



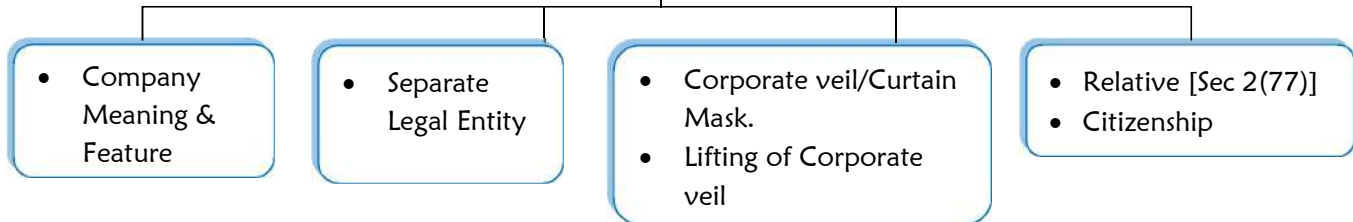
MUST DO REVISION OF **COMPANY LAW**

INDEX

Chapter Name	Page No.
NATURE OF COMPANY	2 – 6
TYPES OF COMPANIES	7 – 13
PROMOTION & FORMATION OF A COMP [Sec-2(69)]	14 – 17
MEMORANDUM & ARTICLES OF ASSOCIATION	18 – 29
PROSPECTUS & ALLOTMENT OF SECURITAS	30 – 36
ALLOTMENT OF SECURITIES (Sec – 39, 40, 41, 42)	37 – 40
SHARE CAPITAL	41 – 51
TRANSFER & TRANSMISSION OF SHARES	52 – 55
MEMBERSHIP REGISTER & RETURN	56 – 60
CHARGES	61 – 64
GENERAL MEETING	65 – 77
DECLARATION & PAYMENT OF DIVIDEND	78 – 81
ACCOUNTS OF COMPANIES	82 – 88
AUDIT & AUDITORS	89 – 96
DEBENTURES	97 – 100
ACCEPTANCE OF DEPOSITS	101 – 103

NATURE OF COMPANY

(Unit –Overview)



Concept – 1: Company and its characteristics [Sec 2(20)]

i) Def. of Co. [Sec 2(20)] :-

It means

- a company formed and incorporated Under Companies Act, 2013 or
- Formed & incorporated Under previous Company Law. Companies Act – 1956, Indian Companies Act, 1913.

ii) Def. of Co. as per “Prof. L.H. Haney.” Co.’s is

- an artificial person,
- created by law,
- having separate personality
- perpetual Succession
↓ (Continuous Existence)
- Common Seal.

iii) Conclusion of both-definitions.

→ Co = Association of persons + Registration of such association under Companies Act.

iv) Characteristics of a company

i) Registered Association

- The first feature of a Co. is that it is an association of persons, registered/ incorporated under companies Act.
- For a Pvt. Co. Minm. 2 persons and public Co. minm 7 person are required.

ii) Artificial Person

- Co. is an artificial person which means it does not have any physical existence or flesh & blood just like a natural person.

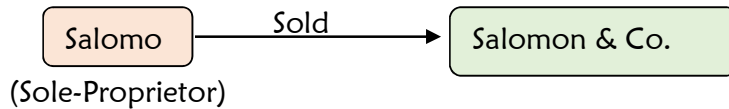
iii) Separate Legal Entity

- After incorporation, a co. becomes different person, from those person, who has incorporated it.
- So, a co. is different from its members. ‘Directors & Shareholders/ officers.’

Case Law: Salomon

↓
Salomon & Co. Ltd.

Fact:



38,782 Pounds

- b) The Co. discharged the consideration as follow
 - i) By way of shares of £ 1 each = £ 20,000 (share were allotted to salmon & his family)
 - ii) By way of secured debenture : £ 10,000 (held by Salomon himself)
 - iii) By Cash : £ 8,782
- c) After, Few years, Co. suffered very huge loss due to rescission in the Mkt. and Co. goes in liquidation.
- d) At the time of Liquidation the total assets were realised for just £ 6,000.
It's Liabilities were as follows:-
 - a) Secured Debenture (held by Salomon) = £ 10,000
 - b) Unsecured Creditor (held by leather = £ 7,000 Supplier)
 - Total = 17,000

iv) Perpetual Succession

- As per this feature of Co. the personality of Co. is not affected by the death, insanity & insolvency of its members.
- As per Prof. L.C.B Grover,
"Members may come and go, but Co. goes on forever".

v) Common Seal

- One of features of Co. is that it has a common seal.
- It is made of Metal and consist of two in formations.
 - a) Name of the company.
 - b) Name of State where regs. office of company is situated.
- It is affixed on generally two documents –
 - a) Share Certificate
 - b) Debenture Certificate
- Presently it is optional.

vi) Separation b/w ownership & Management

One of feature of Co. is that there is separation of ownership & Management. Generally directors are elected by members, out of themselves or sometime some outsider may be elected as director.

vii) Separate Property

- Co. has legal right to acquire, hold & dispose any property in its own name.
- No member of co., can claim himself as an owner or Co. owner of property of the Co.

Case – Law: Macaure √. Northern Assurance Colic

Message/ Lesson From Case-Law:

Director shall not get the property of Co. insured in his own name otherwise the insurance contract will be void, due to lack of insurable interest.

Concept – 2: Corporate Veil & Lifting of Corporate Veil

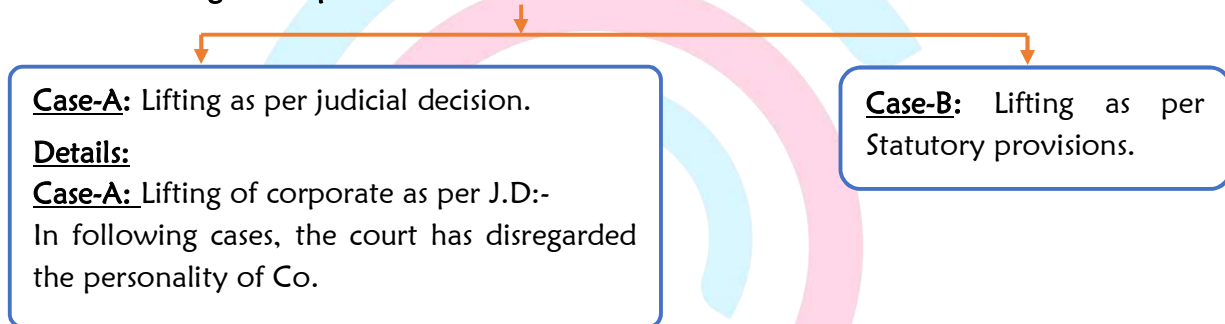
i) Meaning of Corporate-Veil :

- “Veil” means “curtain”, “divider” or a ‘Mask’.
- By fiction of law, it is assumed that there is a “LEGAL CURTAIN” between co. & its members which separates these two.

ii) Lifting of Corporate Veil:

- It means ignoring / disregarding the legal personality of Co. and looking behind the persons who are really interested into the Success or failure of the Co. or controls the affairs (functioning) of Co.
- Generally the “Corporate veil” is regarded but in some exceptional or special cases the court or as, per legal provision, Personality of Co. is disregarded.

iii) Cases in which lifting of Corporate Veil is done.



1) Protection of govt. Revenue:

When companies are formed to so tax evasion the personalities of company (ies) will be ignored and incomes of company (ies) will be included in the hands of its members.

Case- Law: Sir Dinshaw Maneckjee Petit

Fact: In this case, “D” formed 4 private companies just to reduce his tax-liabilities. These companies were not doing any business or not having any other assets. The income of these companies were exempt as per income tax of that time.

Decision: The court held that those 4 companies were SHELL co./ Sham/ Dummy Co. and their incomes will be clubbed into member.

2) Prevention of fraud/ Prevention of improper conduct/ Prevention of breach of Contracts-

- If a company is formed for committing fraud or avoiding any legal obligation etc. or breach of contract.
- Then the personality of company can be ignored.

Cash-Law: Gilford Motor C. Ltd.

√.
Horne

Fact: In this case, “H” was employee of Gilford Motor Co. Ltd. and as per employment agreement, he was under obligation, for not soliciting the customer of Gilford Motor (employer), even after leaving the job.

“H” left the job and forms a private co. along with his wife and one friend. “H” passed the data to his co. and the co. started soliciting the customer of Gilford Motor Co. Ltd.

Decision: The court held that, “H” & his Co.’ both are one/ Same and extended the “Obligation of H” also upon “his co.”

3) Determination of enemy character of company-

- A co. can't be enemy or friend. However, when the members or person having control (i.e. director) over the co., becomes enemy due to war, then co. also become.

Cash Law: Daimler Co. Ltd.

√.

Continental Tyre & Rubber Co. Ltd.

Fact: ‘Continental.....’ was incorporates in England, by German people, including one citizen of England. All the directors of ‘Continental’ were German citizen.

Decision: The court held that” Continental.....” has become enemy due to citizenship f its members/ directors.

4) Prevention of avoidance of Welfare of employee.

- If the new co. is incorporated for just avoiding or escaping the welfare of employees/ workers.
- Then corporate veil can be disregard.
- “Welfare” means facility of bonus, gratuity provident-fund.

Cash Law: Workers of Associated Rubber Industries Ltd.

√.

Associated R. I. Ltd.

Fact: Associated R. I. L, formed a new co. (100% Subsidiary) and transferred all its profitable investment. The main purpose of formation of new co. was to reduce the benefits of workers of old co. (Associated R.I.L).

Decision: The court ignored that the personality new co./ Subsidiary co. and ts profit shall be clubbed n the hands of Associated R.I.L.

(B) Lifting of Corporate Veil as pr provisions of Companies Act:

1) Reduction in Statutory no. of member (Sec-3A):

- If, the no. of members in a company, (legal).
- Falls below the Statutory limit. (i.e. legal limit of 7/2).
- and the remaining members continue the business, without increasing the No. of members.
- Then, for transaction after 6 months the remaining members will be personally liable.

2) Liability of Promoter/ director etc in case of Mis-statement in prospectus m(Sec-34 & 35)

- If there is any Mis-Statement in the prospectus.
- Then for any loss of investor, promoters and director will be personally liable, who has signed or authorised the issue of prospectus.

3) Failure to receive Minm. Subscription (Sec-39)

- If co. fails to receive minimum subscription within 30 days of issue of prospectus.
- Then Co. shall not allot the shares.
- Instead Co. shall refund the application. Money, otherwise directors/ promoters will become personally liable to the applicant.

4) Merger/ combining of F.S, of subsidiary Co. into the F.S of holding Co. (Sec-129).

- As per Sec-129, it is mandatory to prepare a “Consolidate Financial Statement” by merging the F.S. of subsidiary co. into the F.S. of holding co.

5) Liability of director/ manager for fraudulent conduct of business. (Sec-447).

- If nay director/ Manager does any activity or omit to do any activity.
- Which has ceased injury to
 - Co
 - Shareholder
 - Creditors or
 - any person
- Then for such loss, such director/ will be personally liable.

Concept – 3: CO. AS CITIZEN (NO. SECTION OF COM. LAW

- No. co. is not a citizen because as per citizenship Act. 1955, citizenship is available to only “Individual”.
- So, a co. doesn't have those fundamental right which are only available to citizen of India like right of vote etc.

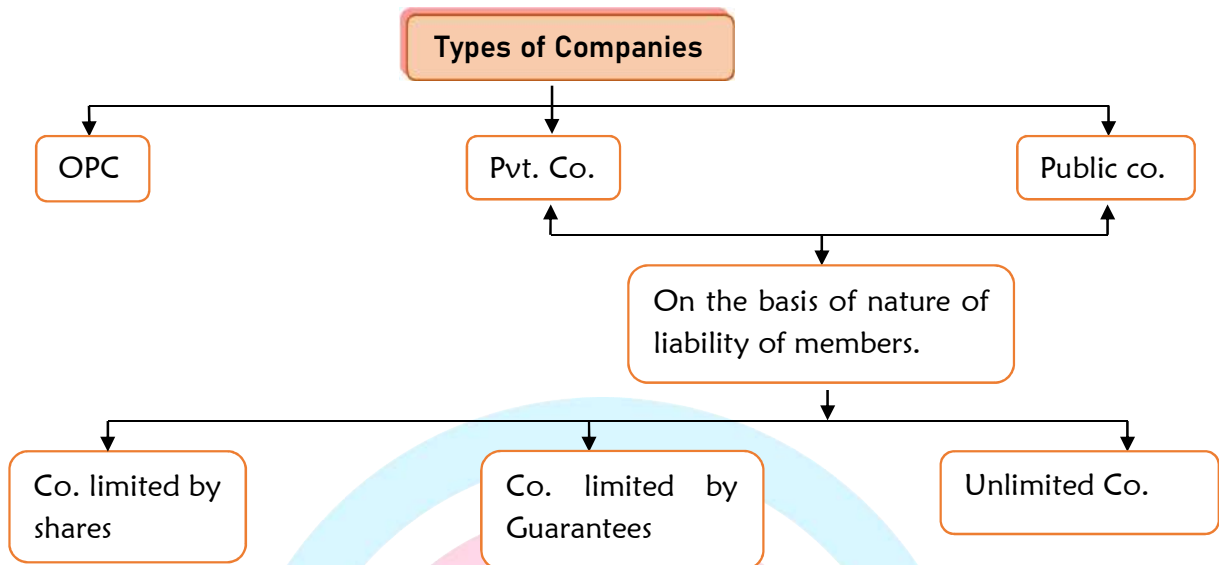
4) Def. of relative Sec-2(77)

Following 10 persons are covered into def. of relative:-

- a) Member of HUF
- b) Husband & Wife
- c) Father (including step father)
- d) Mother (including Step Mother)
- e) Son (including Step Son)
- f) Daughter
- g) Son's Wife
- h) Daughter's husband.
- i) Brother (including Step brother).
- j) Sister including Step Sister).

UNIT – II

TYPES OF COMPANIES



• OTHER TYPES OF COMPANIES

- a) **On the basis of Control:**
 - Holding
 - Subsidiary Co.
 - Associate (20% - 50%)
- b) **On the basis of ownership:-**
 - Govt. Co./ Public Sector Co.
 - Pvt. Sector Co. (like TCPL, RIL)
- c) **Miscellaneous Topics:-**
 1. Small Co. (Amendment in 2017).
 2. Dormant Co. (Inactive Co.)
 3. Nidhi Co.
 4. Licensed Co. (N.P.O.)
 5. Illegal Association (Sec-464).

Concept – 1: Private Company & its Features [Sec-2(68)]

(I) Def. of Private Company

- It means a company.
- having such minimum paid up capital as may be prescribed.

AND

Which by its AOA puts 3 conditions.

- a) R = restricts the right of transferability of its shares.
It means shares of Pvt. Company are not freely transferable. The company shall put restriction, but not prohibition (Complete ban) on transfer of shares.
e.g. An existing member, must offer his share to another member of Pvt. company.
- b) L = Limits the numbers of members upto 200.

Exception

While counting the limit of 200, following all special points.

- i) Joint members are counted as a member.
- ii) An employee who become member, during the employment will not counted as member he will also not counted as member, if he has left the employment.
(ex - employee).
- c) P = Prohibits (Complete ban) on issue of prospectus, inviting public for subscription (Purchase) of securities.

Concept – 2: Public Company [Sec-2(71)]

i) Def. of Public Company

It means a company.

- a) Which is not a private company.
AND
- b) Which has such minimum paid-up capital as may be prescribed.

ii) Def. of Demand Public Company [Provis. to Sec-2(71)]

A private company becomes public company if it becomes a subsidiary of a public company.

Concept – 3: One Person Company [Sec-2(62)]

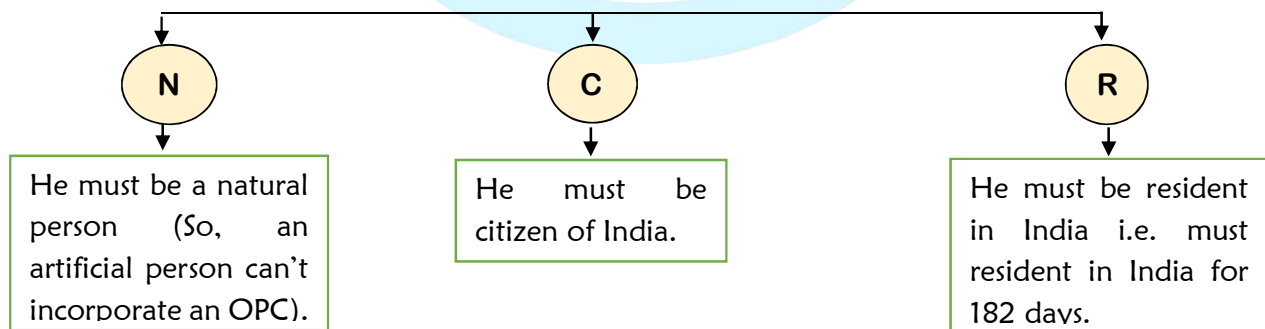
i) Meaning : It is a type of Private company having only one member and registered Under Companies Act, 2013.

ii) Def. [Sec-2(62)] : “OPC” means a company which has only one person as a member.

iii) Features of OPC :

- 1) “OPC has separate personality different from its “Sole member”.
- 2) The liability of “Sole member’ is “Limited”.
- 3) In “OPC” there are 2 persons, i.e., -
 - a) Sole Member
 - b) Nominee

iv) Qualification for member/ Nominee :-



v) Restrictions with respect to OPC

- a) Unique OPC : An individual can form only one OPC.
- b) An OPC, can't Voluntary Convert. Itself into Pvt. Co. or Public Co. within a period of 2 years from the date of incorporation.

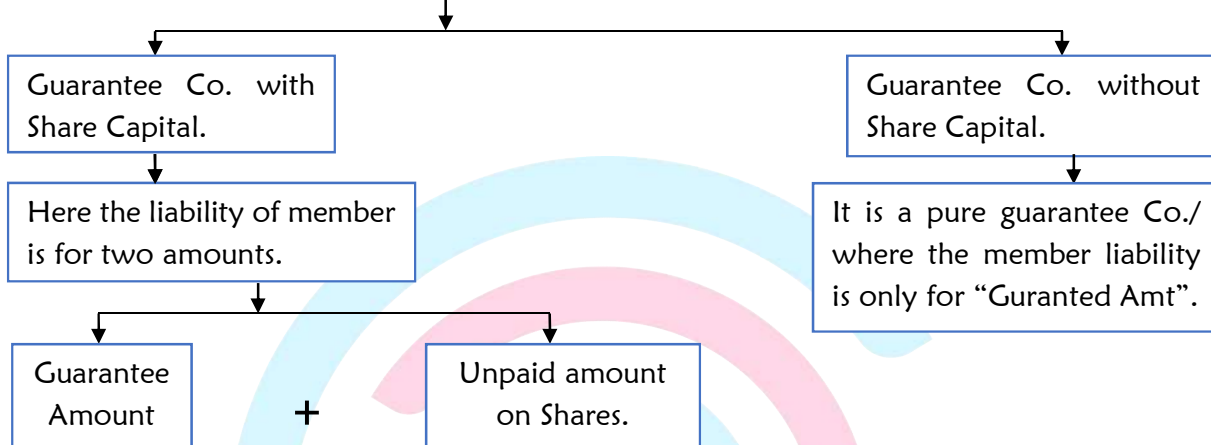
Concept – 4: Types of Company on the basis of nature of liability of its Member

1) Co. limited by Shares [Sec-2(22)]

- It means a company in which the liability of members.
- Is limited upto the unpaid amount on shares, held by them.
- The unpaid amount may be called by BOD (during the life of Co.) or by the liquidator. (at the time of winding up).

2) Co. Limited by Guarantee : [Sec-2(21)]

- A Co. in which the liability of its members are limited by the guarantee amount mentioned in liability clause of MOA.
- Further Classification of Guarantee Co.



Note :

Generally "Guarantee Co." does not carry any business.

3) Unlimited Co: [Sec-2(92)]

A co. in which there is "No Limit" on the liability of its members.

Concept – 5: Types of Companies on the basis of Control

1) Holding Company : [Sec-2(46)] -

It means a company which has one or more subsidiary company.

2) Subsidiary Company [Sec-2(87)] –

It means a company in which the other company (know as holding company).

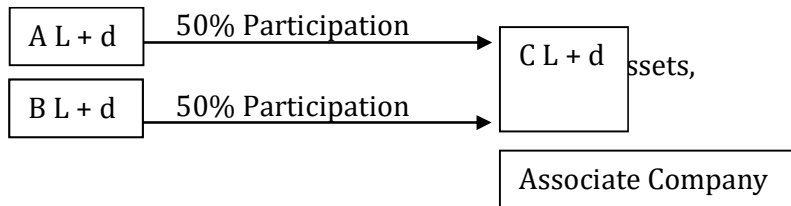
- Holds, either itself or through it other Subsidiary (known as indirectly) more than 50% of Total Share Capital.
- Controls the composition of Board of Directors of the company i.e., the other company has right to appoint or remove either all or at least majority of director.

Note – 1 :- Total Share Capital"
Equity Share capital
+
Convertible Preference Share Capital.

3) Associate Company [Sec-2(6)]:

It means a company in which another company (known as controlling company) has significant influence, but does not include a Subsidiary Company. However, an association company includes a joint Venture.

Example –



4) Significant Influence:

It means holding of at least 20% of Total Share Capital but not exceeding 50%.

5) Joint Venture:

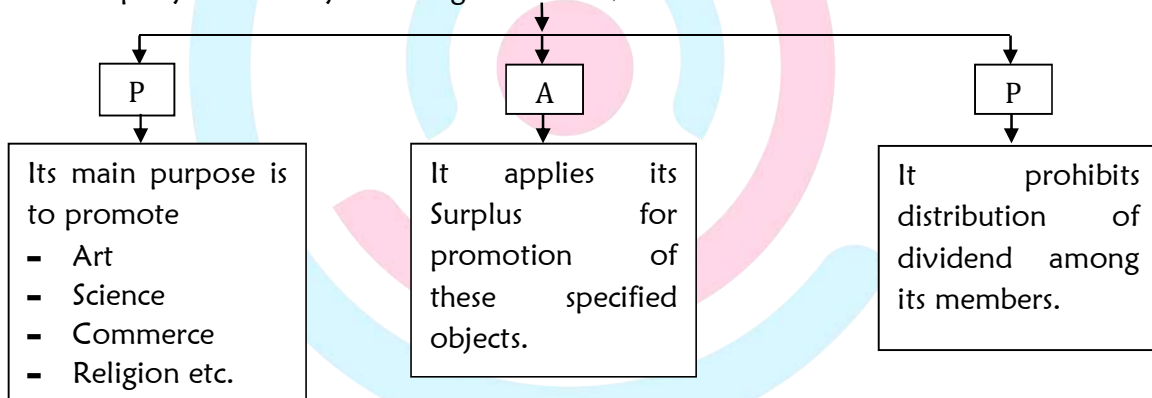
It means a joint arrangement where by parties have rights to the net assets of the arrangement.

Concept – 6: Licensed Company (Sec-8)

Association Not for Profit: -

i) Meaning of Licensed Company

It means a company licensed by Central government, which fulfils these three condition:-



ii) Relaxation/ Benefits available to licensed Co.

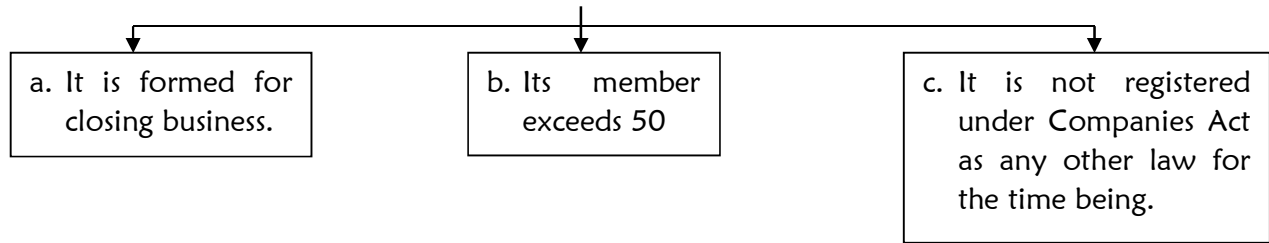
- No need to use the word “Pvt. Ltd.” or “Ltd.” [Sec-4(1)(a) – Proviso. Exception.
- It can use the words like “Charitable”, “Benovolent”, “Foundation” etc.
- Lesser Board- Meeting : A licensed company is required to just call & hold”2 Board Meetings”, instead of “4 Board Meetings”.
- No need to pay Stamp duty – A licensed co. is not required to pay stamp duty on its MOA & AOA.
- Firm : A partnership Firm can becomes member of a licensed Co.

iii) Restrictions/ limitation of licensed Co.

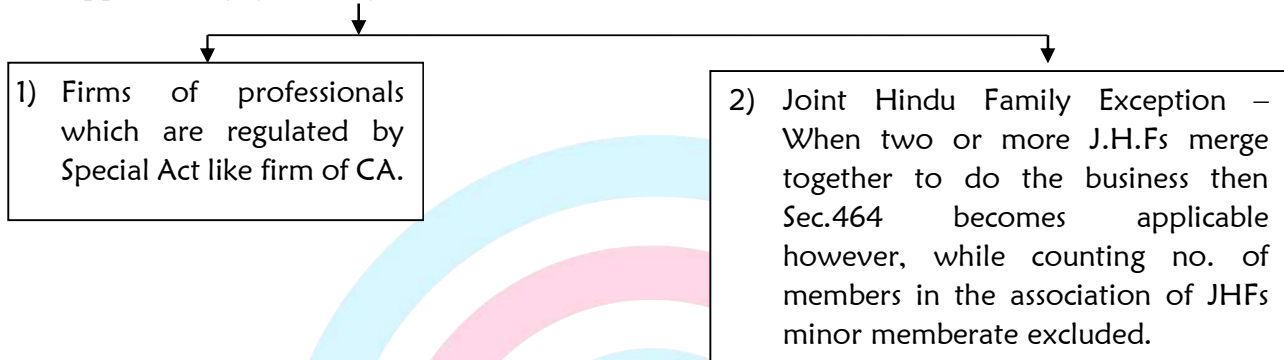
- Prior permission of Central Government is required to alter. MOA & AOA.
- A licensed Co. an just Merge with another license Co. having same objective.

Concept – 7: Illegal – Association (Sec. 464)

i) **Meaning of “Illegal Association”** : It means a group of person or partnership firm, which satisfies these 3 conditions.



ii) **No Applicability (Sec-464)**



iii) **Other points about Illegal Association**

- a) Ignorance of existence if illegal association – The law doesn't recognise the existence of legal association law punishes its member.
- b) No benefit of subsequent reduction – A illegal association remains illegal even after subsequent reduction in no. of members.

Miscellaneous Points

1) **Small Company : [Sec-2(85)]**

It means a private co. which satisfied these two conditions:-

- a) Which paid-up capital doesn't exceed \$ 50 lakhs (May be increased by CG upto \$ 10 Cr.) and;
- b) Which turnover doesn't \$ 2 cr. (May be increased by CG, upto \$ 100cr.). However, small Co. doesn't include.
 - a. A Public Co.
 - b. A Holding & Subsidiary Company
 - c. A licensed Co;
 - d. A Co. or body corporate, regulated by “Separate Act”.

2) **Dormant Co. (Sec. 455)**

- It means a regd. Co.
- Having no significant Accounting transaction
- here “SAT” means any transaction, except these 4:-
 - a) Payment of filling fees (to ROC)
 - b) Payment of any amount, as per requirement of this Act or other (laws) i.e. House Tax.
 - c) Payment of maintenance, expenses, Related to office like rent.
 - d) Allotment of Share by the company to the allotted investors.

Note : Relaxation of Dor. Com.

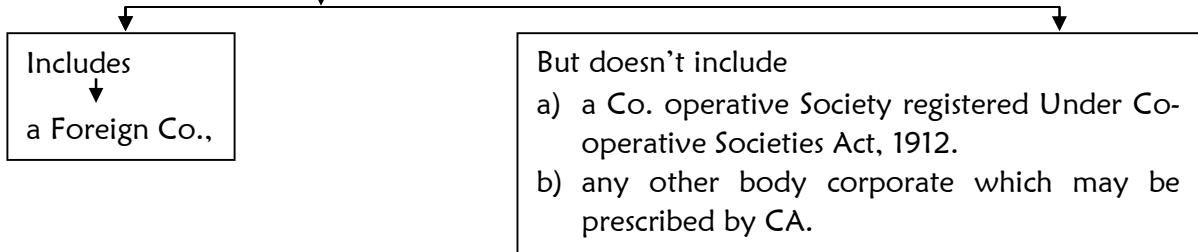
- 1) No need to prepare Cash-flow statement.

2) The concept of rotation of auditor “Doesn’t apply upon a Dormant Co.”

3) Nidhi. Co. (Sec. 406)

- A company.
- Registered as a “Nidhi”
- For cultivate (developing the habit of thrift (cost cutting) and saving among its member.
- It accepts deposits from its members and also lead money to its members for mutual benefits.

4) Body Corporate : [Sec- 2(11)]



Notes:-

1. Companies Act, 2013 not just regulate Co. that but also Body Corporate.
2. The concept of body corporate > (wider) than the concept of company.

5) Restriction on Purchase of Share by a Subsidiary Co. into its Holding Co.

i) Restriction on Subsidiary Co. (Sec-19) –

- No Subsidiary Co.
- Shall purchase or acquires in its holding Co.
- Similarly no holding Co. shall
 - allot or company
 - transfer to subsidiary company.

