shall apply to a banking company in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of loans under clause (f) of sub-section (3) of section 179 in the ordinary course of its business; and

9) Any other resolution or agreement as may be prescribed and placed in the public domain.

Penalty under the Act- Section 117(2) In case of failure to intimate ROC about the resolutions and agreements that are required to be filed within the time specified therein and states that such company shall be liable to a penalty of **one lakh rupees** and in case of continuing failure, with further penalty of **five hundred rupees for each day** after the first during which such failure continues, subject to a **maximum of twenty-five lakh** rupees and every **officer** of the company who is in default including liquidator of the company, if any, shall be liable to a **penalty of fifty thousand rupees** and in case of continuing failure, with further penalty of **five hundred rupees for each day** after the first during which such failure continues, subject to a **maximum of five lakh rupees**.

Minutes (Section 118)

Minutes are the documentation of things discussed or resolutions passed in the meeting.

Rule 25 – Procedure for maintenance of minutes

A **distinct minute book** shall be maintained for **each type of meeting** namely:
(i) General meetings of the **members**;
(ii) Meetings of the **creditors**
(iii) Meetings of the **Board**; and
(iv) Meetings of each of the **committees** of the Board

Within 30 days of the conclusion of the meeting – the minute's proceedings of each meeting shall be **entered in the books** maintained for that purpose.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

For resolution passed by postal ballot – in addition to above a brief report on postal ballot including the **following** shall also be **entered**:

a) Resolution proposed
b) Result of the voting
c) Summary of scrutinizer's report

Each page of every such book shall be **initialled or signed** and **last page** of each report in such books should be **dated & signed as follows**:

a) Meeting of board/committee – By chairman of that meeting/succeeding meeting
b) General meeting – By chairman of that meeting within 30 days, in case of death/inability of chairman by director duly authorised by BOD
c) Resolution passed by postal ballot – Chairman of the board within 30 days, in case of death/inability of chairman by director duly authorised by BOD

Minute books shall be kept at registered office of the company or such place as board may decide and preserved permanently and kept in the custody of company secretary or any director duly authorised by the board. However **minute books of general meeting** shall be **kept only at registered office.**

Section 8 companies are exempted from the provisions of sec 118

Following points regarding minute book as per sec 118 –

a) Minute book is prepared as per **Rule 25**

b) Minute book should be **consecutively numbered**

c) The minutes of each meeting shall contain a **fair and correct summary** of the proceedings that took place at the concerned meeting

d) All **appointments made** at any of the meetings aforesaid shall be **included** in the minutes of the meeting

e) In the case of a **Board Meeting or** a meeting of a **committee** of the Board, the minutes **shall also contain**–
    a. The names of the directors present at the meeting; and
    b. In the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from the resolution

i) Any of the **following matter shall not be included** in the minutes of the meeting, which in the opinion of the Chairman of the meeting–
    a) Is or could reasonably be regarded as **defamatory** of any person; or
    b) Is irrelevant or **immaterial** to the proceedings; or
    c) Is **detrimental** to the interests of the company.

f) The **matter to be included or excluded** in the minutes of the meetings shall be at the absolute **discretion of the Chairman** of the meeting.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

g) The **minutes** kept in accordance with the provisions shall **serve as the evidence** of the proceedings therein.

h) Where the minutes have been kept in accordance with this section, until the contrary is proved, it will be deemed to have been duly called and held, all appointments made shall be deemed to be valid

i) No document, purporting to be a report of the proceedings of any general meeting of a company shall be circulated or advertised at the expense of the company, unless it includes the matters requires by this section to be contained in the minutes of the proceedings of such meeting.

j) **Every company shall observe Secretarial Standards** with respect to general and Board meetings, specified by the Institute of Company Secretaries of India and approved as such by the Central Government

k) **Penalty for contravention**– **25000** for **company** and **5000** for every **officer** in default. If a person is found **tampering with the minutes** of the proceedings of the meeting, he shall be **punishable with imprisonment** for a term which **may extend to 2 years and** with **fine** which shall **not be less than 25,000** but which **may extend to 1,00,000**

Inspection Of Minute-Books Of General Meeting [Section 119]

Minutes of the general meeting to be **kept at registered office** of the company and should be **open for inspection, during business hours**, **by any member, without charge**, subject to such reasonable restrictions as specified in the articles of the company or as imposed in the general meeting. However, at least 2 hour in each business day shall be allowed for inspection –Sec 119(1).

Any member can make a request with prescribed fee (not exceeding **INR 10 for each page** or part of the page) to the company for **supply of copy of minutes** – and **company** is required to **provide** the same **within 7 days** of making such request Sec 119(2)
If a member demand soft copy of minutes for any of the immediately preceding 3 FY then it will provided by the company free of cost

Penalty for contravention – **25000** for **company**, **5000** for each refusal by every **officer** in default – Sec 119(3)
In case of refusal or default – **Tribunal** may **order** an **immediate inspection** of the minute-books or direct that the copy required shall forthwith be sent to the person requiring it.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Maintenance And Inspection Of Documents In Electronic Form [Section 120]

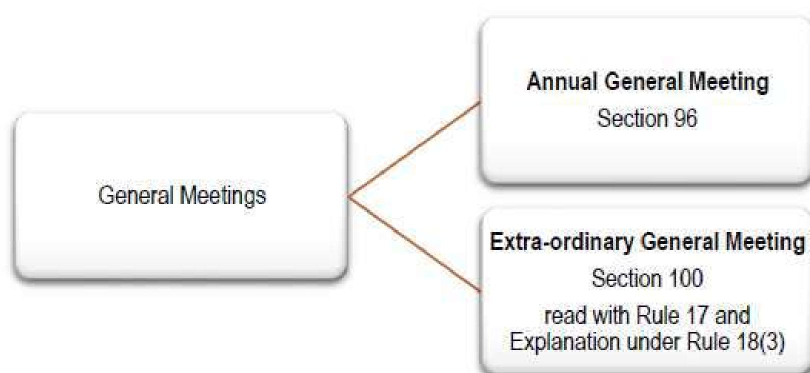
Any **document, record, register or minute**, etc. **may be kept or inspected in the electronic form** as per following rules –

a) Every **listed company or** a company having **at least 1000 shareholders**, debenture-holders and **other security holders**, may maintain its **records**, as required to be **maintained** under the Act or rules made thereunder, **in electronic form** - Rule 27

b) The Managing Director, Company Secretary or any other director or officer of the company as the Board may decide shall be **responsible** for the maintenance and **security of electronic records** – Rule 28

c) Where a company maintains its records in electronic form, any duty imposed by the Act or rules made there under to make those records available for inspection or to provide copies of the whole or a part of those records, shall be construed as a duty to make the records available for inspection in electronic form or to provide copies of those records containing a clear reproduction of the whole or part thereof, as the case may be on payment of not exceeding 10 rupees per page.

Meetings



Section 96 – Annual General Meeting ('AGM')

Every company except One Person Company, shall hold an annual general meeting every year and that the **gap between two AGMs** shall **not be more than 15 months**. Sec 96(1)

The company shall specify the meeting as AGM in the notices calling it

First AGM of a company shall be held within a period of **9 months** from the date of **closing of the 1st financial year** (i.e. April to March next year). In any **other case**, AGM shall be held **within** a period of **6 months from** the date of **closing** of its financial year.

Where a company holds its first AGM as aforesaid, it shall not be necessary for the company to hold any AGM in the year of its incorporation.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Registrar may grant an extension by 3 months, for holding the AGM to any company for special reasons, except in the case of first AGM of the company.
Sec 96(2) - Every **AGM** shall be **called during business hours**, that is, **between 9 a.m. and 6 p.m. on any day that is not a National Holiday** and shall be held either **at the registered office** of the company **or** at some other place **within the city**, town or village in which the registered office of the company is situate:

1) Provided that annual general meeting of an **unlisted company** may be **held at any place in India if consent** is given in writing or by electronic mode **by all** the **members** in advance

2) Provided further that the **Central Government may exempt** any company from the provisions of this sub-section subject to such conditions as it may impose.

For **Govt. co. AGM** can be **held at any other place as CG may approve** in this behalf (this benefit is available if govt. co. has not committed a default in filing its financial statements u/s 137 or annual return u/s 92)

In Sec 8 company – The company can fix the date, time and place of next AGM beforehand and based on the instructions the board can call for the AGM

Sec 97(1) - If any **default is made in holding the AGM** then the **Tribunal may** on the application of any member of the company, call, or **direct** the **calling of, an AGM** of the company and give such ancillary or consequential directions as the Tribunal thinks suitable:
Provided that such **directions may include** a direction that **one member** of the company present in person or by proxy shall be deemed to **constitute a meeting.**

Sec 98 – Similarly - if for any reason, it is impracticable to call a meeting of a company other than an AGM, the Tribunal shall have the power to order for calling the meeting either *suo motu* (on its own) or on the application of any director of the company or of any member of the company

Provided that such **directions may include** a direction that **one member** of the company present in person or by proxy shall be deemed to **constitute a meeting**

Punishment for default in complying with the provisions of section 96 to 98
Company & every officer – Fine upto 1 Lakhs + 5000 for every day till default continues

Section 121 – Report on AGM – **All listed public companies** shall prepare a report in the Form **MGT – 15** as on each AGM including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of this Act and the rules made thereunder. The company shall also **file a copy of report to ROC <= 30 days** of the conclusion of the AGM with the fee as prescribed.
Penalty for non-compliance - of 1 lakh + 500/day on company (Max 5 Lakhs) and 25000 + 500/day on officer in default (Max 1 Lakh)

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Extra-Ordinary General Meetings Section 100

Who can call EGM?

a) BOD – by themselves
b) BOD on requisition of members holding 1/10th voting power/paid up share capital as the case may be
c) If BOD doesn't proceed <= 21 days to call an EGM <= 45 days from the date of receipt of receipt of such requisition then requisitionists themselves can call an EGM within a period of 3 months from the date of the requisition. In such a case company shall reimburse any reasonable expenses incurred by them which shall be deducted from the remuneration/fee payable to defaulting directors.

EGM should be **held at any place within India** (however if company is a wholly owned subsidiary of a company incorporated outside India then for such co. it can be held outside India).

Rule 17 Calling of Extraordinary general meeting by requisitionists

The **members may requisition** convening of an extraordinary general meeting in accordance with Sec 100(4), by providing such requisition **in writing or through electronic mode** at least clear **twenty-one days prior** to the proposed date of such EGM.
The notice shall specify the place, date, day and hour of the meeting and shall contain the business to be transacted at the meeting.-
Requisitionists should convene meeting at Registered office or in the same city or town where Registered office is situated and such meeting should be convened on any day except national holiday

If the **resolution** is to be proposed as a **special** resolution, the **notice** shall be given as **required** by section 114(2)

The **notice shall be signed** by all the requisitionists or **by requisitionists** duly authorised in writing by all other requisitionists on their behalf or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition.

No explanatory statement as required under section 102 need be annexed to the notice of an extraordinary general meeting convened by the requisitionists and the requisitionists may disclose the reasons for the resolution(s) which they propose to move at the meeting.

The **notice of the meeting** shall be **given** to those members whose names appear in the Register of members of the company **within three days** on which the requisitionists deposit with the Company a valid requisition for calling an extraordinary general meeting.

Where the **meeting is not convened**, the **requisitionists** shall have a **right to receive list of members together with their registered address and number of shares held** and the company concerned is bound to give a list of members together with their registered address **made as on twenty first day** from the date of receipt of valid requisition together with such changes, if any, **within forty-five days** from the date of receipt of a valid requisition.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

The notice of the meeting shall be given by speed post or registered post or through electronic mode. Any accidental omission to give notice or the non-receipt of such notice by, any member shall not invalidate the proceedings of the meeting.

Important Points for One Person Company

The section states that the provisions of section 98 and section 100 to 111 shall not apply to One Person Company.

Any business which is required to be transacted at an
1) Any general meeting by means of an ordinary or special resolution,
2) Board meeting

It shall be sufficient if the resolution is communicated by the member to the company and entered in the minutes-book required to be maintained under section 118 and signed and dated by the member and such date shall be deemed to be the date of the meeting for all the purposes under this Act.

Registers Sec 88

Every company should maintain the register of members, register of debenture-holders and register of any other security holders.

Sec 88(1)(a) – Register of members (residing in or outside India) and for each class of equity & preference shares should be **maintained separately**.

Rule 5 Maintenance of Register of Members
Entries have to made in the register **<=7 days of approval of allotment** by BOD/committee. Further register is to be **maintained at registered office**, however with special resolution passed in GM register can be maintained at any other place in the same city/village/town where registered office is situated **or at any place in India where >1/10th of total members reside**.
Hypothecation and pledge of shares is also required to be entered in the register of members as per Rule 5(7) and 5(8).

Rule 3 Particulars of Register To Be Maintained In Form MGT 1 From The Date of Registration
Name, address, email address, PAN/CIN, Nationality, Date of becoming member, date of cessation, amount of guarantee (if any), Instructions (if any) given by member with regard to sending notices etc.

Sec 88(1)(b) Separate Register of Debenture Holder/ Security Holder To Be Maintained In MGT 2 As Per Rule 4

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Rule 5 In case of **change of status of member**, security holder etc. due to change of name, due to death/insolvency, due to transfer to investor education protection fund, due to any other reason – entries shall be made in the respective registers.

Details of nomination also required to be made in MGT 1 & MGT 2.

Index of Members Sec 88(2)
Every register shall include an index of names maintained as per Rule 6 --- however it is **not necessary if members < 50**. Company shall make necessary entries in the index simultaneously with the entry for allotment or transfer of any security in such register.

Register & index of beneficial owner maintained by depository shall be deemed to be the corresponding register and index for the purpose of this act – sec 88(3)

Depositories – NSDL & CDSL
Depository participant – Zerodha, ICICI Bank etc.

Foreign Register Sec 88(4) & Rule 7

If company is **authorized by its articles** then it **can maintain register** of members/debenture holders/other security holders in the respective country **where such members resides**.
Register shall be maintained in the same format as principal register.

Co. on opening/discontinuing/making any change in any foreign register has to file <=30 days a notice in form MGT 3 along with fee to ROC.

A foreign register shall be **open to inspection and may be closed**, and extracts may be taken therefrom and copies thereof may be required, in the same manner, as is applicable to the principal register, except that the advertisement before closing the register shall be inserted in at least two newspapers circulating in the place wherein the foreign register is kept.

If a foreign register is kept by a company in any country outside India, the decision of the appropriate competent authority in regard to the rectification of the register shall be binding.

The company shall –
- **Transmit** to its registered office in India, a **copy of every entry** in any foreign register within 15 days after the entry is made; and
- Keep at such office a **duplicate register** for all the purposes of this Act, be **deemed to part of the principal register**.
- **Both the register** (principal register and all foreign registers) **shall be distinguished** from each other and no transaction of one register shall be recorded in any other register.

The company may discontinue the keeping of any foreign register, and thereupon all entries in that register shall be transferred to some other foreign register kept by the company outside India or to the principal register.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Penalty on failure to maintain register Sec 88(5)

Company and every officer of the company who is in default shall be punishable with fine which shall **not be less than 50,000** but which may **extend to 3,00,000** and where the failure is a continuing one, with a further fine which may extend to **1,000 per day**
The offence under this section is a compoundable offence under section 441 of the Act.

Section 89 & Rule 9 – Declaration In Respect Of Beneficial Interest In Any Share

1) Any person who is a member but not holding the beneficial interest in such shares and
2) Person holding beneficial interest
3) Any changes in the beneficial interest

Shall be declared to the company in form MGT 4 <=30 days and company shall take a note of such declaration in the register of members and shall file a return in MGT 6 to ROC<=30 days.

Not applicable to trust created to set up Mutual fund or venture capital fund or other funds approved by SEBI.
If beneficial owner doesn't file declaration then he/she can't claim the rights on any share.

Beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the **right or entitlement** of a person alone or together with any other person **to**—
(i) Exercise or cause to be exercised any or all of the **rights attached to such share**; or
(ii) **Receive** or participate in any **dividend** or other distribution in respect of such share. [Section 89(10)]

Penalty – Sec 89(5) & 89(7)

For persons required to file declaration – upto 5000 + 1000/day during which default continues
For company/defaulting officer – Not less than 500 but can go upto 1000 and 1000/day till default continues

Section 89 not applicable to government companies

Sec 90 Register of Significant Beneficial Owners In A Company

1) Every **individual holding beneficial interest >=25%** (significant beneficial owner) shall **make** a **declaration** to the company, specifying the nature of his interest and other particulars in such manner as may be prescribed, however central government may exempt a class or classes of persons.

2) Every **company** shall **maintain a register of the interest** declared by individuals **and changes therein** which shall include the name of individual, his date of birth, address, details of ownership in the company and such other details as may be prescribed.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

3) The **register** maintained shall be **open to inspection** by any member of the company on payment of such fees as may be prescribed.
4) Every **company shall file a return of significant beneficial owners** of the company and changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form and manner as may be prescribed. **Subsection 4A** – every **company shall take necessary steps to identify an individual who is a significant beneficial owner** in relation to the company & require him to comply with the provisions of this section.

4A) Every co. shall take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and require him to comply with the provisions of this section.

5) A **company shall give notice**, in the prescribed manner, to any person (whether or not a member of the company) **whom the company knows or has reasonable cause to believe**—
   a. to be a significant beneficial owner of the company;
   b. to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or
   c. to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued, and who is not registered as a significant beneficial owner with the company as required under this section.
6) The **information required** by the notice **shall be given** by the concerned person **within** a period not exceeding **thirty days** of the date of the notice.
7) The **company shall**,—
   a. where that person fails to give the company the information required by the notice within the time specified therein; or
   b. where the information given is not satisfactory,

apply to the Tribunal within a period of **fifteen days of the expiry of the period specified in the notice**, for an order directing that the shares in question be subject to restrictions with regard **to transfer of interest**, **suspension of all rights** attached to the shares and such other matters as may be prescribed

8) On any application made under sub-section (7), the **Tribunal** may, after giving an opportunity of being heard to the parties concerned, make such **order** restricting the rights attached with the shares **within a period of sixty days** of receipt of application or such other period as may be prescribed.

9) The company or the **person aggrieved** by the order of the Tribunal may **make an application to the Tribunal for relaxation** or lifting of the restrictions placed under sub-section (8), within a period of one year from the date of such order:
   Provided that if no such application has been filed within a period of one year from the date of the order, such shares shall be transferred, without any restrictions, to the authority constituted under sub-section (5) of section 125 (Investor education and protection fund), in such manner as may be prescribed. Subsection 9A – The CG may make rules for the purpose of this section

9A) The CG may make rules for the purpose of this section

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

If any **person fails to make a above declaration,** he shall be **punishable with imprisonment** for a term which may extend to **one year or** with **fine** which shall **not be less than one lakh rupees** but which may **extend to ten lakh rupees** or with both and where the failure is a continuing one, with a further fine which may extend to **one thousand rupees for every day** after the first during which the failure continues.

10) If a **company**, required to maintain register and file the information or required to take necessary steps under subsection 4A **- fails to do so or denies inspection** as provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall **not be less than ten lakh rupees** but which may **extend to fifty lakh rupees** and where the failure is a continuing one, with a further fine which may extend to **one thousand rupees for every day** after the first during which the failure continues.

11) If any **person wilfully furnishes any false** or incorrect **information** or suppresses any material information of which he is aware in the declaration made under this section, he shall be **liable to action under section 447** (punishment for fraud).

Above section not applicable to government companies

<u>Section 91 & Rule 10 – Power To Close Register of Members Or Debenture-Holders or Other Security Holders</u>

Company may close the register of members, debenture-holders and other security holders by **giving** minimum **7 days' notice** or such lesser period as specified by SEBI for listed companies or company intends to list its securities
Notice is to be published in at least one English & one vernacular language having wide circulation in the place where registered office is situated.
Also notice should be published on company's website (if any)

Section 91(1) further states that the registers may be closed for any period not exceeding 30 days at any one time and for an aggregate period of 45 days in one year.
Closing means in that time period no new entry in the register would be made

Above provisions are not applicable to a private company provided notice has been served on all members of the private company not less than 7 days prior to closure of the register.

<u>Annual Return [Section 92-94]</u>
Every company is required to file with the ROC, the annual return as prescribed in section 92, in Form MGT– 7 as per Rule 11(1) – following particulars contained in annual return to be filed by every company -

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

1. Its registered office, principal business activities, particulars of its holding, subsidiary and associate companies.

2. Its shares, debentures and other securities and shareholding pattern

3. Its indebtedness

4. Its members and debenture-holders along with the changes therein since the close of the previous financial year

5. Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year.

6. Meetings of members or a class thereof, Board and its various committees along with attendance details.

*7. Remuneration of directors and key managerial personnel

8. Penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment.

9. Matters relating to certification of compliances, disclosures.

10. Details in respect of shares held by or on behalf of the Foreign Institutional Investors including their names, addresses, countries of incorporation, registration and percentage of shareholding held by them.

For private companies – declaration of remuneration of directors and KMP not required
Annual return has to be **signed by a director** of the company **and** the **company secretary**; and **in case**, there is **no company secretary**, by a **company secretary in practice**. However, in relation to One Person Company, small company or start-up private co., the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

Annual return, filed by a **listed company** or a company having paid-up **share capital of 10 crore** or more; **or** a **turnover** of **50 crore** or more, shall be **certified by a Company Secretary in practice** and the certificate shall be in Form MGT – 8. It must state that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of the Act. Sec 92(2) & Rule 11(2)

The extract of annual return shall be attached with the Board's Report in Form MGT – 9, as per section 92(3) read with Rule 12(1).

A copy of annual return shall be **filed with the ROC within 60 days** from the date on which the Annual General Meeting ('**AGM**') is held or where **no annual general meeting** is held in any year within **60 days from the date on which the annual general meeting should have been held**, along **with** the **reasons** for not holding the AGM

Certification of the annual return is done by a company secretary in practice.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

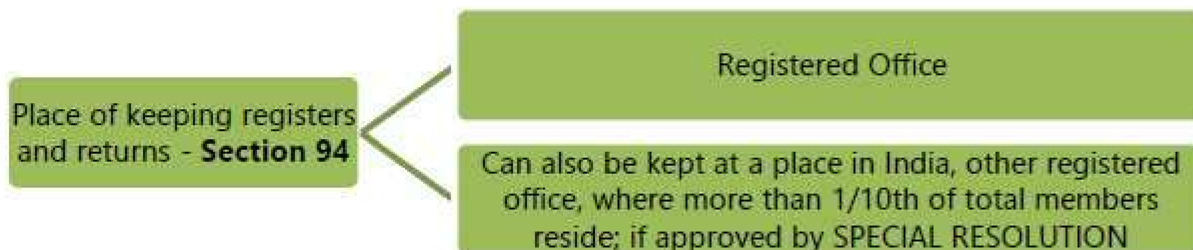
Penalty for contravention–

Company and its every officer who is in default shall be liable to a penalty of **fifty thousand rupees** and in case of continuing failure, with further penalty of **one hundred rupees** for **each day** during which such failure continues, subject to a maximum of five lakh rupees

If a **company secretary** in practice, certifies the annual return otherwise than in accordance with this section and the rules made thereunder, he shall be punishable with fine which shall not be less than **50,000** but which may **extend to 5,00,000.**

Copies of annual return along with the copy of **certificates** and the **documents** required to be annexed thereto shall be **preserved for a period of 8 years** from the date of filing of the annual return – Rule 15(3)

Section 94 – Place of keeping and inspection of registers, returns, etc



The registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be **open for inspection** by any member, debenture-holder, other security holder or beneficial owner, during business hours on any working day without payment of any fees and by any other person on payment of such fees (not exceeding 50 per inspection) as prescribed in Rule 14(1).

According to Section 94(3) read with Rule 14(2), **any member**, debenture-holder or security holder or beneficial owner **can take the extracts** during any business hours without payment of any fee or can also get copies thereof with payment of fee not exceeding 10 for each page. Such copies or entries or return shall be **supplied within 7 days** of deposit of fee.

Provided that such particulars of the register or index or return as may be prescribed shall not be available for inspection under sub-section (*2*) or for taking extracts or copies under this sub-section.

Preservation of register of members etc. and annual return–

Register of members along with the index shall be **preserved permanently** and shall be kept in the custody of company secretary or any other person authorized by BOD

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

The **register of debenture-holder** or any other security holder along with the index shall be preserved for a period of **8 years from the date of redemption** of debentures or securities and shall be kept in the custody of company secretary or any other person authorized by BOD

Copies of all annual returns prepared under section 92 and copies of all certificates and documents required to be annexed thereto shall be preserved for a period of 8 years from the date of filing with the ROC.

Foreign register shall be **preserved permanently**, **unless it is discontinued** and all the entries are transferred to any other foreign register or to the principal register. Foreign register of debenture-holder or any other security holder shall be preserved for a period of 8 years from the date of redemption of debenture or securities.

Penalty for refusing the inspection or making any extract or copy required

Company and every officer of the company who is in default, shall be liable for each such default, to a penalty of **1,000 for every day** subject to **a maximum** of **1,00,000** during which the refusal or default continues

The **Central Government may** also, by **order**, direct an immediate **inspection** of the document, or direct that the extract required shall forthwith be allowed to be taken by the person requiring it.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

CH-7 DECLARATION & PAYMENT OF DIVIDEND

Meaning of Dividend

A dividend is a part of distributable profits whose payment is made by a company to its shareholders.

A dividend is allocated as a fixed amount, say INR 5 per share or expressed as a certain percentage of face value of share, with shareholders receiving a dividend in proportion to their shareholding.

Types of Dividend

(i) Interim dividend –- Interim dividend is said to be declared and paid between two agms. It is declared by bod, however regularized by members in agm. Further source of declaring interim dividend are –

a) Surplus in the profit and loss account; or
b) Profits of the financial year in which such dividend is sought to be declared; or
c) Profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.

Important note - If the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

For example, if a company declared dividend at the rate of 15% during the immediately preceding three financial years, then in case the company incurs loss in the current financial year, it is permitted to declare interim dividend at a rate which is not higher than 15%.

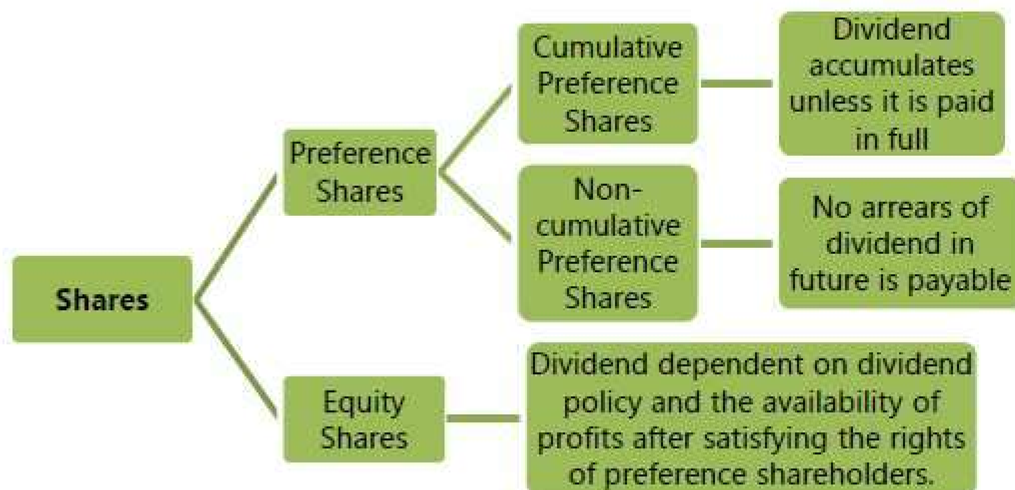
The amount of the dividend, including interim dividend, shall be deposited in a separate account maintained with a scheduled bank within five days from the date of declaration.
All provisions which are applicable to the payment of dividend shall also apply in case of interim dividend.

(ii) Final dividend - When the dividend is declared at the annual general meeting of the company, it is known as 'final dividend.

The rate at which dividend needs to be declared and paid shall be **recommended by the board** of directors in the directors' report. However, such rate (or a lower rate) is required to be **approved by** the **members at** the **AGM** by passing an ordinary resolution since declaration of dividend is an ordinary business.

The rate of dividend recommended by the board cannot be increased by the members.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App



Sources for Declaration of Dividend

1) Profits of current year arrived after providing depreciation or/&
2) Profits of any previous financial year or years - after providing for depreciation in accordance with Schedule II and remaining undistributed profits/reserves or
3) Money provided by central government or state government in pursuance of guarantee given by that government

Note 1: Before declaration of any dividend, carried over previous losses and depreciation not provided in previous year or years are required to be set off against profit of the company for the current year

Note 2: In computing profits any amount representing unrealised gains, notional gains or revaluation of assets and any change in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair value shall be excluded

Note 3: Capital profits are not same as distributable profits because they are not earned in the normal course of business; and therefore, normally not available for distribution as dividend

As per First Proviso to Section 123 (1), it is not mandatory for a company to transfer a particular percentage of its profits to reserves before the declaration of any dividend in any financial year – Kitna bhi transfer kar sakte hai reserves mein

Declaration of Dividend When There Is Inadequacy or Absence of Profits

1) In case of inadequate profits company can pay dividend from past year's accumulated profits but rate cannot be more than average rate of immediately preceding 3 years (this condition shall not apply if the company has not declared any dividend in each of the three preceding year)

2) Total amount to be drawn from such accumulated profits shall not exceed 10% of paid up share capital + free reserves as per latest audited financial statement.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

3) The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared and only thereafter, any dividend in respect of equity shares shall be declared.

4) The balance of reserves after such withdrawal shall not fall below 15% of its paid-up share capital as appearing in the latest audited financial statement.

Payment of Dividend Sec 125(5)

Dividend shall be payable only to the registered shareholder or to his order or to his banker

A purchaser of shares whose name is not registered in the Register of Members cannot claim payment of dividend to him though he might have made full payment to the seller of shares.

In such a case if the instrument of transfer of shares has been delivered to the company but the company is yet to register the transfer and further the registered shareholder has not authorised the company to pay dividend to the transferee, then the dividend in relation to such shares shall be **transferred to the Unpaid Dividend Account**. Details in this respect are given later in the Chapter.

Note: In terms of Section 51, a company may, if so authorised by its articles, pay dividend in proportion to the amount paid-up on each share (If INR 10 FV share is INR 4 paid up then 40% is paid up – so if co. is authorised by AOA can declare dividend @ INR 5 per share – so shareholders of partly paid up share will get INR 2 (40% of INR5) per share).

(b) Dividends are payable in cash and not in kind. Dividends that are payable to the shareholders in cash may also be paid by cheque or dividend warrant or through any electronic mode.

Section 127 requires that the declared dividend must be paid to the entitled shareholders within the prescribed time limit of 30 days from the date of declaration of dividend. In case dividend is paid by issuing dividend warrants, such warrants must be posted at the registered addresses within the prescribed time. Once posted, it is immaterial whether the same are received within 30 days by the shareholders or not.

Note: First Proviso to Section 123 (5) states that sub-section (5) shall not be deemed to prohibit the capitalization of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company.

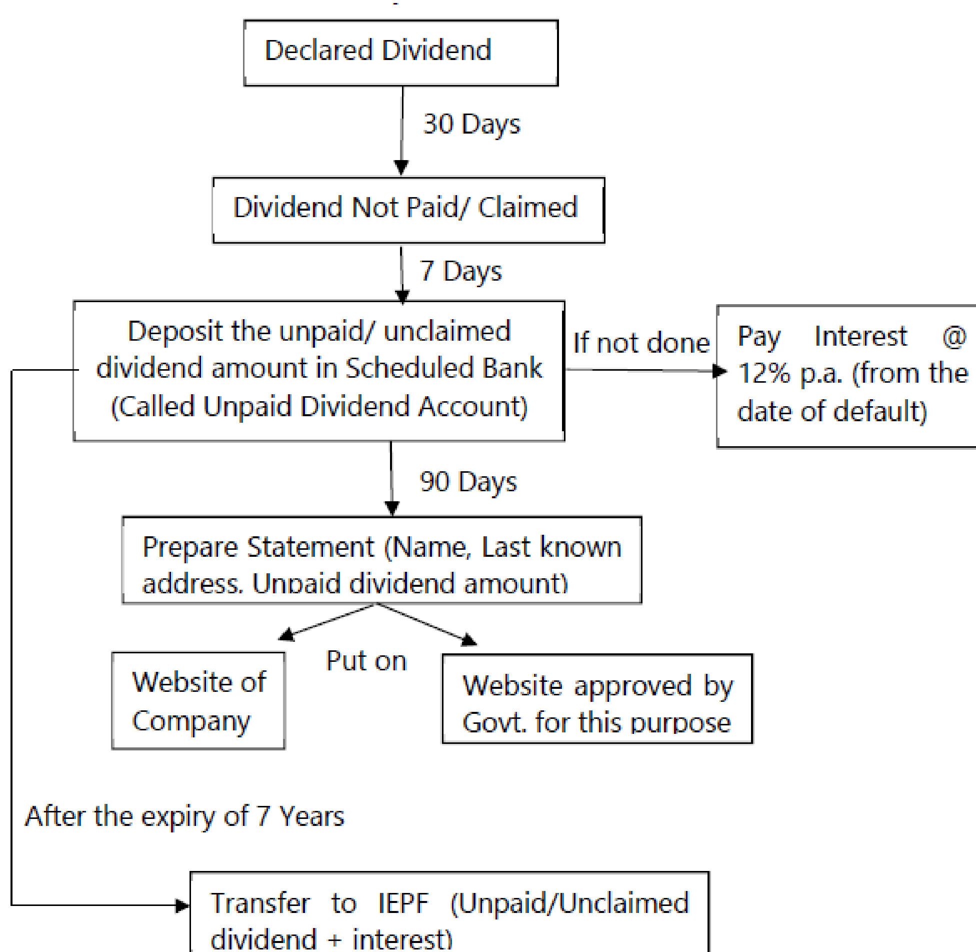
© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(c) *Applicability of Section 123 (5) to Nidhis:* This sub-section shall apply to the Nidhis, subject to the modification that any dividend payable in cash may be paid by crediting the same to the account of the member, if the dividend is not claimed within 30 days from the date of declaration of the dividend.

Prohibition on Declaration of Dividend

1) Co. which fails to comply with provisions of acceptance of deposit/ repayment of deposit etc. cannot declare dividend on its equity shares
2) Section 8 co;. cannot pay dividends

Unpaid Dividend Account



Punishment for contravevning any provision

1) Company – 5L to 25L
2) Officer in default – 1L to 5L

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Investor Education And Protection Fund (IEPF) Sec 125

What All Amount Goes To IEPF account –

a) The amount given by the Central Government by way of grants after due appropriation made by Parliament
b) Donations given by the Central Government, State Governments, companies or any other institution for the purposes of the Fund
c) The amount lying in the Unpaid Dividend Account (UDA) of co. transferred after expiry of 7 years
d) **Amount in the General Revenue Account of the Central Government-**
e) The amount lying in the old IEPF under section 205C of the Companies Act, 1956;
f) The interest or other income received out of investments made from the Fund;
g) **Amount received through disgorgement or disposal of Securities-**
h) The application money received by companies for allotment of any securities and due for refund after 7 years
i) Matured deposit with co. (not banks) unpaid and unclaimed for 7 years
j) Matured debentures with co. after 7 years
k) Interest accrued on above h) to j)
l) Amount received from sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years;
m) Other Amounts as prescribed

Utilization of The Fund: According to section 125 (3) the Fund shall be utilized for:

(a) Refund of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;
(b) Promotion of investors' education, awareness and protection;
(c) Distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement;
(d) Reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and
(e) Any other purpose incidental thereto in accordance with the rules framed under the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.

Refund of Amount- It is provided that in case of a person whose amounts referred to in clauses (a) to (d) of sub-section (2) of section 205C transferred to IEPF, after the expiry of 7 years as per provisions of the Companies Act, 1956, shall be entitled to get refund out of the fund in respect of such claims in accordance with rules made under this section.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Application To The Authority For Payment: According to section 125 (4), any person claiming to be entitled to the amount referred in section 125 (2) may apply to the Authority constituted under section 125 (5) for the payment of the money claimed

Other Provisions Governing The IEPF

(i) Constitution of the Authority for Administration of Fund- An Authority is being constituted for the administration and maintenance of accounts as well as other relevant records of the Fund. Further, with the notification of IEPF Authority, the Secretary, Ministry of Corporate Affairs shall be the ex-officio Chairperson of the Authority. In addition, there shall be six members (maximum limit seven) and a Chief Executive Officer who shall be the convenor of the Authority.

(ii) Provision of required Resources by the Central Government for Administration of the Fund- The Central Government may provide to the Authority such offices, officers, employees and other resources in accordance with the *IEPF Authority (Appointment of Chairperson and Members, holding of Meetings and provision for Offices and Officers) Rules, 2016*.

(iii) Authority to work in consultation with CAG of India- The Authority shall administer the Fund and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed after consultation with the Comptroller and Auditor-General of India.

(iv) Spending of Money- The Authority shall be competent to spend money out of the Fund for carrying out the objects specified in section 125 (3) *i.e.* purposes for which the fund shall be utilized.

(v) Audit of the Fund- The accounts of the Fund shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him. Such audited accounts together with the audit report thereon shall be forwarded annually by the Authority to the Central Government.

(vi) Preparation of Annual Report by the Authority- For each financial year, the Authority shall prepare in the prescribed form and at prescribed time its annual report giving full account of its activities during the financial year and forward a copy thereof to the Central Government. In turn, the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor- General of India to be laid before each House of Parliament.

According to Section 126, in case any instrument of transfer of shares has been delivered by a shareholder for registration and the transfer of such shares has not been registered by the company, such company shall take the following steps: (a) transfer the dividend in relation to such shares to the Unpaid Dividend Account. Such action of transferring dividend to Unpaid Dividend Account may not be initiated by the company if it is authorised by the registered holder of such share in writing to pay such dividend to the transferee specified in the instrument of transfer; and (b) keep in abeyance in relation to such shares any offer of rights shares under section 62 (1) (a) and any issue of fully paid-up bonus shares in pursuance of first proviso to section 123 (5).

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

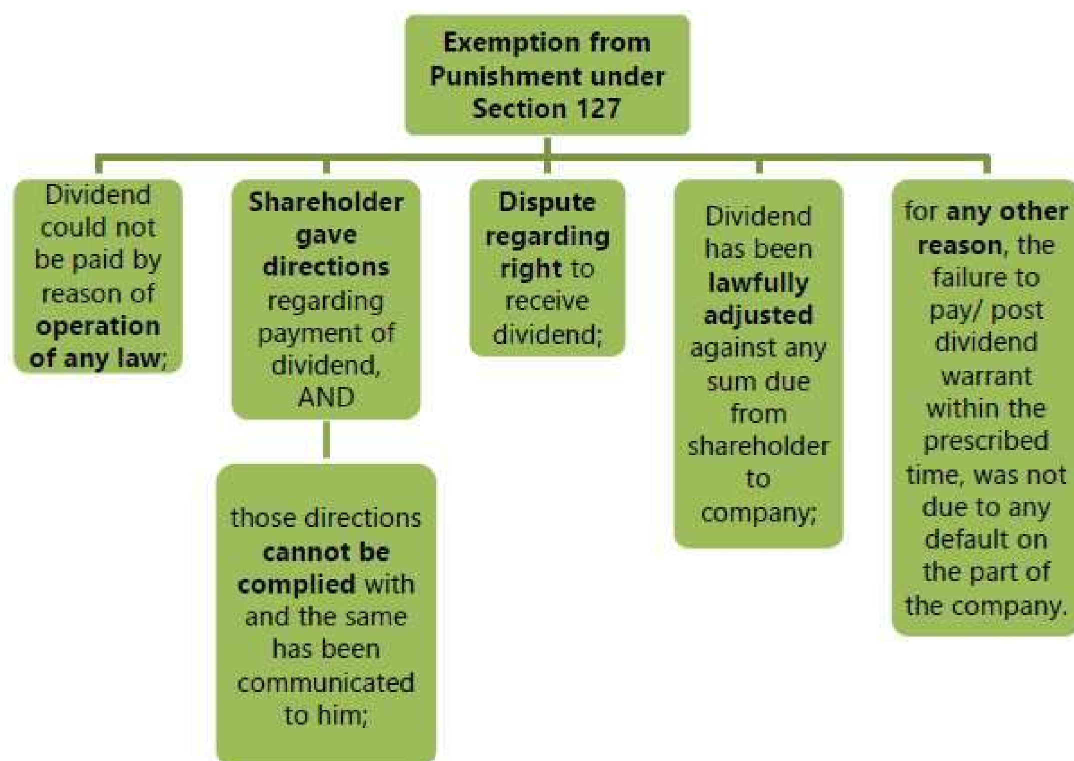
Time Limit for Distribution of Dividends In case a company declares dividend, it must be paid or the dividend warrant thereof must be posted **within 30 days** from the date of declaration of dividend to the entitled shareholders. Posting of dividend warrants within 30 days absolves the company from any punishment irrespective of whether it is received by the shareholder concerned within this time or not. The offence is committed only when the company fails to post dividend warrants at the registered address of the members within 30 days of declaration. Non-receipt of dividend warrants by the shareholders within the prescribed time does not attract any punishment

Punishment for Failure

In case a company fails to pay declared dividends or fails to post dividend warrants within 30 days of declaration, following punishments are applicable:

(i) Every **director** of the company shall be punishable with imprisonment maximum up to two years, if he is knowingly a party to the default. Further, he shall also be liable to pay minimum fine of INR 1,000 for every day during which such default continues.

(ii) The **company** shall be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues



© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Example: Mr. Alok, holding equity shares of face value of ` 10 lakhs, has not paid ` eighty thousand towards call money due on shares. Can the dividend amount payable to him be adjusted against such dues? Give reasons for your answer.

Answer: Yes. As per clause (d) of Proviso to Section 127, where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, then the dividend can be lawfully adjusted by the company against any such dues.
Thus, the action of the company adjusting dividend payable to Mr. Alok towards call money due on shares amounting to ` eighty thousand is justified and therefore, no punishment is attracted

Applicability of Section 127 To Nidhis

Section 127 dealing with punishment shall apply to the Nidhis, subject to the following modification:
In case the dividend payable to a member is INR 100 or less, it shall be sufficient compliance of the provisions of the section 127, if the declaration of the dividend is announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhis for at least 3 months

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

CH-8 ACCOUNTS OF COMPANIES
[Company (Accounts) Rules, 2014]

Every company shall prepare books of accounts (on accrual basis & double entry system) and other relevant books and records and financial statement for every financial year – which should give a true and fair view of the state of the affairs of the company, including that of its branch office(s).

Where BOA To Be Maintained - All books of accounts to be kept at registered office. BOD may decide to keep it at any other place in India – however <= 7 days BOD shall file with ROC in writing giving full address of that other place.

Inspection of BOA Sec 128(3) - BOA shall be open for inspection by **any** (all types of directors) of the **directors** during business hours. However to inspect accounts of subsidiary – authorization by BOD resolution is required.

Further where any **financial information is kept outside India** then directors can inspect that individually (and not through its agent or attorney) – Rule 4(4)

Preservation of BOA Sec 128(5) – Atleast for 8 financial years – however if investigation is ordered then BOA may be kept more than 8 years as per the direction.

Who is responsible to maintain BOA – MD/WTD/CFO/Any other person charged by BOD

Failure to comply Imprisonment (upto 1 year) or fine (50000 to 5 lakh) or both

Can Books of Accounts Maintained In Electronic Form?

Yes, following points needs to be looked upon in this regard:

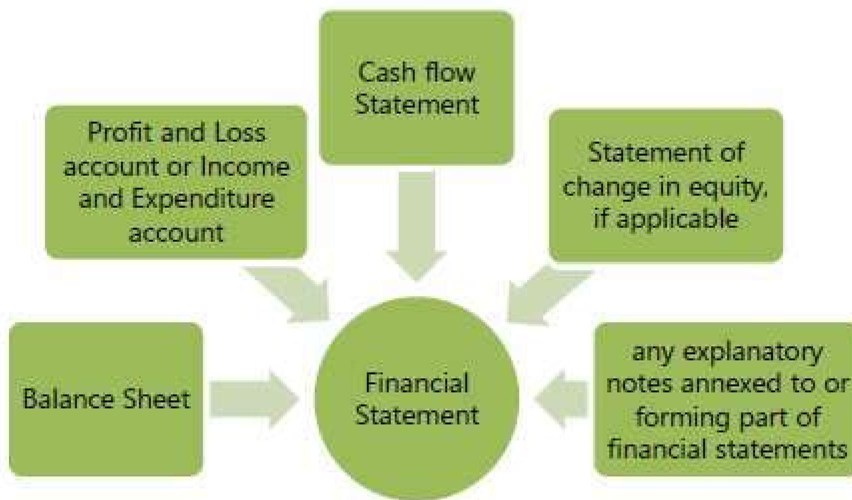
1) BOA should be kept in the format in which they were originally generated and it shall not be altered
2) They should be accessible in India for subsequent reference (including backup of books & papers maintained outside India – should be kept on Indian server on periodic basis)
3) Document shall be capable of being displayed in a legible form
4) Co. should intimate ROC on annual basis – name & location of service provider, internet protocol address of service provider.