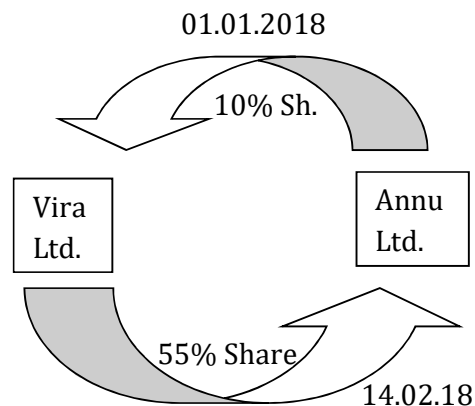
ii) Consequences of Violation of Sec-19 –

- The allotment/ transfer of share will be void-ab-intio.

iii) Exception : [Proviso to 19(1)] –

In these 3 exceptional cases a subsidiary Co. can validity hold/ acquire shares to its Holding Co:-

- a) Legal Representative – When subsidiary Co. holds shares in the holding Co. as legal representative of a deceased member.
- b) Trustees – When the subsidiary Co. holds shares in its holding Co. as a ‘Trustee’ for some other person. (that other person is known as beneficiary).
- c) Pre-holding – When the subsidiary acquires share holding company before creation of H.S relation. Example:-



SUMMARY

- 1) Pvt. Co. [Sec-2(68)] = Prescribed Cap + 3 restriction into AOA (Restriction Limited Pro).
 - 2) Pub. Co. [Sec-2(71)] = Not a private company + Subsidiary of a Pub. Co.
 - 3) OPC : [Sec-2(62)]
 - Sole member + Nominee
 - Eligibility for Member
-

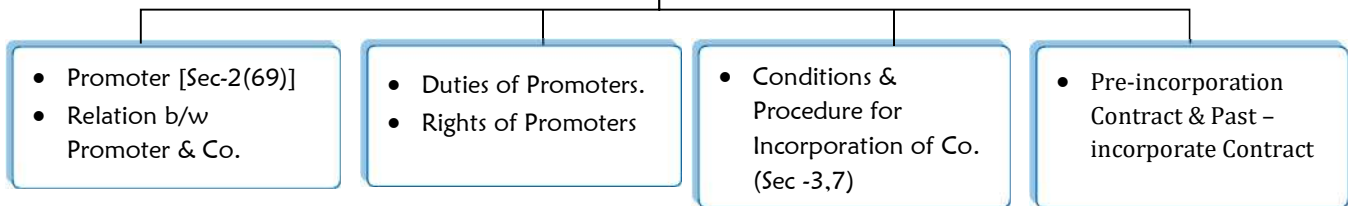


CHAPTER -3

PROMOTION & FORMATION OF A COMP

[Sec-2(69)]

(Chapter –Overview)

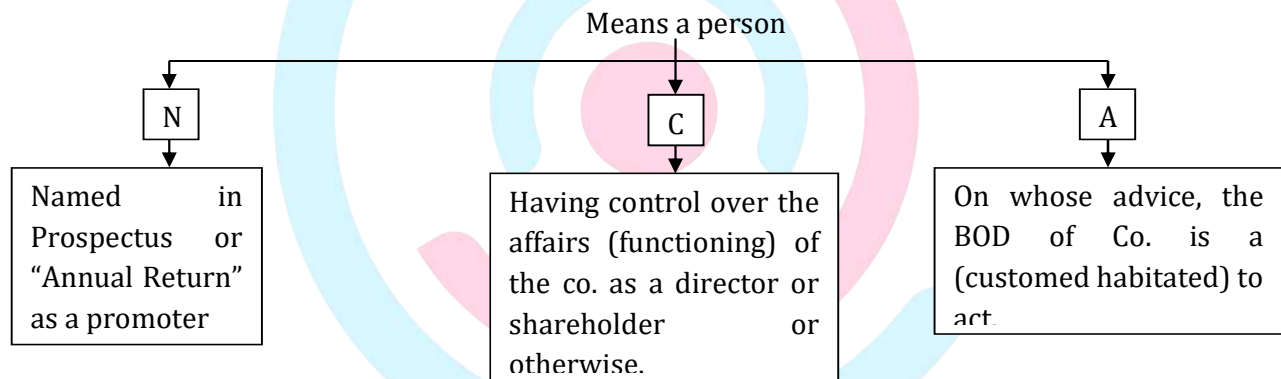


Concept – 1 : Promoter- Meaning, Definition & Status [Sec-2(69)]

i) Promoter Meaning –

- Who conceives the idea of a company &
- Takes necessary action to bring that idea, into reality.

ii) Def. of Promoter [Sec-2(69)]

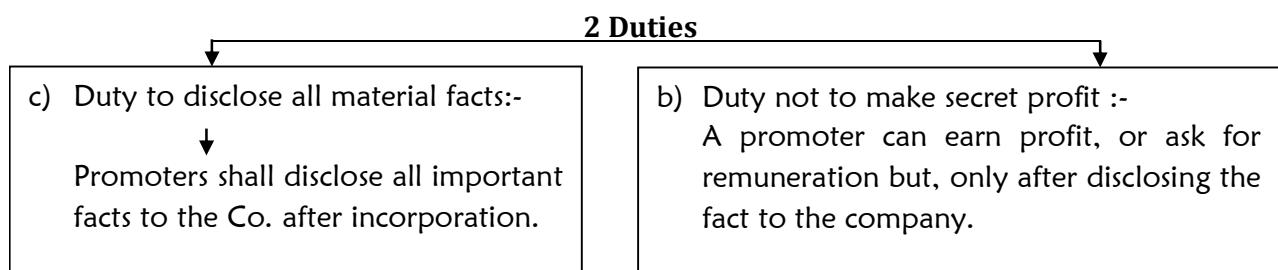


Provided that promoter doesn't include a person who is professional and working in merely professional capacity.

iii) Relation b/w Promoter & proposed Co.

- It seems that "Promoter" is an "Agent" or a "Trustee", but in fact it is not so,
- Generally Promoters are treated as in "fiduciary relation", with the proposed co.

Concept – 2 : Duties of Promoter (no Section)



Concept – 3 : Condition & Procedure for Incorpo. of Co:- [Sec-3 + Sec-7] + Companies (Incorporation & Ancillary Matters) Rules 2014)

i) Condition for Incorporation of Co. [Sec-3(1)]

Any 7 or 2 or 1 person, by subscribing (writing/ signing/ purchasing) their names to MOA & AOA, can form a public Pvt. or OPC for a lawful purpose and subject to fulfilment of other conditions may be prescribed.

ii) Steps for Incorporation of Company : (Sec-7)

1) Name Approval Stage:

Firstly, the person intending to registers the Co. shall select some reasonable names and apply to ROC for its (their) approval.

Presently a web-service i.e. "RUN" (Reserve unique Name) is used to get the name approval. For this apply with maxm. 2 names and a fee of \$ 1,000 to ROC. The name approved by ROC, will be valid for 20 days.

2) Drafting of MOA & AOA:

After name approval, the person in tenting to form the company, will prepare MOA (As per Table A to E of schedule I) as well s AOA (Table F to J of Sch.I).

3) Stamping & Signing on MOA and AOA :

- Now, the parties will pay stamp duty as per state stamp law/ Act.
- After stamping, the subscriber will sign the last pages of MOA & AOA by writing their name, address, occupation, no. of shares taken etc.

4) Submission of Application for Registration

Now make an application to ROC, in form INC-7 along with following documents. (Attachment)

a) Copy of MOA & AOA;

b) Statutory- Declaration :

A declaration by CA as well director of proposed Co. in form INC-8, that all the legal requirement for Incorporation of Co. has been fulfilled.

c) Declaration as to no offence :

- Each of the subscriber shall declare in writing in INC-9 that he has been not convicted for an offence related to incorporation or management of the co.

d) Details of regd. Office :

The company shall also give details of P/S registered office, like

- H. No.
- Street No. → Post Office → land Mark
- Pin code etc in Inc-22.

e) Consent & details of directors:-

- Attach with application, form DJP-2, i.e. consent letter to work as director.
- Attach details of director in form AIR-12 like name, date of becoming director details of other company in which he is director.

5) Issue of Certificate of Incorporation [Sec-7(2)]

If ROC finds all the document in order, then will issue COI inform No. INC-11.

Concept – 4 : Effect & Nature of CDT/ Registration [Sec-9]

i) Effect of Registration of Co. (Sec.9)

Following are the effects of registration of a co:-

- a) **Body Corporate** – The co. becomes a body corporate from the date mentioned in the COI;
- b) **Member** – The subscriber (signatories) to MOA, AOA becomes member of the CO.
- c) **Perpetual Succession** – The co. gets continuous representation.
- d) **Name** – Co. get a name, written in the MOA.
- e) **Acquisition of assets** – Now the co. can acquires any type of assets hold its dispose it.
- f) **Sue & be Sued** – Now the 3rd party can file suit against the Co. & Vice-Versa.

ii) Nature of Certificate of Incorporation (No Section)

- The 'COI' is conclusive proof that all the formalities of incorporation of the Co. has been fulfilled.
- The validity of COI, can't be challenged if subsequently some irregularities are discovered in the process of incorporation or certificate of incorporation.
- In following cases "COI" is held to be valid:-
 - a) When "COI" is wrongly dated:-
(As decided in the case of Jubilee Cotten Mills Ltd vs Lewis).
 - b) When MOA is wrongly signed by a guardian of 5 minor subscribers (As decide in the case of Moosa V. Ebrahim)
 - c) When "Object Clause" of MOA, is altered after signing by subscriber but before registration.
 - d) When the signatures of subscribes are forged; (duplicate signature).
 - e) Ehen a co. is registered with illegal object then also COI will be valid. However the co. can't start illegal business so it has to change its object.

Concept – 5 : Pre- Incorporation Contract & Liability for it. (No Section)

- a contract, entered by promoter on behalf proposed company.
- generally, promoter enters into contract, with 3rd party (Seller/ Supplier) for purchase of assets/ Furniture, for the use & benefits of proposed Co.

ii) Effect of Pre – incorporation

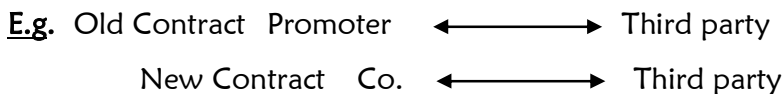
Contract :- "Promoter" will be personally liable, for any liability, arising from Pre-incorporation contract.

iii) Reliving the promoter from liability w.r.t Pre-incorporation Contract :-

In these 2 cases, Promoter will be received.

1) Novatpon [Sec-62, of Indian Contract Act] :-

- When the Co. enters into new contract, with third party, by which old contract between promoter and third party is replaced.
- Then it results into 'Release of Promoter"



2) Relief as per specific relief Act, 1963:-

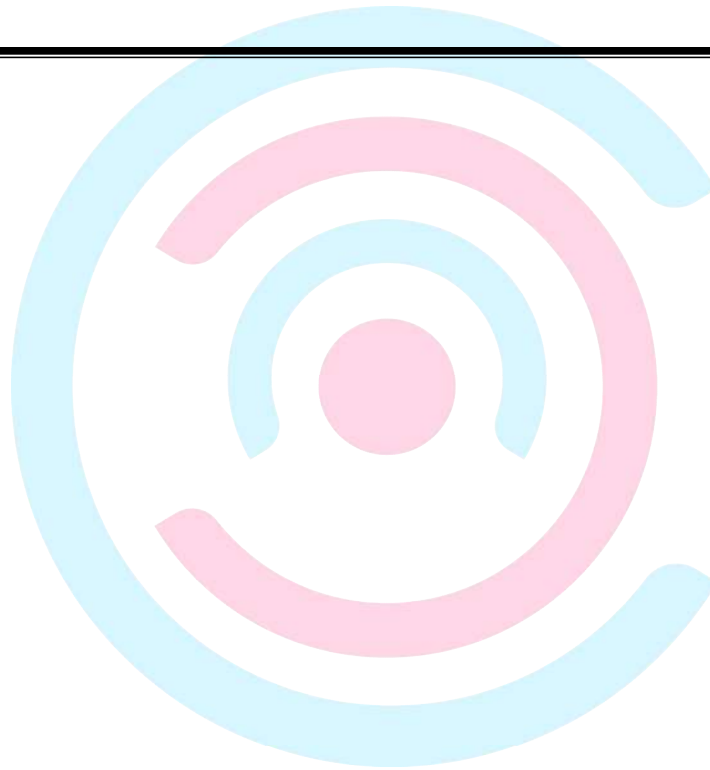
W.e.f 1963, Pre-incorporation Contract can be ratified (To confirm 1 to adopt) by fulfilling these conditions:-

- a) The promoter has disclosed the third party, about adoption of contract by the co. in futures.
 - b) The pre-incorp. Contract must be according to the objects of the Co;
 - c) The co. communicates its acceptance to third party into formal way.
- When the Co. adopts the Pre-incorporation Contract, the promoter will be released.

Concept – 6 : SPICE & Incorporation : -

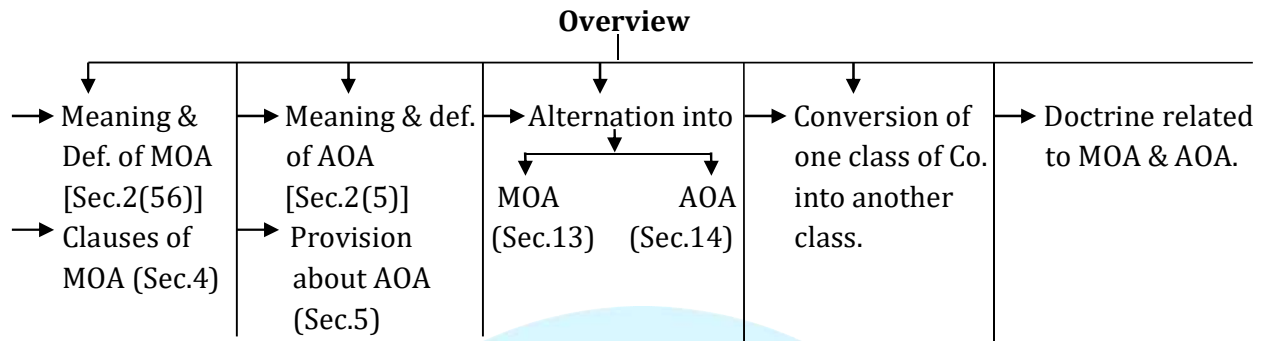
(No Section), but rule 38 of the companies (Incorp.) Rules 2014.

- i) **About SPICE** – It is an alternative method of incorporation of company. Where one integrated form i.e. INC – 32 is used for incorporation of company.
- ii) **Attachment with SPICE** – Now these documents are mainly attached with SPICE (INC-32).
 - a) e – MOA (INC-33)
 - b) e – AOA (INC – 34)
 - c) Proof of regd. office of the company.
- iii) **Advantages of SPICE** –
 - i. No need to file Multiple forms like. (INC-7, INC-22, DIR-12).
 - ii. Less Filing Fees.



CHAPTER -4

MEMORANDUM & ARTICLES OF ASSOCIATION



Concept - 1 : Memorandum of Association

An overview [Sec-2(56) = Sec-4]

i) **Meaning –**

‘Memorandum’ is most important document in the life of Co. containing basic informations about the Co. like name, State in which regd. office of Co. is situated, object etc. are given.

ii) **Nature of MOA : (No Section)**

➤ “MOA” is charter of the co, which gives its power to do some business written in the object-clause. At the same time, it also restricts the co. from doing any other business.

iii) **Def. of MOA : [Sec-2(56)]**

“Memorandum”

- Means the “Memorandum of Association” of a co.
- as originally framed or (at the time of incorporation).
- altered from time to time as per provision of previous co. law or this Act. (Sec-13).

iv) **Clauses/ Contents of MOA [Sec-4(1)]**

Following are the various clauses/ paragraphs into MOA.

1) **Name – Clause : [Sec-4(1)(a)]**

- This is the first, clause;
- Name of every co. must end with the words “Pvt. Ltd.” or “Ltd.” except Sec-8 licensed company.

2) **Situation Clause [Sec-4(1)(b)]**

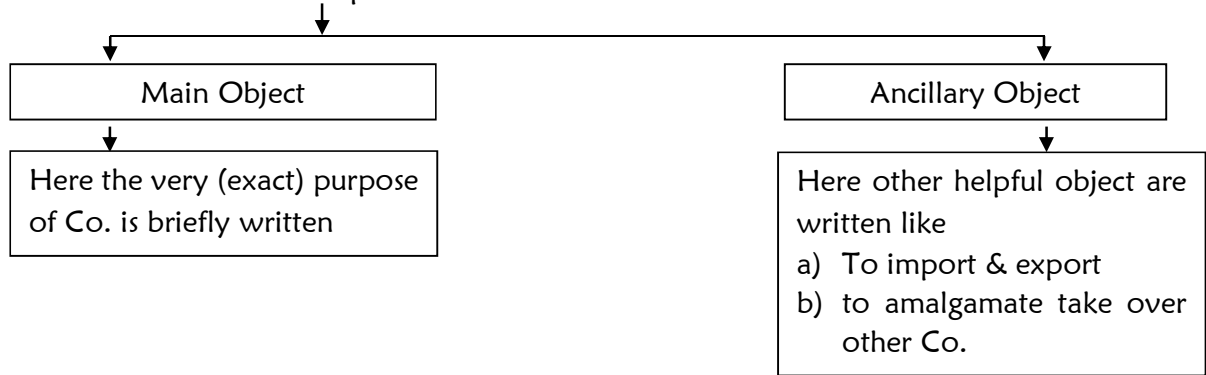
- 2nd clause;
- This clause consist of “name of State only” and not complete correspondence address.

Note :-

The complete correspondence address like House no., Floor no., Street No., Postal Code are given into INC-22.

3) Object-clause [Sec-4(1)(c)]

- 3 rd clause;
- It is divided into two part i.e.



4) Liability – Clause [Sec-4(1)(d)]

- 4th Clause
- This clause specifies the nature of liability of members of the company.

5) Capital – Clause [Sec-4(1)(e)]

- 5th Clause
- Not found in every company;
- This clause is found in such companies which have share capital.
- This clause provides three details:
 - Amount of Authorised Capital
 - No. of Shares
 - Face-value of such Shares

6) Nomination Clause [Sec-4(1)(f)]

- Found only in an OPC.
- Here the name of the nominee is written.

7) Subscription Clause/ Association Clause

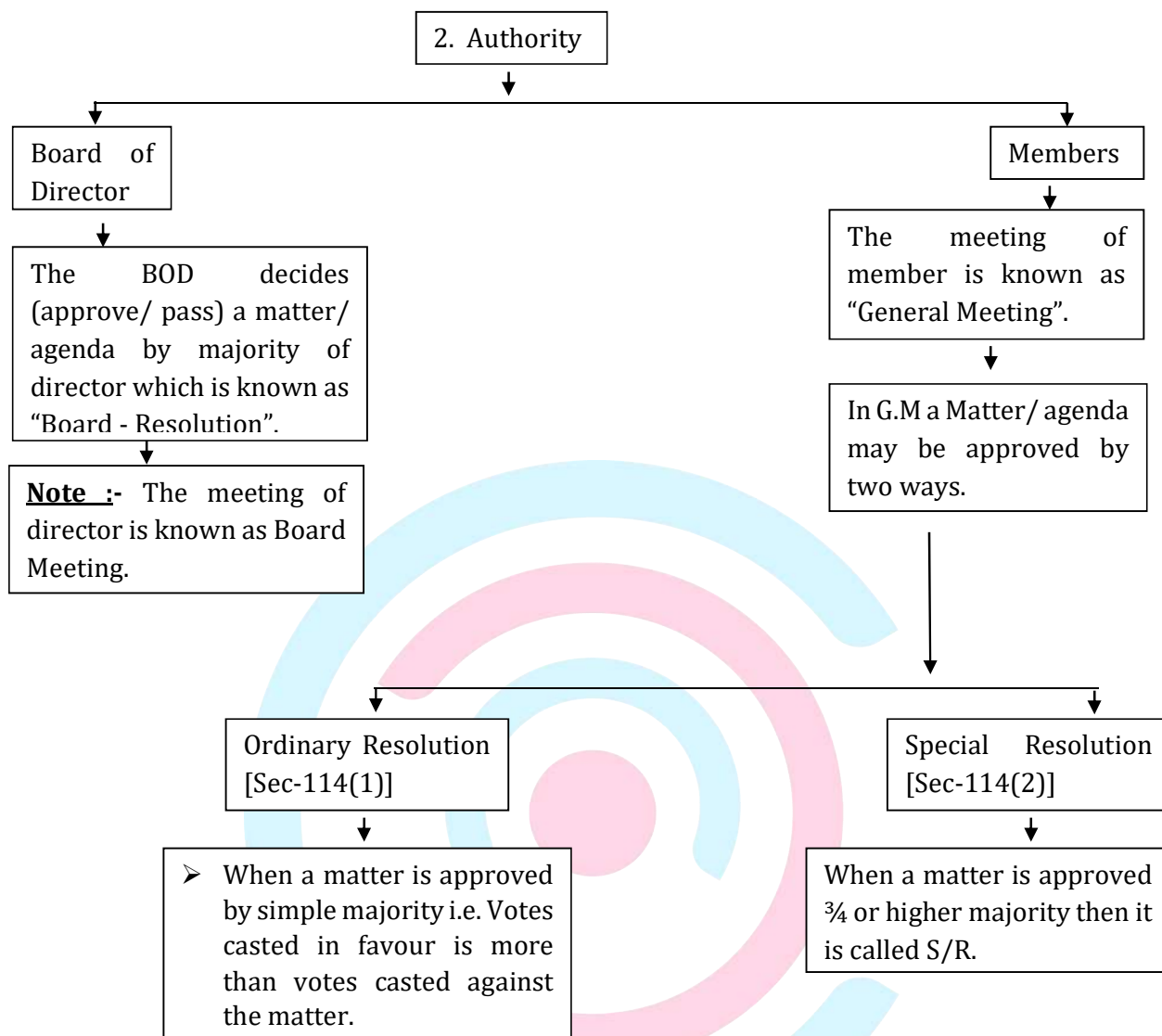
- Under this paragraph, the names, addresses, occupations, etc. of subscribers (signatories) are given. This must be witnessed by a professional CA, CS, CMA, or LLB.

v) Formats/ Standard Format of MOA: [Sec-4(6)]

Every company shall have its own MOA, as per its nature, given as follows.

Table	MOA For
A	Co. limited by shares
B	Guarantee Co. without share capital
C	Guarantee Co. with share capital
D	Unlimited Co. without share capital
E	Unlimited Co. with share capital

Concept – 2 : Decision Making Authority in Company



Notes :-

- 1) Generally O/R is passed for routine matter like
 - a) Adoption of Annual Accounts.
 - b) Declaration of dividend.
 - c) Appointment of Directors.
 - d) Appointment of Auditors.
 - e) Alteration into capital – clause etc.
- 2) When S/R is passed, its copies must be filed to ROC within 30 days, in MGT-14.
- 3) Notice calling G.M, must clearly indicate that which matter require O/R & which matter requires S/R.

Concept – 3 : General Rule For Alteration in clauses of MOA [Sec-13]

i) Power to Alter [Sec-13(1)] :-

1. A co. can alter its MOA (except subscription-clause/ Association-clause) by passing S/R and
2. Subject to other conditions as may be prescribed in Rules like approval of CG/RD? National Co. law authority.

Note :-

As per proviso to Sec. 13(1) the capital clause will be altered as per Sec-61 of the Act, i.e. by passing OR.

ii) Registration of Alteration: [Sec-13(10)]

- Any alteration in MOA will be effective only when, it is registered with ROC.
- For this the co. has to submit various document like:-
 - a) Altered copy of MOA.
 - b) Copy of S/R (MGT.14)
 - c) Copy of approval from external agent.

Concept – 4 : Alteration into Name-Clause [5Sec.13(2)]

E.g.

Praksh Export + Pvt. Ltd. (Old Name),
Ujala International Pvt. Ltd. (New Name)
↓
(No Change)

Conditions/ Steps for alteration in name clause.

- i) **Pass S/R :-** Call & held general-meeting of member and pass S/R at that G.M for alteration into name-clause.
- ii) **Obtain approval of CG :-** Apply to CG, for Approval of name change of co.
Exception :- In these 2 cases Co. is not required to obtain approval to CG.
 - a) While deleting the word “Pvt.” from name of a Pvt. Co.
 - b) While adding the word “Pvt.” into name of a “Public” co.
- iii) **Filing document to ROC :-** Now, the Co. shall file following documents to ROC (registration of alteration).
 - a) altered copy of MOA.
 - b) Copy of S/R (No. of member who voted in favour & member who voted against).
 - c) Copy of CG’s approval.
- iv) **Issue of Fresh C.O.I**
 - The ROC, will check all the documents and then will issue fresh C.O.I.
- v) **No Adverse Impact :-** Change in name shall not have any negative impact on the right & liability of the Co.

Concept – 5 : Regd. Office & its Alteration (Sec-12,13)

★ **Sec - 12 :-**

i) Mandatory- Maintenance [Sec-12(1)]

- The term “Registered-office” is not defined in the Act.
- However, it means a “Communication Office” maintained by Co; where all communications are made.
- As per Sec-12(1), every co. must maintain a “regd. office” within 15days of its incorporation and there after till its existence.

ii) Verification of Regd. Office [Sec-12(2)]

- The company shall intimate about the exact address of “R.O” in form DNC-22 along with supporting documents like lease deed, N.O.C from house owner, title deed’s copy if property is

owned by Co. This intimation & verification shall be made within next 15 days of establishing or change in “R.O”

iii) **Significance of “R.O” (No Section)**

1. “R.O” serves as a ‘Communication-office’ of the Co.,
2. A.G.M shall be held at the registered office of the co. (Sec.96).
3. Books of accounts shall be maintained at the R.O (Sec.128).
4. Registered & Return (Annual – Return) Registered of members shall be maintained at the R.O (sec.94).

iv) **various modes of alteration into “R.O” →**

↓
(4 Modes)

Case - I : -

Change in regd. office – within same city/ Town/ Village [Sec-12(5)].

E.g. –

Old Regd. Office ↓ H.No. 4, Kanpur, (U.P)	New Regd. Office ↓ H.No. 786, Kanpur (U.P)
---	--

Conditions:-

- 1) **Board – Resolution :**
Call and hold a Board-Meeting and pass “Board-Resolution”.
- 2) **Intimation to ROC :**
Intimate about the new regd. office in INC-22 along with supporting document, to ROC, within 15 days (Proposed to be 30 days) by companies (Amendment) Act, 2017 date yet to be notified.

Case – II :-

Change in “R.O” from one C/T/V to another (new) C/T/V [Sec.12(5)].

E.g. –

Old R.O H.No. 420, Kanpur (U.P)	New R.O H.No. 420, Noida (U.P)
------------------------------------	-----------------------------------

Conditions :-

- 1) **Pass Special- resolution**
Call and hold G.m of members and pass S/R for effecting change.
- 2) **Filing with ROC : -**
 - a) Copy of S/R i.e. form MGT-14, within 30 days from the date of passing of S/R.
 - b) Intimation about new regd. office, within 15 days of alteration into regd. office.

Case – III :-

Change in regd. office, involving change in jurisdiction of ROC [Proviso to Sec.12(5), 12(6)]

- This “case of change in R.O” is applicable into the States of Maharashtra & Tamil Nadu when there are 2 Roles.

Conditions :-

- 1) **S/R :** Pass Special Resolution for alteration in regd. office.

- 2) **Approval of R.D** : Apply to Regional Director, in form INC-23, for obtaining approval for change in “R.O”.
- 3) **Filing of document to R.O.C** :
 - a) Copy of S/R (MGT-14, 30 days)
 - b) Copy of order of R.D (Within 60 days)
 - c) Intimation about new registered office (INC-22, within 15 days, from change).

Case – IV :-

Shifting of regd. office from one State to another State [Sec.13]

Conditions :-

- i) Pass S/R
- ii) **Obtain approval of CG:-**
 - Apply to CG (In form INC-23) along with affidavit that
 - a) Interest of creditors will not adversely suffers.
 - b) List of creditors
 - c) No. workers will be retrenched (terminated).
- iii) **Submission of documents to ROC :-**
File Following documents to ROC.
 - a) Copy of S/R
 - b) Approval of CG.
 - c) Intimation about new address in INC-22.

Concept – 6 : Alteration into object Clause

- 1) **Pass S/R** – Call and hold G.M and Pass S/R for alteration into object clause.
- 2) **Give exit Opportunity** – In case of a public company, which has raised money from public by issue of prospectus, must give an exit opportunity to the dissenting share holders in case there in some unutilised proceeds (amount) of public issue.
- 3) **Submission of Document to ROC :-**
 - a) Furnish copy of S/R into MGT-14, within 30 days of passing of S/R.
 - b) Copy of altered MOA.
- 4) **Issue of “Certificate of Registration”** –
The change into object-clause will not be effective till it is registered with ROC after Registration, the ROC will issue a “Certificate of Registration”.

Concept – 7 : Alteration into Liability - Clause

- 1) **Pass S/R** – The liability clause of any company can be changed or members liability can be increased or decreased by just passing S/R.
- 2) **Filling of document to “ROC” :-**
 - a) Copy of S/R
 - b) Copy of Altered MOA,
- 3) No advance effect on Rights of Creditors. If an unlimited Co. converts itself into limited company, then also the right of old creditors will not be adversely affected.

Concept – 8 : Alteration in Capital - Clause

Sec-61
+
Sec-64

1) Meaning of “Alteration of Capital Clause” :-

It means change in Capital clause of company. There are five methods of charges into capital clause [Sec-61(1)].

- a) Increased in Authorised – Share – Capital.
- b) Consolidation of shares into shares of higher face value.
- c) Conversion of fully paid shares into stock and re-conversion of shares.
- d) Division of shares into shares of smaller face value.
- e) Cancellation of unsubscribed capital (Diminution of shares)

↓
Cancellation of unwanted shares.

2) Conditions for Alterations into Share Capital

- i) **AOA** – There must be authority in the AOA of company, which authorises it to alter its Capital Clause.
- ii) **Pass O/R** – Call and hold general meeting and approve the alteration into capital clause, by passing Ordinary Resolution.
- iii) **Filing of Documents to ROC** –
 - a) File altered copy of MOA.
 - b) Give intimation about change into Capital-Clause in form no. SH.7 within 30 days.
The registrar will register the above alteration Share-Capital.

Concept – 9 : Articles of Association And Provision Relating to A.O.A

Sec-2(5)
+
Sec-5

i) Meaning of AOA –

It means bye-tacos/ Sub-role of the company, which provides for various matters, necessary for day-to-day functioning of Company.

ii) Definition of AOA [Sec.2(5)] –

Article means “AOA” of a company as originally framed or altered, from time to time, as per provision of this Act or, previous company law.

iii) Content of AOA –

- a) **Interpretation of certain words** – Here various general words are defined;
- b) Share capital and rights attached with Share Capital.
- c) Lien
- d) Forfeiture of shares,
- e) Calls in arrears & Calls in advance.

iv) Formats of AOA : [Sec. 5(6)] –

- a) **Table F** : Applicable for a company limited by shares.

- b) **Table G** : Guarantee Co. having shares capital.
- c) **Table H** : Guarantee Co. without Share Capital.
- d) **Table I** : Unlimited company having Share Capital.
- e) **Table J** : Unlimited company without Share Capital.