Note – Co. can maintain BOA of branch at the branch itself provided it sends summarised returns to registered office periodically and keep it open for inspection.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Financial Statetements Section 129

Prepared as per Schedule III - At every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year Sec 129(2). Refer definition chapter 2 for more details on FS & FY.



Consolidated Financial Statements [Section 129(3)]

Where company has one or more subsidiaries (including joint ventures) or associate then it requires to prepare a consolidated financial statement which should be laid before AGM along with its FS.

Following Company Not Required To Prepare Consolidated FS

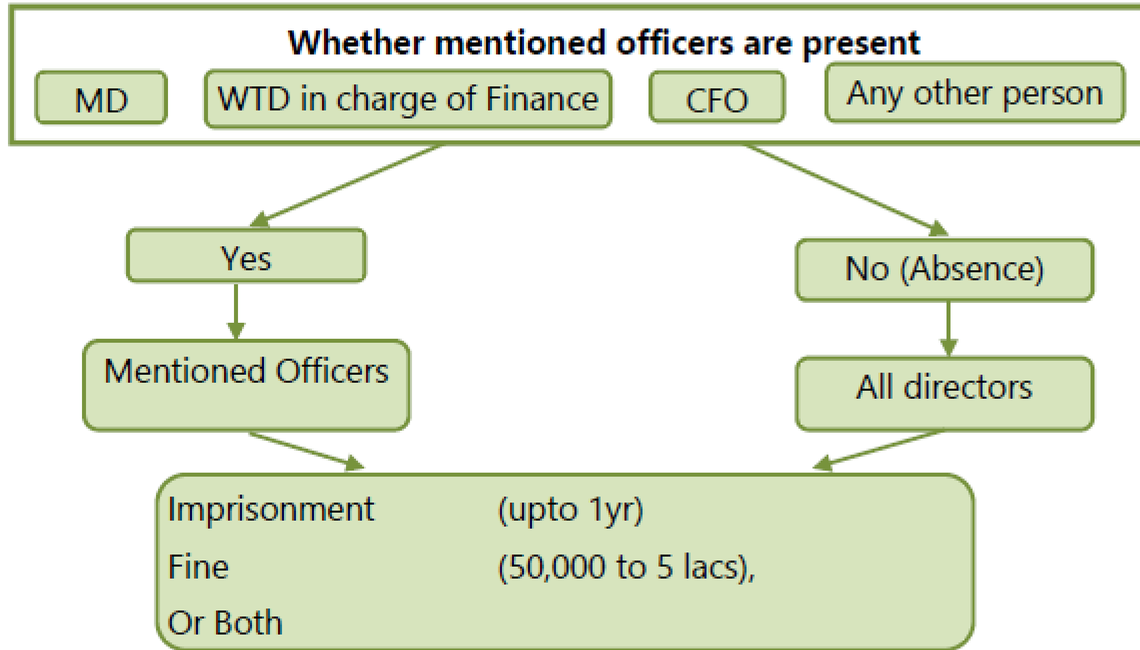
If all conditions are fulfilled

1) Unlisted company +
2) Compay's ultimate or intermediate holding files consolidated FS (compying with AS) with ROC and
3) It is a subsidiary of another co. and all its members do not object to the company not presenting consolidated financial statements.

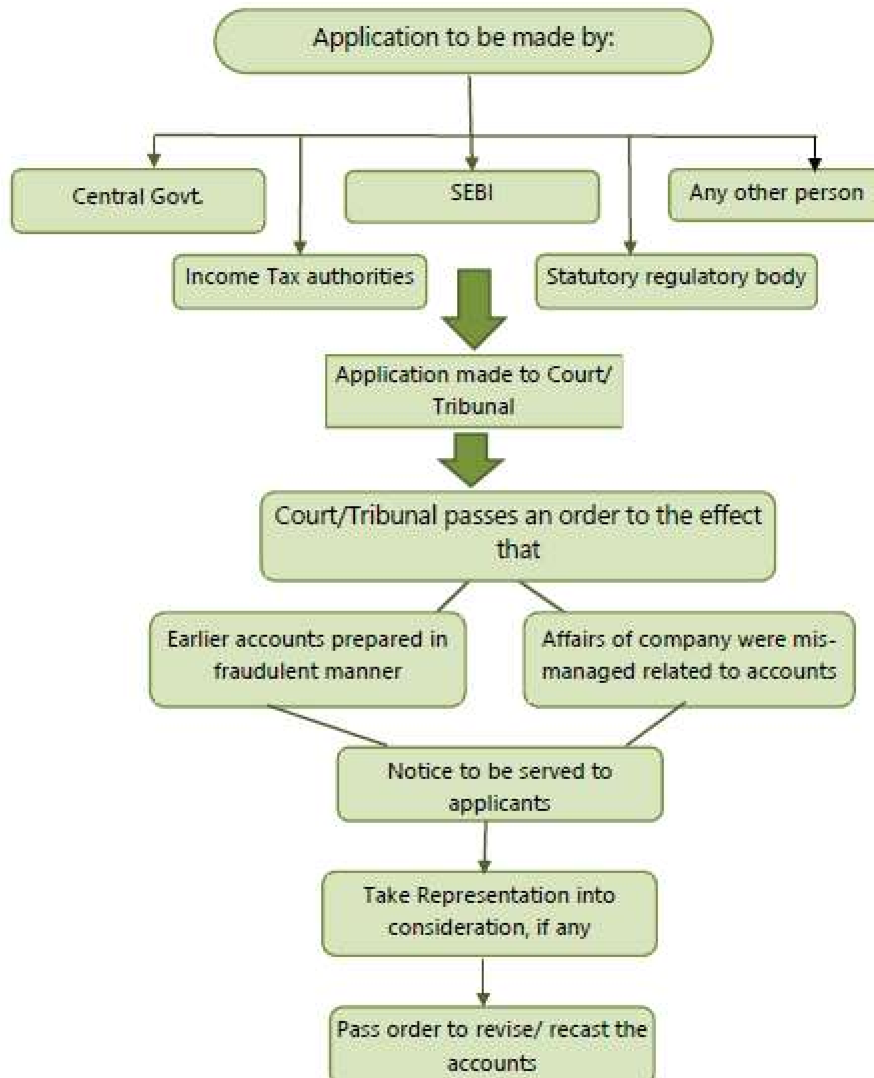
Further Central government may exempt any class or classes of companies from complying with any requirements of this section or rules made thereunder (if its in the public interest).

Where the financial statements of a company do not comply with the accounting standards referred to in sub-section (1), the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation **[Section 129(5)]**.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App



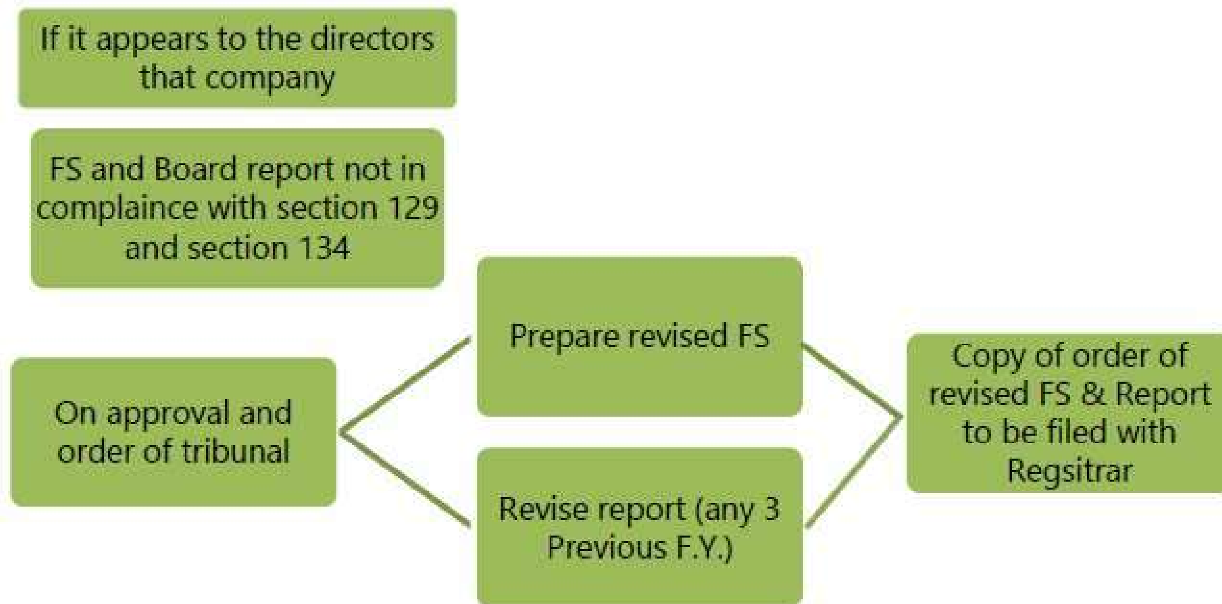
Re-Opening of Accounts On Court's Or Tribunal Orders [Section 130]



© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Note - Accounts revised or recasted shall be final
No order shall be made for re-opening of BOA relating to a period earlier than 8 FY immediately preceding current FY. However if CG has ordered for keeping BOA for a longer period in such situation BOA may be opened within such longer period.

Voluntary Revision of Financial Statements or Board's Report [Sec 131]



Tribunal shall give notice to the Central Government and the Income tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section.

Such revised financial statement or report shall not be prepared or filed more than once in a financial year.

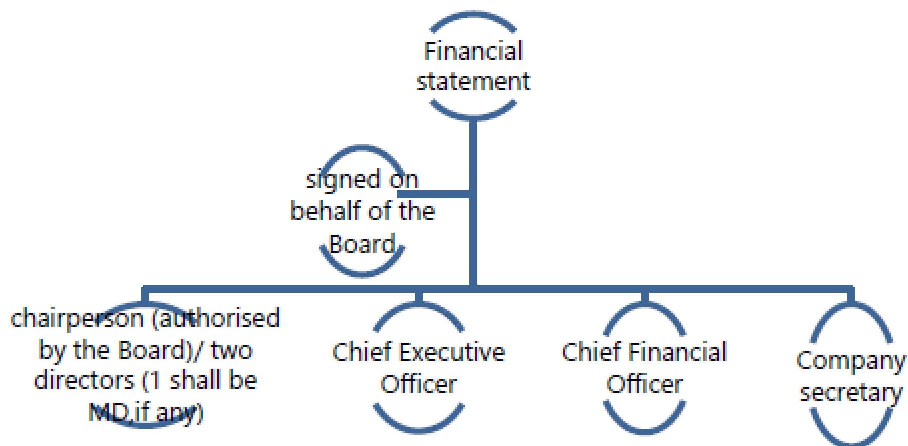
Detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made

Central Government To Prescribe Accounting Standards Section 133

The Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the ICAI in consultation with and after examination of the recommendations made by the NFRA [National Financial Reporting Authority]

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Authentication of Financial Statements [Sec 134(1), (2) & (7)]



Note - Before signing BOD shall approve the financial statements
However in case of OPC – FS shall be authorised by only one director

Signed copy of every FS including cosolidatd FS shall be issued circulated or published along with a copy each of—
(1) Any notes annexed to or forming part of such financial statement;
(2) The auditor's report; and
(3) The Board's report

Board's Report [Sec 134(3) & (4)

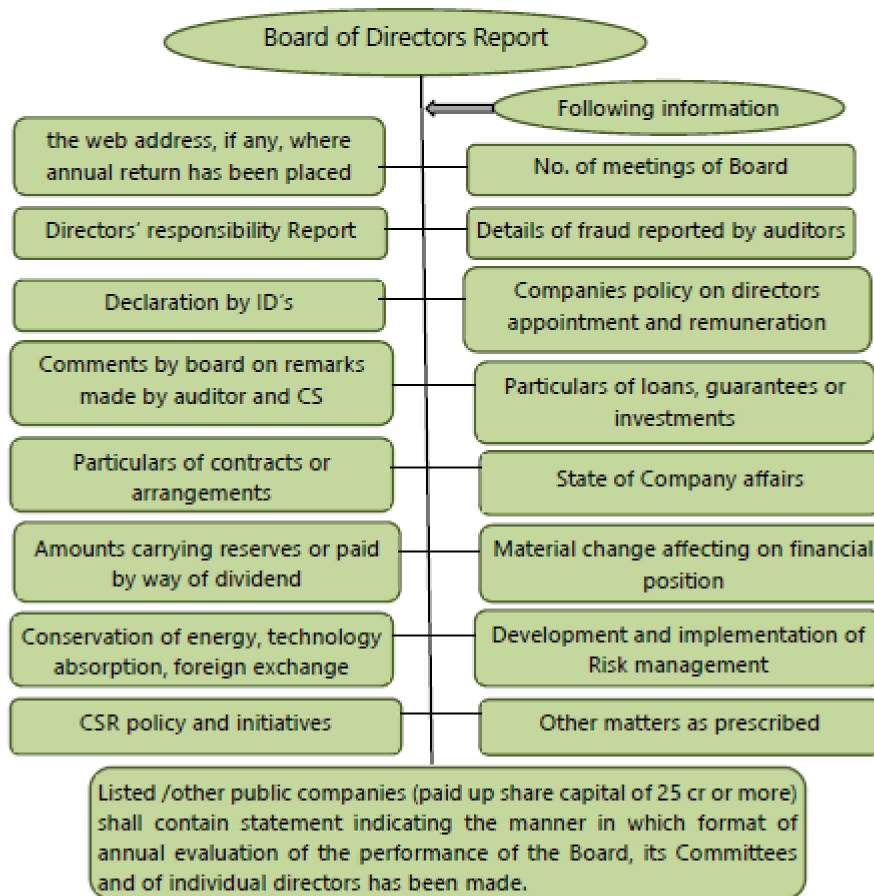
The Board's Report shall be prepared based on the standalone financial statement of the company and shall report on the highlights of performance of subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company during the period under report.

CG may prescribe an abridged board's report, for the purpose of compliance with this section by One Person Company or small company

Further for OPC – Board's report shall mean a report containing explanations or comments by the board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Contents of BOD Report



As Per Rule 8 Following Other Details Are Required In Director's Report

This rule shall not apply to One Person Company or Small Company

1) The financial summary or highlights
2) The change in the nature of business
3) Details of directors or key managerial personnel who were appointed or have resigned during the year;
4) The names of companies which have become or ceased to be its subsidiaries, joint ventures or associate companies during the year;
5) The details relating to deposits like-
    a. accepted during the year
    b. remained unpaid or unclaimed as at the end of the year
    c. whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved
        i. at the beginning of the year;
        ii. maximum during the year
        iii. at the end of the year;

6) The details of deposits which are not in compliance with the requirements of Chapter V of the Act

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

7) Details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future
8) details in respect of adequacy of internal financial controls with reference to the Financial Statements
9) Disclosure, as to whether maintenance of cost records as specified by the Central Government - is required by the Company and accordingly such accounts and records are made and maintained,
10) Statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Directors' Responsibility Statement [Section 134(5)]:

The Directors' Responsibility Statement referred to in 134(3) (c) shall state that—

1) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures
2) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period
3) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
4) the directors had prepared the annual accounts on a going concern basis; and
5) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively
6) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

Here, the term **"internal financial controls"** means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information

The Board's report and any annexures thereto shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director. Sec 134(6)

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Contravention [Sec 134(8)]

Persons liable	Punishment for contravention of any provision of this section
Company	fine which shall not be less than ₹ 50,000 but which may extend to ₹ 25 Lacs
Every officer of the company who is in default	(1) Imprisonment for a term which may extend to 3 years; or (2) fine which shall not be less than ₹ 50,000 but which may extend to ₹ 5 Lacs; or (3) Both with imprisonment and fine

Corporate Social Responsibility [Section 135]

Sec 135(1) - Which company is required to constitute CSR committee (3 or more directors – out of which atleast 1 independent however if co. is not required to appoint independent director then 2 or more directors) -

1) Net worth of rupees 500 crore or more, or
2) Turnover of rupees 1000 crore or more or
3) A net profit of rupees 5 crore or more

during the immediately preceding financial year

If above company ceases to be satisfy all the above conditions for 3 consecutive FY then it shall not be required to constitute CSR committee and comply with provions of sub-section (2) to (5).

CSR committee shall institute a transparent moitoring mechanism for implementation of the CSR projects or programs or activities undertaked by the co.
The board's report under Sec 134(3) shall disclose the composition of the CSR committee.

Amount of contribution towards CSR Sec 135(5)

BOD shall ensure that every company spends in every FY at least 2% of average net profits of the co. made during the three immediately preceding FY, in pursuance of its CSR policy.

Net profit shall not include any profit arising from any overseas branch and any dividend received from other companies in India which are covered under Sec 135.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

CSR projects undertaken in India will only be counted in CSR expenditure. Further projects for the benefit of only employees or their families or to political parties will not be counted as CSR expenditure.

For spending the CSR amount - company should give preference to the local are and areas around where it operates.

If co. fails to spend such amount then board shall specify the reason for not spending the amount in the board's report.

Co. can spend upto 5% of their total CST expenditure on building capacity of their own personnel as well that of implementing agencies (having track records of at least 3 FY).

<u>Duties of CSR Committee Sec 135(3)</u>

(a) formulate and recommend a CSR Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII;
(b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
(c) monitor the CSR Policy of the company from time to time.

Contents of the CSR Policy [Rule 6 of the Companies (CSR) Rules, 2014]:

(a) List of CSR projects or programs which a company plans to undertake falling within the purview of the Schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedules for the same; and

(b) Monitoring process of such projects or programs

(c) The CSR Policy of the company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company.

Duties of the Board in relation to CSR [Section 135(4)]:

The Board of every company referred to in sub-section (1) shall—

(1) After taking into account the recommendations made by the CSR Committee, approve the CSR Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and

(2) Ensure that the activities as are included in CSR Policy of the company are undertaken by the company.

<u>CSR Activities</u>

The CSR activities shall be taken by the company as per its CSR Policy, as projects or programmes or activities excluding activities undertaken in pursuance of its normal course of business.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Board may also establish a sec 8 company or trust for executing its CSR projects or it may undertake its projects through sec 8 co. or trust established by central or state government.

If CSR activities to be done through any other company/trust then it should have a track record of minimum 3 years in executing those projects.

Further CSR work can be undertaken jointly with other co. provided that both companies should be in a position to report separately on such projects.

CSR Reporting

Board's report shall include an annual report on CSR
In case of a foreign company, the balance sheet filed under section 381(1)(b) shall contain an Annexure regarding report on CSR

Activities specified under Schedule VII:

Activities which may be included by companies in their CSR Policies (i.e. Activities as specified under Schedule VII) are as follows:

(1) Eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water;

(2) Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects;

(3) Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;

(4) Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund set up by the Central Government for rejuvenation of river Ganga;

(5) Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;

(6) Measures for the benefit of armed forces veterans, war widows and their dependents;

(7) Training to promote rural sports, nationally recognised sports, paralympic sports and Olympic sports;

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(8) Contribution to the Prime Minister's National Relief Fund or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) or any other -fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;

(9) Contribution to incubators funded by Central Government or State Government or any agency or Public Sector Undertaking of Central Government or State Government, and contributions to public funded Universities, Indian Institute of Technology (IITs), National Laboratories and Autonomous Bodies (established under the auspices of Indian Council of Agricultural Research (ICAR), Indian Council of Medical Research (ICMR), Council of Scientific and Industrial Research (CSIR), Department of Atomic Energy (DAE), Defence Research and Development Organisation (DRDO), Department of Biotechnology (DBT), Department of Science and Technology (DST), Ministry of Electronics and Information Technology) engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs)

(10) Rural development projects;

(11) Slum area development. [For the purposes of this item, the term 'slum area' shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.]

12) Disaster management, including relief, rehabilitation and reconstruction activities.

The MCA vide General Circular No. 21/2014 dated 18 June 2014

One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure.

Expenses incurred by companies for the fulfillment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act

Expenditure incurred by Foreign Holding Company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, the CSR expenditures are routed through Indian subsidiaries

Penal Provisions

The Companies Act requires that—

(i) The Board's report shall disclose the composition of the Corporate Social Responsibility Committee as per subsection (3) of section 134;

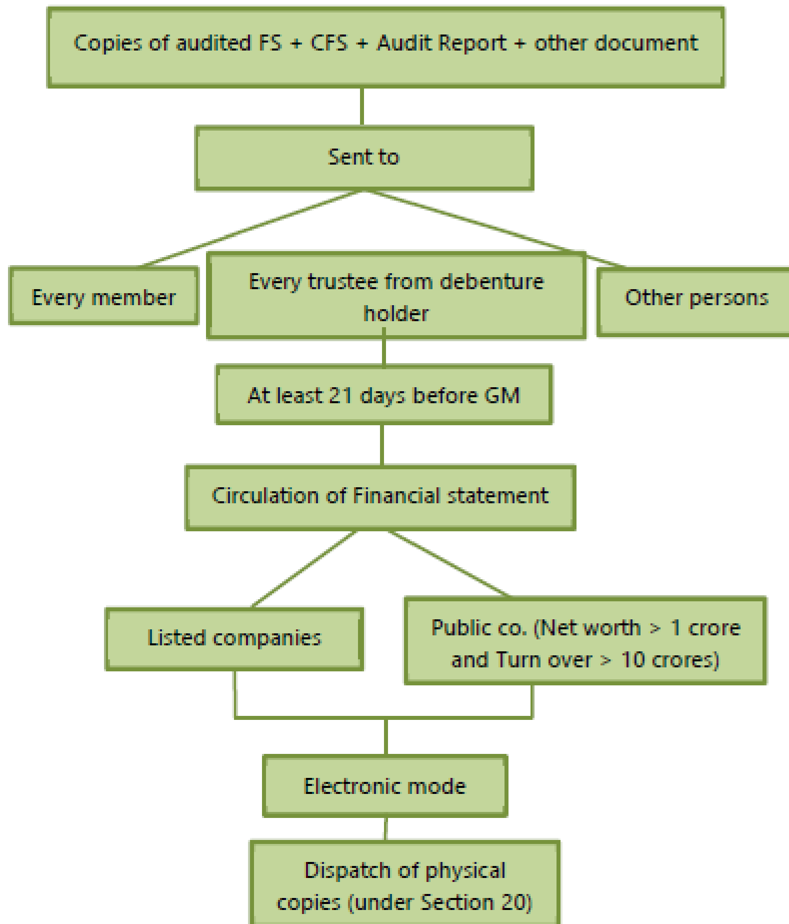
(ii) If the company fails to spend such amount (i.e. at least two percent of the average net profit), the Board shall disclose and specify the reasons for not spending the amount in its report as per Clause (o) of sub-section (3) of section 134.

As per section 134 of Companies Act, 2013 if the Company fails to disclose such information, it shall be punishable with fine, which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.

Right of Members To Copies of Audited Financial Statement [Sec 136]



< 21 days notice allowed if agreed by by member holding >=95% voting power agrees

However In Case of Listed Companies

In the case of a listed company, the provision 136(1) shall be deemed to be complied with,

- if the copies of the documents are made available for inspection at its registered office during working hours for a period of not less than 21 days before the date of the meeting
- Along with it a statement containing the salient features of such documents in the Form AOC-3 or copies of the documents, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company
- The statement is to be sent not less than 21 days before the date of the meeting unless the shareholders ask for full financial statements.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Every listed co. having subsidiary should also place separate audited accounts of each subsidiary on its website, if any; and provide its copy if asked by a shareholder

A company shall also allow every member or trustee of the debenture holder to inspect the audited financial statement at its registered office during business hours.

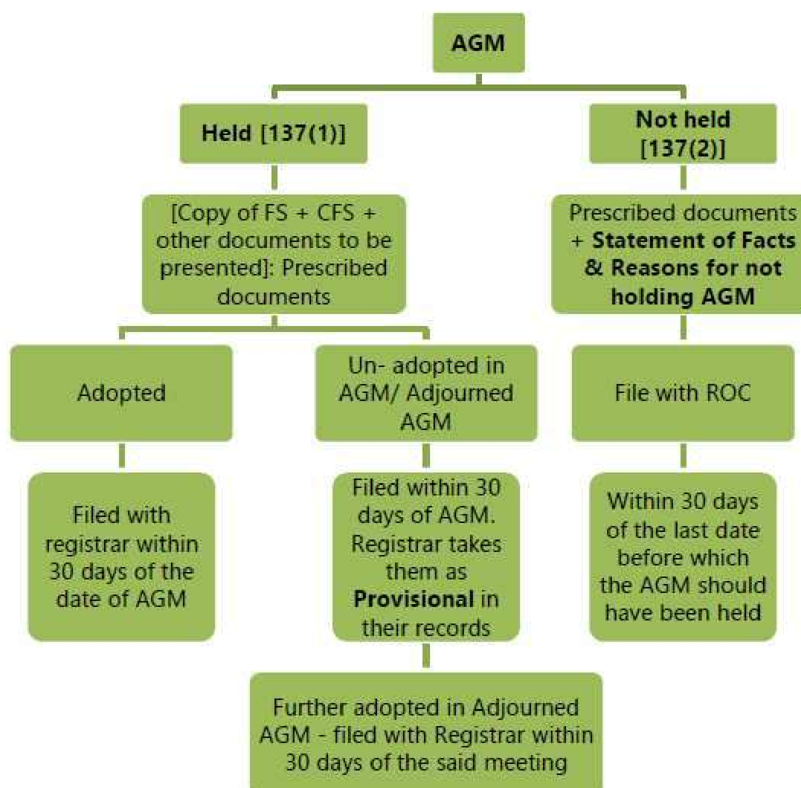
Manner of Circulation of Financial Statements In Certain Cases:

Listed co. and public co. having net worth > 1 crore and turnover > 10 crore: Send FS by

1) Electronic mode to such members whose shareholding is in dematerialized format and whose email Ids are registered with Depository for communication purposes
2) In other cases - By dispatch of physical copies through recognized mode of delivery as specified in section 20

Contravention:
If any default is made in complying with the provisions of this section, the company shall be liable to a penalty of 25,000
Every officer of the company who is in default shall be liable to a penalty of 5,000

Copy Of Financial Statement To Be Filed With Registrar [Section 137]



© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Following companies shall file their FS and other documents u//s 137 with ROC in e-form AOC 4 XBRL as per Annexure I

1) Companies listed with stock exchanges in India & their subsidiaries
2) Paid up share capital >=5 crore
3) Turnover >=100 crore
4) Co. which are required to prepare FS as per IND AS

NBFC, housing finance, companies engaged in banking/insurance business are exempted from filing of FS under these rules.

One Person Company – can file a copy of FS duly adopted by its member + along with documents which are required to be attached to such FS <=180 days from the closure of financial year.

A company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India (fourth proviso to Section 137(1)).

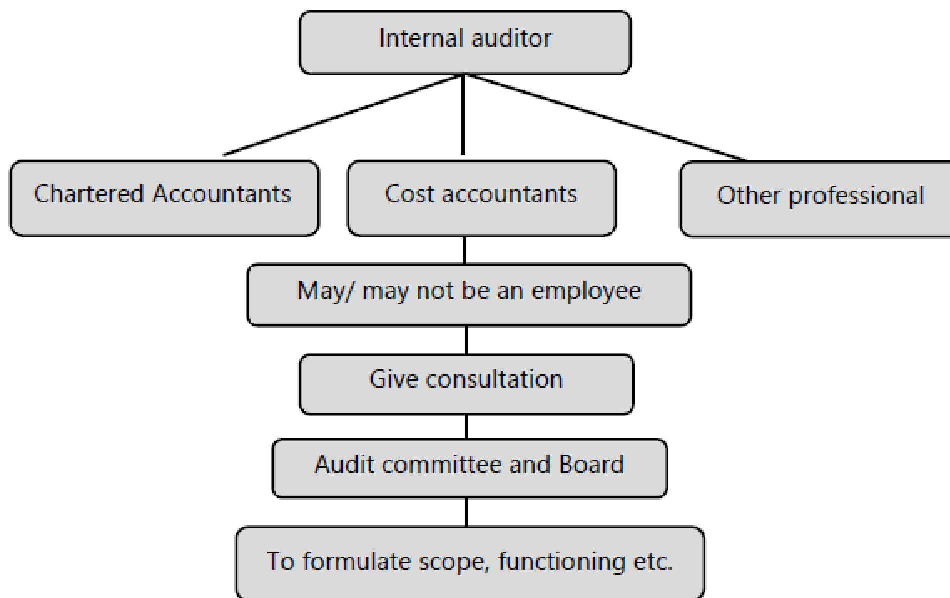
Note – In case of a foreign company which is not required to get its accounts audited as per the legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding or parent Indian company may place or file such unaudited accounts to comply with requirements of section 136(1) and 137(1), as applicable. Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts

Person liable	Punishment for contravention of section 137
Company	with fine of ₹ 1,000 for every day during which the failure continues but which shall not be more than ₹ 10 lacs,
Officers— managing director and the Chief Financial Officer of the company, if any In their absence, any other director who is charged by the Board with the responsibility In its absence, all the directors of the company.	(1) Imprisonment for a term which may extend to 6 months or (2) Fine which shall not be less than ₹ 1 lac but which may extend to ₹ 5 lacs, or (3) Both with imprisonment and fine.

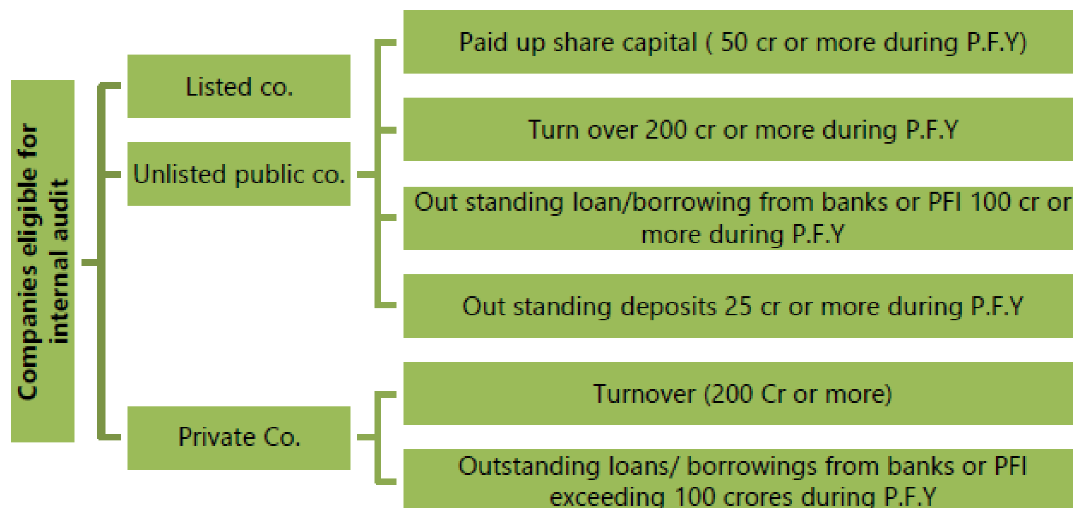
© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Internal Audit [Section 138] & Rule 13 of Companies (Accounts) Rules, 2014

Who can be an internal auditor



Following companies required to conduct internal audit



© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Ch-9 Audit & Auditors

Requirement For Appointment of Auditor Section 139 (1)

Every co. at its first AGM shall appoint an individual or a firm as an auditor of the company.
The auditor shall hold the office from the conclusion of 1st AGM till the conclusion of 6th AGM and thereafter till the conclusion of every 6th AGM.

Who will select the auditor?

1) **Audit committee u/s 177 consituted** – By Audit Committee - It will recommend individual or firm to the BOD.
    a. If BOD agrees then recommend to members
    b. If BOD disagrees then BOD shall refer back the recommendation to the committee with reasons to reconsider and If Committee decides not to reconsider its original recommendation then
        i. The BOD shall record the reasons for its disagreement with the committee and send its own recommendation to the members in the AGM or
        ii. If BOD agrees with the recommendation of the audit committee then it shall place the matter for consideration by members in the AGM.

2) **Other** – By BOD – It shall recommend individual or firm to members in AGM

The competent authority (Audit Committee or BOD as the case may be) shall take into consideration the qualifications and experience of the individual or the firm proposed to be considered for appointment as auditor and whether such qualifications and experience are commensurate with the size and requirements of the company.

It shall have regard to any order or pending proceeding relating to professional matters of conduct against the proposed auditor before the ICAI or any competent authority or any Court.

It may call for such other information from the proposed auditor as it may deem fit.

Certificate by Auditor - The Companies (Audit and Auditors) Rules, 2014 provides the content of the Certificate. According to this, the auditor appointed shall submit a certificate that –

(A) the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;

(B) the proposed appointment is as per the term provided under the Act;

(C) the proposed appointment is within the limits laid down by or under the authority of the Act;

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(D) the list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.
The certificate shall also indicate whether the auditor satisfies the criteria provided in section 141 [Section 141 provides provisions on eligibility, qualification and disqualification of Auditor which will be discussed later] of the Companies Act, 2013

Communication to Auditor
Further, the company shall inform the auditor concerned of his or its appointment, and also file a notice (in the Form ADT-1) of such appointment with the Registrar within 15 days of the meeting in which the auditor is appointed.
Here, "appointment" includes reappointment.

Term of Auditor [Section 139(2)]
For companies shall not appoint individual auditor for more than one term of 5 consecutive years and an audit firm for more than two terms of 5 consecutive years:

1) Listed companies
2) Unlisted public companies having paid up share capital >= 10 crores
3) All private limited companies having paid up share capital >=50 crore
4) All companies having paid up share capital below the above limit but having public borrowings from financial institutions, banks or public deposit >= 50 crore

Cooling off Period –

1) In case of individual auditor after completion of tenure of 5 consecutive years shall not be eligible for re-appointment as the auditor in the same company for 5 years from the completion of such term.
2) In case of audit firm which has completed its 2 term of 5 consecutive years shall not be eligible for 5 years from the completion of such term.

A break in the term for a continuous period of five years shall be considered as fulfilling the requirement of rotation.

Further, as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

If a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

It is also provided that nothing contained in above mentioned points shall prejudice the right of the company to remove an auditor or the right of the auditor to resign from such office of the company.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

First auditors [Section 139(6)]

First auditor shall be appointed by the BOD within 30 days of the date of registration to hold office until the conclusion of the first AGM.

If the Board fails to appoint the first auditor it shall inform the members of the company and the company may appoint the first auditor within 90 days at an EGM and such auditor shall hold office till the conclusion of the first AGM.

Apointment of First Auditor In case Government Company

The first auditor shall be appointed by the CAG within 60 days from the date of registration of the company. In case the CAG does not appoint the first auditor within the said period, the BOD of the company shall appoint such auditor within the next 30 days.

Further, in the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the members of the company who shall appoint such auditor within the 60 days at an EGM, who shall hold office till the conclusion of the first annual general meeting.

Casual Vacancy of Auditor

Board may fill the casual vacancy within 30 days but where such vacancy is caused by the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board.

Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

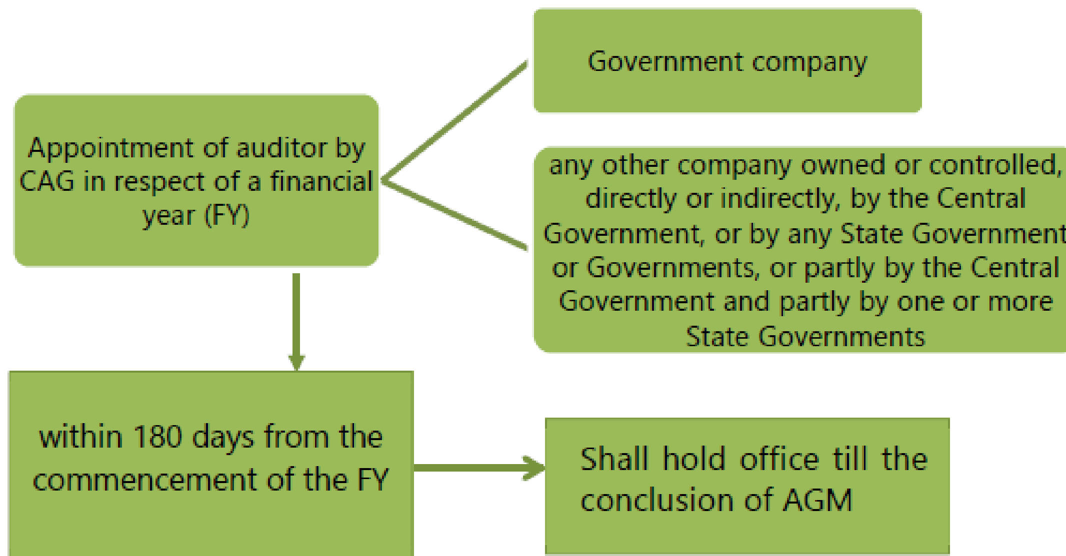
In Case of Government Co. - Casual vacancy of an auditor shall be filled by the CAG within 30 days. In case the CAG does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next 30 days.

Rotation of auditor [section 139(3) and (4)]

After the expiry of tenure of existing auditor – company shall appoint another auditor.

However the incoming auditor or audit firm shall not be eligible if such auditor or audit firm is associated with the outgoing auditor or audit firm under the same network of audit firms.
The term “same network” includes the firms operating or functioning, hitherto or in future, under the same brand name, trade name or common control.

Appointment of Subsequent Auditor In Case of Govt. Company Sec 139(5)

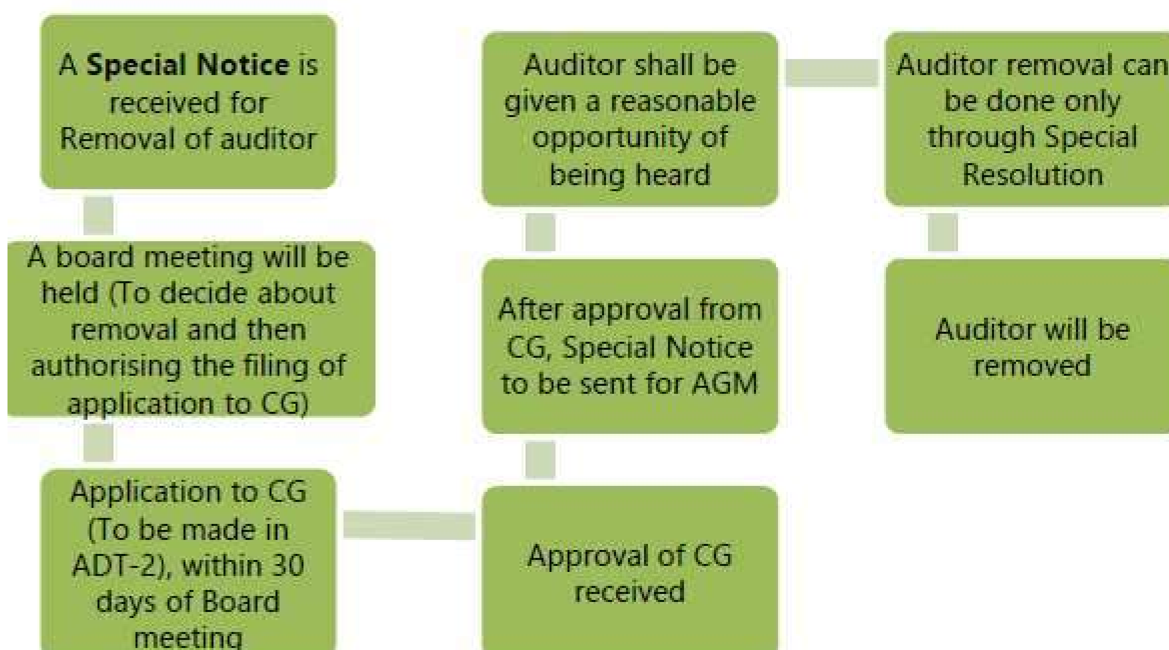


Re-appointment of retiring auditor [section 139(9), (10) and (11)]:

(a) A retiring auditor may be re-appointed at an AGM if—
(1) he is not disqualified for re-appointment;
(2) he has not given the company a notice in writing of his unwillingness to be re-appointed; and
(3) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.
(b) Where at any AGM, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

Removal of Auditor - Before the expiry of his term

Co. shall hold general meeting <=60 days of receipt of approval from CG



© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

CG powers delegated to regional director

Resignation by Auditor [Section 140(2) & (3)]

Resignation by auditor of Non-Government Co. – File form ADT-3 with Co. & ROC <= 30 days from date of resignation – Auditor shall indicate the reasons and other facts as may be relevant to his resignation.

Resignation by auditor of Government Co. – File form ADT-3 with Co., CAG & ROC <= 30 days from date of resignation.

Contravention to above – Penalty 50000 or auditor's remuneration whichever is less
In case of continuing failure a further penalty of 500 per day upto 5 Lacs

Appointing Auditor other than the Retiring Auditor [Section 140(4)]

If tenure of auditor 5 years/ 10 years as the case may be has not been complete – then a special notice is required for a resolution at AGM appointing any other person as auditor or providing expressly that a retiring auditor shall not be re-appointed.

On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor

Auditor may give his representation (not exceeding a reasonable length) in writing to the co. and company will send the copy of representation to its members.

If the representation is not sent to members because of late receipt or due to company's default – The auditor may require that the representation shall be read out at the meeting. Further copy of representation shall be with ROC.

Representation is not required to be sent or read out if on application by co. or any aggrieved party – Tribunal is satisfied that this rights are being abused by the auditor, then the copy of the representation may not be sent and the representation need not be read out at the meeting.

Auditor acts in a fraudulent manner or abetted or colluded in any fraud [Section 140(5)]

Tribunal suo moto or on application made by CG ot by any person concerned - If it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, may, by order (passed within 15 days of receipt of application), direct the company to change its auditors.

Auditor against which order is passed under this section shall not be eligible to be appointed as an auditor of **any** company for a period of 5 years from the date of passing order and auditor shall also be liable u/s 447.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Eligibility, Qualifications And Disqualifications of Auditors [Section 141]

Qualifications of an auditor [Section 141(1) & (2)]: A practising CA or a firm where majority partners are practising in India are qualified for appointment may be appointed as auditor of the company.

Where a firm including a LLP is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm.

Disqualifications of auditors [Section 141(3)]:
The following persons shall not be qualified for appointment as auditor of a company—

1) A body corporate other than a LLP
2) An officer or employee of the company
3) A person who is a partner, or who is in the employment, of an officer or employee of the company
4) A person who, or his relative or partner
    a. is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company (i.e. fellow subsidiary) – however relative may hold upto 1 Lac face value of security or interest in the co. – if security/interest held > 1 Lac then within 60 days from such acquisition - corrective action shall be taken by the auditor.
    b. is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of 5 Lacs; or
    c. has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of 1 Lac

5) A person or a firm who, whether directly or indirectly, has business relationship (commercial transactions except when in nature of professional service or when done at arm's length price) with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company.

6) A person whose relative is a director or is in the employment of the company as a director or key managerial personnel;

7) A person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 companies other than one person companies, small companies and private companies having paid-up share capital less than one hundred crore rupees.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Before appointment is given to any auditor, the company must obtain a certificate from him to the effect that the appointment, if made, will not result in an excess holding of company audit by the auditor concerned over the limit laid down in section141(3)(g).

8) A person who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction;

9) A person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company.

Vacation of office by an auditor [Section 141(4)]: If a person appointed as an auditor of a company incurs any of the disqualifications specified in Section 141(3), he shall be deemed to have vacated his office. Such vacation shall be deemed to be a casual vacancy in the office of the auditor.

Remuneration Of Auditors [Section 142]

Section 142 of the Companies Act, 2013 provides for remuneration of auditors. According to this section:

(i) The remuneration of the auditors of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

(ii) In the case of first auditor, remuneration may be fixed by the Board.

(iii) The remuneration mentioned aforesaid shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him. But the remuneration does not include any remuneration paid to him for any other service rendered by him at the request of the company.

Powers And Duties Of Auditors And Auditing Standards [Section 143]

Powers of Auditors [Section 143(1)]:

a) **Access to books of accounts and vouchers:** Every auditor of a company shall have a right of access at all times to the books of accounts and vouchers of the company, whether kept at the registered office of the company or at any other place.

b) **Entitled to have necessary information and explanation:** He shall be entitled to require from the officers of the company such information and explanations as the auditor may consider necessary for the performance of his duties as auditor.

c) **Access to record of all its subsidiaries:** The auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries and associate companies in so far as it relates to the consolidation of its financial statements with that of its subsidiaries and associate companies.