Concept – 10 : Alteration into AOA and Restrictions on Alteration [Sec-14]

- i) **General – Rule for Alteration (Sec-14) –**
Any company can alter its AOA by passing S/R.
- ii) **Limitations/ Restrictions on Alteration into AOA –**
 - 1) **Approval of CG (Proviso to Sec-14)** : If a public company wants to alter its AOA by adding conditions of [Sec-2(68)] (R + L + P), then such alteration into AOA, will be effective only, if approval by CG.
 - 2) **Alteration shall not be inconsistent to MOA** : AOA shall not altered into such manner, that it goes beyond the powers of MOA.
 - 3) **Not inconsistent to any Statute (Act)** : Any alteration into AOA, which is inconsistent or contrary to the provisions of companies. Act or any other Act, will not be allowed/ approved.
 - 4) **Shall not be against minority Shareholders** : Article shall not be allowed to suppress or oppress (harass) the minority shareholder alteration will be valid only when it is for the benefit of company as a whole and not just for benefit of majority group.
 - 5) **Shall not be Inconsistent to Public Policy** : Any alteration into AOA, shall not be against public policy.
 - 6) **Shall not be Retrospective** : Any alteration into AOA, will not be allowed, if it implements something from back date alteration into AOA, shall be effective only from the future date.

Concept – 11 : Conversion of One Class of Company into another Class of Companies (Sec – 18)

- i) **Principle for Conversion/ Conditions for Conversion [Sec.18(1)] :**
One class of company can convert itself into another class of company by altering its MOA by following Sec-13 and AOA (by following Sec-14).
- ii) **issue of Fresh COI [Sec-18(2)] :**
The Registrar, will issue fresh COI. If it is satisfied that all the conditions has been fulfilled.
- iii) **No adverse effect of Conversion [Sec-18(3)] :**
Conversion of company will not affect any rights, Liabilities of the company so, the company will continue to remain debtor/ creditor in same manner, even after conversion.

Concept – 12 : Binding Effect of MOA & AOA (Sec-10)

- i) **Creation of Contractual relation –**
MOA & AOA, is registered with ROC, it creates a binding contract between following person, as if they have personally signed the MOA & AOA.
 - a) Co. & its members.
 - b) Co. & its directors.
 - c) Co. member & Other members of CO.,
- ii) **No. Implies Contract b/w Co. & Outsider –**

- MOA & AOA doesn't create any relation b/w Co. & outsider, even if name of outsider is given into AOA.
- **Relevant Case Law :-**
Eley √. Positive Life Assurance Co. Ltd.,
In this case : "E" was named into AOA of the Co. as a solicitor for life time. He can't be removed except proven misconduct later, the co. altered its AIA, and deleted that clause from AOA as per Sec-14.

"Eley" filed a suit against his removal. Court held that 'MOA & AOA' doesn't create any binding contract with outsider.

Doctrine related to MOA & AOA



(General Principle)

Concept – 13 : Doctrine of Ultra - vires & its Effect

i) **Meaning of Doctrine of UV Transactions –**

- It means any transaction entered by a Co. which is outside the MOA of the company.

ii) **Effect of UV Transaction –**

- 1) **Void-ab-intio :** An UV transaction is useless from beginning i.e., can't be enforced in the court of law.
- 2) **Stay – Order :** If UV transaction is not yet completed, then any member can stop such UV transaction.
- 3) **Personal Liability :** If due to UV transaction any loss arises or any liability created against the Co., then for such loss or liability, then such loss or liability "Officer in default" will be personally liable.
- 4) **No. Ratification :** An UV transaction can't be ratified, even by Unanimous (100%) caused of members.

iii) **relevant Case Law –**

Ashbury railway Carriage & Iron Co. Ltd.

√.
Richie

Fact –

A civil engineering Co. agreed to finance the railway line construction by another contractor which was not covered into its objects clause.

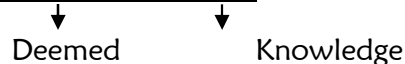
Later, the engineering Co., refused to grant any fund to contractive. Richie.

Decision –

The court held that the company's action to give loan/ finance the laying down of railway track is "Ultra-Vires" and Void-ab-intio.

Concept – 14 : Doctrine of Constructive notice

i) **Meaning of "Constructive- Notice"**



- As per this doctrine only person dealing with Co. must have knowledge of provisions of MOA & AOA of the Co.
- If that person, has no knowledge of MOA & AOA, h will be punished/ Penalised.

ii) **Scope of ‘Constructive Notice’**

➤ This doctrine protects the Co. and punish the ignorant outsider, dealing with the company.

iii) **Relevant Case law**

Kotla Venkataswamy √. C. Rammurthi

Fact –

As per provision of AOA, any agreement between Co. & outsider, will be enforceable only when such agreement is signed by 3 person i.e. MD, Directors & C.S.

On some mortgage deed there was just 2 signatures on behalf of Co., which was noticed by lender.

Decision –

The court held that the lender has no rights against the Co., as secured lender because “Mortgage deed was not properly signed.

Concept – 15 : Doctrine of Indoor Mgt. & its exception

i) **Meaning of ‘Doctrine of Indoor Mgt.’ –**

As per this doctrine, an outsider dealing with co. is not required to inquire into internal- Proceedings/ actions or internal Mgt. of the company, in ordinary course of business.

ii) **Condition for Protection to outsider as per this doctrine –**

- a) The outsider has read & understand the MOA & AOA.
- b) He has no knowledge of internal irregularity.
- c) He has acted in good faith. i.e. without any negligence.

iii) **Example –**

Royal British bank

√.

Turguard

Fact –

The BOD of Co. was authorised by its AOA to borrow on bonds such sum of money by obtaining approval of shareholder by way of resolution in G.M. But directors of RBB gave a bond to “T” without any authority from member shareholders.

On due date, RBB refuse to redeem the bond on the ground of irregularity on the part of BOD.

Decision –

The court held that RBB is liable to pay the amount of Bond to “T” and “T” can safely assume that “Board of Director” has taken permission of members of RBB Ltd.

iv) **Exceptions to doctrine of Indoor Mgt. –**

➤ In following Cases, the concept of indoor Mgt. will not apply:

1) **Knowledge of Irregularity –**

- If a person, dealing with company has knowledge about internal irregularity.
- Then such person, shall not deal with Co., or can’t enter into such transaction.
- If he enters into transaction (despite the knowledge of irregularity) he will not be protected.

Example – Howard √. Patent Ivory Manu. Co.

- The directors of company can borrow money upto £ 1,000 without approval of members.
- Some director of the Co. gave loan to his own Co. i.e £ 3,500 without approval from members.
- The court held that the director will be entitled to recover only £ 1,000 and remaining of £ 2,500 will not be realised.

2) **No Knowledge of MOA & AOA –**

- If a person, dealing with the Co.
- Has no knowledge of clauses of MOA & AOA, he will not be protected.

3) **Negligence –**

When a person carelessly deals with the company than this doctrine doesn't apply. In other words, if there are some subscribers grounds surrounding a transaction than the person dealing with company shall make inquiry otherwise he will not be protected.

Relevant Case –

C. Anand Bihari Lal

√. Dinshaw & Co. Ltd.

Fact & Decision –

An accountant agreed to sell the co. property to third party. The 3rd party (Buyer) failed to make inquiry about the accountant. The court held that the third party will not be protected.

4) **Forgery –**

- 'Forgery' means "Duplicate signature".
- If a document contains forged signature, then such document is void-ab-intio and action of forgery is also punishable under IPC, which makes forgery illegal.
- This doctrine doesn't apply or doesn't cover the cases of forgery, because forgery is not just irregular but also illegal.

Relevant Case law –

Ruben

√.

Great Fingall Concolidated Co. Ltd.

Fact –

As per AOA of the Co; a Share-Certificate must have signature of 1 CS & 2 directors. At one occasion the C.S issued Share-certificate by forging the signature of 2 directors.

Decision -

The court held that Ruben will not got any right on the basis of forged share certificate. right on the basis of forged Share – Certificate

Contradictory Decision –

There was a case, named "Shri Krishnan √. Modal Bros & Co. it was held that co. will be liable for fraudulent acts on its officers if the officers are working under their apparent (clear) authority.

Concept – 16 : Rectification in the name of Co. [Sec.16]

Case – I :

Rectification in name of co. when name of new co. or new name of existing co. is identical or similar to the name of another, CO. –

[Sec.16(1)(a)]

- The new co. or existing co. with new name has to rectify its name, within a period of 3 months, by passing O/R, from the date when direction given by CG.

Case – II :

Rectification in name of Co. when name of new Co. or new name of existing Co. is identical or similar to name of Registered Trade Mark [Sec. 16(1)(b)].

- The proprietor of Registered T.M shall apply to C.G within a period of 3 years.
 - a) From the date of incorporation of new co. or
 - b) From the date of alteration into name of existing co.
- The CG may direct the company to rectify its name within a period of 6 months.
- The co. must pass O/R.

Note :-

Penalty [Sec.16(3)]

If Co. fails to follow the direction of Cg u/s 16(1) then penalty will be imposed as follows.

- a) Upon Co. - \$ 1,000 per day of default.
- b) Upon directors/ Officers in default - \$ 55,00 per day of default, but not exceeding \$ 1,00,000.

Concept – 17 : Undesirable – Name [Sec-4(2), 4(3)] + Rule – 8 of Co. (INC) Rule 2014

i) Meaning of Undesirable Name –

It means unwanted name of the Company. In other words a name which is not suitable according to Co. law.

ii) Prohibition on use of undesirable Name –

No. Co. shall be registered with undesirable name.

iii) When name becomes Undesirable –

- a) **Identical** : When name of co. is identical with the name of another co.
- b) **Too nearly resemble** : When name of co. is very close to the name of existing company.
- c) **Offensive** : When the name of company constitute an offence Under Companies Act.
- d) **names & Emblem** : (Prevention of Improper Use) Act 1950. A name will be desirable when, it uses some reserved words like
 - ★ Name of national hero;
 - ★ Satyamev jayate;
 - ★ British India;
 - ★ Name of any other Country.

Note –

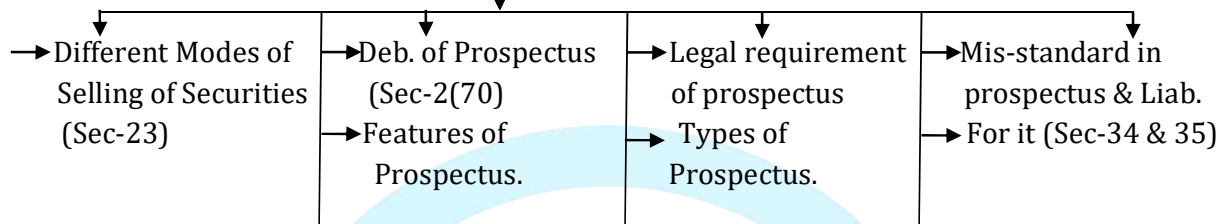
Use of “Electronic- Trust” in name; w.e.f 2013, a charitable Co. (registered u/s 8) can use the words, “Electronic Trust” as per scheme approved by BDT. (Central Board of Direct – Taxes). This co. shall not do any other thing except giving contribution to political parties.

CHAPTER -5&6

PROSPECTUS & ALLOTMENT OF SECURITAS

- **Section – used** : Ch.III of Companies Act, 2013, deals with the matters of prospectus & allotment of securities through Section 23-42.
- Rules Used Companies (Prospectus & Allotment of Securities) Rules, 2014.
- **Code of Frame** : PAS – 1, PAS – 2

CH – 5 Prospectus (Only for Pub. Co.)

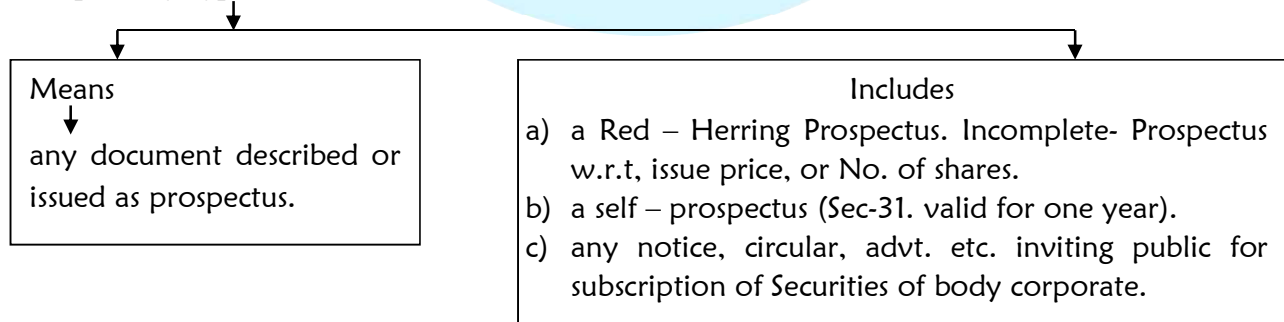


Concept – 1 : Different Modes of Selling (issue) of Securities (Sec-23)

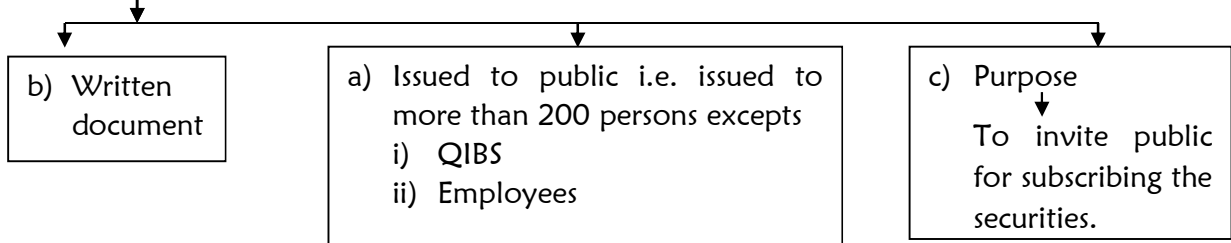
Selling of Securities by a Public Co. [Sec-23(11)]	Selling of Securities by a Pvt. Co.
↓ 3 Modes ↓	
a) by public issue through prospectus.	X
b) by private placement i.e. offering of shares to selected group of person.	✓
c) By right (Sec-62) or bonus (sec-63) shares.	✓

Concept – 2 : Prospectus & its Features [Sec-2(70)]

i) **Def. [Sec-2(70)] :**

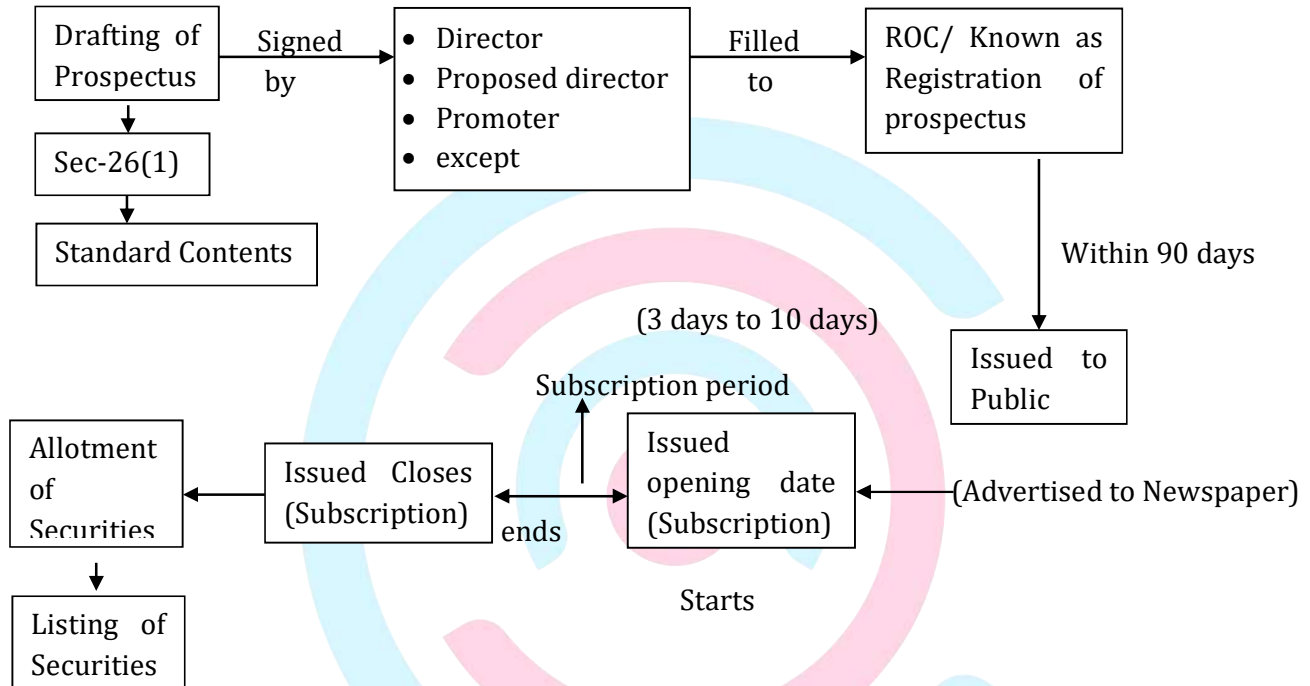


ii) Features :



Concept – 3 : Legal Requirement for Prospectus

Summary



Concept – 4 : Expert & Conclusion for Inclusion of experts Statements

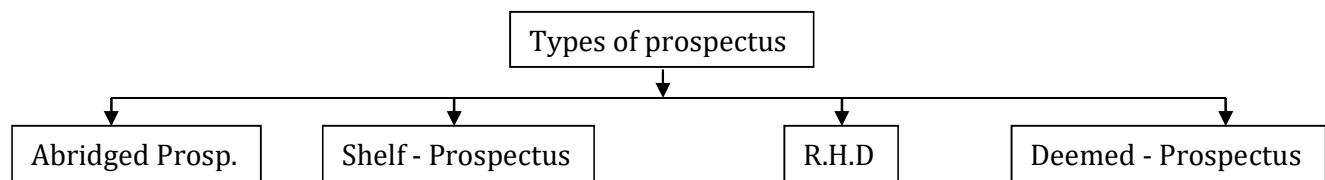
i) Def. of Experts [Sec-2(38)] –

Includes

- an engineers
- a valuer
- a C.A.
- a CS, → a CMA or
- any other persons, who has power or authority to issue a certificate.

ii) Conditions for Inclusion of Expert Statement into prospectus :-

- a) **Unconnected** : The expert must be unconnected with the Co.’s formation and management;
- b) **Written Consent** : The expert statement will be included if he has given express consent for this, in writing.
- c) **No Revocation** : The expert must also conform that he has not withdrawn his earlier consent.



Concept – 5 : Abridged Prospectus [Sec-2(1) + Sec-33]

i) **Def. [Sec-2(1)] –**

→ A. Pros.

- Summarised prospectus
- Containing Salient features
- As prescribed by SEBI.

ii) **Mandatory attachment of Abridged prosp. with SAF**

- No. Co. can
- Issue/ distribute S.A.F to public, without attaching “abridged prospectus” with it.

Exception :

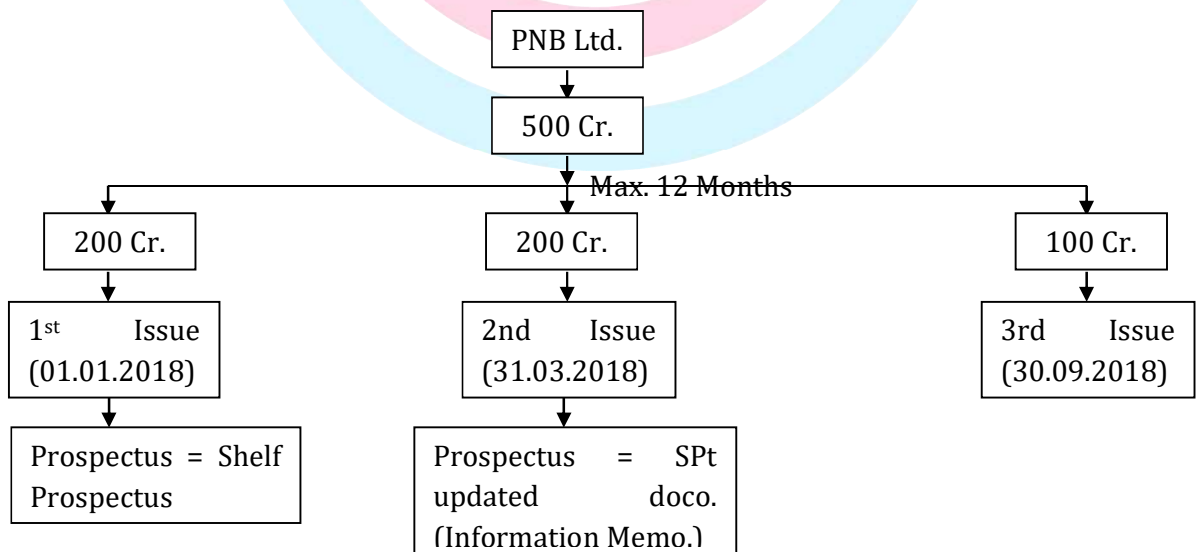
In following cases a co. can issue S.A.F without attaching abridged prospectus.

- a) When co. invites under writers for entering into underwriter agreement. or
- b) When co. is offering shares to selected group of persons (Known as Pvt. Placement).

iii) **Free of cost Supply of Normal – prospectus [Sec-33(2)] –**

- It is duty of.
- Co.
- to furnish copy of normal – prospectus.
- to prospective applicant (who will apply for shares)
- Before closure of issue.

Concept – 6 : Self Prospectus (Sec-31)



i) **Meaning of Shelf – Prospectus –**

It means a prospectus which is valid for multiple – issues within a prescribed period.

ii) **Validity of S.P –**

1 year from the date of first year.

iii) **Information Memorandum -**

It means a supplementary document used with S.P for 2nd & subsequent public issue. The contents of I.M are as :-

- a) New charges created after 1st issue;
- b) Change in Financial Position CF the Co.

iv) **What constitutes Prospectus –**

- a) For first public issue – ‘S.P’ itself is treated as “Prospectus”.
- b) For 2nd & Subsequent – S.P along with updated I.M will constitute prospectus.

Concept – 7 : Red – Herring Prospectus (Sec-32)

i) **Meaning –**

It means a prospectus, containing all informations of normal prospectus except.

- a) No. of shares (to be issued).
- b) Issue Price.

ii) **Suitability –**

When co. is not in position to fix the price itself, then it uses R.H.P.

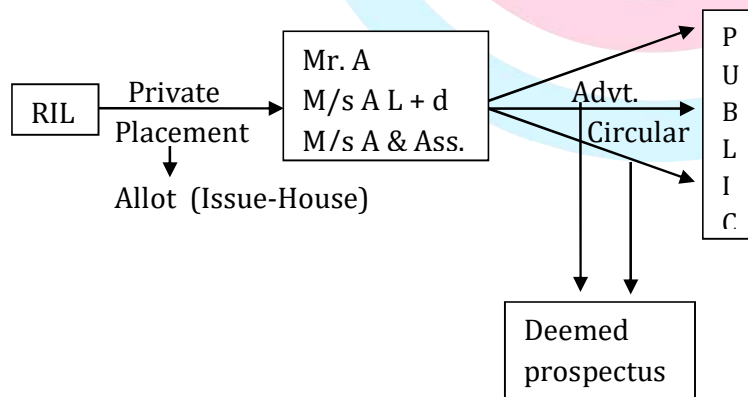
iii) **Filing of R.H.P to R.O.C –**

- The Co. shall file R.H.P to ROC.
- at least 3 days, Before opening of issue (building).

iv) **Filing of Final prospectus to ROC –**

- The co. after end of issue will file a prospectus containing three information.
 - a) No. of Securities sold;
 - b) Issue Price
 - c) Total amount raised.

Concept – 8 : Deemed - Prospectus (Sec-25)



i) **Meaning of Deemed Prospectus**

It means an advertisement/ Circular etc. issued by a person (known as issue house) on benefits of issuer Co.

ii) **2 Circumstances in which (Sec-25) applies –**

In these 2 cases, the concept of deemed prospectus applies :-

- a) **Time** : When the issue-house re-offers the securities to general Public, within a period of 6 months from the date of allotment.
- b) **Consideration** : when the issue- house reOffer the securities, to general public, without paying the amount of full consideration.

iii) **Additional information in Deemed prospectus –**

In “Deemed-Prospectus”, a part form normal prospectus, following 2 extra information are given.

- a) Consideration paid by issue house (if any).
- b) Time and place, where the allotment letter (through which shares were allotted to issue-house) can be inspected by any person.

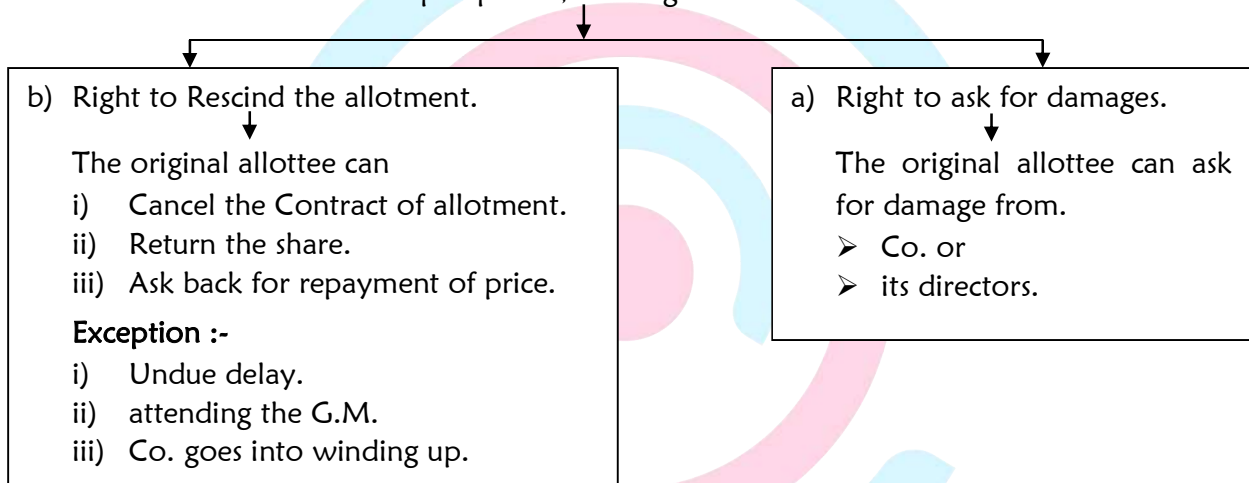
Concept – 9 : Mis-Statement in Prospectus

i) **Meaning of Mis-Statement –**

- a) Inclusion of incorrect or false-statement.
- b) Omission of Material information in prospectus.

ii) **General remedies in case of Mis-Statement in Prospectus –**

➤ In case of Mis-Statement in prospectus, the original allottee has two remedies.



Case laws –

- 1) **Rex √. Kysant**: Giving incomplete information makes the prospectus Mis-States.
- 2) **Peek √. Gurney**: Only original allottee who bought share from company on relying the prospectus.

Concept – 10 : Consequences for Mis-Statement in Prospectus

- If there is any Mis-statement in prospectus.
- Then it gives rise to following types of liabilities.

(A) **Criminal – Liability [Sec-34]** –

i) **Mis-Statement in Prospectus is equal to fraud :-**

- If any prospectus includes any statement, which is untrue or misleading.
- then every person who authorizes the issue of such prospectus, will be punished with imprisonment & fine specified Under Sec.447.

ii) **Defences available against Criminal Liability :-**

As per proviso to Sec-34, a person can escape from his Criminal liability.

- a) When the “Statement” or “Omission of Statement” was immaterial.
- b) When he proves that he believed that statement was true, when he made that statement.

(B) Civil Liability (Sec-35) :-

i) Condition for arising of Civil Liability :-

If there is any financial loss due to Mis-Statement in prospectus.

- then following person will be liable to pay compensations :-
 - a) Company itself;
 - b) Director
 - c) Proposed director
 - d) Promoter
 - e) Any one who authorised the issue of prospectus.
 - f) Experts.

ii) Defences –

In following cases the above person can escape from his/ it Civil-Liability.

- a) **Withdrawal of Consent** : When a propose director withdraw his consent after giving his (consent) before issue of prospectus to public.
- b) **Issue of Prospectus** : When name of a without consent person is written into prospectus without his consent, and that person gives reasonable notice to public that the said prospectus has been issued without his consent/ Knowledge.
- c) **Protection to Expert** : If expert's statement is based, upon official records of company. But it proves to be wrong, then also expert will be protected.

Miscellaneous Points about Prospectus

1) Punishment for fraudulent inducing person to invest money (Sec-36).

i) Scope of (Sec-36) : Any person knowingly or recklessly makes any

- | | | |
|---|----------|---|
| <ul style="list-style-type: none">• Statement• Promise or• Forecast | Which is | False
Defective or
Misleading or
Deliberately conceals
any material facts |
|---|----------|---|

2) Class Action (Sec-37) –

- Any person or person can enforce his or their rights u/s
 - 34 (Criminal liab.)
 - 35 (Civil liab.) or
 - 36 9Penalty for fraud ently including person to invest.
- By way of class action i.e., action on behalf of group of persons/ association.

3) Penalty for application for purchase of share through.

Multiple names/ fictions Name (Sec-38)

i) Prohibition an application for multiple names of same person :-

- No person shall
- make Multiple applications
- For subscribing Securities of a co.
- Either by using different combinations of own name or by using fictitious name.
- Then such person will be punished u/s 447.

ii) **Duty of Co. to give disclaimer :-**

It is duty of Co; to clearly highlight in every prospectus about provisions of Sec-38.

Summarised

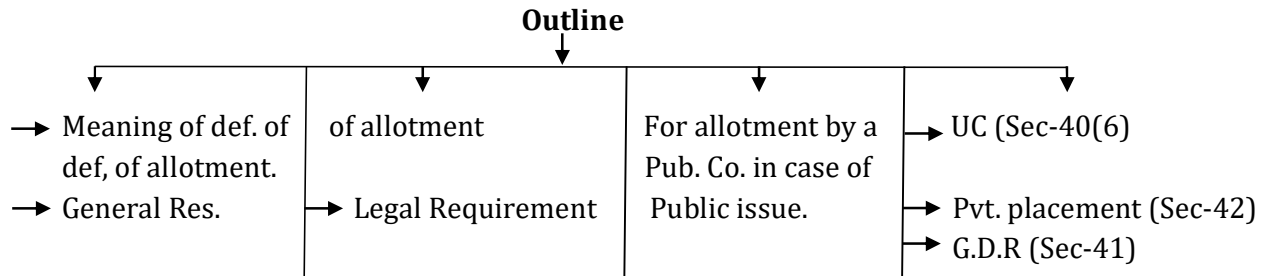
- Prosp. [Sec-2(70)] means + includes:
- Features : Written + Issued to Public + Purpose
- Abridged – Prospectus [Sec-33] : Short Prospectus.
 - SAF shall attached with Abridged prospectus.