Duties of Auditors:

(a) The auditor shall inquire into the following matters, namely—

(1) Whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members;

(2) Whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;

(3) Where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;

(4) Whether loans and advances made by the company have been shown as deposits;

(5) Whether personal expenses have been charged to revenue account;

(6) Where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading.

(b) The auditor shall make a report to the members of the company on the following:
(1) On the accounts examined by him; and
(2) On every financial statements which are required by or under this Act to be laid before the company in general meeting; and

(c) The auditor while making the report **shall take into account the provisions of the Act, the accounting and auditing standards** and matters which are required to be included in the audit report under the provisions of this Act or any rules made thereunder or under any order made under section 143(11).

(d) The auditor shall express his opinion on the accounts and financial statements examined by him. He shall express an opinion, according to him and to the best of his information and knowledge, whether the said accounts/financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.

(e) The auditors' report shall also state Sec 143 (3) —

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(1) whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements;

(2) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;
(3) whether the report on the accounts of any branch office of the company audited under sub-section (8) by a person other than the company's auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;

(4) whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;

(5) whether, in his opinion, the financial statements comply with the accounting standards;

(6) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;

(7) whether any director is disqualified from being appointed as a director under sub section (2) of section 164;

(8) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;

(9) whether the company has adequate internal financial controls with reference to financial statements in place and the operating effectiveness of such controls;

Private companies are exempt from this requirement (9) – if it is OPC, small company **or** having turnover <50 crores + borriwngs from banks/financial institutions/body corporate < 25 crore.

(f) Rule 11 of the Companies (Audit and Auditors) Rules, 2014 provides that the auditor's report shall also include their views and comments on the following matters, namely:

(1) Whether the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statement;

(2) Whether the company has made provision, as required under any law or accounting standards, for material foreseeable losses, if any, on long term contracts including derivative contracts;

(3) Whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the company.

(g) Where any of the matters is answered in the negative or with a qualification, the auditor's report shall state the reason for the same

(h) Compliance with auditing standards [Section 143(9) and 143(10)]:

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(1) Every auditor shall comply with the auditing standards

(2) The Central Government may prescribe the standards of auditing or any addendum thereto, as recommended by the ICAI, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority (NFRA).
(3) It is further provided that until any auditing standards are notified, any standard or standards of auditing specified by the ICAI shall be deemed to be the auditing standards.

Additional matters as prescribed in CARO, 2016 for specified companies

Reporting of frauds by auditors [Sec 143(12)]

If an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud, involving an amount of one crore or above, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government in following manner:

1) Auditor shall report the matter to BOD /Audit committee immediately but not later than 2 days of his knowledge of the fraud, seeking their reply or observations within 45 days;

2) On receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within 15 days from the date of receipt of such reply or observations;

3) in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of 45 days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations

4) the report shall be sent to the Secretary, Ministry of Corporate Affairs (MCA) in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same;

5) the report shall be on the letter-head of the auditor containing postal address, e-mail address and contact telephone number or mobile number and be signed by the auditor with his seal and shall indicate his Membership Number; and

6) The report shall be in the form of a statement as specified in Form ADT-4.

In case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board immediately but not later than two days of his knowledge of fraud and he shall report the matter specifying the following:

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(i) Nature of fraud with description;
(ii) Approximate amount involved; and
(iii) Parties involved.
The following details of each of the fraud reported to the Audit Committee or the Board under sub-rule (3) of amended Rule 13 during the year shall be disclosed in the Board's Report:
(i) Nature of fraud with description;
(ii) Approximate amount involved;
(iii) Parties involved, if remedial action not taken; and
(iv) Remedial actions taken.

The provision of this section shall mutatis mutandis apply to a Cost Auditor and a Secretarial Auditor during the performance of his duties under section 148 and section 204 respectively

No duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter referred above if it is done in good faith.

Penalty for non compliance of section 143(12): If any auditor, cost auditor or the Secretarial auditor, as mentioned above, do not comply with the provisions of this section (i.e. section 143(12)), he shall be punishable with fine which shall not be less than INR 1 lacs but which may extend to INR 25 lacs.

Audit of Government Companies [Section 143(5), (6) & (7)]:

the CAG shall appoint the auditor under section 139(5) or 139(7) and direct such auditor the manner in which the accounts of the Government company are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the CAG

The audit report among other things, include the following:
(1) the directions, if any, issued by the CAG;
(2) the action taken thereon; and
(3) its impact on the accounts and financial statement of the company.

(c) The CAG shall within 60 days from the date of receipt of the audit report have a right to—
(1) conduct a supplementary audit of the financial statement of the company by such person or persons as he may authorise in this behalf; and for the purposes of such audit, require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the CAG may direct; and
(2) comment upon or supplement such audit report.
(d) Any comments given by the CAG upon, or supplement to, the audit report shall be sent by the company to every person entitled to copies of audited financial statements under section 136(1) and also be placed before the AGM of the company at the same time and in the same manner as the audit report.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

CAG may, if he considers necessary, by an order, cause test audit to be conducted of the accounts of such company, without prejudice to the provisions related to Audit and Auditors.

Audit of accounts of branch office of company [Section 143(8)]:

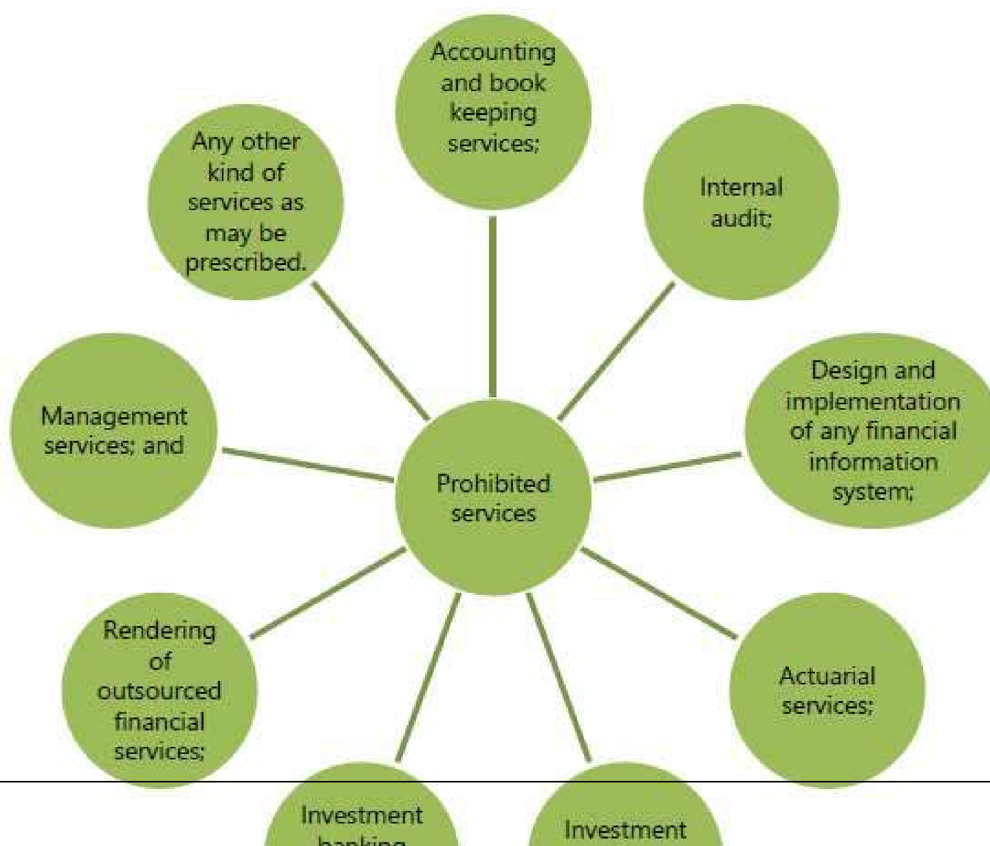
Branch office in India:
Where a company has a branch office, the accounts of that office shall be audited either by:
(A) the company's auditor appointed under section 139, or
(B) by any other person qualified for appointment as an auditor of the company under section 139.

Branch office outside India: If the branch office is situated in a country outside India, the accounts of the branch office shall be audited either by: (A) the company's auditor or (B) by an accountant or (C) by any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country.

The duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be as contained in sub-sections (1) to (4) of section 143. (d) The branch auditor shall prepare a report on the accounts of the branch examined by him and send it to the auditor of the company who shall deal with it in his report in such manner as he considers necessary. (e) The provisions regarding reporting of fraud by the auditor shall also extend to such branch auditor to the extent it relates to the concerned branch.

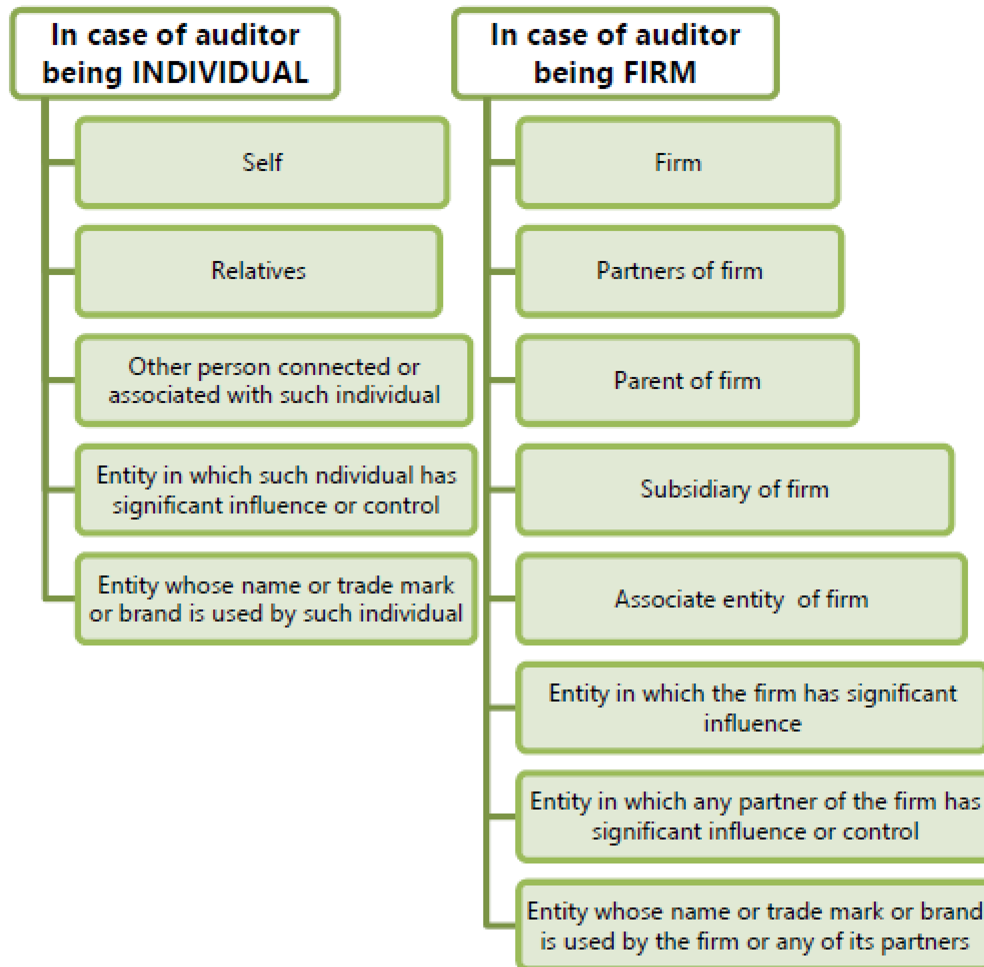
Application of provisions of section 143 to Cost Accountants and Company Secretary [Section 143(14)]: The provisions of this section shall mutatis mutandis apply to: (a) the cost accountant conducting cost audit under section 148; or (b) the company secretary in practice conducting secretarial audit under section 204.

Auditor Not To Render Certain Services [Section 144]



©
ups on Learnzup App

RENDERING OF SERVICES 'DIRECTLY OR INDIRECTLY'



Auditors To Sign Audit Reports, Etc. [Section 145] - Section 145 of the Companies Act, 2013 provides for auditors to sign audit reports, etc. According to this section:

(i) The person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company in accordance with the provisions of sub-section (2) of section 141 (i.e. in case of firm including LLP, only Chartered Accountants are authorised to act as statutory auditors and sign).

(ii) The qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

Auditors To Attend General Meeting [Section 146] Section 146 of the Companies Act, 2013 provides for auditors to attend general meeting. According to this section: (i) All notices of, and

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

other communications relating to, any general meeting shall be forwarded to the auditor of the company. (ii) The auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorised representative, who shall also be qualified to be an auditor, any general meeting. (iii) The auditor shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

Punishment For Contravention [Section 147]

Section 147 of the Companies Act, 2013 provides for punishment for contravention. According to this section:

Penalty on company [Section 147(1)]:

If any of the provisions of sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than 25,000 but which may extend to 5 lacs.

Penalty on officers [Section 147(1)]:

If any of the provisions of sections 139 to 146 (both inclusive) is contravened, every officer of the company who is in default shall be punishable with
(1) imprisonment for a term which may extend to 1 year or
(2) with fine which shall not be less than ` 10,000 but which may extend to ` 1 lac; or
(3) both with imprisonment and fine

Penalty on auditor [Section 147(2) & (3)]:

(a) If an auditor of a company contravenes any of the provisions of section 139, section 143, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than ` 25,000 but which may extend to ` 5 lacs or four times the remuneration of the auditor, whichever is less.

(b) If an auditor has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with-
(1) imprisonment for a term which may extend to 1 year and
(2) with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees or eight times the remuneration of the auditor, whichever is less.

Further, where an auditor has been convicted as above, he shall be liable to—
(1) refund the remuneration received by him to the company; and
(2) pay for damages to the company, statutory bodies or authorities or to members or creditors of the company for loss arising out of incorrect or misleading statements of particulars made in his audit report.

The Central Government shall, by notification, specify any statutory body or authority or an officer for ensuring prompt payment of damages to the company or the persons. Such body, authority or officer shall after payment

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

of damages to such company or persons file a report with the Central Government in respect of making such damages in such manner as may be specified in the said notification. **[Section 147(4)]**

(v) Liability of Audit firm [Section 147(5)]: Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in the Companies Act, 2013, or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally and shall also be liable under section 447. Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.

Central Government To Specify Audit of Items of Cost In Respect of Certain Companies [Section 148]

CG may direct a class of company to maintain cost records which shall be included in their books of accounts maintained u/s 128.
Further CG may by order, direct a class of companies which have a prescribed turnover or net worth to get their accounts audited.

Cost audit shall be conducted by Cost Accountant/Firm of cost accountant who shall be appointed by BOD on recommendation of audit committee (if any) which shall recomment remuneration for such cost auditor – which will be approved by BOD and subsequently ratified by shareholders.

Company auditor however cannot be appointed as a cost auditor. Further cost auditor shall comply with cost auditing standards.

Qualifications, disqualifications, rights, duties and obligations applicable to co. auditors shall apply to cost auditor.

The report on the audit of cost records shall be submitted by the cost accountant to the Board of Directors of the company

A company shall within 30 days from the date of receipt of a copy of the cost audit report furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein.

After considering cost audit report and information & explanation furnished by the co. – the CG may call for such further information & explanation and the co. shall furnish the same within such time as may be specified by that government.

In case of contravention penalty given under sec 147 shall apply

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

National Financial Reporting Authority Rules, 2018 (NFRA Rules)

(1) For the purpose of monitoring and enforcing compliance with SAs under the Act, the NFRA may:

(i) Review working papers (including audit plan and other audit documents) and communications related to the audit;

(ii) Evaluate the sufficiency of the quality control system of the auditor and the manner of documentation of the system by the auditor; and

(iii) Perform such other testing of the audit, supervisory, and quality control procedures of the auditor as may be considered necessary or appropriate.

(2) The NFRA may require an auditor to report on its governance practices and internal processes designed to promote audit quality, protect its reputation and reduce risks including risk of failure of the auditor and may take such action on the report as may be necessary.

(3) The NFRA may seek additional information or may require the personal presence of the auditor for seeking additional information or explanation in connection with the conduct of an audit.

(4) The NFRA shall perform its monitoring and enforcement activities through its officers or experts with sufficient experience in audit of the relevant industry.

(5) The NFRA shall publish its findings relating to non-complainces on its website and in such other manner as it considers fit, unless it has reasons not to do so in the public interest and it records the reasons in writing.

(6) The NFRA shall not publish proprietary or confidential information, unless it has reasons to do so in the public interest and it records the reasons in writing.

(7) The NFRA may send a separate report containing proprietary or confidential information to the Central Government for its information.

(8) Where the NFRA finds or has reason to believe that any law or professional or other standard has or may have been violated by an auditor, it may decide on the further course of investigation or enforcement action through its concerned Division.

Overseeing The Quality of Service And Suggesting Measures For Improvement (As Per NFRA Rules)

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(1) On the basis of its review, the NFRA may direct an auditor to take measures for improvement of audit quality including changes in their audit processes, quality control, and audit reports and specify a detailed plan with time-limits.

(2) It shall be the duty of the auditor to make the required improvements and send a report to the NFRA explaining how it has complied with the directions made by the NFRA.

(3) The NFRA shall monitor the improvements made by the auditor and take such action as it deems fit depending on the progress made by the auditor.

(4) The NFRA may refer cases with regard to overseeing the quality of service of auditors of companies or bodies corporate referred to in rule 3 to the Quality Review Board constituted under the Chartered Accountants Act, 1949 (38 of 1949) or call for any report or information in respect of such auditors or companies or bodies corporate from such Board as it may deem appropriate.

(5) The NFRA may take the assistance of experts for its oversight and monitoring activities.

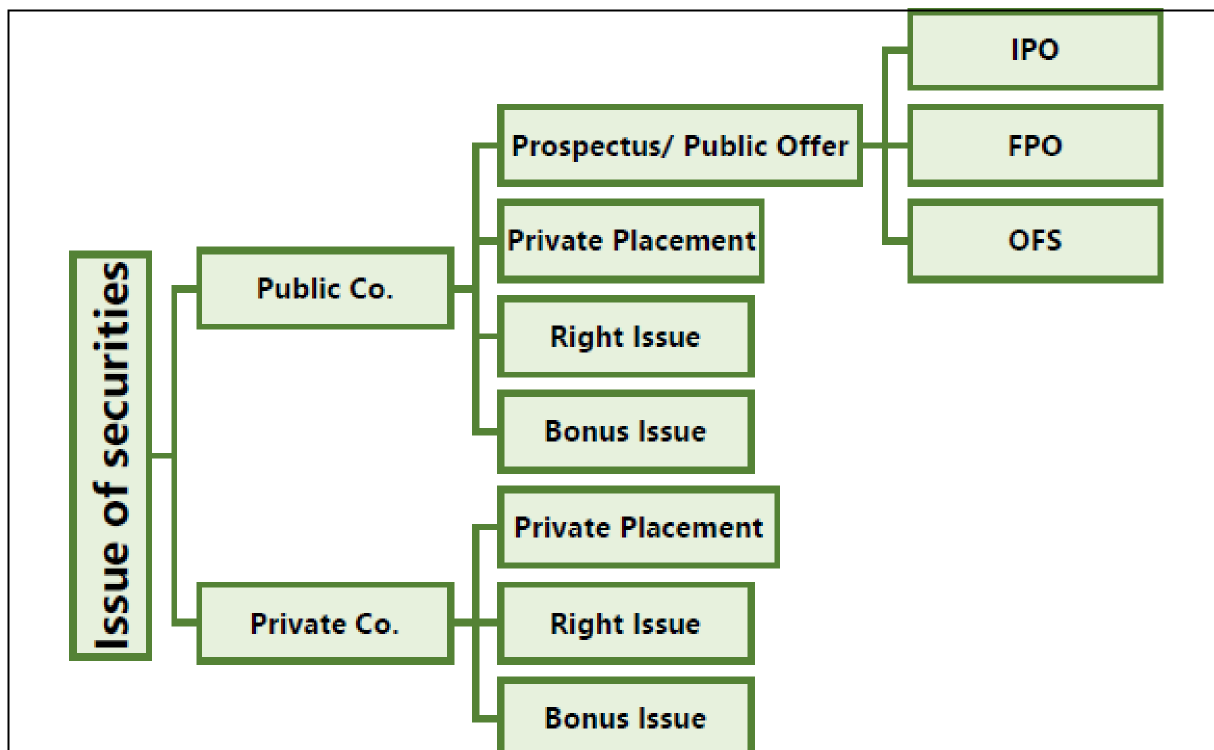
© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Ch-10 Prospectus & Allotment of Securities

Every business requires capital to run its operations. In order to invite public (through public offer) or private players (through private placement) to invest in companies share capital, advertisement is required which should be in accordance with the relevant legal provisions so that any investor is not defrauded or be-fooled.

This advertisement is known as prospectus.

Section 23 – Company may issue securities in the following ways -



Full Form - Initial Public Offer (IPO) Further Public Offer (FPO) Offer For Sale of Securities (OFS).

Securities means the securities as defined in Sec 2(h) of the Securities Contracts (Regulation) Act, 1956.

The Provisions of

Section 23 – Table :

	Public Company	Private Company
Public Offer (including IPO, FPO or OFS)	Yes	No
Private Placement	Yes	Yes
Rights issue / Bonus Issue	Yes	Yes
Compliance with SEBI	Yes, for listed company	No

Prospectus - Prospectus means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of body corporate.

Matters To Be Stated In Prospectus Section 26

1) According to Sec 26 (1), every prospectus issued by or on behalf of a public co. shall be dated and signed and shall state such information and set out such reports on financial information as may be specified by the SEBI in consultation with the Central Government.

Prospectus shall make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the SEBI Act, 1992 and the rules and regulations made thereunder; and

2) Nothing in sub-section (1) shall apply—
(a) to the issue of prospectus or form of application to existing members or debenture-holders of a company

(b) to the issue of a prospectus or form of application relating to shares or debentures which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange.

3) Provisions of sub-section (1) shall apply to a prospectus or a form of application, whether issued on or with reference to the formation of a company or subsequently. The date indicated in the prospectus shall be deemed to be the date of its publication.

4) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless on or before the date of its publication, there has been delivered to the Registrar for filing, a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his duly authorised attorney.

5) Expert statement can be included in prospectus provided expert is a person who is not, and has not been interested in the formation or promotion or management, of the company and has given his written consent to the issue of the prospectus and has not withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for filing.

6) Mention compliances of the formalities: Every prospectus issued under sub-section (1) shall, on the face of it—

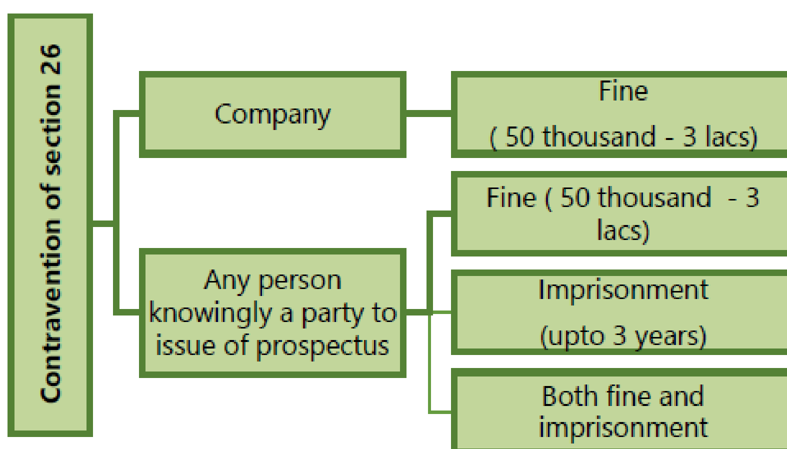
© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(a) State that a copy has been delivered for filing to the Registrar as required under sub-section (4); and
(b) Specify any documents required by this section to be attached to the copy so delivered or refer to statements included in the prospectus which specify these documents.

7) The Registrar shall not register a prospectus unless the requirements of this section with respect to its registration are complied with and the prospectus is accompanied by the consent in writing of all the persons named in the prospectus.

8) No prospectus shall be valid if it is issued more than ninety days after the date on which a copy thereof is delivered to the Registrar under sub-section (4).

9) Punishment in case of contravention:



The major minimum contents of a prospectus or deemed prospectus are underlined in the Sec 26(1) above.

In addition to these there are substantial disclosure requirements which are prescribed under Companies (Prospectus and Allotment of Securities) Rules, 2014.

As per Section 2(38) — **Expert includes** an engineer, a valuer, a Chartered Accountant, a Company Secretary, a Cost Accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force;

Public Offer of Securities To Be In Dematerialised Form

(1) **Section 29(1)** states that every company making public offer; and such other class or classes of companies as may be prescribed shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

(2) Any company, other than a company mentioned in sub-section (1), may convert its securities into dematerialised form or issue its securities in physical form in accordance with the provisions of this Act or in dematerialised form.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Securities could be held in physical or dematerialised form. However public offer of securities has to be mandatorily in demat form in accordance with the Depositories Act, 1996. Demat ensures fool proof control over issue, sale, purchase, pledge, extinguishment of securities lending transparency and credibility to the entire process and securities markets.

Rules, 2014 (Dematerialisation of securities)

The **promoters** of every public company making a public offer of any convertible securities may hold such securities **only** in **dematerialised** form:

Provided that the entire holding of **convertible securities** of the company by the promoters held in physical form up to the date of the initial public offer shall be converted into dematerialised form before such offer is made and thereafter such promoter shareholding shall be held in dematerialized form only.

Shelf Prospectus, Red Herring Prospectus and Abridged Prospectus

Section 31 and Section 32 deals with important provision related to Shelf Prospectus and Red-herring Prospectus respectively. These twin provisions play a significant role in facilitating commercial and logistical consideration involved in the funds raising cycle.

Suppose an issuer company issues debentures frequently and has to file a prospectus every time it issues a new series of debenture. To solve this issue a prospectus with a shelf life can be issued, Any number of issues could be made during the tenure of the shelf prospectus.

The only caveat is to supplement the shelf prospectus by an "information memorandum" containing key updates or changes

Shelf Prospectus –The expression "shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

1) **Filing of shelf prospectus with the registrar:** According to section 31, any class or classes of companies, as the SEBI may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage-

   (i) of the first offer of securities included therein which shall indicate a period not exceeding **one year** as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and

   (ii) in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

2) **Filing of information memorandum with the shelf prospectus:** A company filing a shelf prospectus shall be required to file an **information memorandum** containing all **material facts** relating to new charges created, changes in the financial position of the co. as have occurred between first offer or the previous offer of securities and the succeeding offer of

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

securities and such other changes as may be prescribed, with the Registrar within the prescribed time prior to issue of securities under shelf prospectus.

Provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.

3) Memorandum together with the shelf prospectus shall be deemed to be a prospectus: Where an information memorandum is filed, every time an offer of securities is made under sub-section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

Red Herring Prospectus — The expression "red herring prospectus" means a prospectus which does not include complete particulars of the quantum or price of the securities included therein. Section 32 deals with the issue of red herring prospectus by a company. Accordingly law states that-

(i) Issue a red herring prospectus prior to the issue of a prospectus: A company proposing to make an offer of securities may issue a red herring prospectus **prior** to the issue of a prospectus.

(ii) Filing with the registrar: A company proposing to issue a red herring prospectus shall **file** it with the Registrar at least **three days** prior to the opening of the subscription list and the offer.

(iii) Same obligation: A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be **highlighted as variations** in the prospectus.

(iv) Filing of red herring prospectus with registrar and SEBI upon closing of offer: Upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.

Abridged Prospectus means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf.
[Refer the topic 'Issue of application forms for Securities']

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Document Containing Offer of Securities For Sale To Be Deemed Prospectus

(1) Section 25 of the Act states the law related to the document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company.

(2) Securities will be treated as offered for sale to the public in the below cases -

(3) Effect of section 26 - Section 26 as applied by section 25 shall have effect as if —
(i) it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

(a) the net amount of the consideration received or to be received by the company in respect of the securities to which the offer relates; and

(b) the time and place at which the contract where under the said securities have been or are to be allotted may be inspected;

(ii) the persons making the offer were persons named in a prospectus as directors of a company.

(4) Person making an offer is a company or a firm - Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document referred to in sub-section (1) is signed on behalf of the company or firm by two directors of the company or by not less than one-half of the partners in the firm, as the case may be.

Offer of Sale of Shares By Certain Members of Company - Section 28

(1) Where certain members of a company propose, in consultation with the BOD to offer, whole or any part of their holding of shares to the public, they may do so in accordance with such procedure as may be prescribed.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(2) Any document by which the offer of sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company and all laws and rules made thereunder as to the contents of the prospectus and as to liability in respect of mis-statements in and omission from prospectus or otherwise relating to prospectus shall apply as if this is a prospectus issued by the company.
(3) The members, whether individuals or bodies corporate or both, whose shares are proposed to be offered to the public, shall collectively authorise the company, whose shares are offered for sale to the public, to take all actions in respect of offer of sale for and on their behalf and they shall reimburse the company all expenses incurred by it on this matter.

Variation in terms of contract or objects in prospectus [Section 27]

Variation on approval in general meeting by passing of SR: A company shall not, at any time, vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, except subject to the approval of, or except subject to an authority given by the company in general meeting by way of special resolution:

Provided that the details of the notice in respect of such resolution to shareholders, shall also be published in the newspapers (one in English and one in vernacular language) in the city where the registered office of the company is situated indicating clearly the justification for such variation:

Provided further that such company shall not use any amount raised by it through prospectus for buying, trading or otherwise dealing in equity shares of any other listed company.

Exit offer to dissenting shareholders: The dissenting shareholders being those shareholders who have not agreed to the proposal to vary the terms of contracts or objects referred to in the prospectus, shall be given an exit offer by promoters or controlling shareholders at such exit price, and in such manner and conditions as may be specified by the Securities and Exchange Board by making regulations in this behalf.

Securities To Be Dealt With In Stock Exchanges

(1) Filing of an application with recognised stock exchange: In accordance to Section 40(1) every company making public offer shall, before making such offer, make an application to one or more recognised stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.

(2) Prospectus to state name of stock exchange: Where a prospectus states that an application has been made, such prospectus shall also **state the name** or names of the stock exchange in which the securities shall be dealt with.

(3) To maintain separate bank account: All monies received on application from the public for subscription to the securities shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(a) for adjustment against allotment of securities where the securities have been permitted to be dealt with in the stock exchange or stock exchanges specified in the prospectus; or

(b) for the repayment of monies within the time specified by the Securities and Exchange Board, received from applicants in pursuance of the prospectus, where the company is for any other reason unable to allot securities.

(4) Condition purporting to waive compliance shall be void: Any condition purporting to require or bind any applicant for securities to waive compliance with any of the requirements of this section shall be void.

(5) In case of default: If a default is made in complying with the provisions of this section, both the company and the officer of the company shall be liable.

Company - Fine varying from five lakh rupees to fifty lakh rupees
Officer - Punishable with imprisonment upto one year, or with fine varying from fifty thousand rupees to three lakh rupees, or with both.

(6) Payment of commission: A company may pay commission to any person in connection with the subscription to its securities, whether absolute or conditional, subject to such conditions as given in Rule 13 of the *Companies (Prospectus and Allotment of Securities) Rules, 2014*.

Conditions for the payment of commission: (a) the payment of such commission shall be authorized in the company's AOA; (b) the commission may be paid out of proceeds of the issue or the profit of the company or both; (c) Rate of commission: Following is the rate of commission to be paid to the person:

in case of shares	in case of debentures
shall not exceed 5% of the price at which the shares are issued, or	shall not exceed 2.5% of the price at which the debentures are issued, or
a rate authorised by the articles,	as specified in the company's articles,
whichever is less	whichever is less

Disclosure of the particulars: The prospectus of the company shall disclose the following particulars –
(i) the name of the underwriters;
(ii) the rate and amount of the commission payable to the underwriter; and
(iii) the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.

(e) No commission to be paid: There shall not be paid commission to any underwriter on securities which are not offered to the public for subscription.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(f) **Copy of payment of commission to be delivered to registrar:** A copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

Allotment of Securities By Company

"Allotment" means the appropriation out of previously un-appropriated capital of a company, of a certain number of shares to a person. Till such allotment, the shares do not exist as such. It is on allotment that the shares come into existence.

According to Section 39

(1) No allotment of any securities of a company offered to the public for subscription shall be made unless the amount stated in the prospectus as the **minimum** amount has been subscribed and the sums payable on **application** for the amount so stated have been paid to and received by the company by cheque or other instrument.

(2) The amount payable on application on every security shall not be less than **five per cent**. of the nominal amount of the security or such other percentage or amount, as may be specified by the SEBI by making regulations in this behalf.

(3) If the stated minimum amount has not been subscribed and the sum payable on application is not received within a period of thirty days from the date of issue of the prospectus, or such other period as may be specified by the Securities and Exchange Board, the amount received under sub-section (1) shall be **returned** within such time and manner as may be prescribed.

(4) Whenever a company having a share capital makes any allotment of securities, it shall file with the Registrar a **return of allotment** in such manner as may be prescribed.

(5) In case of any default under sub-section (3) or sub-section (4), the company and its officer who is in default shall be liable to a **penalty**, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

Once securities are issued and subscribed for, these needs to be allotted in tune with the conditions as given below:

- Minimum subscription to be received within 30 days of issue of prospectus. In case minimum subscription is not received, the issue is regarded as failed. To take care of such eventuality, the merchant bankers in case of public offer resort to underwriting, suitable pricing, bringing in anchor investors etc. among other things. In case failed issue, the entire issue proceeds need to be refunded along with applicable interest.
- Application money > 5% of the nominal amount.
- Return of allotment needs to be filed with the ROC

As per Rule 11 (Refund of Application Money)

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(1) If the stated minimum amount has not been subscribed and the sum payable on application is not received within the period specified therein, then the application money shall be repaid within a period of fifteen days from the closure of the issue and if any such money is not so repaid within such period, the directors of the company who are officers in default shall jointly and severally be liable to repay that money with interest at the rate of fifteen percent per annum.

(2) The application money to be refunded shall be credited only to the bank account from which the subscription was remitted.

Mis-Statements In Prospectus

Mis-statement is the act of stating something that is false or not accurate. It could either be by commission or by omission or by both. Mis- statement of prospectus is a serious offence which attracts section 34 and / or section 35**.** Liabilities can be classified under two headings:

Criminal Liability For Mis-Statements In Prospectus [Section 34] Where a prospectus, issued, circulated or distributed under this Chapter, 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 shall be liable under section **447**: Provided that nothing in this section shall apply to a person if he proves that such statement or omission was **immaterial** or that he had reasonable **grounds** to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.

Civil Liability For Mis-Statements In Prospectus [Section 35]

(1) Liabilities of persons: According to **Section 35(1),** where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who—

(a) is a **director** of the company at the time of the issue of the prospectus;

(b) has **authorised himself** to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time;

(c) is a **promoter** of the company;

(d) has **authorised** the **issue of the prospectus**; and

(e) is an **expert** referred to in sub-section (5) of section 26,
-shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay **compensation** to every person who has sustained such loss or damage.

(2) Exceptions: No person shall be liable if he proves—

(a) that, having consented to become a director of the company, he **withdrew** his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(b) that the prospectus was **issued without his knowledge** or consent, and that on becoming aware of its issue, he forthwith gave a **reasonable public notice** that it was issued without his knowledge or consent.

(c) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by sub-section (5) of section 26 to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder.

(3) Liability on defraud: Where it is proved that a prospectus has been issued with **intent to defraud** the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in subsection (1) shall be **personally** responsible, without any **limitation** of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

Punishment For Fraudulently Inducing Persons To Invest Money [Section 36] Any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into—
(a) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or
(b) any agreement, the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or
(c) any agreement for, or with a view to obtaining credit facilities from any bank or financial institution, -shall be liable for action under section 447.

Action By Affected Persons [Section 37] - A suit may be filed or any other action may be taken under section 34 or section 35 or section 36 by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus. Class Actions – Gift of Companies Act, 2013 Class action suit is for a group of people filing a suit against a defendant who has caused common harm to the entire group or class.

This is not like a common litigation method where one defendant files a case against another defendant while both the parties are available in court. **In the case of class action suit, the class or the group of people filing the case need not be present in the court** and can be represented by one petitioner. The benefit of these type of suits is that if several people have been injured by one defendant, each one of the injured people need not file a case separately but all of the people can file one single case together against the defendant.

Class action suits in India were so far filed under the guise of public interest litigations. Courts were free to dismiss these. These shareholders ran pillar to post right from the National

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Consumer Disputes Redressal Commission up to the extent of Supreme Court and had their claims rejected.

Punishment For Fraud Meaning of fraud: "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;

"Wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;

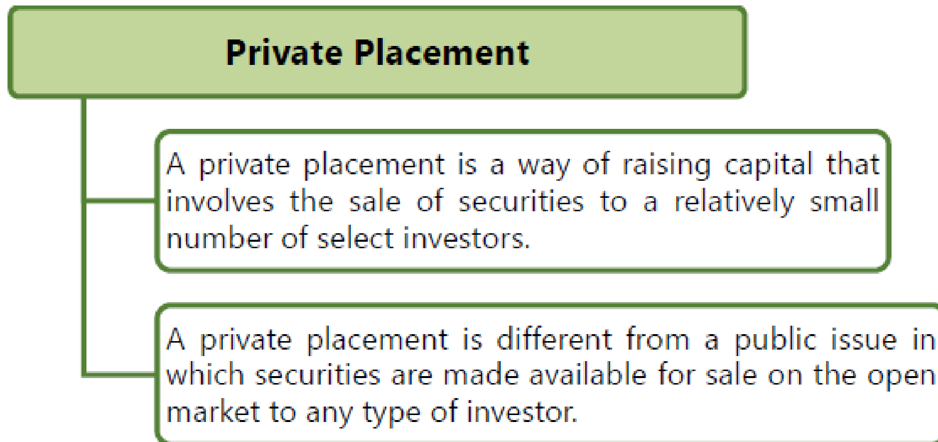
"Wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled.

Sec 447 punishment for fraud

	Fine		Imprisonment
Fraud of less than 10 lakh rupees or 1% of turnover whichever is less	Upto ₹ 50 Lakhs	or	Upto 5 years
Fraud of equal to or more than 10 lakh rupees or 1% of turnover whichever is less	Min: amount of fraud Max: (amount of fraud) x 3	and	Min: 6 months Max: 10 Years
Involving Public Interest	Min: amount of fraud Max: (amount of fraud) x 3	and	Min: 3 years Max: 10 Years

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Private Placement Offer Or Invitation For Subscription Of Securities On Private Placement [Section 42]



Offer or Invitation for Subscription of Securities on Private Placement: [Section 42]

(1) A company may, subject to the provisions of this section, make a private placement of securities.

(2) A private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as "identified persons"), whose **number shall not exceed fifty** or such higher number as may be prescribed [excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option in terms of provisions of clause (b) of sub-section (1) of section 62], in a financial year subject to such conditions as may be prescribed.

(3) A company making private placement shall **issue** private placement **offer and application** in such **form** and manner as may be prescribed to identified persons, whose names and addresses are recorded by the company in such manner as may be prescribed: Provided that the private placement offer and application shall not carry any right of renunciation.

(4) Every identified person willing to subscribe to the private placement issue shall apply in the private placement and application issued to such person alongwith subscription money paid either by **cheque or demand draft or other banking channel** and not by cash:
Provided that a company shall **not utilise** monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with sub-section (*8*).

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(5) **No fresh offer** or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company:
Provided that, subject to the maximum number of identified persons under sub-section (*2*), a company may, at any time, make more than one issue of securities to such class of identified persons as may be prescribed.

(6) A company making an offer or invitation under this section shall allot its securities within **sixty days** from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within **fifteen days** from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent. per annum from the expiry of the sixtieth day:
Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—
(a) for adjustment against allotment of securities; or
(b) for the repayment of monies where the company is unable to allotsecurities.

(7) No company issuing securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an issue.

(8) A company making any allotment of securities under this section, shall file with the Registrar a return of allotment within fifteen days from the date of the allotment in such manner as may be prescribed, including a complete list of all allottees, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.

(9) If a company defaults in filing the return of allotment within the period prescribed under sub-section (8), the company, its promoters and directors shall be liable to a penalty for each default of one thousand rupees for each day during which such default continues but not exceeding twenty-five lakh rupees.

(10) Subject to sub-section (11), if a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount raised through the private placement or two crore rupees, whichever is lower, and the company shall also refund all monies with interest as specified in sub-section (6) to subscribers within a period of thirty days of the order imposing the penalty.

(11) Notwithstanding anything contained in sub-section (9) and sub-section (10), any private placement issue not made in compliance of the provisions of sub-section (2) shall be deemed to be a public offer and all the provisions of this Act and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be applicable.

As per Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014,

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

For the purposes of sub-section (2) and sub-section (3) of section 42, a company shall not make an offer or invitation to subscribe to securities through private placement unless the proposal has been previously approved by the shareholders of the company, by a special resolution for each of the offers or invitations
Provided that in the explanatory statement annexed to the notice for shareholders' approval, the following disclosure shall be made:-
(a) particulars of the offer including date of passing of Board resolution;
(b) kinds of securities offered and the price at which security is being offered:
(c) basis or justification for the price (including premium, if any) at which the offer or invitation is being made;
(d) name and address of valuer who performed valuation;
(e) amount which the company intends to raise by way of such securities;
(f) material terms of raising such securities, proposed time schedule, purposes or objects of offer, contribution being made by the promoters or directors either as part of the offer or separately in furtherance of objects; principle terms of assets charged as securities:

Provided further that this sub-rule shall not apply in case of offer or invitation for. non-convertible debentures, where the proposed amount to be raised through such offer or invitation does not exceed the limit as specified in clause (c) of sub section (1) of section 180 and in such cases relevant Board resolution under clause (c) of subsection (3) of section 179 would be adequate:
Provided also that in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation exceeds the limit as specified in clause (c) of sub-section (1) of section 180, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitations for such debentures during the year.

(2) For the purpose of sub-section (2) of section 42, an offer or invitation to subscribe securities under private placement shall not be made to persons more than **two hundred** in the aggregate in a financial year:
Provided that any offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees stock option as per provisions of clause (b) of sub-section (1) of section 62 **shall not be considered** while calculating the limit of two hundred persons.
Explanation.- For the purposes of this sub-rule it is hereby clarified that the restrictions aforesaid would be **reckoned individually for each kind of security** that is equity share, preference share or debenture.

(3) A return of allotment of securities under section 42 shall be filed with the Registrar within fifteen days of allotment.

(4) The provisions of sub-rule (2) shall not be applicable to -
(a) non-banking financial companies which are registered with the Reserve Bank of India under the Reserve Bank of India Act,1934 and
(b) housing finance companies which are registered with the National Housing Bank under the National Housing Bank Act, 1987, if they are complying with regulations made by the Reserve Bank

of India or the National Housing Bank in respect of offer or invitation to be issued on private placement basis:
Provided that such companies shall comply with sub-rule (2) in case the Reserve Bank of India or the National Housing Bank have not specified similar regulations.

(5) A company shall issue private placement offer cum application letter only after the relevant special resolution or Board resolution has been filed in the Registry:
Provided that private companies shall file with the Registry copy of the Board resolution or special resolution with respect to approval under clause (c) of subsection (3) of section 179.

Ch-11 Share Capital & Debentures

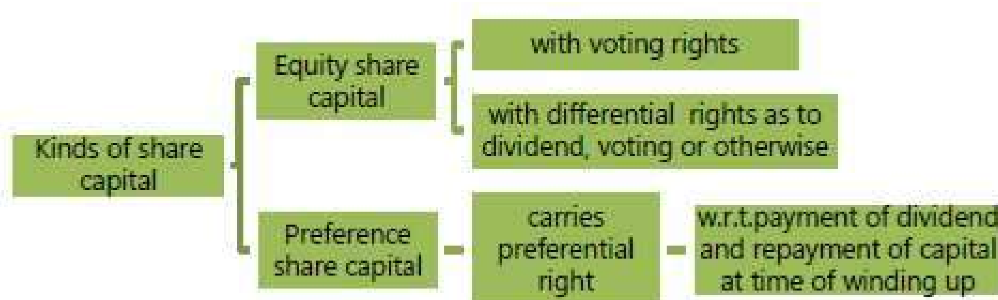
[Companies (Share capital & Debenture) Rules, 2014]

The **share capital is the lifeblood** for running the affairs of the company.