CHAPTER -6

ALLOTMENT OF SECURITIES

(Sec – 39, 40, 41, 42)



Concept – 1 : Allotment & Basic Rules of Allotment

i) **Meaning :**

Allotment means acceptance given by company against investor purchasing of shares.

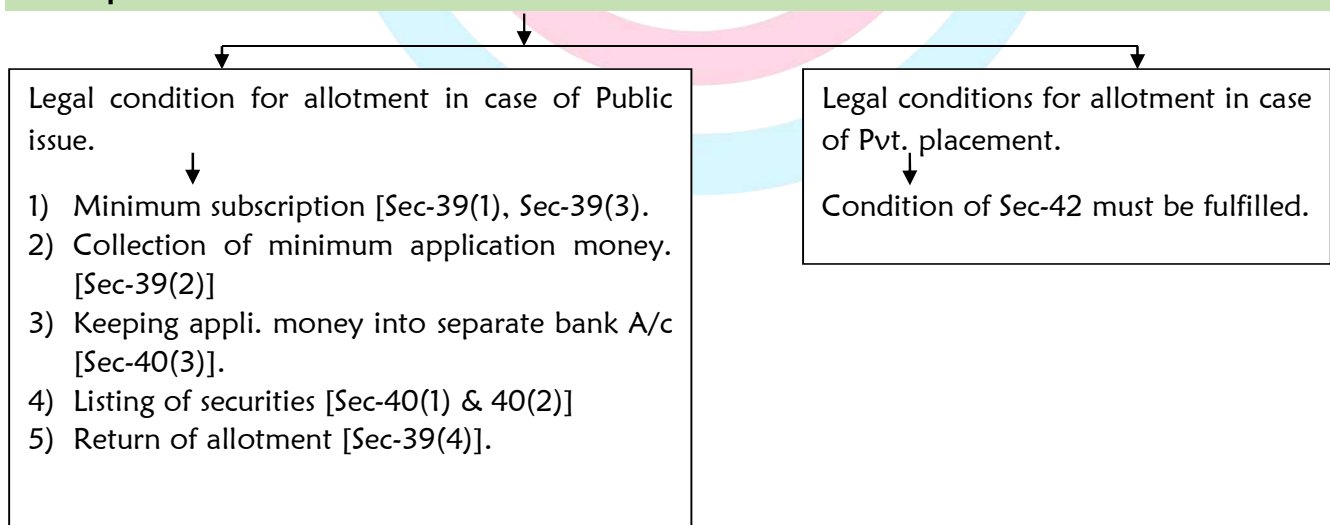
ii) **Def. as per Gopal Jalan’s Case**

As per case of “Gopal Jalan & Co. v. Calcutta stock change, allotment was defined as follow:-
“Allotment means appropriation out of unappropriated Share capital” So, when a Co. re issue the forfeited share, it is not called as

iii) **Basic Rule about Allotment of Securities :-**

- 1) **Proper Authority :** “Allotment” shall be made only by BOD.
- 2) **Unqualified (Unconditional) :** Allotment shall be unconditional. So, co. can’t put a condition that allotment will also purchase shares debentures in future.

Concept – 2 : Condition for Allotment of Securities



Concept – 3 : Minimum Subscription & Related prov. [Sec-39(1), (3)]

i) **Meaning of Minm. Subscription –**

- 1) **As per Companies Act :** It means the minimum amount specified by directors in the prospectus, as minimum subscription.

2) As per SEBI Regulation : 90% of total issue size is called as minm. subscription.

ii) Time limit for Minim. Subscription –

1) As per companies Act: Amount stated in the prospectus, as minimum subscription must be received by the issue co. within 30 days of issue of prospectus or within such other time as prescribed by SEBI.

2) As per SEBI Regulation :

Case –I : In case of non under written public-issue minim subscription must be received upto date of closure of issue.

Case – II : In case of underwritten public issue, minim subscription must be received within a period of 60 days after closure of issue.

3) Consequences of non-receiving of minim subscription:

- Co. shall refund the application money to public, within 15 days. (10 days in case of SEBI)
- If co, fails then it will be liable to pay interest @ 15% (SEBI – 18%) and its promoter/ director, will be personally liable.

Concept – 4 : Application Money & Keeping of Application Money : [Sec-39(2), 40(3)]

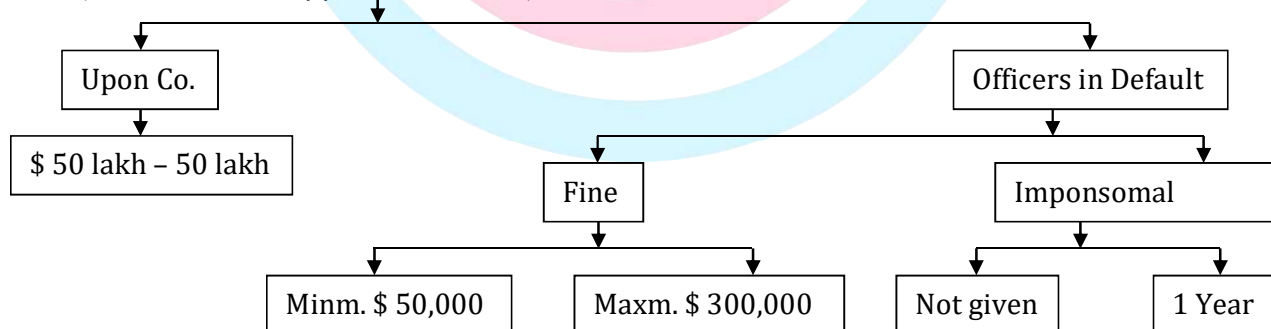
i) Amount of application money: [Sec-39(2)] :

- The amount, when must be sent application money by the public shall not be less than 5% of nominal value of shares or such higher mount as may be prescribed by SEBI.
As per SEBI Regulation minor amount payable on application shal not be less than 25% of nominal value.

ii) Mandatory keeping of application money into separate bank A/c: [Sec-40(3)]:

- The co. shall deposit the application money into a separate bank A/c in a schedule bank.
- The amount of application money can be used only after successful allotment of shares or for returing to those investors, who are not successful.

iii) Penalty for Misuse of Application Money (Sec-40):-vv



Concept – 5 : Listing of securities : [Sec-40(1), 40(2)]

i) Meaning of Listing of Securities –

It means a contract /Permission of stock exchange by which shares of issue Co. will be treated on stock Exchange.

- “Listing” gives liquidation shares.

ii) Mandatory Permission for listing [Sec-40(1)] –

- Every public company.

- Bringing public issue.
- Shall apply and obtain permission of one or more recognised Stock-exchange.
- Before issuing prospectus.

iii) **Disclosure into prospectus [Sec-40(2)] –**

The Co. shall disclose the fact that stock exchange has given permission shall be written/ disclosed into prospectus.

Concept – 6 : Return of Allotment [Sec-39(4)]

i) **Mandatory Filing of Return [Sec-39(4)] –**

- Every Co.
- Which has made allotment of shares.
- Must file a return of allotment.
- In form PAS – 3.
- Within 30 days.

ii) **Attachment into PAS – 3 –**

Following document shall be attached with PAS – 3:

a) **List of allottees** : Containing

- name
- address
- occupation (Nature of engagement/ employment)
- No. of share acquired by each allottee.

b) **“Copy of Contract”** : When shares are allotted for other than cash like payment to underwriter, vendor etc.

c) **Copy of Resolution** : When allotment is made of “Bonus Shares”.

Concept – 7 : Underwriting Commission [Sec-40(6)]

i) **Rate of UC –**

Unless of the AOA of the Co. prescribes for a lower rate of underwriting commission the commission will be as follow:

- a) **In Case of Shares** : 5% of issue price.
- b) **In Case of Debentures** : 2.5% of issue price.

ii) **Other Important point about U.C –**

- a) Underwriting commission can be paid only in case of public issue of securities.
- b) UC can be paid either in cash or in kind i.e., by allotment of shares/ flat etc. Since neither Companies Act, 2013 nor Companies Rules, 2014. Prohibits Payment of UC in land.

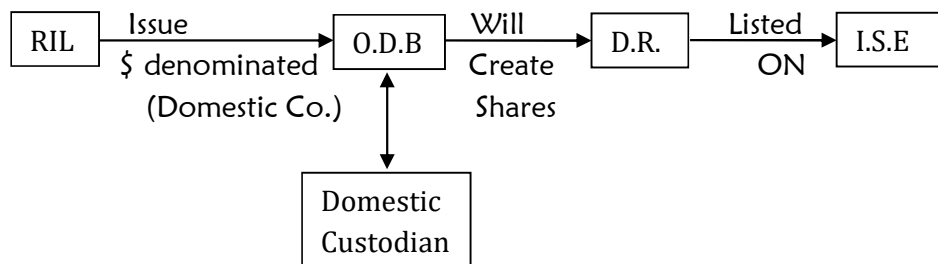
(Global Depository Receipt)

Concept – 8 : GDR and Conditions for Issue of GDR (Sec-41)

i) **Def. of G.D.R [Sec-2(44)] –**

It means depository receipt, issue by overseas Depository bank, after authorisation from Indian Companies.

ii) **Flow Chart Preparation –**



(holds \$ denominated Shares, on behalf of O.D.B)

iii) Condition for Issue of G.D.R/ A.D.R/ D.R –

- 1) **Board Resolution** : The proposal of issue of G.D.R. shall be authorised by BOD, by passing “Board of Resolution” at the “Board Meetings”.
- 2) **S/R** : Obtain approval of member for issue of G.D.R by passing S/R.
- 3) **Appointment of Professional** : The Co. shall appoint professional who will, over sea (Supervise) the compliances of.
 - Provision of this Act.
 - G.D.R Scheme (2014).
 - Regulation of RBI etc.
- 4) **Placing the Compliance Certificate with BOD** : The certificate issued by professional will be placed before the BOD of the issuer Co. or nay committee of the BOD.

Concept – 9 : Private Placement & Provisions about Private – Placement (Sec-42)

i) Definition of P.P (Explanation to Sec-42) –

It means offering of securities to a select group of persons (also known as identified persons) through private placement offer CUM. Application.

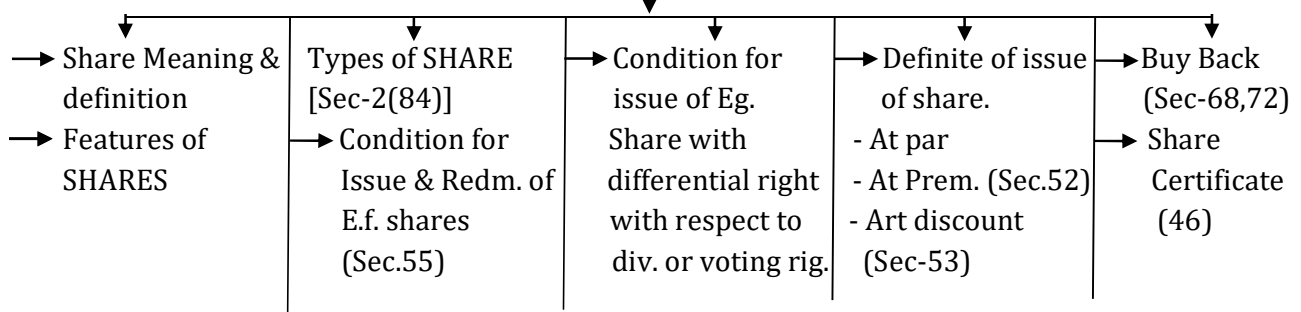
ii) condition for “Private Placement” –

- 1) **Pass S/R** : The proposal of private placement must be approved by members by passing S/R.
- 2) **Maxm. No. of Member** : Offer under private placement shall be made not more than 200 person in a F.Y. While counting 200, exclude :-
 - i) Qualified Institutional Buyer. like LIC.
 - ii) Employees.
- 3) **Made of receipt of Money** : One through banking charges.
- 4) **Time limit for allotment** : Within 60 days from the date of receipt of application money.
- 5) **Return of allotment** : The co. shall file return of allotment within 15 days from the date of allotment to ROC.

CHAPTER -7

SHARE CAPITAL

CH. Outline



Concept - 1 : Return of Allotment [Sec-39(4)]

i) Def. of SHARES –



ii) Features of SHARES –

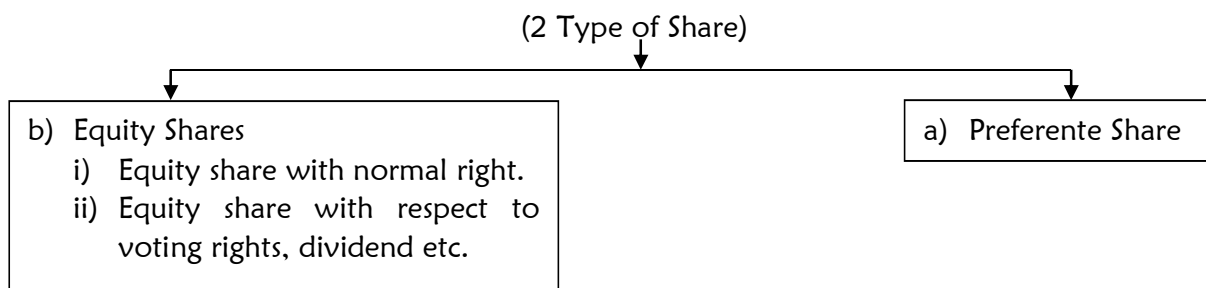
1) **Movable & Transferable (Sec-44) :**

- For company law, shares are treated as movable property.
- Share can be transferred as per provision of AOA.

2) **Distinctive No. (Sec-45) :**

- Every physical shares shall be distinctively numbered by the Co.
- However, in case of Demat Shares there is no requirement of numbering of shares.

Concept - 2 : Types of SHARES (Sec-43)



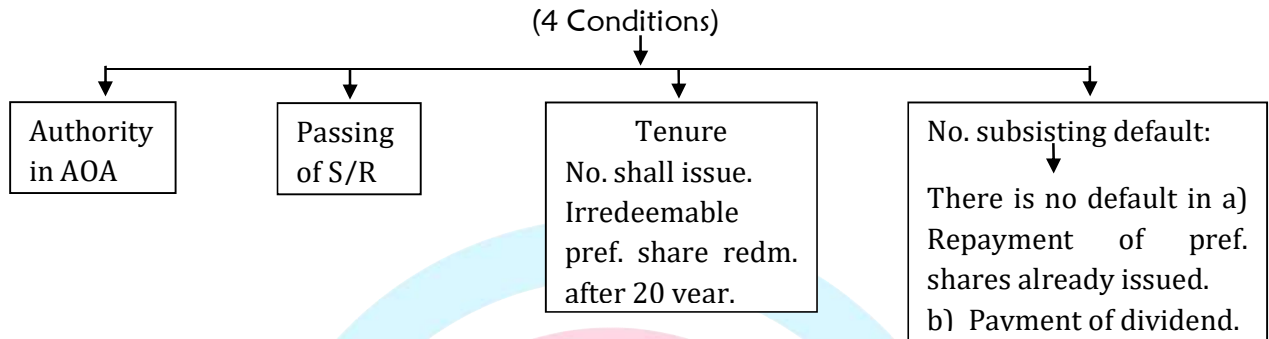
Concept – 3 : Pref. Shares & Condition for Issue & Redemption of Pref. Shares (Sec – 55)

i) Pref. Shares [Explanation to (Sec-43)] –

It means such type of shares, which as two preferential rights in comparison to equity shares.

- a) Preferential right for payment of dividend.
- b) Preferential right for return of capitalist the time of winding up.

ii) Condition for issue of Pref. shares (Sec-55) –



iii) Condition for Redemption of pref. share (Sec-55) –

i) **Fully Paid** : Only fully paid pref. share can be redeemed.

ii) **Sources of Redemption** : The amount of pref. share shall be redeemed out of

- i.) Free reserves
- ii.) Issue proceeds of new shares.

iii) **Sources of Payment of Premium on Redemption of P.F Shares** :

- i.) Out of Securities premium (Collected u/s 52).
- ii.) Free Reserve

iv) **Creation of C.R.R** :

- The Co. shall, create CRR if it has used free reserve for redemption.
- The amount of CRR, will be equal to face value of Pref. shares.

v) **Intimation to ROC (Sec-64)** : The Co. shall give intimation about pref. share redemption of within 30 days from redemption in form SH.7.

Concept – 4 : Equity share with Differential Rights with Respect to Voting, dividend & Others. [Sec-43(a)(ii) + Rule 2014]

i) Meaning of Equity Shares with Differential rights (EDR) –

It means a class of equity shares which offers

- a) Higher voting, rights then lower divided, or
- b) Lower voting, right then higher dividend right.

ii) Conditions for issue of EDR –

[Rule of companies Share Capital & Deb. Rule 2014].

↓
(Total 8 Conditions)

- 1) Authority into AOA.
- 2) Pass O/R.
- 3) Overall limit of EDR : A Co. can issue EDR only upto 26%.

4) Trends of profit making : The Co. has earned profit during last 3 year.

5) No default in Filing of F.S and Annual Return :



(Yearly Summary of Changes):

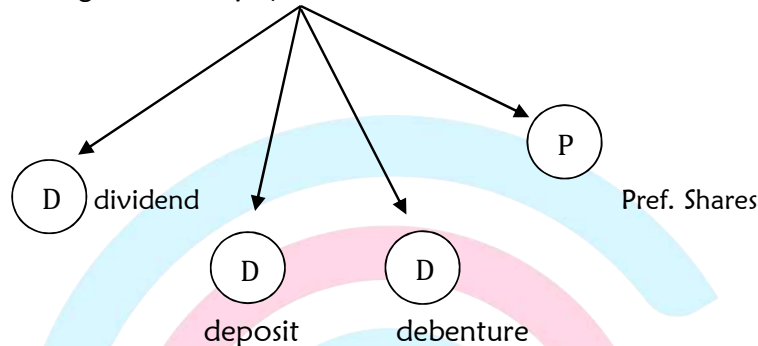
➤ The Co. has not defaulted in filing of annual accounts (f.S.) as well as “Annual Return” during last 3 years.

6) No default in Term Loan :

The Co. has no defaulted in repayment of term loan and payment of term loan and payment of interest there on.

7) No Subsisting default:

There is no containing default in payment of

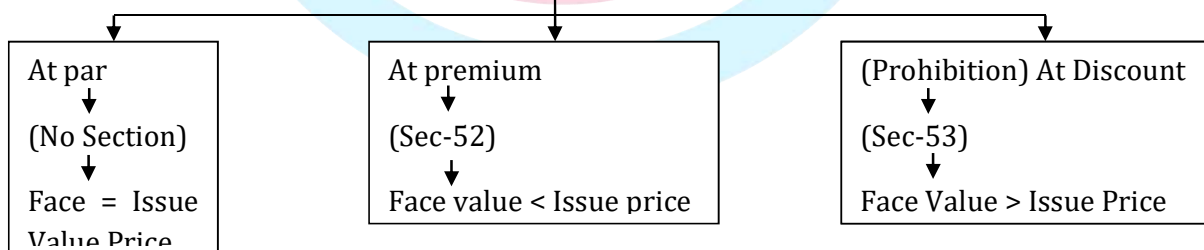


8) No Punishment :

The company has not punished by court Tribunal Under following Acts.

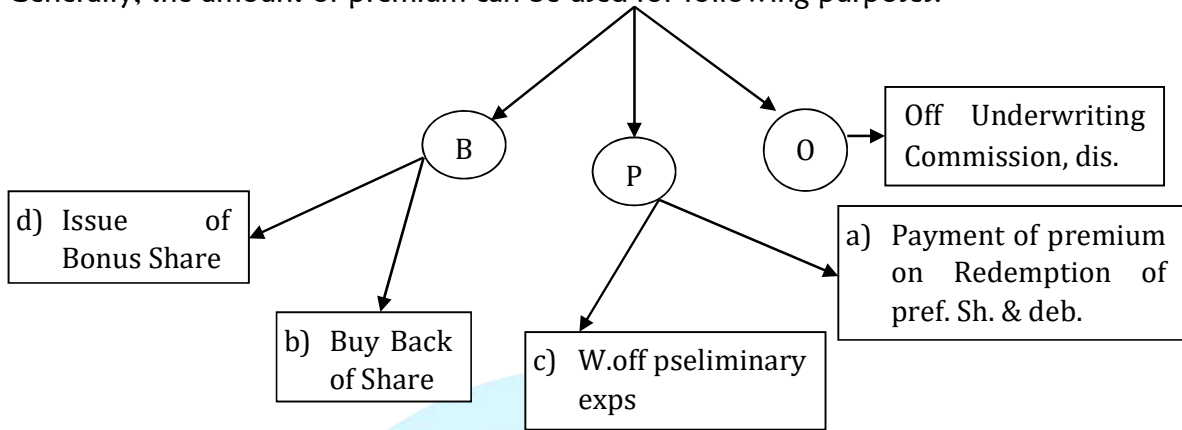
- a) SEBI
- b) RBI
- c) SCRA
- d) FEMA
- e) Other specific law/Act like Banking Req. Act,1949 etc.

ISSUE OF SHARE – DIFF./ MODES

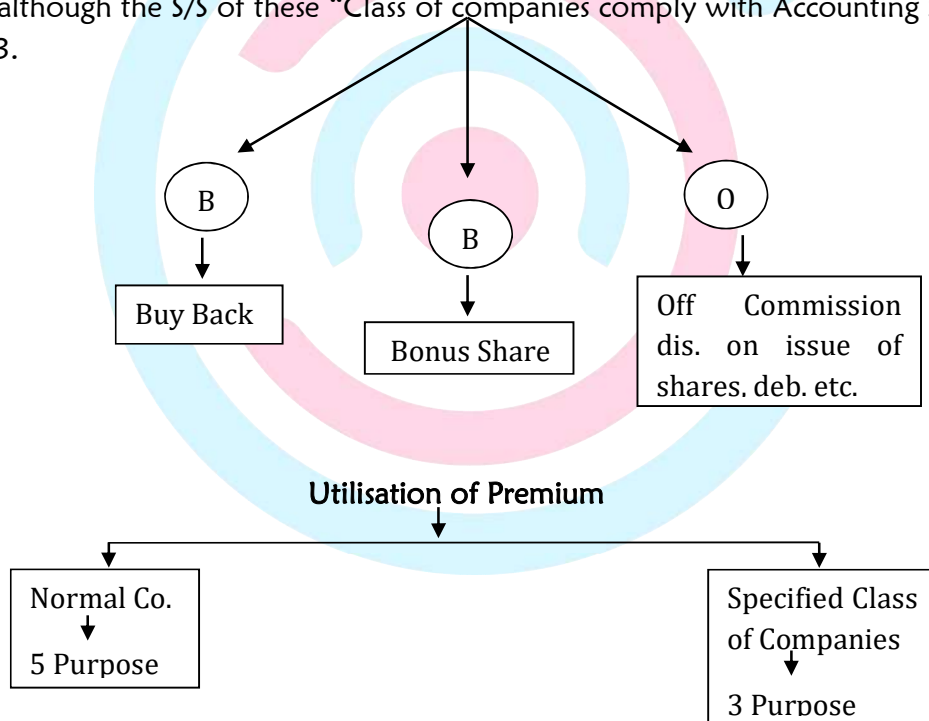


Concept – 5 : Issue of Securities at Premium (Sec-52)

- i) **Transfer of excess amount into Securities Premium A/c: [Sec-52(1)] –**
 ➤ The Co. shall transfer the excess amount into the “Securities Premium A/c”.
- ii) **Restricted use of “Securities Premium Amount” : [Sec-52(2)] –**
 ➤ Generally, the amount of premium can be used for following purposes.



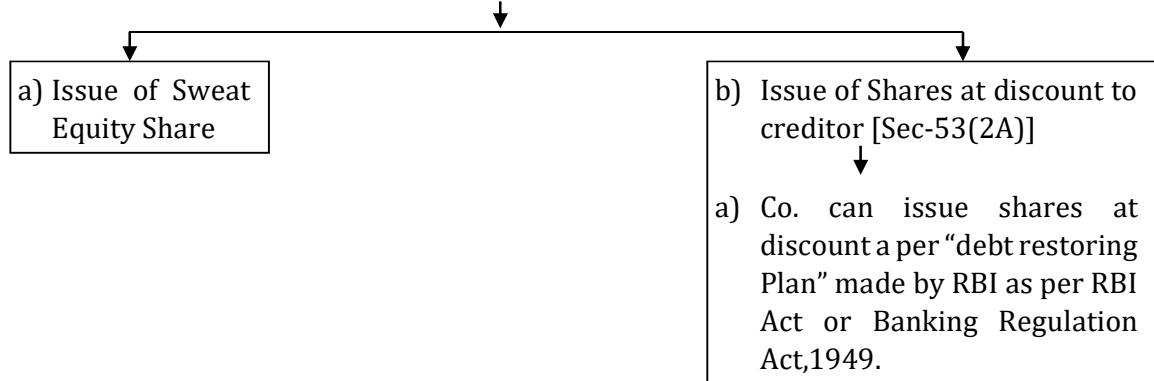
- iii) **Further Restriction on utilisation of Seco. premium for certain class of companies. [Sec-52(3)] –**
 The CG may prescribe certain class of company which can use amount of securities prem. For only 3 purposes, although the S/S of these “Class of companies comply with Accounting Standard made by CG u/s 33.



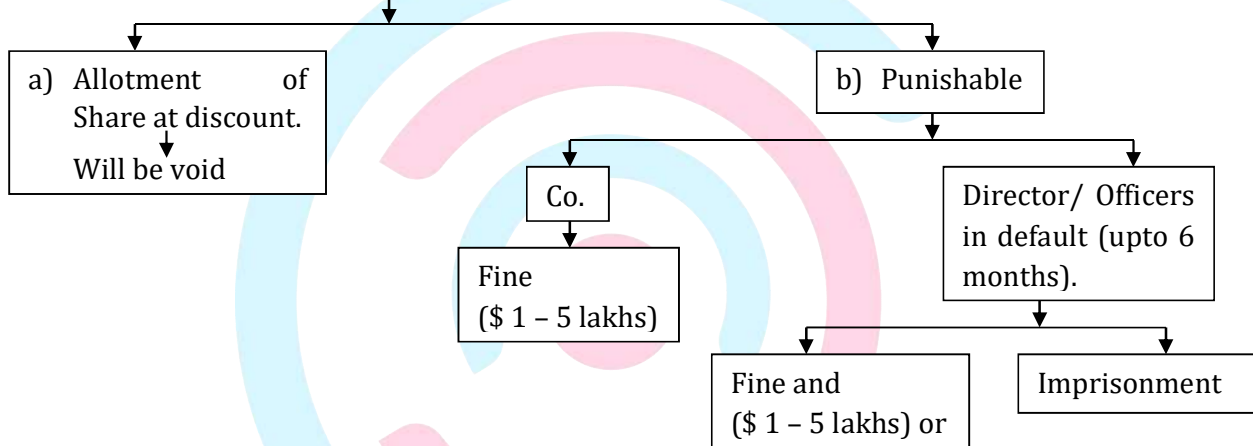
Concept – 6 : Issue of Share at Discount (Sec-53)

i) Prohibition on issue of shares at discount [Sec-53(1)]-

Generally, a co. can't issue shares at discount except these 2 exceptions.



ii) Effect of Contravention of Sec-53 -



Concept – 7 : Sweat Equity of Share & Conditions (Sec-54)

i) Def. of "Sweat Equity Shares" –

It means equity shares, issued by a company to its

- employees or
- directors
- at discount or for consideration other than cash. These shares can be issued for
 - Providing know how.
 - Value-addition or
 - transfer of intellectual property.

ii) Conditions for Issue of Sweat Equity Share –

- Existing Class :** The sweat equity shares must belong to a class of shares already issued.
- Pass S/R :** The proposal of issue of Sweat equity shares must be approved by members, of the co. by passing S/R.
- Fulfilment of additional conditions :-**
 - A part from condition of Sec-54, the listed Co. shall fulfil the conditions of SEBI Regulation.
 - Similarly, an unlisted Co. has to also fulfil the additional conditions prescribed by CG.

- iv) **No Discrimination** : The co. shall not discriminate among sweat equity shareholder & Normal Shareholder.

Concept – 8 : Right – Shares & its Exceptions (Sec-62)

i) **Meaning of Right – shares: [62(1)(a)] –**

- It means offering of shares to existing share holders, in proportion to share held by them.

ii) **Exceptions :-**

In following cases a company can offer its further share to any person, other than existing shareholders.

1) **Offering of shares to Employees : [Sec-62(1)(b)] –**

- A Co. can validly offers its further shares to its employees as per scheme of “ESOP” which is approved by members by passing S/R.

2) **Offering of further shares to outsider as Preferential Allotment [Sec-62(1)(b)] –**

- ‘Preferential Allotment’ means offering of shares to outsiders by passing S/R.

3) **Issue of further shares to convertible debenture holders. [Sec-62(3)] -**

- A Co. can validly issue further shares to holders of convertible debenture, as per term & conditions of issue of such debentures.

4) **Conversion of Govt. loan/ Debenture in to shares [Sec-62(4)(5)(6)] –**

- The CG may by direction requires the company to issue shares to it for
 - a) any loan given by it to the Co., or
 - b) any debenture purchased by it into the Co.
- The Govt. gives this direction after considering the “Public Interest”.
- The ‘terms and Conditions’ of order for conversion is determined by Govt. after considering the
 - a) Financial position of the company.
 - b) Terms & Conditions of debentures.
 - c) Rate of int. on loan/ debentures.
- The Co. may file appeal to NCLT within 60 days of communication of order of govt. for conversion of loan/ debentures into shares.
- As per Sec-62(6), the MOA of the company will be deemed to be automatically altered.

5) **Renouncement by existing Shareholders –**

The existing shareholder may surrender their right to purchase shares to any other person, if not prohibited by AOA;

6) **No Reply from Existing Shareholders –**

If the existing shareholders, neither agree to buy the further shares nor renounce their right then further shares will be disposed by BOD, in a manner not prejudicial to the Co. and its shareholders.

Concept – 9 : Bonus Shares & Conditions for issue of Bonus Share [Sec-63]

i) **Meaning of Bonus Shares –**

- Shares offered by existing shareholders, without any cost i.e free of cost.
- It is also called as “Capitalisation of Profit’ by a Co.

ii) **Conditions –**

- 1) Authority into AOA,
- 2) Folly-paid up shares.