Shares and debentures are financial instruments for raising funds for the company. Under the Companies Act, 2013, these are **jointly referred to as "Securities"**.

Generally, shares depict ownership interest in a company with entrepreneurial risks and rewards whereas debentures depict lender's interest in the company with limited risks and returns.

Types of Share Capital



Rule 4 of the Companies (Share capital and Debenture) Rules, 2014 states about equity shares with differential rights

Conditions for the issue of equity shares with differential rights: No company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions, namely:

(a) Authorized by AOA
(b) **Authorized by an ordinary resolution** passed at a general meeting of the shareholders:
For listed equity shares pass resolution by **postal ballot**;

(c) The voting power in respect of shares with differential rights of the company shall not exceed 74% of total voting power including voting power in respect of equity shares with differential rights issued at any point of time.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

~~(d) The company having consistent track record of distributable **profits** for the **last three years**~~;

(e) The company has **not defaulted in filing** financial statements and annual returns for three preceding financial year.

(f) Co. has no subsisting default in the payment of a declared dividend or repayment of its matured deposits or redemption of its preference shares or debentures/loan or payment of interest thereon;

(g) The company has **not defaulted** in repayment of any term loan from a public financial institution or state level financial institution or scheduled bank that has become repayable or interest payable thereon or statutory dues relating to its employees to any authority or default in crediting the amount in IEPF to the Central Government;

Provided that a company may issue equity shares with differential rights upon expiry of five years from the end of the financial Year in which such default was made good.

(h) The company has **not been penalized** by Court or Tribunal during the last three years of any offence under the Reserve Bank of India Act, 1934, the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated by sectoral regulators.

Restriction on conversion of equity share capital with voting rights into equity share capital carrying differential voting rights: Further Rule 4(3) specifies that the company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice–versa.

Rights to the holders of the equity shares with differential rights: Rule 4(5) states that the holders of the equity shares with differential rights shall enjoy all other rights such as bonus shares, rights shares etc., which the holders of equity shares are entitled to, subject to the differential rights with which such shares have been issued.

Particulars of shares to be maintained in the register of members: Rule 4 (6) Where a company issues equity shares with differential rights, the Register of Members maintained under section 88 shall contain all the relevant particulars of the shares so issued along with details of the shareholders.

Share Certificate [Section 46]

(1) **Share certificate** (distinctively numbered) shall be prima facie evidence of the title of the person specifying the shares held by any person. It is issued under the common seal, if any, of the company **or** signed by two directors or by a director and the Company Secretary,if any.

(2) A **duplicate share certificate** may be issued, if such certificate —

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

a. is proved to have been **lost** or destroyed; or
b. has been defaced, **mutilated** or torn and is surrendered to the company

(3) Notwithstanding anything contained in the articles of a company, the **manner of issue** of a certificate of shares or the duplicate thereof, the form of such certificate, the particulars to be entered in the register of members and other matters **shall be such as may be prescribed.**

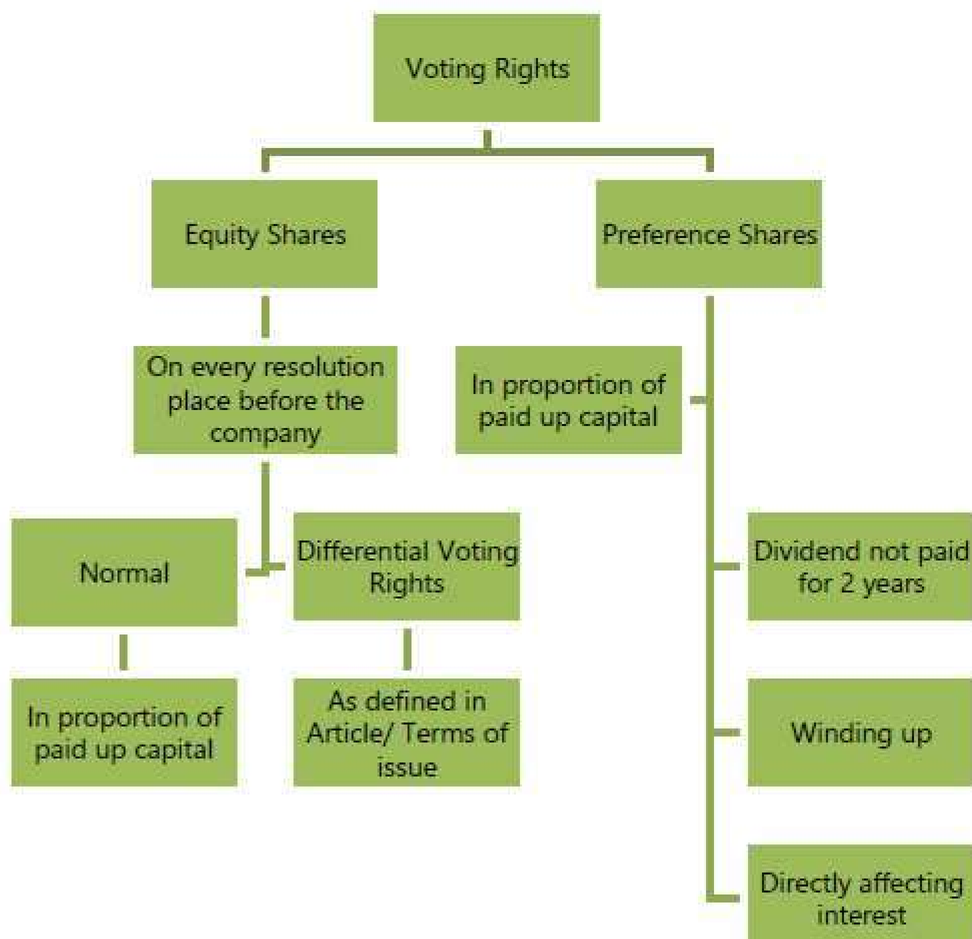
(4) Where a share is held in depository form, the record of the **depository** is the prima facie evidence of the interest of the **beneficial owner.**

(5) If a company with **intent to defraud issues a duplicate certificate** of shares, the company shall be **punishable** with **fine** which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares or rupees ten crores whichever is higher and every **officer** of the company who is **in default** shall be liable for action under section **447**."

Now a days listed shares are held in the electronic format – DMAT form

At present, there are **two depositories in India**: **NSDL** and **CDSL** with various depository participants (DPs) linked to them. Dematerialised securities are held by investors in their respective accounts with the DP. The DP keeps a track of transfer, transmission, charge creation etc. There are necessary enabling legal enactments to facilitate all these procedures.

<u>Rights And Variation Of Rights [Section 47 & 48]</u>



© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Exemption to Private Company- Section 47 shall not apply where memorandum or articles of association of the private company so provides – provided pvt co. has not committed default in filing its financial statements or annual return.

Variations of shareholders' rights [Section 48]

(1) Variation in rights of shareholders with consent: the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-**fourths** of the issued shares of that class or by means of a **special resolution** passed at a separate meeting of the holders of the issued shares of that class,—

(a) if provision with respect to such variation is contained in the memorandum or articles of the company; or

(b) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class.

Provided that **if variation by one class of shareholders affects the rights of any other class** of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

(1) **No consent for variation:** Where the holders of **not less than ten per cent** of the issued shares of a class **did not consent** to such variation or vote in favour of the special resolution for the variation, they **may apply to the Tribunal** to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal:

Provided that an **application** under this section shall be **made within twenty-one** days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose. [Sub – section (2)]

(3) Binding decision of tribunal: The decision of the Tribunal on any application under sub-section (2) shall be **binding** on the shareholders.

(4) Filing copy of order with the Registrar: The Company shall, within **thirty days** of the date of the order of the Tribunal, file a copy thereof with the **Registrar**.

(5) Default in compliance with the provision: Where any default is made in complying with the provisions of this section, 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 and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with **both**.

Calls And Incidental Matters [Section 49 To Section 51]

As per **Section 49**, these calls have to **uniformly** made and there should be no differentiation for a given class of security holders. However the provision is not applicable in case where different amounts are paid for a same class for security.

As per **Section 50**, a company may, if so authorised by its **articles**, accept from any member, the whole or a part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up. However, in case of member of a company limited by shares there would be **no voting** right on that advance amount till the amount is duly called for and adjusted. The company could pay proportionate dividends in proportion to amount paid on each share, if authorised by the articles **[Section 51].**

Issue of Shares At Premium or Discount [Section 52 To Section 55]

When a security of a given face value is issued at price higher than its face value, the issue is called as issue at premium and the differential amount as premium.

Where the issue price is lower to the face value, the issue is regarded at discount and the differential known as discount.

Application of premiums received on issue of shares [Section 52]

Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a securities premium account and the provisions of this Act relating to reduction of share capital (which are very stringent) of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.

Application of securities premium account: The securities premium account may be applied by the company—

(a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;

(b) in writing off the preliminary expenses of the company;

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;

(d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or

(e) for the purchase of its own shares or other securities under section 68.

Prohibition on issue of shares at discount [Section 53]

A company cannot issue shares in disregard of Section 53 of the Companies Act, 2013.

1. A company shall not issue shares at a discount, except in the case of an issue of sweat equity shares given under section 54.

2. Any share issued by a company at a discount shall be void.

3. **Exception**: A company may issue shares at a discount to its **creditors** when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India under the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949.

4. Where any company **fails to comply** with the provisions of this section, such company and every officer who is in default shall be liable to a **penalty** which may extend to an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less, and the company shall also be liable to **refund all monies** received **with interest** at the rate of **twelve per cent.** per annum from the date of issue of such shares to the persons to whom such shares have been issued.

It is clear for the reading of section **52 and 53** that these restrictions are only on issue of shares, it could be **equity or preference** but not on any debt related products like bonds or debentures whose pricing is more governed by YTM (yield to maturity) considerations.

Issue of Sweat equity shares [Section 54]

Sweat equity is issued to keep the employees of a company motivated by making them partner in growth of the company.

As per **Section 2(88)—sweat equity shares** means such equity shares as are issued by a company to its **directors** or **employees** at a **discount** or for consideration, **other than cash**, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;

As per **Section 2(37)— Employees' stock option** means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any,

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

which gives such directors, officers or employees, the benefit or **right to purchase**, or to subscribe for, the shares of the company at a future date at **a pre-determined price**;
Section 54 of the Companies Act, 2013 provides the conditions where a company may issue sweat equity shares of a class of shares **already issued**.

Conditions: A company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely—
(a) the issue is authorised by a **special resolution** passed by the company;
(b) the **resolution specifies** the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
(d) where the equity shares of the company are **listed on a recognised stock** exchange, the sweat equity shares are issued in accordance with the **regulations** made by the **Securities and Exchange Board** in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as prescribed under Rule 8 of the *Companies (Share and Debentures) Rules, 2014*,

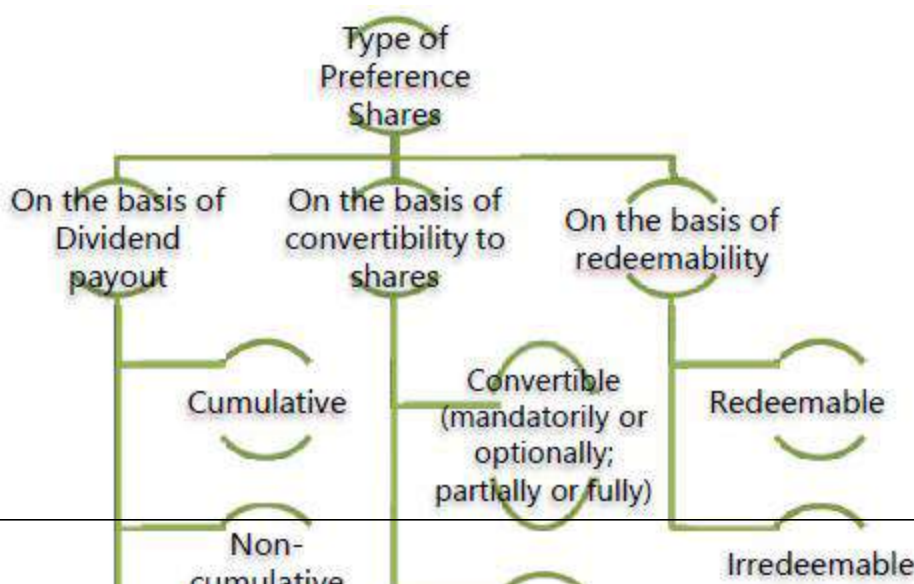
The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall **rank *pari passu*** with other equity shareholders.

As per the Rule 8 of the Companies (Share and Debentures) Rules, 2014, ''Employee'' means-

(a) a permanent employee of the company who has been working in India or outside India; or
(b) a director of the company, whether a whole- time director or not; or
(c) an employee or a director as defined in sub-clauses (a) or (b) above of a subsidiary, in India or outside India, or of a holding company of the company;

Whereas the expression **'Value additions'** means actual or anticipated economic benefits derived or to be derived by the company from an expert or a professional for providing know-how or making available rights in the nature of intellectual property rights, by such person to whom sweat equity is being issued for which the consideration is not paid or included in the normal remuneration payable under the contract of employment, in the case of an employee. **Preference shares - Issue and redemption [Section 55]**

<u>Types of Preference Shares</u>



ee Study Groups on Learnzup App

Issue & Redemption of Preference Shares According to Section 55:

1) No company limited by shares shall issue any preference shares which are irredeemable;

A company limited by shares may, if so authorised by its articles, issue preference shares which are liable to be redeemed within a period **not exceeding twenty years** from the date of their issue subject to such conditions as prescribed under Rule 9 of the Companies (Share Capital and Debentures) Rules, 2014.

Exceptions: A company may issue preference shares for a period exceeding twenty years (but not exceeding thirty years) for infrastructure projects (specified in schedule VI), subject to the redemption of 10 % of shares beginning 21st year at the option of such preferential shareholders;

2) No such shares shall be **redeemed** except **out of the profits** of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of such redemption;

3) No such shares shall be redeemed unless they are fully paid;

4) Where such shares are proposed to be redeemed out of the profits of the company, there shall, out of such profits, be transferred, a **sum equal to the nominal amount** of the shares to be redeemed, to a reserve, to be called the **Capital Redemption Reserve(CRR)** Account, and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the Capital Redemption Reserve Account were paid-up share capital of the company; and

Class of companies whose financial statement complies with Accounting standards: In case of such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133, the **premium**, if any, **payable on redemption shall be provided for out of the profits** of the company, before the shares are redeemed.

Provided also that premium, if any, payable on redemption of any preference shares issued on or before the commencement of this Act by any such company shall be provided for out of the

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

profits of the company or out of the company's securities premium account, before such shares are redeemed.

In a case not meeting above criteria, the **premium**, if any, payable on redemption shall be **provided** for **out of the profits** of the company or out of the company's **securities premium** account, before such shares are redeemed.

In case of unredeemed preference shares: Where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue, it may—

For the removal of doubts, it is hereby declared that the issue of further redeemable preference shares or the redemption of preference shares under this section shall not be deemed to be an increase or, as the case may be, a reduction, in the share capital of the company.

The **capital redemption reserve account** may, be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid **bonus shares.**

Transfer And Transmission of Securities And The Allied Provisions [Section 56 To Section 59]

Requirement for registering the transfer of securities [Section 56(1)]: A **company shall not register a transfer** of securities of the company, or the interest of a member in the company in the case of a company having no share capital, **unless a proper instrument of transfer**, in such form as may be prescribed, **duly stamped, dated and executed** by or on behalf of the transferor and the transferee (except where the transfer is between persons both of whose names are entered as holders of beneficial interest in the records of a depository), specifying the name, address and occupation, if any, of the transferee, has been **delivered to the company** by the

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

transferor or the transferee **within a period of 60** days from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities.

Instrument of transfer lost/ not delivered [First proviso to section 56(1)]: Where the instrument of transfer has been **lost** or the instrument of transfer has not been delivered within the prescribed period, the company may register the transfer on such terms as to **indemnity** as the Board may think fit.

In case of Government company – It is further provided that the provisions of this sub-section [i.e. section 56(1)], in so far as it requires a proper instrument of transfer, to be duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee, **shall not apply with respect to bonds issued by a Government company,** provided that an intimation by the transferee specifying his name, address and occupation, if any, has been delivered to the company along with the certificate relating to the bond; and if no such certificate is in existence, along with the letter of allotment of the bond.

Provided also that the provisions of this sub-section shall not apply to a Government Company in respect of securities held by nominees of the Government.

Power of company to register: Power of company to register shall not be effected by above provision (given under sub- section 1) on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted.

Transmission of securities on an application of transferor alone: Where an application is made by the transferor alone and relates to **partly paid shares**, the transfer shall not be registered, unless the company gives the notice of the application, in such manner as may be prescribed, to the transferee and the transferee gives no objection to the transfer within two weeks from the receipt of notice.

Company delivering the certificate: Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted—

Different conditions	Period of the delivering the certificates
In the case of subscribers to the memorandum;	Within **2 months** from the date of incorporation
In the case of any allotment of any of its shares	Within a period of **two months** from the date of allotment
In the case of a transfer or transmission of securities	Within a period of **one month** from the date of receipt by the company of the instrument of transfer or the intimation of transmission
In the case of any allotment	Within a period of **six months** from the

Provided that where the securities are dealt with in a **depository**, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

Transfer of security of the deceased: The transfer of any security or other interest of a deceased person in a company made by his **legal representative** shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer.

Default in compliance of the provisions:

Company shall be **punishable** with fine varying from 25,000 rupees to 5 lakh rupees and

Every officer of the company who is in default shall be punishable with fine with the minimum of 10 thousand rupees extending to 1 one lakh rupees.

Liability of depository: Where any **depository** or depository participant, with an intention to defraud a person, has transferred shares, it shall be liable under section **447** with the liability mentioned under the Depositories Act, 1996.

Punishment for personation of shareholder [Section 57]

If any person deceitfully **personates** as—

1) An owner of any security or interest in a company, or
2) of any share warrant or coupon issued in pursuance of this Act, and

Thereby obtains or attempts to obtain any such **security or interest** or any such share warrant or coupon, or receives or attempts to receive **any money due to any such owner**, Such person shall be **punishable** with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Refusal of registration and appeal against refusal [Section 58]

Section 58 of the Companies Act, 2013, deals with process of the company to be followed by - on refusal to register the transfer of securities.

(i) If a private company limited by shares refuses, to register the transfer of, or the transmission of the right to any securities or interest of a member in the company, then the company shall **send notice of the refusal** to the transferor and the transferee or to the person giving intimation of such transmission, within a period of **thirty days** from the date on which the instrument of transfer, or the intimation of such transmission, was delivered to the company.

The securities or other interest of any member in a **public** company are **freely transferable**, subject to the contract/arrangement.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(ii) The transferee may appeal to the Tribunal against the refusal within a period of **thirty** days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of **sixty days** from the date on which the instrument of transfer or the intimation of transmission, was delivered to the company.

(iii) If a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, is delivered to the company, the transferee may, within a period of **sixty days** of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, **appeal** to the Tribunal.

(iv) The Tribunal, while dealing with an appeal may, after hearing the parties, either **dismiss the appeal**, or by order—

(a) **direct that the transfer or transmission shall be registered by the company** and the company shall comply with such order within a period of **ten days** of the receipt of the order; or

(b) **direct rectification of the register** and also direct the company to pay damages, if any, sustained by any party aggrieved.

(v) If a person contravenes the order of the Tribunal he shall be punishable with imprisonment for a term not less than one year but may extend to three years **and** with fine not less than one lakh rupees which may extend to five lakh rupees.

Rectification of register of member [Section 59]

The provision states that-

(i) Remedy to the aggrieved for not carrying the changes in the register of members: If the name of any person is, without sufficient cause, **entered** in the register of members of a company, or after having been entered in the register, is, **omitted** there from, or if a default is made, or unnecessary **delay** takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or any member of the company, or **the company may appeal in such form as may be prescribed, to the Tribunal,** or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India**, for rectification** of the register.

(ii) Order of the Tribunal: The Tribunal may, after hearing the parties to the appeal by order, either **dismiss** the appeal or direct that the transfer or transmission shall be registered by the company within a period of **ten days** of the receipt of the order, or direct **rectification** of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(iii) The provisions of this section shall not restrict the right of a holder of securities, to transfer such securities and any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.

(iv) Where the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 or this Act or any other law for the time being in force, there the Tribunal may, on an application made by the depository, company, depository participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to **set right the contravention** and rectify its register or records concerned.

(v) Default in complying with the order: If any default is made in complying with the order of the Tribunal under this section, the company shall be **punishable** with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

<u>Alteration of share capital [Section 61]</u>

According to section 61 of the Companies Act, 2013 a limited company having a share capital may alter its capital part of the memorandum.

(1) A limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to—

(a) **Increase its authorised share capital** by such amount as it thinks expedient;

(b) **Consolidate and divide** all or any of its share capital into shares of a larger amount than its existing shares,
Provided that no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;

(c) **Convert all or any of its fully paid-up shares into stock,** and reconvert that stock into fully paid-up shares of any denomination;

(d) **Sub-divide its shares**, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.

(e) **Cancel shares** which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The cancellation of shares shall not be deemed to be a reduction of share capital.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

A company shall within 30 days of the shares having been consolidated, converted, sub-divided, redeemed, or cancelled or the stock having been reconverted, notice should be given to the Registrar in the prescribed form along with an altered memorandum **[Section 64 of the Companies Act, 2013].**

Further Issue of Share Capital – Rights Issue; Preferential Allotment [Section 62]

A rights issue involves pre-emptive subscription rights to buy additional securities in a company offered to the company's existing security holders.

A **public company may issue securities through a rights issue or a bonus issue** in accordance with the provisions of this Act and in case of a listed company or a company which intends to get its securities listed also with the provisions of the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder as per section 23(1)(c) of the Companies Act, 2013.

A private company may issue securities by way of rights issue or bonus issue in accordance with the provisions of this Act as per the section 23(2)(a).

As per the section 62 of the Companies Act, 2013-

Where at **any time**, a company having a share capital **proposes to increase its subscribed capital** by the issue of further shares, such shares shall be offered—

(a) To persons who, at the date of the offer, are holders of equity shares of the company in proportion, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:—

(i) The offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;

In case of private company- where ninety percent, of the members of a private company have given their consent in writing or in electronic mode, the periods lesser than those **specified** in the above said sub- clause or sub-section (2), shall apply.

(ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to **renounce** the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;

(iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he **declines** to accept the shares offered, the Board of Directors **may dispose** of them in such manner which is not dis-advantageous to the shareholders and the company;

(b) To employees under a scheme of employees' stock option, special resolution (ordinary resolution in case of pvt. co.) passed by company and subject to the conditions as may be prescribed; or

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(c) To any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, if the price of such shares is determined by the **valuation report** of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

This clause authorises company to issue shares to persons other than its existing shareholders and to employees under ESOP. However, the process to issue those shares is provided under section 42 of the Act (Private placement).

(2) The **notice** referred to in sub-clause (i) of clause (a) of sub-section (1) shall be **dispatched** through registered post or speed post or through electronic mode or courier or any other mode having proof of delivery to all the existing shareholders **at least three days before** the opening of the issue.

(3) Exception- This section **shall not apply** to the increase of the subscribed capital of a company caused by the exercise of an option attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company.

Provided that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in general meeting.

(4) Conversion of debentures/loan into shares : Where any debentures have been issued, or loan has been obtained from any Government by a company, and if that Government considers it necessary in the public interest, it may, by order, direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to the Government to be reasonable in the circumstances of the case even if terms of the issue of such debentures or the raising of such loans do not include a term for providing for an option for such conversion.

Term of conversion not acceptable to the company: Where the terms and conditions of such conversion are not acceptable to the company, it may, within 60 days from the date of communication of such order, appeal to the Tribunal which shall after hearing the company and the Government pass such order as it deems fit.

(5) Points to be taken into consideration for the term of conversion: In determining the terms and conditions of conversion, the Government shall have due regard to the financial position of the company, the terms of issue of debentures or loans, as the case may be, the rate of interest payable on such debentures or loans and such other matters as it may consider necessary.

(6) When memorandum of company stand altered and increases authorized share capital: Where the Government has, by an order directed that any debenture or loan or any part thereof shall be converted into shares in a company and where no appeal has been preferred to the Tribunal or where such appeal has been dismissed, then the memorandum of company shall, by

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

such order having the effect of increasing the authorised share capital of the company, stand altered and the authorised share capital of such company shall stand increased by an amount equal to the amount of the value of shares which such debentures or loans or part thereof has been converted into.

Example: A listed company at Bombay Stock Exchange, intends to offer its new shares to non-members. All the existing members of the company were against the same pointing on the validity of the same. Here in the given case, section 62 (1) (a) (iii), (b) and (c) further shares in a company limited by shares may be issued to non -members under certain circumstances. In compliance with the provision, offer of new shares to non-members is valid.

Issue of bonus shares [Section 63]

Bonus shares are shares issued proportionately by a company to its current shareholders as fully paid shares free of any cost to them.

Example: 1:3 bonus issue means an existing shareholder will get one extra free share for every three shares already held by him/her.
This section 63 of the Companies Act, 2013 deals with the condition and the manner of issue of fully paid-up bonus shares by a company to its members.

(1) Section 63 says that a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—
(i) its free reserves;
(ii) the securities premium account; or
(iii) the capital redemption reserve account:
Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

(2) No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares unless—

(a) it is **authorised by** its **articles**;

(b) it has on the recommendation of the Board, been **authorised** in the **general meeting** of the company;

(c) it has **not defaulted** in payment of interest or principal in respect of fixed deposits or **debt** securities issued by it;

(d) it has **not defaulted** in respect of the payment of statutory dues of the **employees**, such as, contribution to provident fund, gratuity and bonus;

(e) the partly paid-up shares, if any outstanding on the date of allotment, are made **fully paid-up;**

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(f) it complies with such conditions as may be **prescribed***.

The bonus shares shall not be issued in lieu of dividend.

It can **only be done if the articles of the company contain provisions in regard thereto**. It means that profits which otherwise are available for distribution among the members, are not divided among them in cash, but the shareholders are allotted further shares (bonus shares). Capital profits, shares premium and capital redemption reserve account can also be used for the purpose of issuing fully paid bonus shares.
Note: According to the proviso to Section 123(5) of the Companies Act, 2013, it is permissible for a company to capitalise its profits or reserves for the purpose of issuing fully paid up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company.

*The company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

Notice to be given to Registrar for Alteration of Share Capital [Section 64]
Where–
1) A company alters its share capital in any manner specified in section 61 (1),
2) An order made by the Government under section 62(4) read with 62(6) has the effect of increasing authorised capital of a company; or
3) A company redeems any redeemable preference shares,

The company shall **file a notice** in the prescribed form with the Registrar **within a period of thirty days** of such alteration or increase or redemption, as the case may be, along with an altered memorandum.

In default: "Where any company fails to comply with the provisions of sub-section (1), such company and every officer who is in default shall be liable to a **penalty** of **one thousand rupees** for each day during which such default continues, or five lakh rupees whichever is less."

Reduction of share capital [Section 66]
Accumulated business losses, assets of reduced or doubtful value or having paid up capital in excess of wants of the company could lead to the need of reducing share capital.
Section 66 deals with the reduction of share capital.

(1) Reduction of share capital by special resolution: Subject to **confirmation** by the **Tribunal on an application** by the company, a company limited by shares or limited by guarantee and having a share capital may, by a **special resolution**, reduce the share capital in any manner and in particular, may—

(a) extinguish or reduce the liability on any of its shares in respect of the share capital **not paid-up**; or
(b) either with or without extinguishing or reducing liability on any of its shares,—

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(i) **cancel any paid-up** share capital which is lost or is unrepresented by available assets; or
(ii) **pay off any paid-up** share capital which is in excess of the wants of the company, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

No reduction shall be made: Section further Provides that no such reduction shall be made if the company is in arrears in the repayment of any **deposits** accepted by it, either before or after the commencement of this Act, or the interest payable thereon.

Issue of Notice from the Tribunal :

The Tribunal shall give notice of every application made to it under sub-section (1) to the **Central Government**, **Registrar** and to the Securities and Exchange Board, in the case of listed companies, and the **creditors** of the company and shall take into consideration the **representations**, if any, made to it by that *Government,

Registrar, the Securities and Exchange Board and the creditors within a period of **three months** from the date of receipt of the notice: Provided that where no **representation** has been received from the *Central Government, Registrar, the Securities and Exchange Board or the creditors within the said period, it shall be presumed that they have **no objection** to the reduction.

(3) Order of tribunal: The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been **discharged** or determined or has been **secured** or his **consent** is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit:

Provided that no application for reduction of share capital shall be sanctioned by the Tribunal unless the accounting treatment, proposed by the company for such reduction is in conformity with the **accounting standards** specified in section 133 or any other provision of this Act and a certificate to that effect by the company's auditor has been filed with the Tribunal.

(4) Publishing of order of confirmation of tribunal: The order of confirmation of the reduction of share capital by the Tribunal under sub-section (3) shall be **published** by the company in such manner as the Tribunal may direct.

(5) Delivery of certified copy of order to the registrar: The company shall deliver a certified copy of the order of the Tribunal under subsection (3) and of a **minute** approved by the Tribunal showing—
(a) the **amount** of share capital;
(b) the **number** of shares into which it is to be divided;
(c) the amount of **each** share; and
(d) the amount, if any, at the date of registration deemed to be **paid**-up on each share,
to the Registrar within **thirty days** of the receipt of the copy of the order, who shall register the same and issue a **certificate** to that effect.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(6) Nothing in this section shall **apply to buy-back** of its own securities by a company under section 68.

(7) No liability of member: A member of the company, past or present, shall not be liable to any call or contribution in respect of any share held by him exceeding the amount of difference, if any, between the amount paid on the share, or reduced amount, if any, which is to be deemed to have been paid thereon, as the case may be, and the amount of the share as fixed by the order of reduction.

(8) In case where creditor is entitled to object by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his debt or claim, not entered on the list of creditors, and after such reduction, the company commits a default, within the meaning of section 6 of the Insolvency and Bankruptcy Code, 2016, in respect of the amount of his debt or claim-

(a) every person, who was a member of the company on the date of the registration of the order for reduction by the Registrar, shall be liable to contribute to the payment of that debt or claim, an amount not exceeding the amount which he would have been liable to contribute if the company had commenced winding up on the day immediately before the said date; and

(b) if the company is wound up, the Tribunal may, on the application of any such creditor and proof of his ignorance as aforesaid, if it thinks fit, settle a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(9) Nothing in sub-section (8) shall affect the **rights of the contributories among themselves.**

(10) Liability of officer: If any officer of the company—

(a) knowingly conceals the name of any creditor entitled to object to the reduction;

(b) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or

(c) abets or is privy to any such concealment or misrepresentation as aforesaid, he shall be liable under section 447.

(11) In case of failure to publish the order of confirmation of the reduction of shares: If a company fails to comply with the provisions of sub-section (4), it shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees

<u>Restriction on purchase by company or giving of loans by it for purchase of its shares [Section 67]</u>

Sec 67 not applicable to private companies if no other body corporate has invested in it + borrowed money <= 2*paid up share capital or 50 crore whichever is lower

A fundamental principle of Company Law was that a Company cannot buy its own shares. This is laid by Section 67 of the Companies Act, 2013.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

Section 67

(1) No company limited by shares or by guarantee and having a share capital shall have power to buy its own shares unless the consequent reduction of share capital is effected under the provisions of this Act.

(2) No public company shall give, whether directly or indirectly and whether by means of a **loan**, **guarantee**, the provision of **security** or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.

(3) Exceptions: There are, however, **certain exceptions where the company may provide the financial assistance, namely:**

(a) the lending of money by a **banking** company in the ordinary course of its business;

(b) the provision is made by a company for lending of money in accordance with any scheme approved by company through **special resolution** with such requirements as may be prescribed, for the purchase of, or subscription for, fully paid up shares in the company or its holding company, if the purchase of, or the subscription for, the shares held by **trustees** for the benefit of the employees or such shares held by the employee of the company;

(c) the giving of loans by a company to **persons** in the **employment** of the company other than its directors or key managerial personnel, for an amount not exceeding their **salary or wages for a period of six months** with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership. However, disclosures in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report in such manner as may be prescribed. [Section 67].

(4) nothing in Section 67 shall affect the right of a company to **redeem any preference shares** issued under this Act or under any previous Companies law.

(5) If a company contravenes the provisions of this section, it shall be **punishable** with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees **and** every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

Buy Back Of Securities [Sections 68- 70]

Buy back is the re-acquisition by a company of its own securities. It is a way of returning money to its investors.

Power of company to purchase its own securities [Section 68]

Section 68 of the Companies Act, 2013 provides the power of a company to purchase its own securities subject to certain conditions.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(1) Sources of funds for buy-back of shares: A company can purchase its own shares or other specified securities. The purchase should be out of:
(i) its **free** reserves; or
(ii) the securities **premium** account; or
(iii) the **proceeds** of the issue of any shares or other specified securities.

However, buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the **same** kind of shares or same kind of other specified securities [Section 68(1)].
"Specified securities" includes employees' stock option or other securities as may be notified by the Central Government from time to time.

(2) Conditions for buy-back: The company shall not purchase its own shares or other specified securities unless:

(a) the buy-back is authorised by its **articles**;

(b) a **special resolution** authorising the buy-back is passed in general meeting of the company; (except where— (i) the buy-back is, ten per cent. or less of the total paid-up equity capital and free reserves of the company; and (ii) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;

(c) the buy-back is **25% or less** of the aggregate of paid-up capital and free reserves of the company;

Provided that the buy-back of equity shares in any financial year shall not exceed **25%** of its total paid up equity capital in that financial year.

(d) the ratio of the aggregate **debts**(secured and unsecured) owed by the company after buy back is not more than **twice** the paid up capital and its free reserves;
Provided that the Central Government may prescribe a **higher** ratio of the debt to capital and free reserves for a class or classes of companies;
The expression "free reserves" for the purposes of this section, includes securities premium account.

(e) all the shares or other specified securities for buy-back are **fully paid-up**;

(f) the buy-back of the shares or other specified securities **listed** on any recognised stock exchange is in accordance with the regulations made by SEBI in this behalf;

(g) the buy-back in respect of shares or other specified securities other than those specified in Clause (f) is in accordance with **rules** as may be prescribed. [Sections 68(2)]

Provided that **no** offer of **buy-back**, shall be made within a period of **one year** from the date of the closure of the preceding offer of buy-back, if any.

(3) Procedure before buy-back: The **notice** of the meeting at which special resolution is proposed to be passed shall be accompanied by an **explanatory statement** stating -

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(a) a full and complete disclosure of all the **material facts;**
(b) the **necessity** for the buy-back;
(c) the class of shares or **securities** intended to be purchased under the buy back;
(d) the **amount** to be invested under the buy-back; and
(e) the **time** limit for completion of buy-back. [Sections 68(3)]

(4) Time limit for completion of buy-back: Every buy-back shall be completed within **twelve months** from the date of passing the special resolution or a resolution passed by the Board at general meeting authorising the buy-back. [Sections 68(4)].

(5) Buy-Back from Whom?: The buy-back under Sub-section (1) may be—

(a) from the existing share holders or security holders on a proportionate basis; or

(b) from the open market; or

(c) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity. [Sections 68(5)]

(6) Declaration of Solvency: Where a company has passed a special resolution under clause (b) of Sub-section (2) or the Board has passed a resolution under the first proviso to clause (b) of Sub Section (2) to buy-back its own shares or other securities under this section, it shall, before making such buy-back, file with the Registrar and the Securities and Exchange Board of India a declaration of solvency in the form as may be prescribed and verified by an affidavit to the effect that the Board has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year of the date of declaration adopted by the Board, and signed by at least two directors of the company, one of whom shall be the managing director, if any;

Provided that no declaration of solvency shall be filed with the Securities and Exchange Board of India by a company whose shares are not listed on any recognised stock exchange. [Sections 68(6)].

(7) Extinguishment of Securities: Where a company buys-back its own securities or other specified securities, it shall extinguish and physically destroy the shares or securities so bought-back within seven days of the last date of completion of buy-back. [Sections 68(7)]

(8) Cooling Period : Where a company completes a buy-back of its shares or other specified securities under this section, it shall not make further issue of same kind of shares (including allotment of further shares under clause (a) of Sub-section (1) of Section 62 or other specified securities within a period of six months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares. [Sections 68(8)]

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(9) Register of Buy Back: Where a company buys-back its shares or other specified securities under this section, it shall maintain a register of the shares or securities so bought, the consideration paid for the shares or securities bought-back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities and such other particulars as may be prescribed. [Sections 68(9)]

(10) Filing of Buy-back Return: A company shall, after completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board of India, a **return** containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed:
Provided that no return shall be filed with the Securities and Exchange Board of India by a company whose shares are not listed on any recognised stock exchange. [Sections 68(10)]

(11) Penalty for Default: If a company makes default in complying with the provisions of this section or any regulations made by SEBI under clause (f) of Sub-section (2), the company shall be **punishable** with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both. [Sections 68(11)]

<u>Transfer of certain sums to Capital Redemption Reserve account [Section 69]</u>
Where a company purchases its own shares out of free reserves or securities premium account, then a sum equal to the nominal value of the share so purchased shall be transferred to the **capital redemption reserve** account and details of such transfer shall be **disclosed** in the balance sheet.

The capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as **fully paid bonus shares**.

<u>Prohibition for buy-back in certain circumstances [Section 70]</u>
This section of the Companies Act, 2013 prohibits the company for buy back in the certain circumstances.
(1) The provision says that no company shall directly or indirectly purchase its own shares or other specified securities-
(a) through any **subsidiary** company including its own subsidiary companies; or
(b) through any **investment** company or group of investment companies; or

(c) if a default, is made by the company, in repayment of **deposits** or interest payment thereon, **redemption** of debentures or preference shares or payment of **dividend** to any shareholder or repayment of any **term loan** or interest payable thereon to any financial institutions or banking company;
But where the default is **remedied** and a period of three years has lapsed after such default ceased to subsist, there such buy-back is not prohibited.

(2) No company shall directly or indirectly purchase its own shares or other specified securities in case such company has not complied with provisions of Sections 92 (Annual Report), 123

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

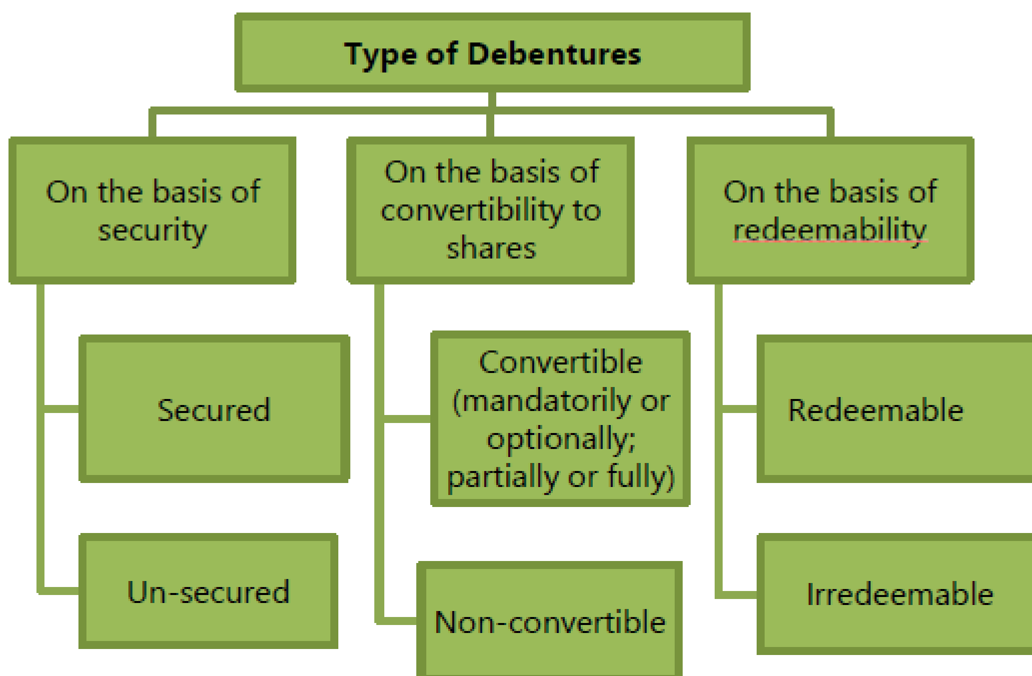
(Declaration of dividend), 127 (Punishment for failure to distribute dividends), and section 129 (Financial Statements).

Debentures [Sections 71]

As per Section 2(30), debenture includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not. Provided that— (a) the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and

(b) such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company,

shall not be treated as debenture;



Section 71 of the Companies Act, 2013 provides the manner in which a company may issue debentures. According to the provision—

(1) Issue of debentures with an option to convert: A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. Provided that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a **special resolution** passed at a general meeting.

(2) No company shall issue any debentures carrying any **voting** rights.

(3) Issue of secured debentures: Secured debentures may be issued by a company subject to such terms and conditions as may be prescribed in Rule 18 of the *Companies (Share Capital and Debentures) Rules, 2014*.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(4) Creation of debenture redemption reserve (DRR) account: Where debentures are issued by a company under this section, the company shall create a **debenture redemption reserve account** out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures.
(5) Limitation on the issue of prospectus/ offer / invitation to the public: No company shall issue a prospectus or make an offer or invitation to the public or to its members **exceeding five hundred** for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more **debenture trustees** and the conditions governing the appointment of such trustees shall be such as may be prescribed.

(6) Debenture trustee to protect the interest of debenture holders: A debenture trustee shall take steps to protect the interests of the debenture-holders and redress their grievances in accordance with such rules as may be prescribed.

(7) Liability of debenture trustee: Any provision contained in a trust deed for securing the issue of debentures, or in any contract with the debenture-holders secured by a trust deed, shall be **void** in so far as it would have the effect of **exempting** a **trustee** thereof from, or indemnifying him against, any liability for **breach of trust**, where he fails to show the degree of care and due diligence required of him as a trustee, having regard to the provisions of the trust deed conferring on him any power, authority or discretion

Provided that the liability of the debenture trustee shall be subject to such exemptions as may be agreed upon by a majority of debenture-holders holding not less than three-fourths in value of the total debentures at a meeting held for the purpose.

(8) To pay interest and redeem the debentures: A company shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue.

(9) Filing of petition before the Tribunal by the debenture trustee: Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Tribunal and the Tribunal may, after hearing the company and any other person interested in the matter, by order, impose such restrictions on the incurring of any further liabilities by the company as the Tribunal may consider necessary in the interests of the debenture-holders.

(10) On failure to redeem the debentures/ to pay interest on the debentures: Where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the Tribunal may, on the application of any or all of the debenture-holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

(11) Default in compliance of order of the Tribunal: If any default is made in complying with the order of the Tribunal under this section, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than two lakh rupees but which may extend to five lakh rupees, or with both.

(12) Specific performance of the contract: A contract with the company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

(13) Procedure to be prescribed by the Central Government: The Central Government may prescribe the procedure, for securing the issue of debentures, the form of debenture trust deed, the procedure for the debenture-holders to inspect the trust deed and to obtain copies thereof, quantum of debenture redemption reserve required to be created and such other matters.

As per the Companies (**Share Capital and Debentures**) Rules, 2014, the company shall create a **Debenture Redemption Reserve** for the purpose of redemption of debentures, in accordance with the conditions given below-
(a) the Debenture Redemption Reserve shall be created out of the profits of the company available for payment of dividend;
(b) the company shall create Debenture Redemption Reserve (DRR) in accordance with following conditions:-

In case of partly convertible debentures, DRR shall be created in respect of non-convertible portion of debenture issue in accordance with this sub-rule.

Which companies required to create DRR?

Debentures Issues By	**DRR Requirement**
All India Financial Institutions (AIFI) regulated by RBI + Banking Companies + Other Financial Institutions + Listed Companies + Listed & Unlisted NBFC & HFC	No DRR
Other Unlisted Companies	10% of value of outstanding debentures

Further few companies are also required to invest (before 30/4) >=15% of the amount of debentures maturing that year in the below securities/deposits:
1) Deposits with any scheduled bank, free from charge or lien;
2) In unencumbered securities of central government or any state government;
3) In unencumbered securities or bonds issued by any other co. notified under Indian Trust Act.

Which companies are required to invest in above deposits/securities?
1) All listed companies including NBFC & HFC but excluding AIFI, banking companies & other financial institutions.
2) All unlisted companies other than NBFC & HFC

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App

The amount deposited or invested, as the case may be, above should not be utilized for any purpose other than for the redemption of debentures maturing during the year referred to above.

© yogeshvermaclasses | www.Learnzup.com | Whatsapp 8368479717 | Join Free Study Groups on Learnzup App