- 3) Boards Recommendation.
- 4) Passing of O/R
- 5) No default in payment of statutory of employees like salary, PF, Gratuity.
- 6) Issued to existing shareholders.

Concept – 10 : Stock & Conditions for Conversion of Shares into Stock

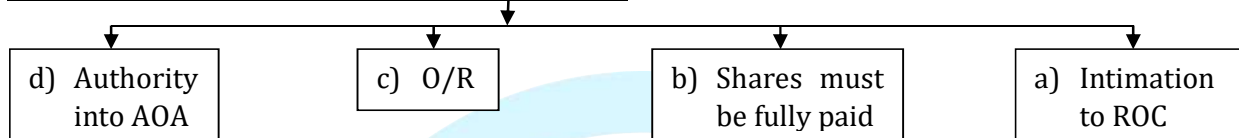
i) **Meaning of Stock –**

It means a bundle of fully paid shares, expressed into a Single-value/ common value.

ii) **Advantages of Stock –**

- To keep Stock-Certificate is very easy, in comparison to multiple share certificates.
- It can be transferred into part/ fraction.

iii) **Condition for Conversion of Shares into Stock -**



Concept – 11 : Reduction in Share capital (Sec-66)

i) **Meaning of Reduction in Share Capital –**

It means cancellation of subscribed

- Called up
- Paid up capital of the company.

ii) **3 Modes of Reduction in Share Capital –**

A company can reduce its share capital by 3 modes :-

- 1) Extinguishing or reducing the liability of shareholders, with respect to uncalled- capital.

E.g. –

On F.V & issue price of \$ 10, the co. has already called \$ 6. It decides to reduce the liability of members from \$ 4 to \$2.

- 2) Cancellation of lost capital i.e. such part of paid up capital, which is not represented by real. assets know as internal reconstruction.

E.g.-

Old B/s			
Eq. Share Capital	10	Real Assets	8
		Good will	2

New B/s			
ESC	8	Real Assets	8
	8		8

3) **Returing of excess paid up capital –**

Here the Co. returns the excess paid up capital, not needed by the Co.

iii) **Condition for Reduction in Share Capital –**

- a) Authority into AOA;
- b) Passing of S/R,
- c) Approval of NCLT; (CNLT will protect the interest of creditors).

d) Registration of reduction: The Co. shall register the reduction in share capital with the ROC.

Concept – 12 : Reduction in Share capital (Sec-66)

Restriction on purchase of own shares : [Sec-67(1)]

- No. Co. (Whether Pvt. or Public).
- Shall purchase its own shares.

Exception –

- i) Reduction in share capital (Sec-66).
- ii) Redemption of pref. shares (sec-65).
- iii) Buy Back (Sec-68).

Restriction on Financial assistance: [Sec-67(2)]

No Public Co.

Shall give –

Financial – assistance to any person to enable that person to purchase its own shares or shares of its holding CO.

3 Exceptions –

- a) **Banking Co.** – A banking co. can give financial assistance into ordinary course of its business.
- b) **Loan to Trustee of employees** – A public co. can validly give loan to trustee of employees knowing the trustee will purchase its fully paid shares.
- c) **Loan to Individual employee** – A co. can give financial assistance to any employee. (Who is not director or K.M.P) too enable him to purchase filling paid up shares, upto 6 months of salary.

Concept – 13 : Buy Back of Securities (Sec-68, 69, 70)

Sec-70 >
↓
Prohibition on buy back

Sec-68 > Companies Act
+ 2013
Sec-69 → Creation of CRR
→ Main provision of Buy back.

i) Meaning –

It is reverse of issue of securities under which Co. purchases its own shares and cancels these shares.

ii) Objective of Buy Back –

- a) To change the existing capital structure;
- b) To increase earning per share
- c) To avoid hostile (Unfriendly) take over;
- d) To give additional exist opportunity, to shareholders.

iii) Sources and conditions for Buy Back (Sec-68,69) –

1) Sources of Buy back [Sec-68(1)] :

A Co. can arrange necessary funds for buyback through any of these methods/ techniques:-

- a) R : Free reserve
- b) S : Securities premium (Collected u/s 52)
- c) S : Sal – Proceeds of different kind of securities;

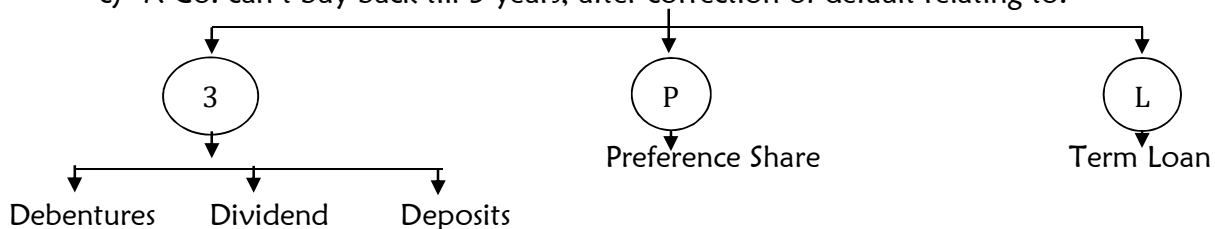
2) Conditions for Buy back : (Sec-68) :

- a) Authority into AOA:-
- b) **Pass O/R** : For buy back the Co. has to obtain approval of member by passing S/R. However, a co. can buy back upto 10% of paid-up equity capital + FR, by just passing “Board Resolution” in the Board Meeting.
- c) **Fully paid Shares** : The shares which are being bought back, must be fully paid.
- d) **Debt Equity Ratio** : The co. shall ensure that the “debt-equity ratio” after buy-back doesn’t exceed 2 :1 CG may subscribed/allow higher rate of debt equity ratio for infrastructure (O).
- e) **Overall Limit of Buy Back** :
 - A Co. can buy back upto 25% of paid-up capital + FR in a year.
 - However, if Co. wants to buy back only equity shares then the max. buy back will be 25% of paid up equity share capital in that P.Year.
- f) **Time limit for Completion of Buy- Back** :
 - Buy back shall be completed within a period of 1 year from the date of passing of BR/SR.
- g) **Prohibition on Further Issue** :
A Co. which has bought back its shares can’t further issue same kind of shares within a period of 6 months.
Exception : -
 - i.) Issue of Bonus Shares.
 - ii.) Issue of Shares to holder of convertible debenture/ holder/ pref. shares.
- h) **Declaration of Solvency** :
 - The Co. shall declare/ file that it shall not become insolvent within a period of 1 year from the date of declaration.
 - The documents shall be filled to ROC & SEBI (in case of listed Co.)
- i) **Physical destruction [Sec-68(7)]** :
 - The Co. shall physically destroyed the bought share, within a period of 7 days of completion of buy back.
- j) **Creation of CRR (Sec-69)** :
 - The Co. has to create CRR < equal to face value of shares bought back if the buy back is funded through.
 - a) FR or/ land
 - b) Securities Premium.

iv) **Prohibition on Buy –Back : (Sec-70) –**

1) **Prohibition on Buy – Back [Sec-70(1)] :**

- a) A Co. can’t buy back its shares through any subsidiary company.
- b) A company can’t buy back its shares through investment through investment company.
- c) A Co. can’t buy back till 3 years, after correction of default relating to.



Concept – 14 : SHARE CERTIFICATE & Related provision [Sec-46 + 56(u)]

i) Meaning –

- No legal definition
- It means a documentary proof issued by a company, certifying that the person.
 - a) named in the certificate is the owner of the shares mentioned in it and,
 - b) has paid the amount specified in the share certificate.

ii) Requirement for Share Certificate –

- 1) Must be in form SH – 1, or as near there to as possible.
- 2) Must be signed by 2 directors and also have ‘COMMON Seal’ (if any).
- 3) Must have a distinctive no;
- 4) Must contain details like.
 - Name of Share holders.
 - Number of share held by him.
 - Amount paid.

iii) Duplicate Share-Certificate [Sec-46(2)] –

a) Cases when DSC is required :

- i.) When original certificate is lost,
- ii.) When original certificate is destroyed + mutilated (lost identity) or defaced.

b) Condition for issue of D.S.C :

- i.) The “BOD” must pass a “Board Resolution” for issue of DSC.
- ii.) The company may charge a fee (not exceeding \$ 50 per day) for duplicate certificate.
- iii.) The word “Duplicate” shall be prominently written on share certificate.
- iv.) The company must issue the DSC within 3 months from the date of receipt of complete document in case of unlisted company. In case of listed company the D.S.C shall be issued within 15 days from the date of receipt of complete document.

Concept – 15 : Calls in Advance & Right & Obligations of Shareholders who has Paid Call in Advance

i) Meaning of Calls in Advance –

Payment made by shareholder without any format call by the company.

ii) Condition [Sec-50(1)] –

A company can receives “Calls-in-Advance” only when it is authorised so, by its AOA;

iii) Some points about rights and obligations of person, paying calls-in-advance –

a) No extra Voting rights [Sec-50(2)] :

A person who has paid “Calls in advance” will not be entitled to extra-voting rights, representing the amount of calls in advance.

b) Extra Dividend :

A Company may pay dividend on the part of excess amount, paid in advance by a share holder, if authorised by its AOA.

c) Interest on Calls-in-advance :

The company must pay int. @ 12% P.A. (Maximum rate) as per table F of companies, Act, 2013.

d) No Refundable : Company is not bank.

e) Priority at the time of winding up.

Note :-

Call shall be made on uniform basis [Sec-40]. It is duty of company to make call on all member of same calls on equally.

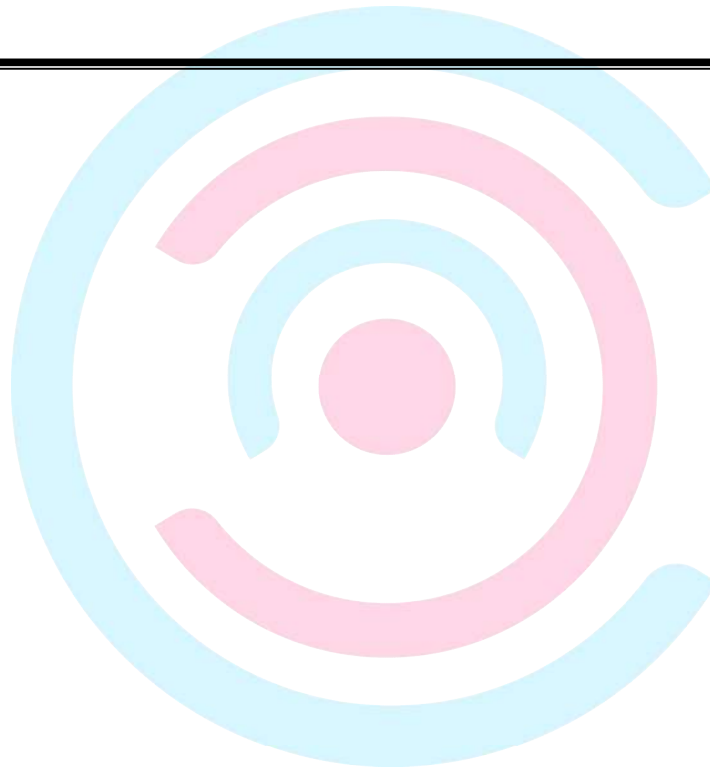
Concept – 16 : Conditions for Forfeiture (Table-F)

- a) Authority in AOA.
- b) Default in payment of Call.
- c) Notice of forfeiture (giving an opportunity to pay the money within a period of 14 days).
- d) Board Resolution.

Note :-

Surrender : Alternative of Forfeiture of Shares.

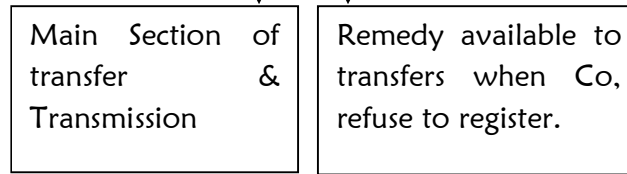
- The members Voluntarily return his share to the company.
- Here, the member takes initiation (First move).



CHAPTER -8

TRANSFER & TRANSMISSION OF SHARES

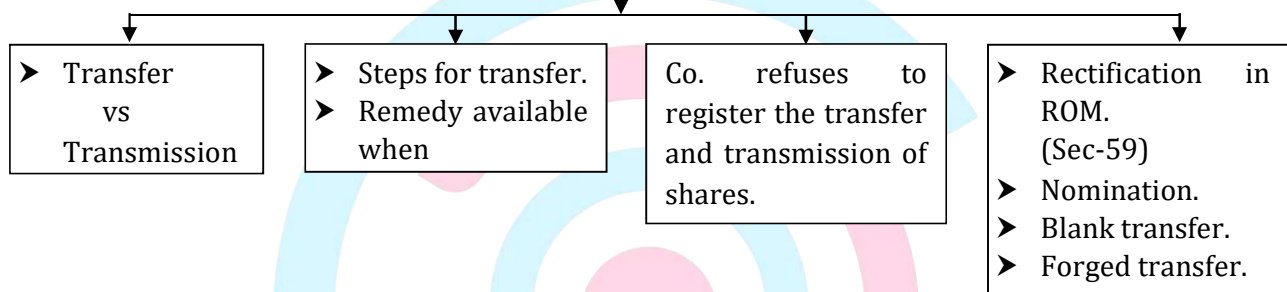
(Sec-56, 58, 59,72)



Section

- 59 – Rectification of Register of member.
- 72 – (Nomination)

CH. Outline



Concept – 1 : Transfer Vs Transmission

BOD	Transfer to Share	Transmission
i) Meaning	It means voluntary change into ownership of shares by intention of parties.	It means change into ownership by operation of law like death, insolvency etc.
ii) Use of Form	For transfer the parties need to use the specific form i.e., SH - 4.	No specified form, so the applicant will apply on plain paper, along with death-certificate nomination proof.
iii) Need of Consideration	Consideration is required for transfer.	Not Applicable
iv) Need of payment of stamp duty	Stamp duty is payable @ 0.25 for every \$ 100 or part of \$ 100.	Not Applicable

Concept – 2 : Steps Involved into Transfer of Share (Sec-56)

- Prescribed Form** – Firstly, the parties will use the “instrument of transfer” in form SH-4.
- Execution of Share** – Transfer Deed/ IDT – The parties will fill the form and do necessary stamping.
- Submission of completed/ executed STD** – The parties will file the completed STD along with Share-Certificate (old) to the Co. for “Registration of Transfer” The completed STD shall be deposited/ Submitted to company within 60 days of execution of STD.

iv) **Issue of fresh/ New share certificate** – The co. will issue ‘New share certificate’ in the name of transferee, within 30 days from, the date of submission of ST/IDT.

Concept – 3 : Additional Condition for Transfer of party paid-Shares.[Sec-56(3)]

i) **Applicability of Sec-56(3) –**

- a) Shares which are transferred are partly paid, and;
- b) Share transfer deed/ IDT is deposited by transferor.

ii) **Duty of Company –**

The Co. shall give notice of submission of IDT to the transferee and the transferee has to reply with 2 works from the date of receipt of notice.

Concept – 4 : Reason of Refusal & Appeal

When a co. refuses to register the transfer of transmission [Sec-58].

Refused to register by a Pvt. Co. [Sec-58(1)(3)(5).

i) **Reason of Refusal [Sec-58(1)] –**

- It is duty of Pvt. Co. to give reason of refusal to the transferor and transferee, within 30 days of delivery of IDT or application for transmission.

ii) **Appeal Against Refusal [Sec-58(3)] –**

- The transferee, may file appeal to NCLT against company for not registering transfer or transmission.
- T/L :-
 - Within 30 days: In case of refusal notice is given by Co.
 - Within 60 days: When Co. doesn't give any notice of refusal.

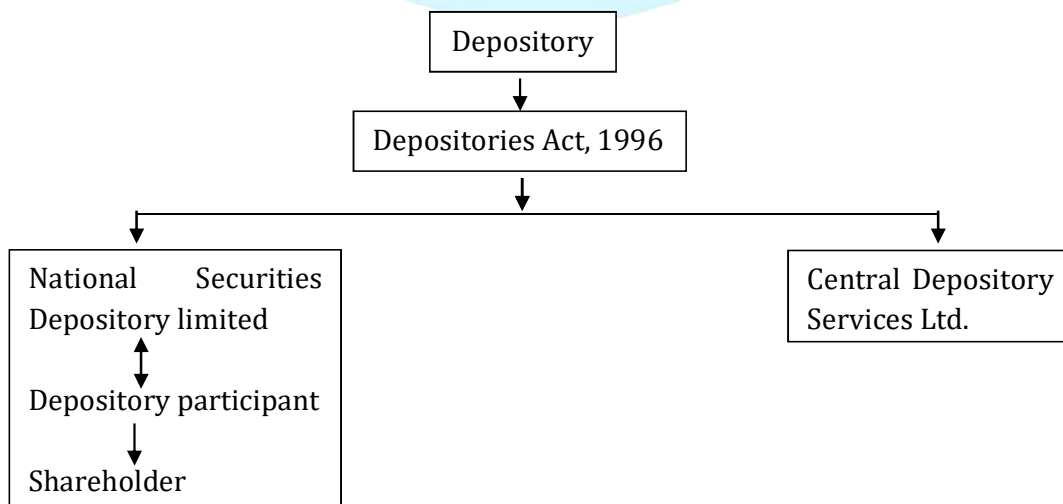
iii) **Order of NCLT [Sec-58(5)] –**

The NCLT after hearing both parties may either dismiss (reject) or order the company.

- a) To register the name of shareholder within 10 days of order.
- b) To pay damage to the transferee

Note –

In case of public, Co. all provision are same except T/L, which is 60 & 90 days in place of 30 & 60 days.



Concept – 5 : Rectification of ROM (Sec-59)

i) Grounds of Rectification –

An application for rectification of ROM can be made to NCLT or foreign court on following grounds.

- a) Inclusion of name of a person into ROM, without sufficient cause.
- b) Omission of name of a member from ROM, without sufficient cause.
- c) When transfer of securities is in contravention of
 - SCRA – 1956
 - SEBI – 1992
 - any other law

- Securities Contract (Req.) Act 1956, deals about Stock exchange.

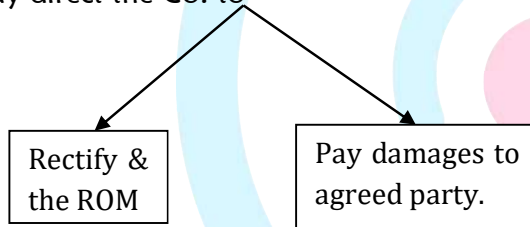
ii) Who can apply for recti. –

- a) Person
- b) Member
- c) SEBI
- d) Depository
- e) Depository participant

iii) Time limit for Application for rectification not applicable.

iv) Order of NCLT :- NCLT

- May either dismiss the application., or
- may direct the Co. to



Concept – 6 : Nomination & Rights of Nominee

i) Meaning –

Nomination is the process of assigning or identifying the next person to whom the securities held by a person. (Original security holder) will vest in the event of his death.

ii) Nomination Form –

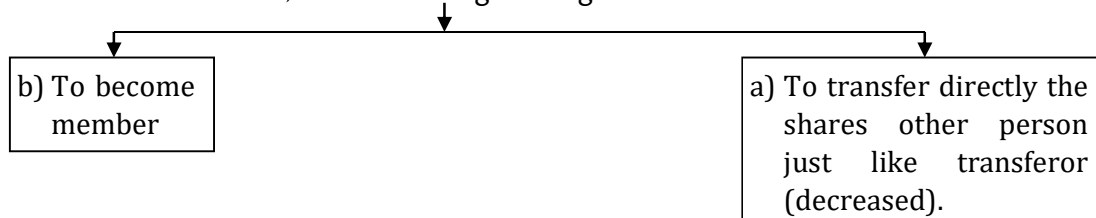
➤ Variation/ Cancellation shall be made in Form SH-14.

iii) Duties of Company –

The Co. shall enter the details of nomination within a period of 2 months, in the ROM.

iv) Right of Nominee –

In case of death of member, the nominee gets 2 rights:



Concept – 7 : Forged Transfer (No Section)

i) Meaning of forged Transfer –

It means a transfer deed, on which signature of “Transferor” is forged.

ii) Effect –

The “Transfer- deed” having forged signature is void-ab-initio/ Null & Void.

iii) Right & Obligation of parties in case of Forged transfer –

a) **Restored** : The original shareholder will get his name restored into ROM.

b) **Removed** : Name of transferee will be removed from ROM.

c) The innocent purchaser will let the amount of consideration (paid by him), from the co.



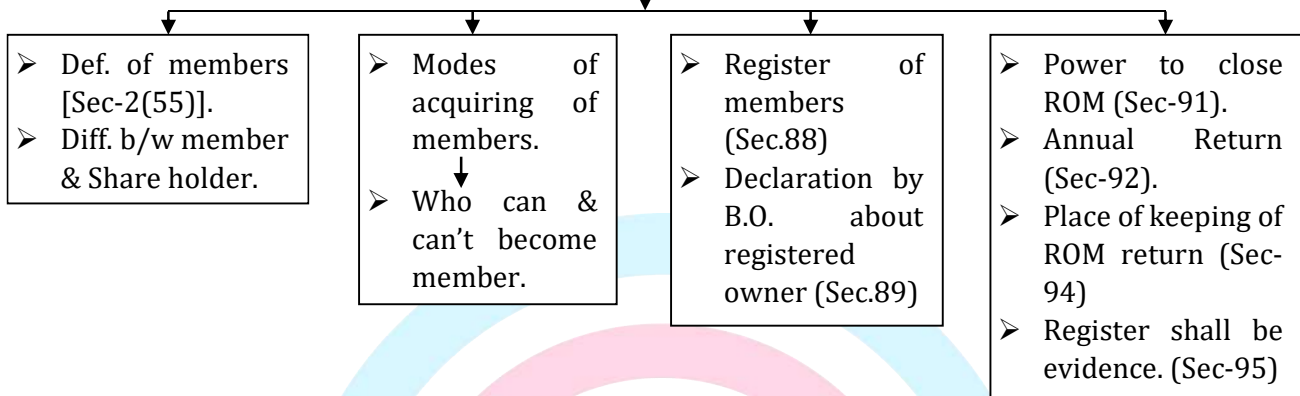
CHAPTER -9

MEMBERSHIP REGISTER & RETURN

Section Used :

Sec.88 – 95/ Sec.88 – 122 of chapter VII of Companies Act, 2013.

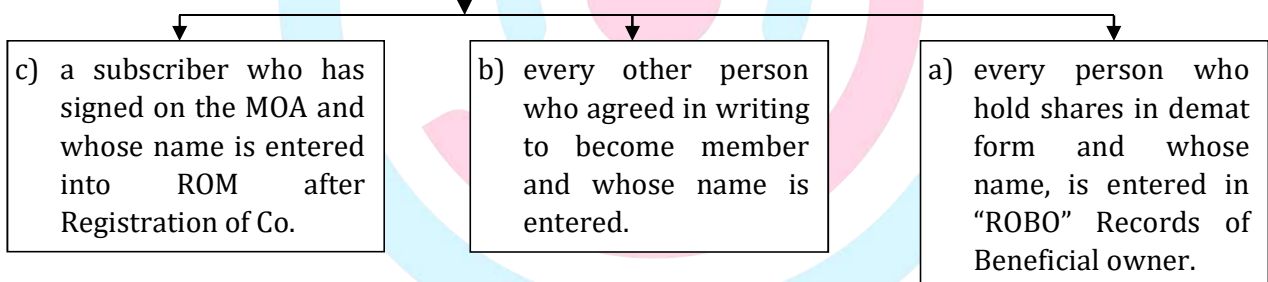
➤ Rule used: Companies (Management & Administration) Rules, 2014.



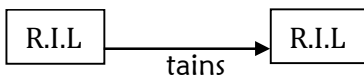
Concept – 1 : Member & Diff. between member & Shareholder [Sec-7(55)]

i) **Member [Sec-2(55)] –**

Member (in relation to a co.) means -



E.g.



X purchased physical shares and his name is placed into ROM of RIL later on, X converted his physical – shares into demat shares and due to such conversion his name is removed from ROM and entered into Records of Beneficial owner (RoBo) maintained by Depository. (NSDL).

ii) **Diff. b/w member & Shareholder –**

BOD	Member	Shareholder
i.) Def.	Sec-2(56)	No legal definition
ii.) Meaning	Person who name is entered ROM (ROBO)	Who owner Share
iii.) Compulsory Option	or Every Co. must have few members as per Sec-3(1).	Only a co. having will have share holder.

iv.) Rights	Generally Member has more right in comparison to shareholder.	Less – right.
-------------	---	---------------

Concept – 2 : Who can't become member of a Co.

1) Minor –

- As a general rule, Minor can't become a member of a company due to incapacity to enter into contract.
- If Co. mistakenly allots shares to minor, then Co.
 - a) Can repudiate such allotment.
 - b) Can remove the name of such minor.
 - c) Shall return all money's received from the minor if his name is removed from ROM. (As per MCA Certificate).
- If Co. allows, the name of minor to continue into ROM, then neither the name of minor nor his guardian's name will be entered into list of contributories, at the time of winding up of the company. As decided in the case of Palainapp √. OI Pasupati Bank Ltd.
- A minor can become a member by way of transfer of fully paid shares as decided in the case of 'Devan Singh √. Minerava Films Ltd.

2) Company –

- A Co. can become member of another Co. if it is so authorised by its MOA (Object clause).
- **Exception :**
 - a) A Co. can't become its own member.
 - b) A subsidiary Co. can't become member of its holding Co.

3) Firm (Partnership) –

- Since partnership firm doesn't have separate personality so it can't become member of a co., except company licensed u/s 8 of Companies Act.

4) Insolvent –

- A person, who is a member of Co. remains member till his name appears into ROM.
- However, the ownership of shares vests into official assignee/ official receiver.
- The co. shall also give notice of G.M to assignee/ receiver but voting rights remain with insolvent member.

Concept – 3 : Modes of acquisition of membership

A person can become member of a company.

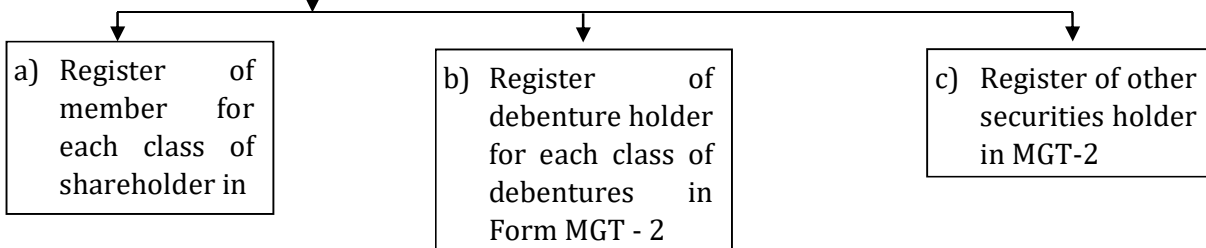
- a) By subscribing to the MOA :-
(Signing)
- b) By agreeing in writing.
- c) By Transfer & Transmission.
- d) By Estoppel/ By acquiescence (Sec-95).
↓
(Familiarity)

- If a person knowingly permits his name to be entered into "ROM".
- Then he will not be allowed to deny the fact that he is not member of such company.

Concept – 4 : Maintenance of various types of Registers (Sec-88)

i) Mandatory Maintenance of ROM etc. [Sec-88(1)] –

- Every Co.
- Shall maintain
- Following registers



ii) Register of Index/ Index Register [Sec-88(2)] –

- ‘Index’ means a table, which lists all the name into alphabetic manner.
- Every Co. having 50 or more member must have “Index register” which facilitate, in tracking of the name of member.
- The Co. shall make necessary entries in the index, simultaneously with the entry for any security into ROM.

iii) Foreign Register of member [Sec.88(3)] –

- Every co. having foreign members/ Foreign debenture holder.
- may
- maintain as additional register.”Known as Foreign Register”.
- at any place outside India
- Conditions
 - a) Authority in AOA;
 - b) Intimation to ROC, within 30 days in Form GT-3.

Concept – 5 : Declaration by R.O about R.O & Vice Versa 9Sec-89)

i) Meaning of Req. owner –

- It means a person, whose name is entered into ROM, as an owner of shares.

ii) Meaning of “B.O” (Beneficial Owner) –

It means a person having interest in share of company.

iii) Duty of R.O [Sec-88(1)]-

- Every person, who is just R.O. (But not beneficial owner)
- Shall disclose.
 - the name &
 - other particulars of B.O.
- This declaration shall be made within 30 days (in form MGT – 4) Form the date, when his name is entered into ROM, to the Co.

iv) Duty of B.O [Sec-89(2)] –

- Every person who is just B.O but not R.O.
- Shall disclose the name of other particular of R.O.
- Within 30 days from the date of acquiring beneficial interest in MGT-5.

v) Duty of Co. [Sec-89(3)] –

- To note down declaration into relevant Register.

- To file the declaration to ROC within 30 days in MGT-6.

vi) **Investigation of B.O. of Shares (Sec-90) –**

- The CG may appoint
- Competent persons
- To investigate into the beneficial ownership of shares or class of shares.

Concept – 6 : Annual Return [Sec-92]

i) **Meaning of “Annual Return” –**

- It means a “Yearly Report” filed by Co. to ROC, containing summary of all financial as well as Non-financial information.
- Generally, through “Annual Report” the ROC, updates its Records/ Registers.

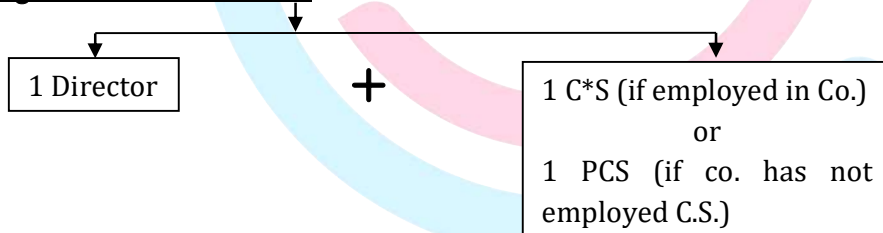
ii) **T/L for Filing of “Annual Return” –**

- Within 60 days from the date of AGM, if it is held.
- If AGM not held, then within 60 days from the last date, on which AG, ought to be held.

iii) **Contents of Annual Return –**

- Particular/ details of Regd. Office;
- Particulars of business activities (Sector/ object of the Co.).
- Particular of its having, subsidiary and associate.
- Its share debentures & other securities and share holding pattern.
- Changes in members & debenture holder.
- Particulars of promoters, directors KMP and changes there in;
- Remuneration of directors & KMP etc.
- Penalty or punishment imposed on the company and status of any compounding or appeal filed against such penalty.
- Any other matters.

iv) **Signing on “Annual return” -**



- For OPC, Small Co. and Private Co., if there is no CS as employee “Annual Return” will be signed by the director of Co.

Concept – 7 : Closure of ROM [Sec-91]

i) **Meaning of Closure of ROM –**

- It means right of Co. to legally refuse to update its ROM, due to transfer/ transmission of shares.
- Generally, a co. closes its ROM, due to following reasons:
 - To fix, names of members to whom notice of G.M.
 - To fix, the names of members to whom dividend, bonus shares etc will be given.

ii) **Conditions for Closure of ROM –**

- **Advance Notice :** At least 7 days before the closure of ROM.
- **Dual language :** (English + Vernacular language) of the district in which regd. office is situated.

iii) **Period –**

- at a time : maxm. 30 days
- over the year : maxm. 45 days

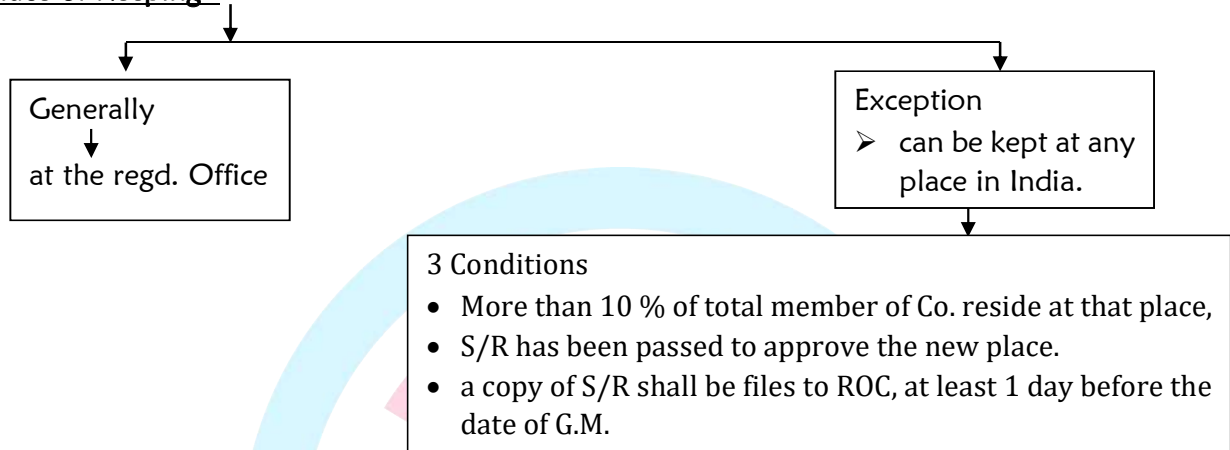
Concept – 8 : Registers & Returns location inspection etc (Sec-94)

i) Applicability of (Sec-94) –

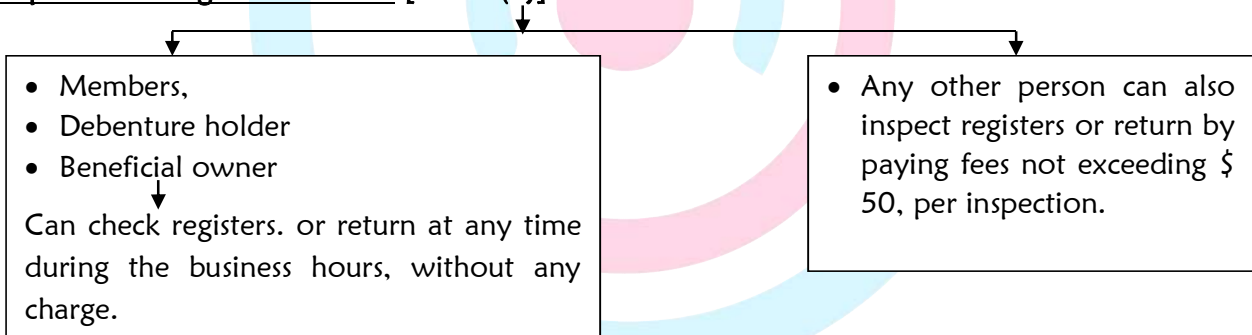
Sec-94 applies upon followings.

- ROM & Index of members.
- ROD
- Annual Return u/s 92.

ii) Place of Keeping -



iii) Inspection of registers & return [Sec-94(2)] -



iv) Extracts (taking Note) & Copy of Registers & Return [Sec-94(3)] –

i) Extract is Free :

Any member, debenture holder, beneficial owner or other securities holders can take extract of ROM etc free of cost.

ii) Copy is Chargeable :

Any member etc. can take copies of ROM, return etc by paying a fee of \$ 10 per page (MXM).

- The co. shall forward the copy of register/ return, within a period of 7 days from the date of fees.

CHAPTER -12

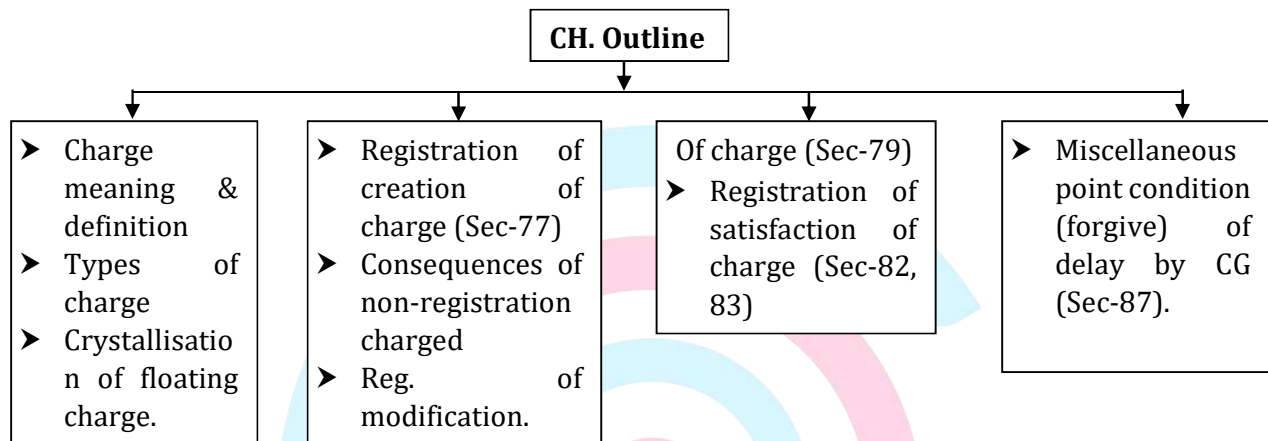
CHARGES

Section Used :

CH- VI of Companies Act, 2013 consisting of sections, 77 to 87, deals about various provisions relating to registration of charge.

★ **Rules used :** Companies (Registration of Charges) Rules, 2014.

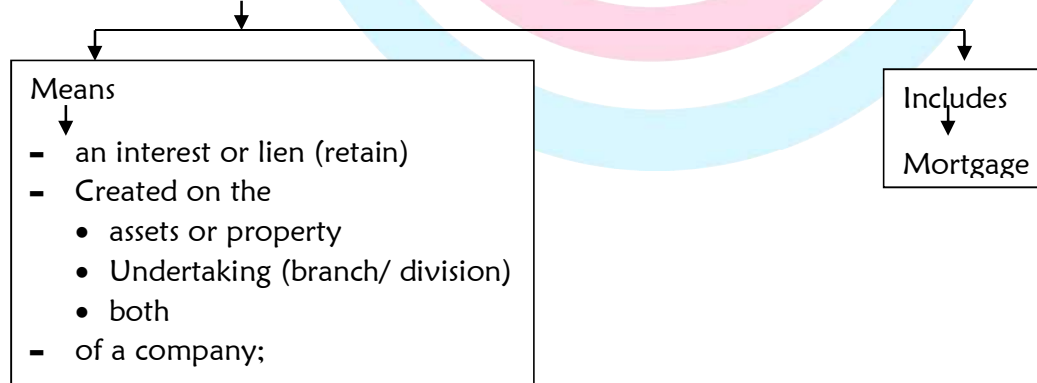
★ **Form Used :** CHG



Concept - 1 : Charge - Def. Meaning & its Types [Sec-2(16)]

i) Meaning "Charge" means right of lender upon the assets of the borrower. The lender is also known as "Charge holder".

ii) Def. [Sec-2(16)] -



iii) **Techniques of creation of Charge –**

A Co. can create charge on its assets etc. by way of

a) **Mortgage :** (Transfer of int. into Immovable property).

b) **Pledge :** (Created on movable property and custody of such property, is handed over to lender);

c) **Hypothecation :** Created on movable property and custody of such property is held by borrower.

iv) 2 Types of charge on the basis of nature of assets –

BOD	Fixed Charge	Floating Charge
i) Meaning	When charged created on same identifiable assets, like land & building, P & M then it is called as Fixed – charge.	“Class of assets” which value is subject to fluctuation like inventory, Trade receivable etc.
ii) Right to deal	The borrower can't deal i.e., can't sell such assets upon which fixed charge has been created.	Can deal into ordinary course of business i.e., the borrower can buy or sell the goods without consent of charge holder.
iii) Applicability of concept of crystallisation.	Not Applicable	Applicable on default of payment or breach of terms & Conditions.

Concept – 2 : Crystallisation & Cases of Crystallisation (No Section)

i) Meaning –

It is a process to convert, floating charge into-fixed charge.

ii) Effect –

The borrower loses the right to deal in the assets, even in ordinary course of business.

iii) causes in which Crystallisation is made –

- a) Winding-up of the company.
- b) Change in name/ objects of the Co;
- c) Default in payment of installation or interest thereon;
- d) When lender enforces the security i.e lender/ debenture holder appoints receiver/ liquidators or Approaches to the Court.
- e) When there is breach of any clause of loan-agreement; (like failure to send stock statement).

Concept – 3 : Registration of Creation of Charge (Sec-77)

i) Mandatory Registration [Sec-77] –

- Every Co., which creates any charge on its assets (In India or outside India).
- Must get it registered with ROC, by filing CHG-1 or CHG-9.
(In case of Secured debentures)

ii) Time limit of Registration of Creation of Charged

Time	Formalities	Conditional Fees
a) Normal time i.e. within 30 days of creation.	General compliances	Normal Fees
b) Beyond 30 days but within 300 days of creation. [1 st Proviso to Sec-77(1)]	ROC may condone the delay on sufficient grounds.	Additional Fees.
c) Beyond 300 days of creation	CG may forgive the delay (Sec-87)	Additional Fees.

iii) **Issue of Certificate of Registration [Sec-77(2)] –**

The ROC, will issue certificate of registration, to Co. & charge hold in form CHG-2

iv) **Consequences of Non-Registration of Charge –**

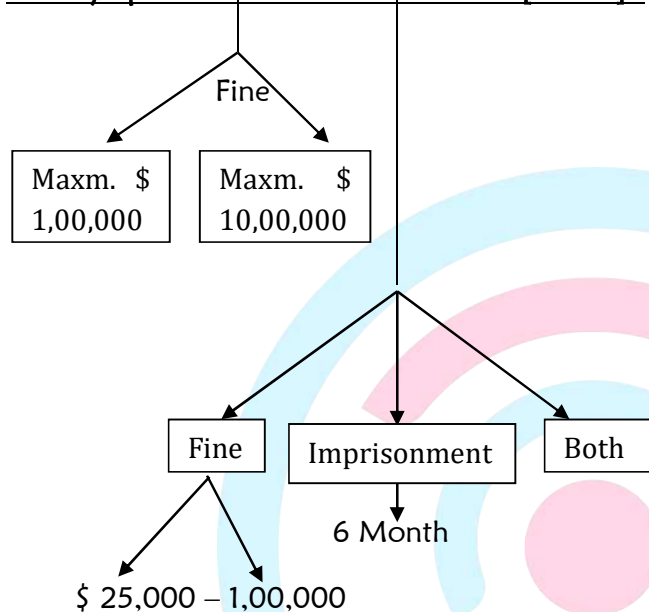
i) **Unregistered Charge is void -**

The charge holder of unregistered charge becomes unsecured creditor and the charge is void against the liquidator.

ii) **Co. liable to pay the amount [Sec-77(4)] –**

Co. will be liable to pay the amount of loan, forthwith/ immediately.

iii) **Penalty upon Co. & Officers in Default [Sec-86] -**



Concept – 4 : Applicability of (Sec-77) in Certain Cases (Sec-79)

i) **Scope of (Sec-79) –**

Sec-79 applies/ specifies these two cases in which registration is mandatory.

- a) Acquisition of property by the Co. upon which some loan is outstanding or
- b) Any modification into the terms & conditions of a registered charge.

ii) **Time limit for Registration of Charge covered u/s 79 –**

All the time limit specified u/s 77, will also apply here.

iii) **Clarification of MCA about Modification –**

“If rate of interest” charges due to charge in Bank-rate or the rate at which the Central Bank gives loan to Commercial bank then it shall not be treated as “Modification in terms & conditions” of registered charge.

Concept – 5 : Registration of Satisfaction of Charge

• **Intimation of Full payment of charge by Borrower Co. (Sec-82) –**

- The borrower shall
- give intimation to ROC,
- in form CHG-4
- within 30 days of full satisfaction.
- Any delay beyond 30 days will be forgiven by CG.

• **Suo-Moto entry of Satisfaction/ payment of charge by ROC (Sec-83) –**

- The ROC, may on its own motion may make in “Register of charge” (Maintained by ROC itself), after giving both parties, notice about such entry.



CHAPTER -13

GENERAL MEETING

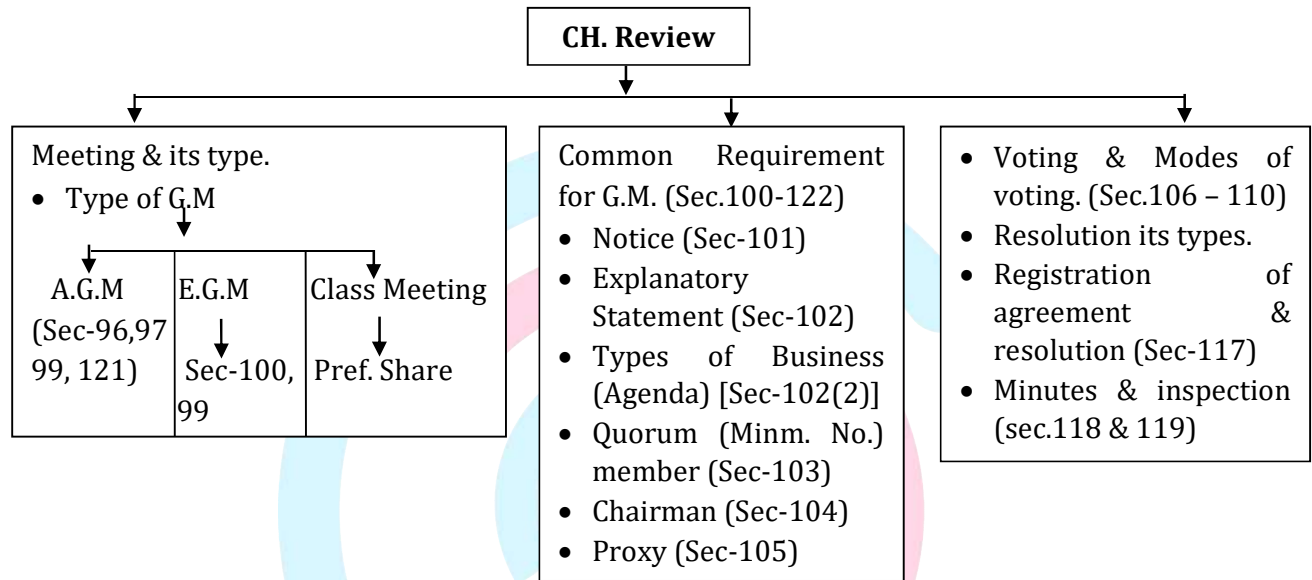
Section Used :

Sec-88-122 of CH.VII of Companies Act, 2013 (But GM starts with Sec-96 and ends 122).

⇒ **Rules Used :**

Companies (Management & Administration) Rules, 2014.

Code : MGT

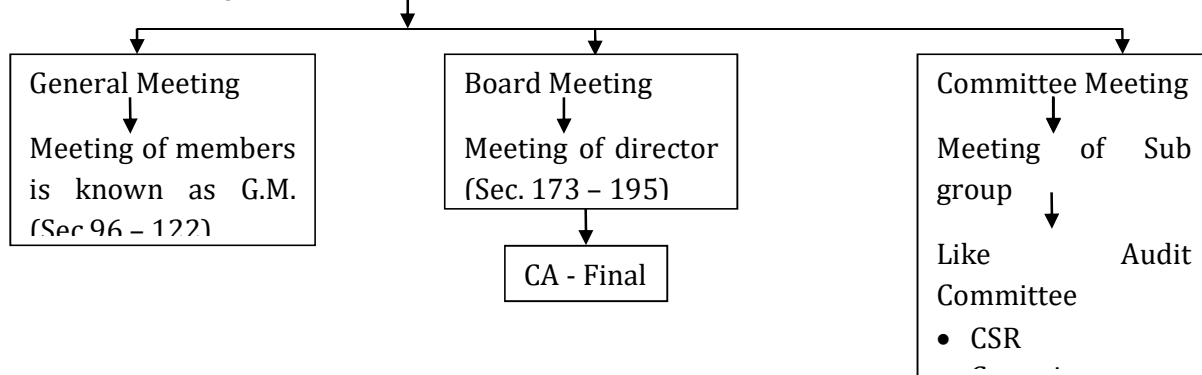


Concept - 1 : Meetings its Types

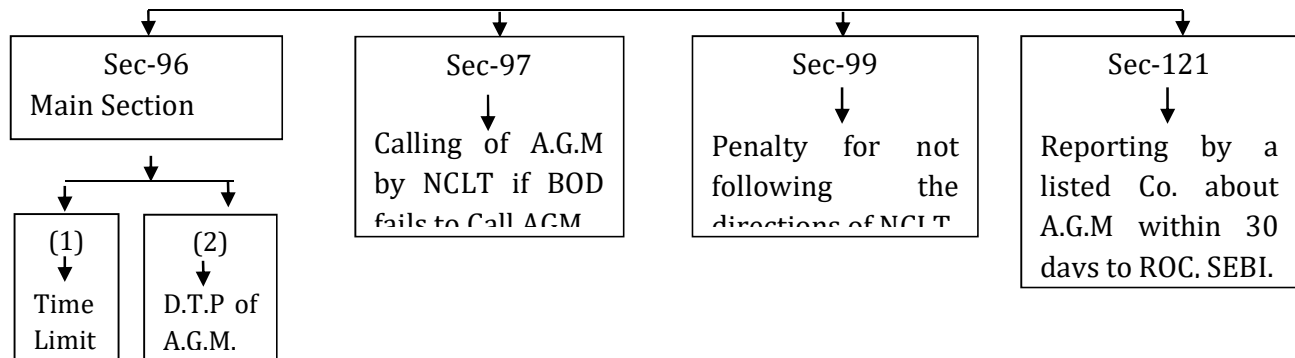
i) **Meaning of Meeting –**

It means gathering of the two or more person to transact (approve/ pass) some lawful business. (Agenda Matter)

ii) **Types of Meeting in Company**



Concept – 2 : AGM & Related - Concepts



❖ Sec-96

i) About A.G.M –

- yearly meeting of members,
- Generally ordinary business is transacted in the meeting i.e.,
 - a) Approval of Annual Account.
 - b) Declaration of dividend.
 - c) Appointment or re-appointment of director in place.
 - d) Appointment & Fixation of Remuneration of retiring director.

ii) Time –

T/L of First AGM [Proviso to Sec-96(1)] ; with 9 months from the end of first financial year.

The T/L of 2nd & subsequent AGMS :-

The T/L is determined, by considering all these three times/ requirement.

- a) 1 AGM in every calendar year i.e., upto 31st Dec of every year.
- b) The Gap b/w two consecutive AGMS shall not be more than 15 months.
- c) The AGM shall be held within 6 months from the end of relevant F.Y.

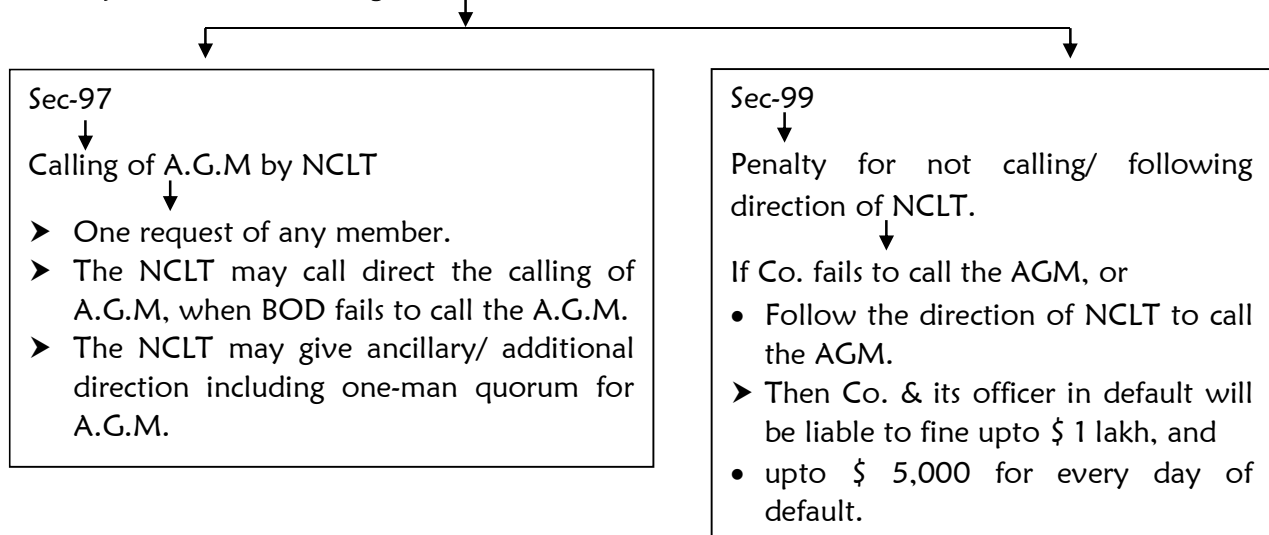
Note :-

As per proviso to Sec-96(1) the ROC may grant extension of 3 months in case of 2nd & subsequent AGMS.

iii) Day (Date), Time & Place of AGM [Sec-96(2)] –

Day of AGM	Any day except National – holiday dec. by CG.
Time/ Hours of AGM	During business hours i.e., 9 am to 6 pm.
Place of AGM	<ul style="list-style-type: none"> • At the regi. office or • Same C/T/V, where the req. office of co. is situated.

iv) Consequences of not Calling A.G.M -



Concept – 3 : Extra ordinary General meeting & related Concept (Sec.100,98)

❖ Sec-100 –

i) Meaning of EGM –

It means a GM other than AGM & Class- Meeting.

ii) Nature of Business/ agenda/ item –

Any matter (including ADDA) transacted at the EGM, will be treated as “Special – Business”.

iii) Authority to call E.G.M –

4 authorities/ 4 models of calling of EGM.

1) Calling of EGM by BOD Suo-Moto (Sec-100(1)):

- The BOD may call EGM of the Co. as & when it thinks, suitability of EGM (it).
- The decision to call EGM, is taken by BOD, by passing B/R.

E.g. :- Co. may call EGM for buy back of shares.

2) Calling of EGM by Bon :

On requisition of eligible member [Sec-100(2)(3)]

- The BOD shall proceed to call EGM, within 21 days of receipt of requisition and must hold the EGM within 45 days of receipt of requisition.
- The requisition shall,
 - a) in writing in e-form.
 - b) signed by requisitioner.
 - c) given the matter to be transacted; (Reason is not required)
 - d) be deposited at the regd. office.

3) Calling of EGM by the requisitioner himself [Sec-100(4)(5)(6):

- If the BOD fails to call the EGM within the specified time.
- Then the requisitioner himself or themselves can call EGM within 3 months from the date of deposit of requisition.
- The requisitioner will call the EGM in same manner as the BOD. The BOD shall make available list of members and there address to the requisitioner.

4) Calling of EGM by NCLT (Sec-98):

- The NCLT either Suo-Moto or
- On application of (M) Member or (D) Director.

- May order for calling of EGM
- The NCLT may give additional direction including on man quorum.

iv) **D.T.P of AGM –**

No restriction about day time & place of EGM. However, when EGM is called by requisitionit himself then EGM shall be called on one day except national holiday.

Common Points about GM

Concept – 4 : Notice of G.M (Sec-101)

Sub-Section = (4)

i) **Length of Notice [Sec-101(1)] -**



❖ **Normal Length of notice –**

- A Co. can call its G.M by giving not less than 21 clear days notice in advance.
- Clear days means next days or complete days. It means exclusion of following days.
 - a) Date of posting of notice &
 - b) Date of G.M
- Again if notice is sent through postal system, then 48 hours are taken as transmission time (Sec-20).
- So, if all days are taken together then GM can be called by giving 25 days notice.

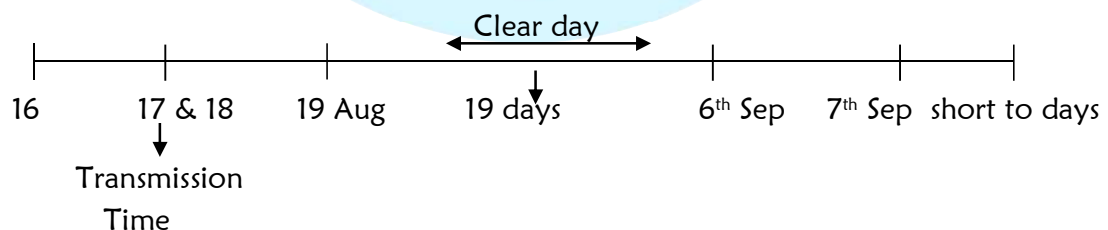
❖ **Shorter length of Notice (Proviso to Sec-101(1)) –**

GM can be called by giving notice of shorter length, if such shorter notice is approved by members holding 95% of voting power or paid up capital.

- This approval can be taken the co, either before the GM or at the G.M in writing.

E.g. –

A ltd issued/ posted notice on 16th Aug for AGM on 7th Sept. Decide whether the notice is valid or not?



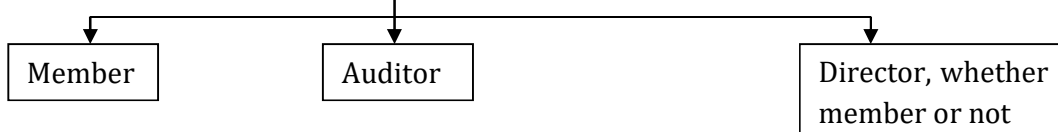
This notice is not valid as per Sec-101(1).

i) **Legal Provision –**

ii) **Contents/ Elements of notice[Sec-101(2)]:**

- a) D = days & date of G.M.
- b) T = Hours of G.M
- c) P = Place of G.M
- d) Agenda = List of matters to be transacted.

iii) Persons entitled to receive – Notice [Sec-101(3)]



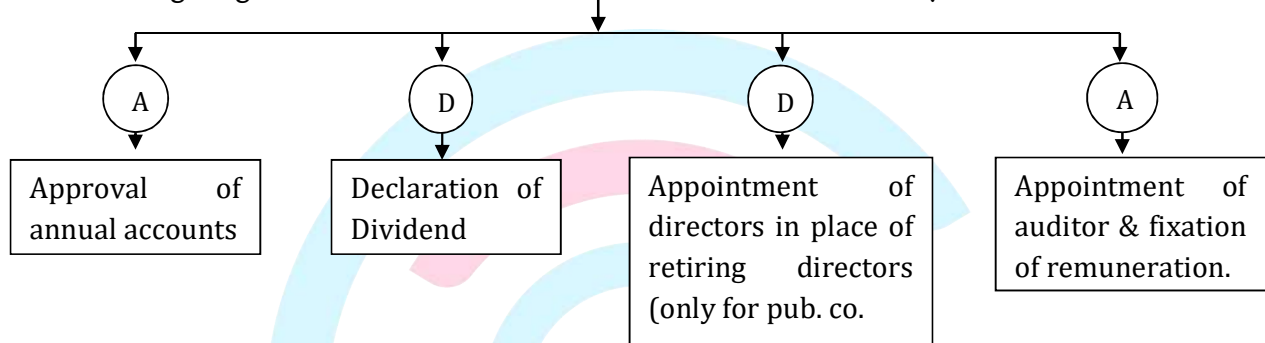
iv) **Accidental – Omission [Sec-101(4)]** – Will not invalidate the meeting or decisions taken in the meetings.

Concept – 5 : Business (Agenda) & its Types [Sec-102(2)]

In companies Act, the matters to be transacted are divided into 2 parts i.e., ordinary Business & Special Business.

i) **Ordinary Business [Sec-102(2)(a)]** –

➤ Following 4 agendas if transacted at AGM will be called as ordinary business i.e.



ii) **Special Business [Sec.102(2)(b)]** –

➤ In AGM - All business except A.D.D.A is known as special business .

➤ In EGM - All business (even A.D.D.A) transacted at EGM is know as “Special – Business”

Concept – 6 : Explanatory- Statement & penalty for not attaching Explanatory Statement [Sec-102(1),(4)]

i) **Meaning of Explanatory – Statement** –

It means a statement, used to explain the special business mentioned in the notice.

ii) **Contents of “Explanatory – Statement” [Sec-102(1), (3)]** –

a) Relevant fact about special business.

b) Special interest of directors, promoters or KMP or their relatives.

c) **Details of Shareholding** : If the special business relates to other co, then the shareholding of director/ Mgr his relatives shall be disclosed, if it 2% or more.

d) **Time & place of inspection** : If the special business relates to any document contract (scheme) then the place & time of inspection of such document shall be specified in the explanatory statement.

iii) **Penalty & Recovery of benefits [Sec-102(4)]** –

• The director must compensate company for any undue benefits taken by him, but not disclosing special int.

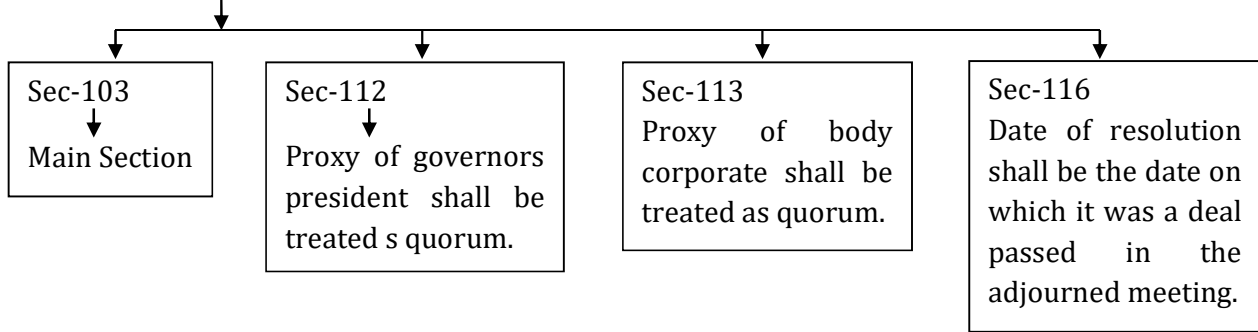
➤ The director will also be liable to fine if 2,50,000 or 5 time of profit whichever is higher.

Concept – 7 : Quorum (Sec-103)

i) **Meaning of Quorum** –

It means minim. No. of members who are personally present at the G.M.

ii) Related Section -



❖ Sec-103 – Consequences of absence of quorum.

Case – I :

If meeting was called on the request of requisitionist [Sec-103(2)(6)] meeting will be dissolved (end).

Case – II :

If meeting was called otherwise [Sec-103(2)(a)] original meetings will be adjourned to be resumed on same day same time and same place, but next week.

Case – III :

If quorum is not present in adjourned meeting [Sec-103(3)] the member who are present will form quorum.

Concept – 8 : Chairman & Veto – Power (Sec-104)

i) Meaning –

A person in whose guidance, supervision, the meeting is conducted.

ii) Provision about appointment of Chairman :

i.) The chairman of BOD, by default becomes chairman of the G.M : (Req.45)

ii.) If the

- Chairman
 - is not present within 15 minutes, or
 - Unwilling to conduct the meeting.
- Then the director will appoint any one of them as chairman, (Req.46).

iii.) If the directors are not willing to work as a chairman or directors are not present within 15 minutes,

- then member will elect any one of them as a chairman (Req.47).
- The appointment of chairman shall be through show of hands, unless poll is not deemed (Sec-104).

iv.) Casting vote of chairman:

- The chairman may use one additional vote/ extra vote, if a matter/ agenda has been tied, which just requires O/R (If permitted by AOA).

Concept – 9 : Proxy & Related Concept (Sec-103)

i) Meaning of Proxy –

➤ It means a person who represents the member in a G.M.

ii) Instrument of Proxy –

a) The proxy form shall be in writing, signed by the appointer and in form No. MGT-11

b) An instrument appointing a proxy, shall not be questioned on the ground that it falls to comply with any special requirements specified for such instrument as per AOA of the Co.

iii) **T/L for deposit of proxy –**

The complete “Proxy form” shall be deposited at the registered office of the company 48 hours before the G.M. The AOA may prescribed be lower/ less time for deposit of proxy.

iv) **Inspection of Proxy form –**

- Any member can inspect the list of proxies, 24 hours before the GM & till the conclusion of G.M.
- For this member has to give 3 days advance notice.

v) **Restriction on Rights of Proxy –**

- a) Not to speak : Can't participate into discussion.
- b) Not to vote, except voting through poll (written voting).
- c) Not to represent, more than 50 members, and aggregate shareholder those members shall not exceed 10% of share capital.

Exception – If a single person hold more than 10% of share capital he can appoint only a single person as his proxy.

vi) **Revocation of Proxy –**

The member/ appointer can validity revoke the proxy by,

- a) Appointing second proxy, or
- b) attending the G.M himself.

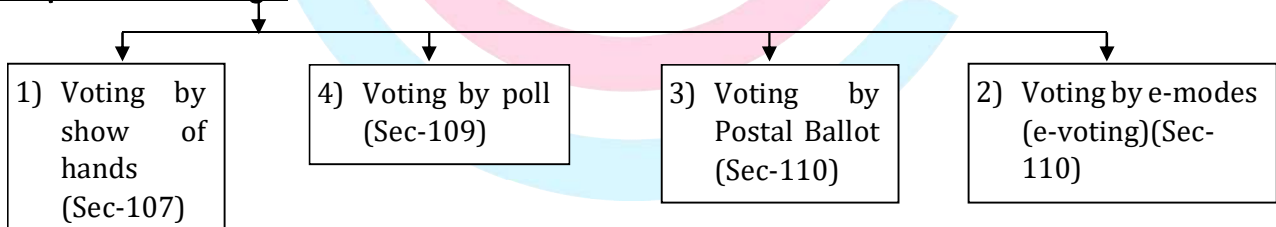
However, if the proxy has voted then the voting can't be invalidated from back date.

Concept – 10 : Voting & Types of Voting at G.M (Sec-106,110)

i) **Meaning –**

“Voting means a technique to ascertain the sense/ mood of members, on a particular agenda or matter.

ii) **4 Opinion of Voting –**



Details –

1) **Voting by show of hands (Sec-107) –**

- i.) **Default Mode/ Method :** Unless poll is demanded all matters are decided by show of hands.
- ii.) **Declaration & Recording of result :** The chairman has right to declare the result of show of hand.
 - The chairman shall record the result of voting, into minute book.

2) **Voting of Poll (Sec-109) –**

- i.) **Poll meeting :** It means written voting at the physical G.M of the members. Here every member, has as many votes, as he owns shares.
(1 Share = 1 Vote)
- ii.) **Deemed of Poll :**
 - A member(s) or proxy(ies) holding 10% of share capital., or

10% of voting power, can ask for poll.

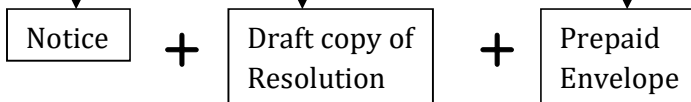
- The chairman can also order for poll, at Suo-Moto.

iii.) **Time limit for Conduct** : The chairman shall conduct the poll within 48 hours except these two matters.

- a) Appointment of Chairman.
- b) Adjournment of G.M.

3) Voting through Postal – Ballot (sec-110) :

i) **Company sends 3 things to each and every member.**



ii) **Reply from members** – The members reply within a period of 30 days from the date of posting of necessary- documents.

iii) **Declaration and Recording of results by Chairman** – The chairman shall record the responses of members into minute of book as suggested by scrutinizer (examiner).

iv) **Ten matters for which postal ballot is required,**

- a) Alteration into object clause of companies registered under previous company law.
- b) Alteration into object clause of companies registered under this Act, when there is some unutilised amt. of post public issue.
- c) Conversion of public Co. into private Co.
- d) Buy back of shares.
- e) Issue of shares with differential rights.
- f) Change in registered office outside the C/T/V and some other wider changes.
- g) Variation of rights attached to a particular class of shares/ debentures users u/s 48.
- h) Appointment of directors through proportion-ate representation (Sec-151).
- i) Sale of substantial assets of the Co. (Sec-180),
★→→ 20% or more of total assets.
- j) Giving loan, guarantee or providing security by one company to another co. which exceeds the prescribed limit u/sm186.

Example –

S/R is required, when the existing + proposed loan etc exceeds higher of these two –

- a) 60% of paid up capital + Free Reserve.
- b) 100% of Free Reserve.

Concept – 11 : Circulation of members Resolution in GM (Sec-111)

i) **Two Rights of Members** –

Sec-111 empowers the members do :

- a) Proposed a new agenda/ matter/ business at the coming of G.M.
- b) To circulate a statement related to an agenda/ already proposed.

ii) **Who can propose** –

Members holding co./ or more voting rights.

iii) **Time / Limit for Requisition** –

The eligible members shall deposit his/ their request at registered office along with reasonable amount for expense.

- a) By giving at least 6 weeks advance notice when new agenda is to be proposed by eligible members.
- b) By giving at least 2 week advance notice in case of circulation of statement, related to an agenda.

iv) Refusal by Company [Sec-111(3)] –

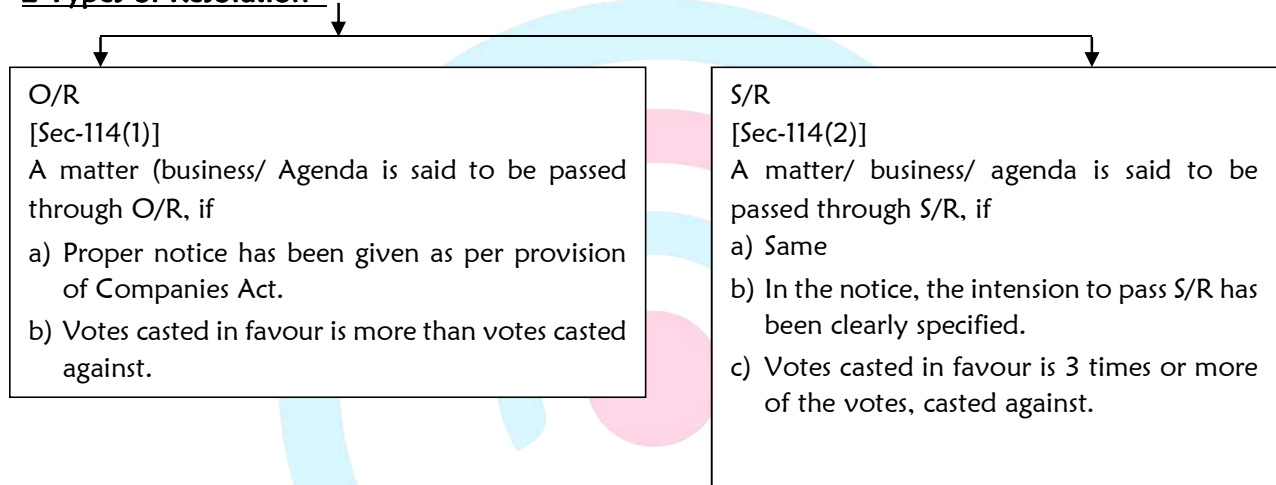
The Co. may refuse to circulate the statement to the members in G.M. If the members is doing all these things to just secure needless publicity.

Concept – 12 : Resolution & its Types (Sec-114)

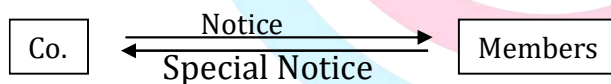
i) Meaning of Resolution –

It means “decision” of member in a G.M.

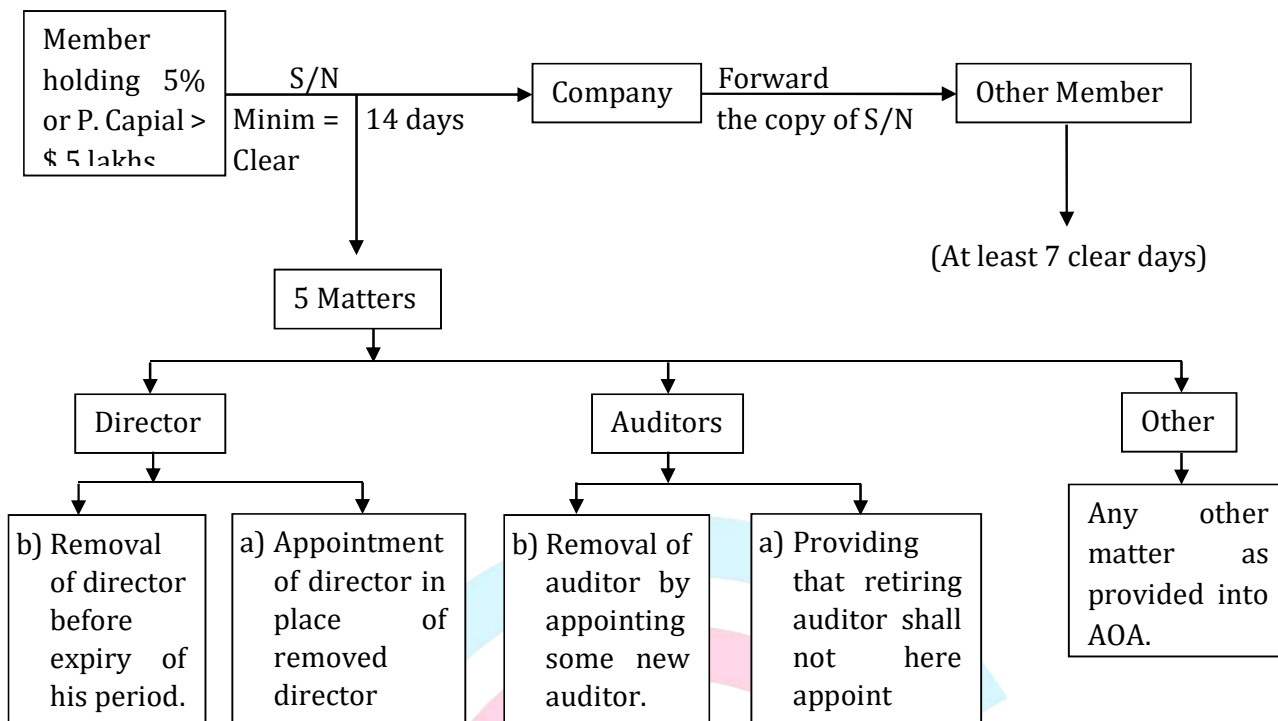
ii) 2 Types of Resolution -



Concept – 13 : Resolution Requiring Special Notice (Sec-115)



Flow Chart of (Sec-115) –



Concept – 14 : Mandatory Registration of Certain Resolution & Agreements (Sec-117)

i) Mandatory Registration –

The Co. shall file notice, copy of resolution or any agreement along with explanatory statement (if only) to ROC, within 30 days, from the

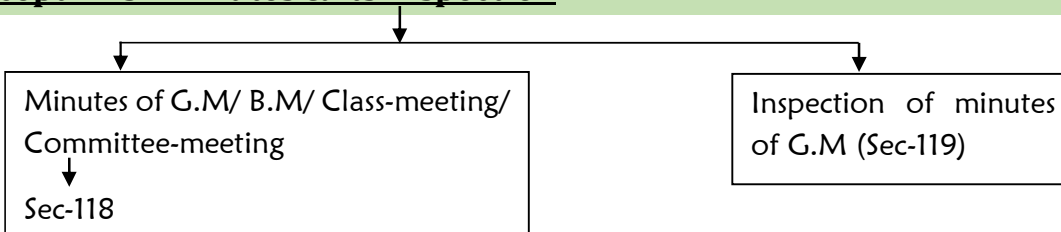
- a) date of passing of resolution or
- b) execution of agreement.

ii) Scope of Sec-117 –

This section apply to,

- a) S/R
- b) A resolution which need to be approved by all members but just approved through S/R.
- c) Copy of Board-Resolution, or
Copy of agreement
 - relating to appointment, renewal of M.D.
- d) A resolution which need to be approved by all member of any class of shares in the company, but just approved through S/R.
- e) Resolution for voluntary winding up of the Co.
- f) Board Resolution passed u/s 174(3) i.e., of B.O.D.

Concept – 15 : Minutes & its Inspection



❖ **Sec-118 –**

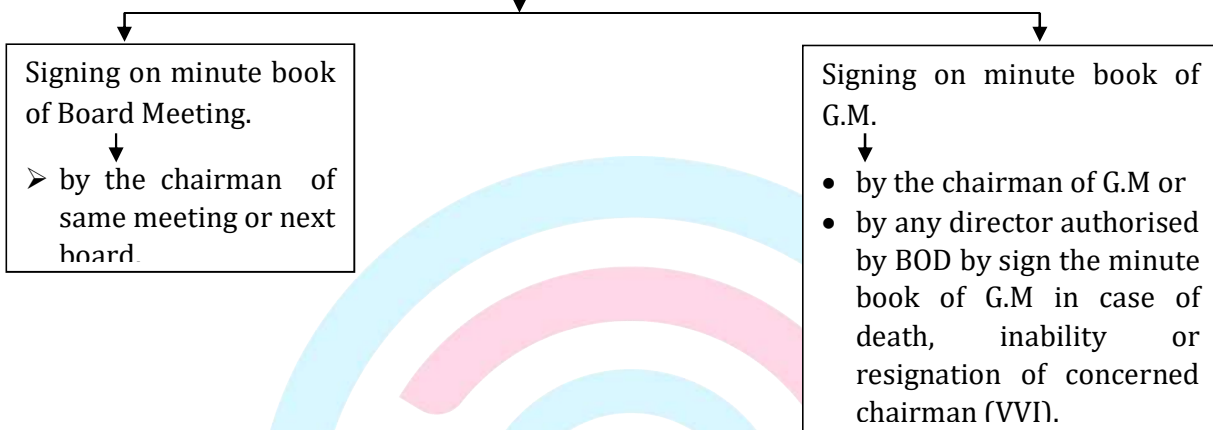
i) **Meaning of Minutes –**

- Official summary of all decisions made or applicant made.
- In the company in the general meeting, board meeting etc.

ii) **Requirements for valid – Minute –**

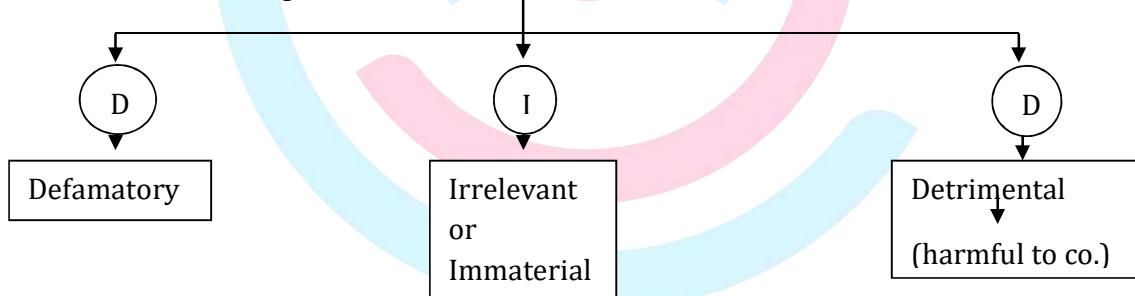
- a) “Minute” shall be kept in “Bounded-book” and all the pages shall be consecutively numbered.
- b) Minute shall be prepared within a period of 30 days relevant meeting.
- c) Minute shall be evidence of the proceeding (actions) recorded there in. [[Sec-118(7)].

iii) **Signing on Minute- Book [Sec-118(1)] -**



i) **Not Inclusion [Sec-118(5)] –**

The chairman has right to not include, these matters.

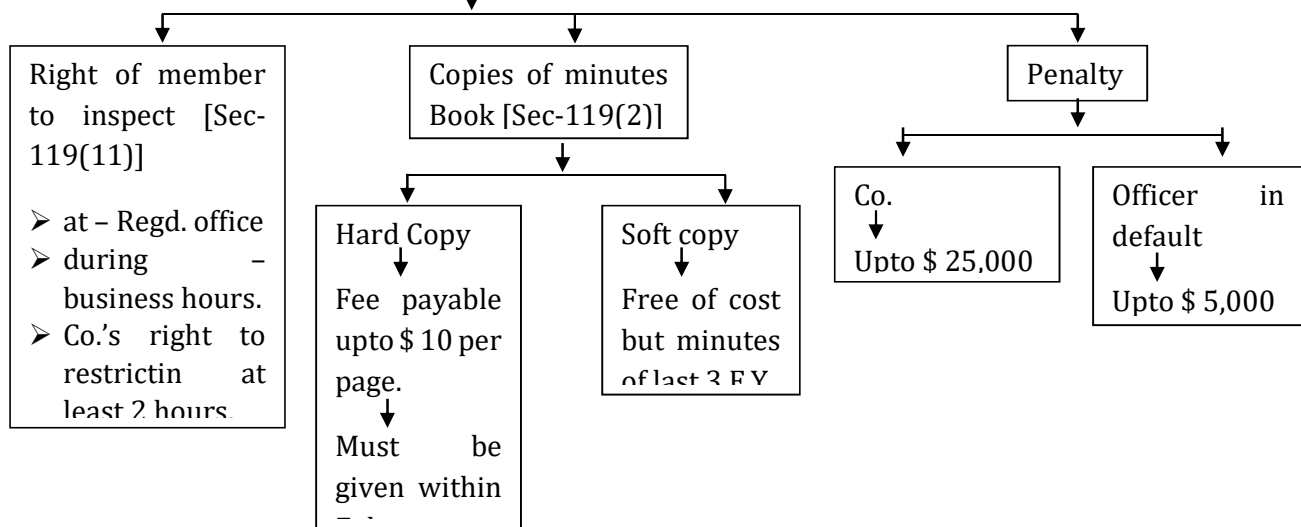


ii) **Discretion about Inclusion or Exclusion [Sec-118(6)] –**

The chairman has discretion to include or exclude certain matters from the minute book.

❖ **Sec-119 –**

Inspection of minute book of G.M.



Concept - 16 : Non- Applicability of Management & Administration on OPC(Sec-122)

i) Non – Applicability of Ch-VIII –

Certain sections of Ch.VIII relating to meeting, notice, resolution doesn't apply upon OPC.

ii) Manner of Passing O/R & S/R –

- In OPC, if a matter/ agenda requires, passing of O/R or S/R.
- Then it will be sufficient if the sole member writes the matter into minute book and put the date, after signing.

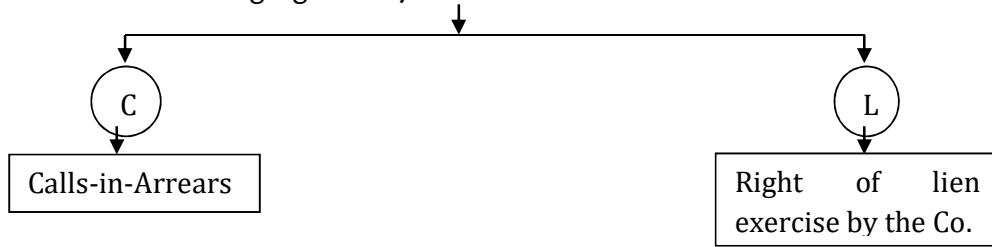
Miscellaneous Points

1) Voting through E-means (Electronic voting system) (Sec-108) –

- i) Applicability of voting through e means : Following company shall provide the facility of voting through e means.
 - a) Every listed Co.,
 - b) Every Co. having 1000 or more members.
- ii) Important points about voting through e means :
 - a) Content of Notice – Following extra contents, shall be included into notice of G.M.
 - i) that the company is providing facility for voting by e means.
 - ii) that the member may also cast their vote through remote e voting.
 - iii) Time schedule of remote e voting i.e., voting shall remain open for not less than 3 days and shall close at 5 P.M. on the date preceding to the date of G.M.
 - b) Scrutinizer – The scrutinizer communicates the e-votes on the matter to the chairman.

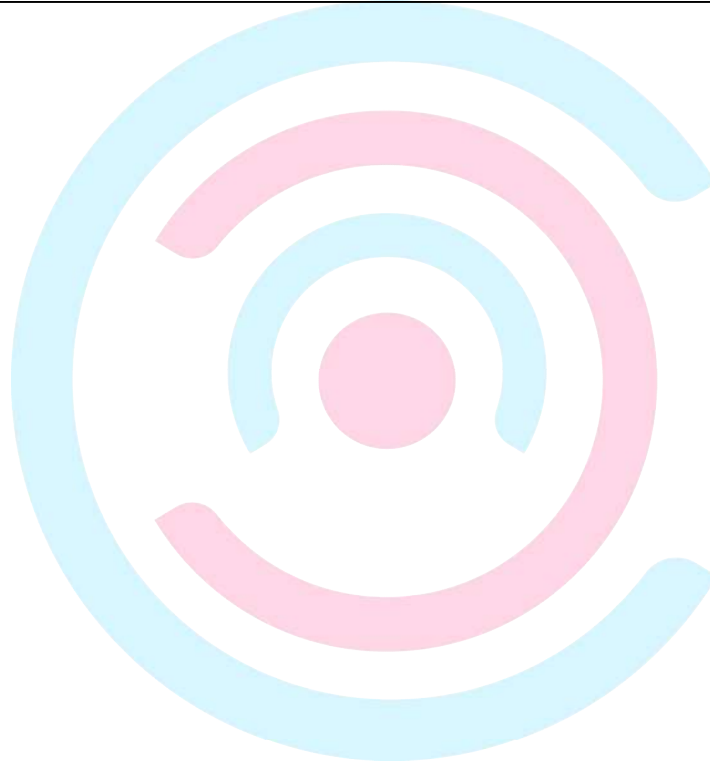
2) Power of Co. to restrict the voting rights of members (Sec-106) –

A Co. can restrict voting rights only into these 2 cases.



Note :-

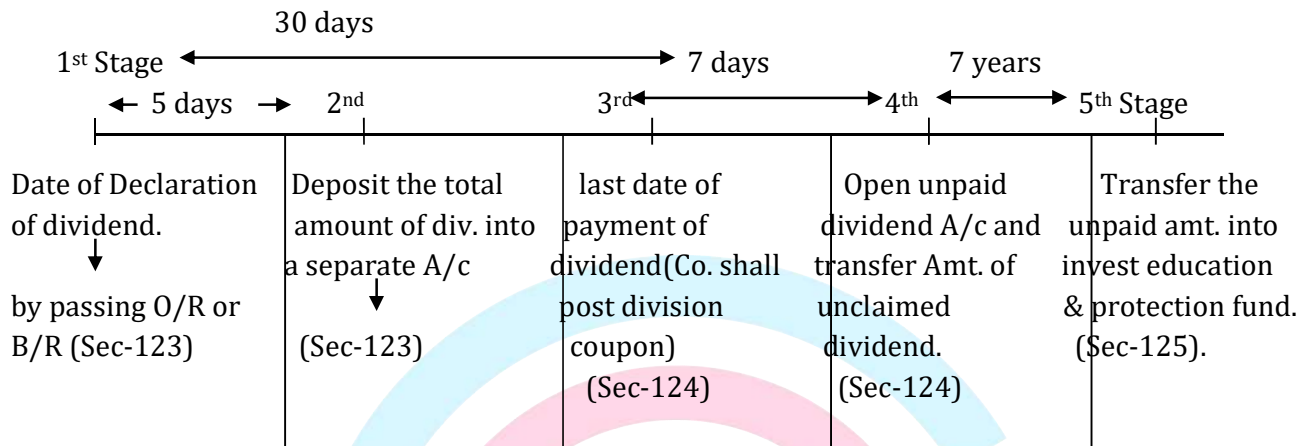
Not holding shares for a particular period by a members is not a ground of restriction on voting rights.



CHAPTER -14

DECLARATION & PAYMENT OF DIVIDEND

- **Section Used :** Sec.123-127 of Companies Act, 2013 (Chapter – VIII) deals about the provision of dividend.
- **Rules Used :** Companies (Declaration & payment of Dividend) Rules, 2014.



- ❖ **Sec-126 :** Keeping of dividend into unpaid dividend/ keeping bonus shares into abeyance (Suspense).
- ❖ **Sec-127 :** Penalty for Non- payment of dividend within prescribed time.

Concept – 1 : Dividend & Conditions for Declaration & Payment of Dividend [Sec-2(35) + (Sec-123)]

- Meaning –**
“Dividend” means distribution of divisible profit of a co. among the members,
- Def. of Dividend [Sec-2(35)] –**
“Dividend” includes interim-dividend.
- Two type of dividend –**

Final Dividend ↓ Dividend proposed by BOD and approved by members in the AGM, by passing O/R.	Interim Dividend ↓ Dividend recommended as well declared by BOD, by passing Board-Resolution.
---	---

- Sources & Conditions for Declaration & Payment of Dividend –**
 - Sources [Sec-123(1)] :** A Co. can deal are dividend out of
 - Current year profit (after charging) depreciation.
 - Undistributed profit of previous year (after charging Dep.) (Rules of Dividend Rule, 2014).
 - Fund provided by Govt. as per agreement b/w Co. & Govt.
 - Conditions for Declaration & payment of dividend :** Out of C.Y. profit).
 - mandatory charging of Dep:** As per Sch-II (Gives useful life of various Assets).

- b) **Do Set off** : of past year losses.
- c) **Transfer in Reserve** : The Co. may transfer some part of profits into “General Reserve”, on its discretion.
- d) **No subsisting default** : The Co. has no continuing default in repayment of deposit or payment of int.
- e) **Depositing of dividend amount** : The amount of dividend shall be deposited into a new A/c i.e., “Dividend A/c of X Ltd./ Pvt. Ltd. in a scheduled-bank, within 5 days of declaration of dividend.

Concept – 2 : Additional Conditions for Declaration of Dividend out of undistributed profit of Pat year.

Proviso to Sec-123(1)

+

Rule of Companies [DPO] Rules, 2014.

1) Maximum rate of Dividend –

The maximum rate of dividend during the current F.Y. shall not exceed the av. rate of dividend for last 3 F year.

However, the condition of rate of div. will not be applicable, if the company has not declared dividend in each of last 3 F years. Simply, the Co. can pay dividend at any rate. Subject to some other-conditions.

2) Maximum Withdrawal –

The Co. can withdraw upto 10% of its paid-up capital & F. Reserve as per latest audited B/S.

3) Set-Off of Current Year Loss –

The Co. shall firstly utilise the withdrawn amount of reserve for adjusting with current year loss.

4) Closing balance in reserve –

To Co. shall ensure that the balance in reserve is not less than 15% of paid-up capital.

Concept – 3 : Unpaid – Dividend A/c (Sec-124)

i) T/L for Payment of dividend [Sec-124(1)] –

The Co. shall post the “dividend coupon/ warrant” to members, within a period of 30 days from the date of declaration.

ii) Transfer of Unclaimed dividend [Sec-124(1)] –

- If dividend not paid/ not claimed with 30 days.
- then, the Co. shall transfer the unpaid/ unclaimed dividend into a new A/c, known as “Unpaid dividend A/c ofLtd./ Pvt. Ltd” within 7 days after expiry of 30 days.

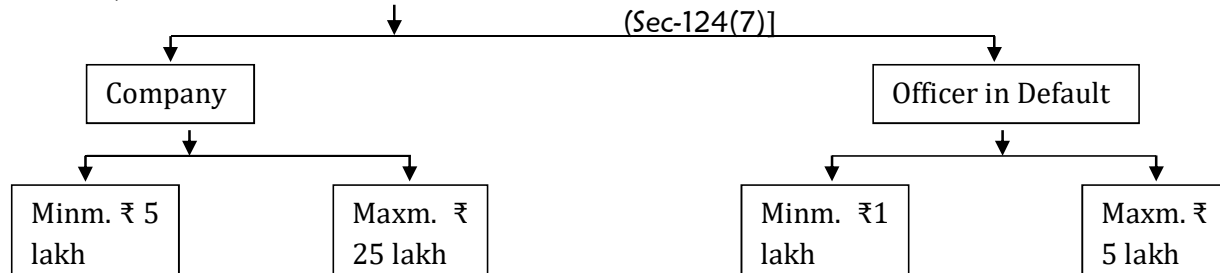
iii) Preparation & Publication of list of members at web site [Sec-124(2)] –

- The Co. shall prepare a list of member, who has not claimed dividend, within 90 days from the date of transfer into UDA.
- and publish it on the website.

iv) Transfer from UDA to IEPF [Sec-124(5)] –

- If the money remains unpaid/ unclaimed in UDA for 7 years from the date of transfer.
- Then the co. shall transfer such amount into I.E.D.F (established u/s 125).

v) **Penalty for Contravention of Sec-124 -**



Concept – 4 : I.E.P.F and Amounts Credited into I.E.P.F (Sec-125)

i) **Established by CG –**

The CG, shall establish a fund where all unclaimed amounts, shall be credited (In old Companies Act, I.E.P.F was constituted u/s 205C).

ii) **Funds Credited into I.E.P.F –**

- a) UDA: (Unpaid Dividend Amount).
- b) Debenture matured but remain unpaid;
- c) Deposit matured, but remain unpaid;
- d) Redemption amount of pref. shares remaining unpaid for 7 years.
- e) Amount of disgorgement of securities (i.e. forfeiture of securities et. by the Govt. Authorities).

iii) **Utilisation of amount of I.E.P.F. –**

- a) Creation of awareness among the investor through advertisement, seminars etc.
- b) Meeting out the exps of ‘Class Action’ takes by investors.

Concept – 5 : Treatment of dividend or Bonus share or rights share during pendency of registration of transfer of shares (Sec-126)

Case – 1 : Treatment of Dividend –

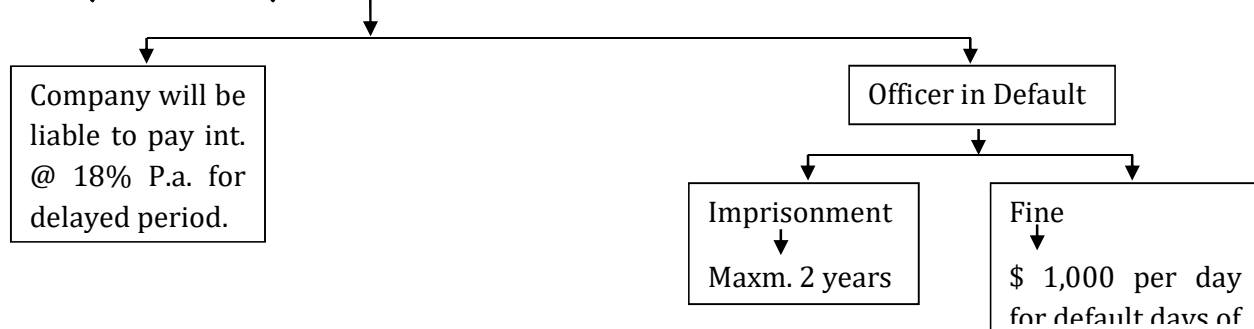
- If application for registration of transfer of share is pending.
- Then the co. shall (transfer the amount of dividend in respect of such shares) into UDA.
- Exception: However, the amount of dividend shall be paid to transferee, if regd. owner authorises the company to do so.

Case – 2 : Treatment of Bonus Shares/ right shares -

- If application for registration of transfer of shares is pending.
- Then the Co. shall transfer any right or bonus shares, (with respect to those shares), into an “Abeyance Act”.

Concept – 6 : Penalty for Non-Payment of dividend within prescribed time (Sec-127)

i) **Penalty for Non- Payment of Dividend -**



ii) **Exception/ Defences against Penalty –**

In following 5 cases the Co. its officers will not be liable for penalty u/s 27:

- a) **Operation of law:**
- b) **Direction of Shareholder:** When the shareholder has given any direction to the Co. regarding the payment of dividend, but such direction could not be fulfilled and the Co. has communicated it to the shareholder.
- c) **Adjusted :** When the amount of dividend is lawfully adjusted against the dues of shareholders.
- d) **Dispute :** Where there is a dispute about right to receive the dividend;
- e) **Any other reason:** When delay in payment is due to any reason, other than default on the part of the company.



CHAPTER -16

ACCOUNTS OF COMPANIES

Section Used : Sec-128 to 138 of chapter IX of Companies Act, 2013 deals about various aspects of Accounts of Companies.

Rules Used : Companies (AOC) Rules 2014,

• Code : AOC

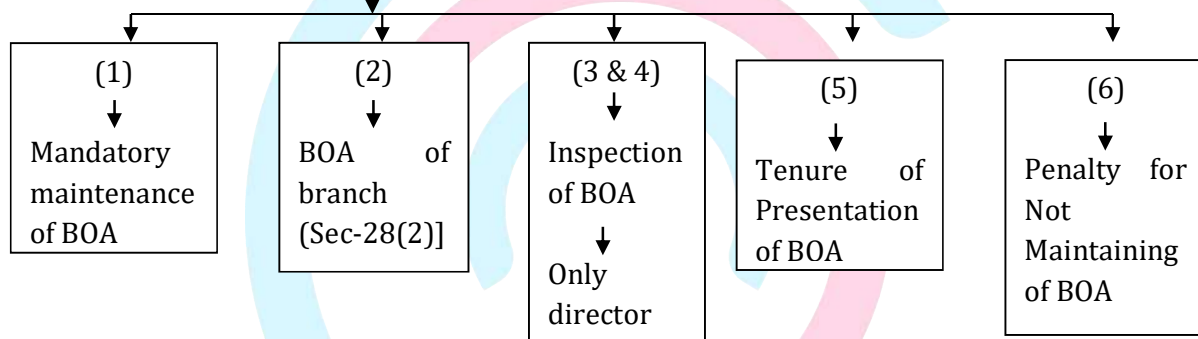
Concept – 1 : Books of Accounts & Related Provision [Sec-2(13) + Sec-128]

i) **Def. of BOA [Sec-2(13)] –**

“BOA” includes records maintained with respect to

- a) Purchase & sell of goods & Services.
- b) Receipts & payment.
- c) Assets & liabilities of the Co.
- d) Cost records (to be maintained by prescribed company).

ii) **Provision about “BOA” [Sec-128] -**



iii) **Mandatory maintenance of books of Accounts [Sec-128(1)] –**

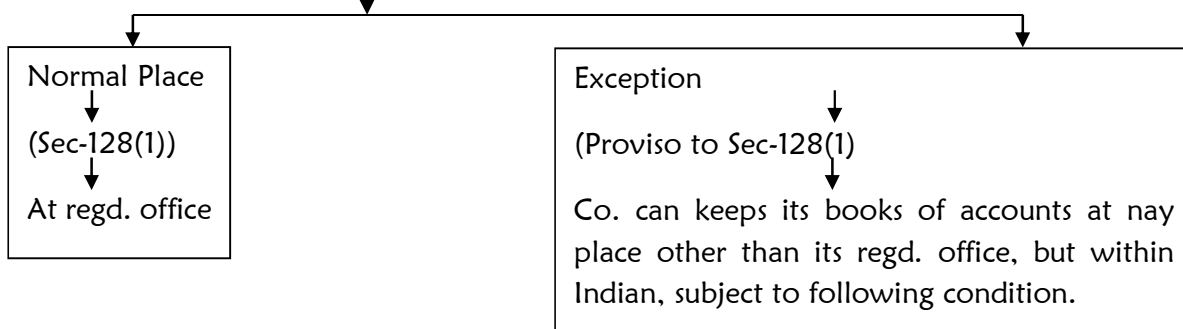
- Every company
- Shall Maintain
- At its regd. office
- Proper books of account books & paper.
- For every F. year.
- Of itself and its branches.

iv) **Condition for Proper BOA [Sec-128(1)] –**

Following are the basic condition for proper BOA .

- a) It must give true & fair view of the state of affairs of the Co. & its branches.
- b) It must explain the transaction affected at the registered office (including its branches).
- c) It is kept on the “Accrual Basis” and
- d) It is kept on the basis of double entry system.

v) Location of “Books of Accounts” -



- The new location, shall be approved by BOD by passing Board- Resolution.
- The intimation of new location shall be made to ROC, within a period 7 days in Form AOC-5.

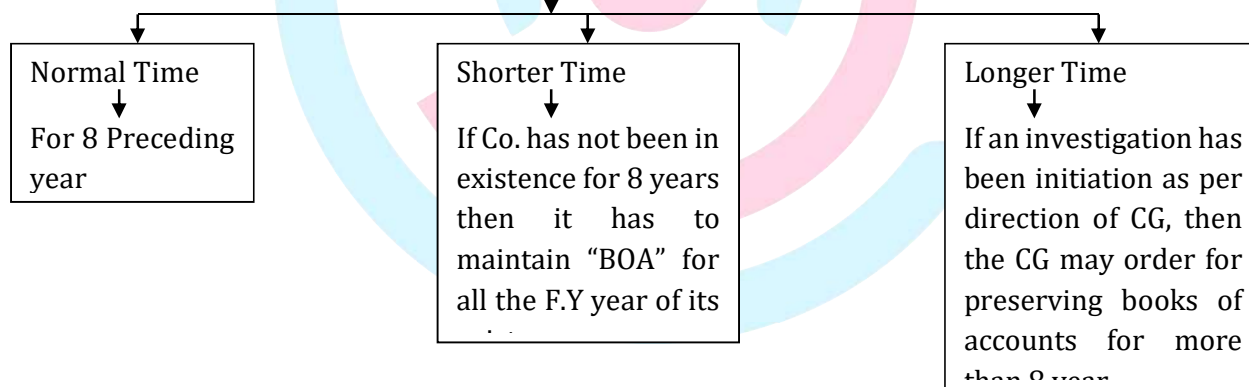
vi) Maintenance of Books of Accounts of Branch [Sec-128(2)] –

- It will be sufficient, if branches maintain its BOA, as its own location i.e., at branch itself.
- However, the branches shall give periodical summary to regd. office.
- In case of “Foreign-branches”. Summary shall be sent on quarterly basis as per companies (AOC) Rules 2014.

vii) Inspection of BOA & Duties of Co. –

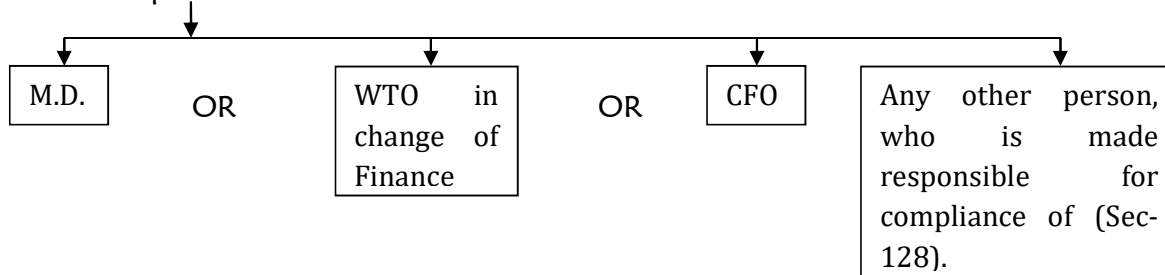
- ❖ **Sec-128(3)** : The BOD can inspect the books of accounts, during business hours, either himself or through his agent.
- ❖ **Sec-128(4)** : Duty of officers of the Co. It is duty of every officers of the co. to give necessary assistance to the inspecting director.

viii) Time of Preservation of BOA (Sec-128(5)) -

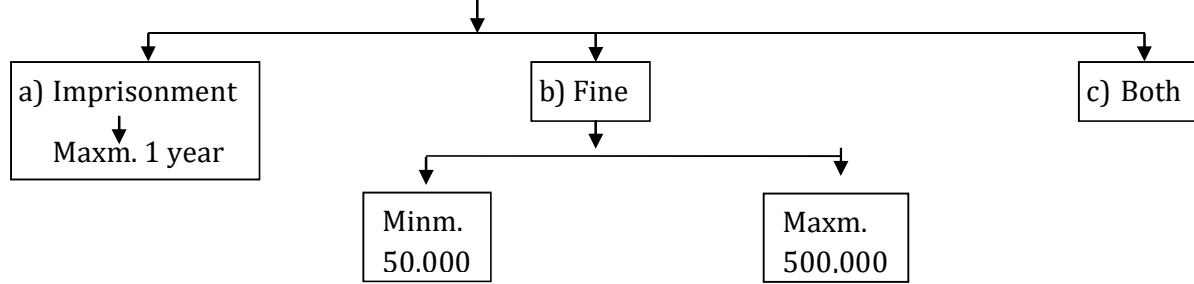


ix) Person Responsible for maintenance of BOA [Sec-128(6)] –

➤ Persons Responsible

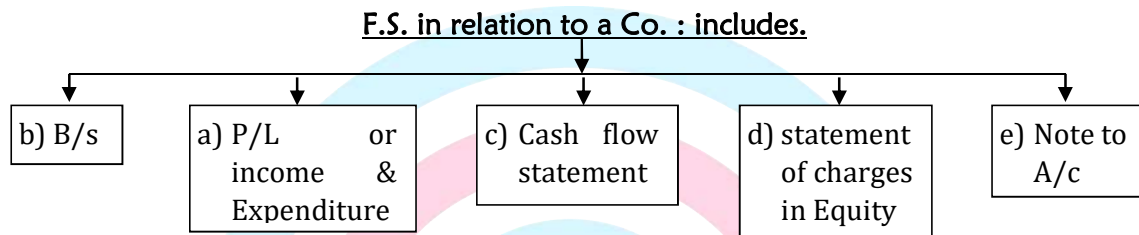


➤ Punishment can Officer in default -

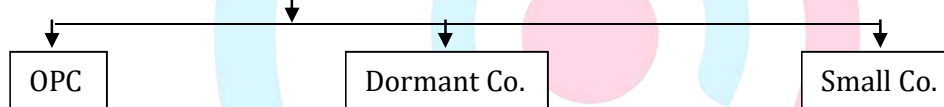


Concept - 2 : F.S & Signing (Authentication of P.S. [Sec-2(40) + (Sec-129) +(Sec-134(1)(2)(7))]

i) Def. of F.S. [Sec-2(40)] –



★ Optional for 3 types of companies.



ii) Basic Condition for F.S [Sec-129(1)] –

Following are the requirement for F.S as per [Sec-129(1)] F.S shall,

- Give a true & fair view of the affairs of the Co;
- Comply with the A.S. Notified u/s 133, and
- be in the form, specified into SCH-III;

iii) Disclose about Deviation from A.S. [Sec-129(5)] –

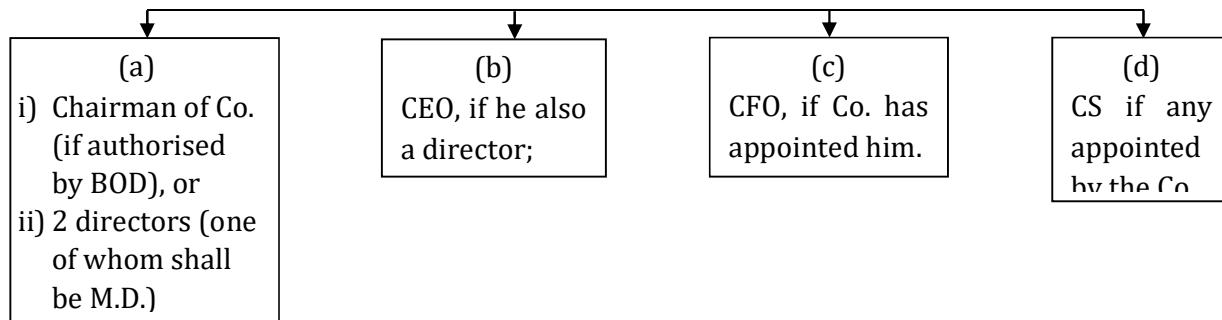
- Where the F.S of Co.
- don't comply with the A.S. referred in Sec-129(1)
- then the Co. shall disclose in its F.S.
 - the deviation
 - the reason of such deviation and
 - the financial effects (of any) arising, due to such deviation.

iv) Duty of BOD to lay down the F.S [Sec-129(2)] –

- It is duty of BOD of the Co.
- to lay down in every A.G.M.
- the F.S of the company for the relevant F.Y.

v) Approval & Authentication of F.S [Sec-134(1)] –

- **Approval of F.S :** Call & hold Board meeting to approve the F.S of relevant F.Y.
- **Authentication of F.S :** As per Sec-134(1) the F.S shall be signed by



Note : - A creditor report shall be included into F.S [Sec-134(2)].

Concept – 3 : Director’s Reports & its Contents [Sec-134(3)(4)]

a) Meaning of Director’s Report –

- It is a written statement Report, prepared his BOD, containing specified information.
- No format of Director’s Report.

b) Contents of Director’s Report [Sec-134(3)] –

- a) Extract of Annual return: (File u/s 92)
- b) No. of board meeting during the relevant F.Y.
- c) Director’s responsibility statement (DRS)
- d) Conservation of energy,
 - Technology absorption.
 - Foreign Exchange earning & out go.
- e) Details of highly paid employee.
- f) Details about CSR Policy and amount expended upon CSR etc.
- g) Amount proposed to be transferred into reserves;
- h) Amount recommended as dividend.

Concept – 4 : Contents of D.R.S [Sec-134(3)(c)+ Sec-134(5)]

- One of the content/ element of “Board’s Report is D.R.S.
- Following are the standard content of Director Responsibility Statement –
 - i) A = Accounting Standards in preparation of Annual Accounts.
 - ii) A = Accounting policy has been consistently followed.
 - iii) P = Preservation of accounting records.
 - iv) G = Going concern → in preparation of F.S.
 - v) I = Internal – Financial control is adequate & operating effectively.
 - vi) C = The Co. has devised (developed) a system to ensure compliance with various law applicable upon Co.

Concept – 5 : Circulation of FSOD to members and others by Company [Sec-136]

i) What to Circulate –

- Every Co. shall circulate (Distribute) the copies of following documents (Collectively known as FSOD) –
 - a) Financial Statement
 - b) Consolidated F.S (if any)
 - c) Auditor’s Report
 - d) Director’s Report

To specified Person.

ii) **Meaning of Specified Persons –**

- For Section-136. following persons are known as specified –
 - i.) Members
 - ii.) Debenture Trustee
 - iii.) Any other person, who is entitled to receive the F.S like:- Creditor, Lender.

iii) **When to Circulate –**

- a) **Normal Company** : At least 21 days, before the AGM.
- b) **Sec-8 Company** : At least 14 days before the AGM.

Note :- Above time is not applicable, when GM is called by giving short notice, as per Sec-101.

iv) **Special Point for Listed Co. –**

1) **Abridged FSOD :**

- A listed co. may circulate abridged FSOD (Form AOC-3) to its members provided Normal FSO is made available for inspection at least 21 days before the AGM at the registered office of the Co.

2) **Publication of FSOD at Website –**

- The listed Co. shall publish the FSOD at its website.

Concept – 6 : Filing of FSOD with ROC (Also known as Annual/ Filing with ROC)

↓
3 Cases

Case – I: AGM helds and FSO Adopted [Sec-137(1)] –

- The Co. shall CFS a copy of
 - FS
 - including CFS (if any)
 - Along with all documents required to be attached or annexed with the F.S.

Case – II: AGM held but FSOD not Adopted –

- Firstly, the copy of unadopted FSOD, on provisional basis within 30 days of the date of AGM.
- If the FSOD are adopted in the adjourned AGM, then refile the adopted FSO within 30 days of such adjourned AGM along with additional file.

Case - III: AGM not held [Sec-137(2)] –

- File the FSOD within 30 days of the last date before which the AGM shall be held with the reason, that AGM was not held.

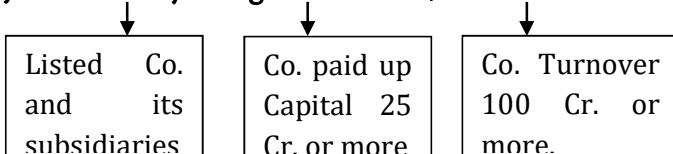
Case - IV: Filing of FSOD by OPC [Sec-137(1)] –

- Within 180 days from the closure of the financial year.

Note : Short note on XBRL?

i.) **Meaning :** XBRL stands for extensible business reporting language. It means a standardized language for communication in e-form by companies with R.O.

ii.) **Mandatory Filing of Annual A/c into XBRL**



Concept – 7 : Corporate Social Responsibility (Sec-135)

Sec-135

+

Companies (CSR Policy) Rules 2014

+

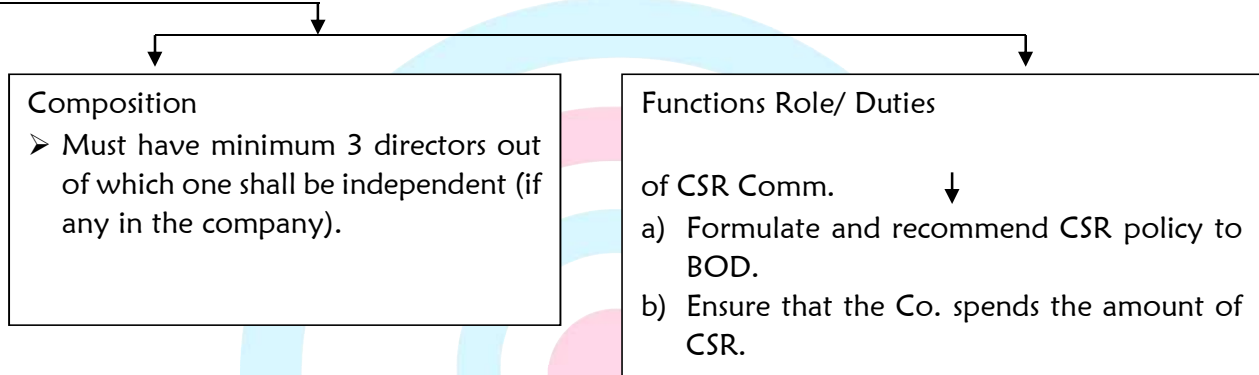
Schedule-VIII : List of activities, for which amount of CSR will be expended.

i) **Applicability of CSR –**

Every company including foreign company shall constitute a committee i.e. CSR Committee, if it satisfies any of these conditions in any 3 financial year (last).

- a) Its net profit is \$ 25 Crore or more or,
- b) Its net worth is \$ 500 crore or more or,
- c) Its turnover is \$ 1000 crore, or more.

ii) **About CSR Committee :-**



iii) **Amount to be spent on CSR –**

At least 2 % of average net profits of the company made during the 3 immediately preceding financial year.

iv) **CSR activities as Specified in SCH-VIII –**

- a) **Hunger** : Eradicate
- b) **Education** : Promote
- c) **Empowerment** : of women,
- d) **Environment** : Protection
- e) National heritage.

[Rural] (f) { ★ Sports, nationally recognised sports, Paralympics sports etc.
★ development projects

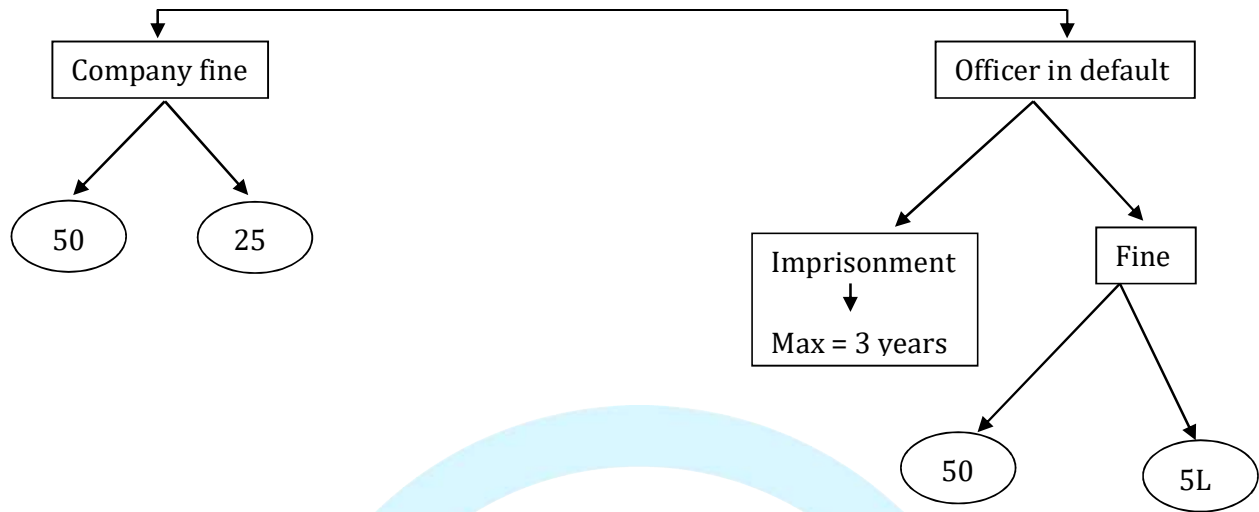
v) **Activities not treated as CSR,**

- a) Expenditure incurred outside India.
- b) Contribution to political parties.
- c) Expenditure exclusively for benefits of employees or family members.

Note :-

vi) Penalty –

If Co. fails to constitute the CSR committee or disclose into “Directors Report” then the Co. and its officer in default will be punished.

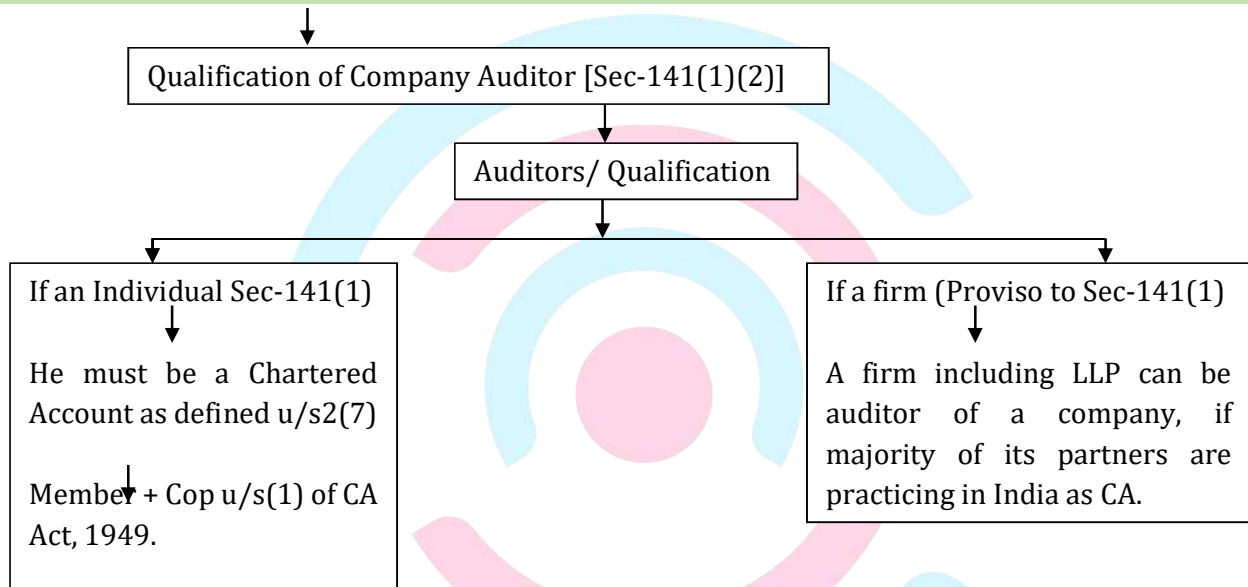


CHAPTER -15

AUDIT & AUDITORS

- ★ **Section Used :** Sec-139 to 148 of Ch-X of the Companies Act, 2013, deals about the provisions of Audit and Auditor's.
- ★ **Rules Based :** Companies (Audit and Auditors) Rules, 2014.
- ★ **Code :** ADT
 - ADT-1 : Appointment of Auditor,
 - ADT-2 : CG's Approval for removal of Auditor
 - ADT-3 : Resignation of Auditors

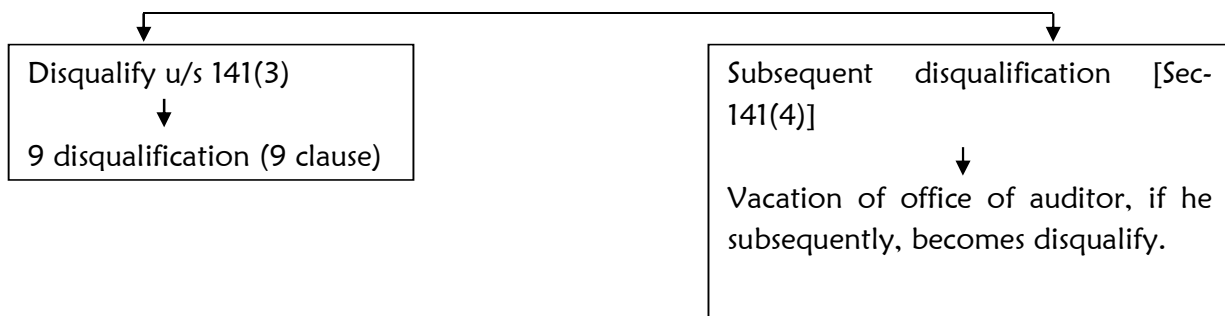
Concept – 1 : Qualification of Auditor



Note :- Who will sign Audit Report in case of Firm/ LLP [Sec-141(2)].

- Only such partner, who is a CA. will sign the Audit-report, on behalf of firm.

Concept – 2 : Disqualification of Auditor



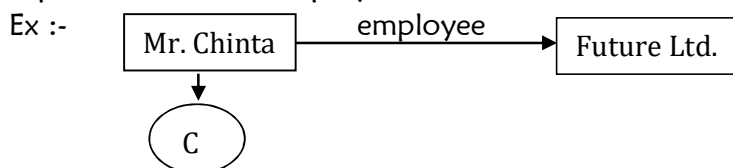
a) **Body Corporate [Sec-141(3)(a)] –**

A body corporate is not eligible to be appointed as auditor.

Exception :- LLP

b) Employee/ Officer [Sec-141(3)(6)] –

- A person who is an employee/ officer of the Co. is not eligible to be appointed as auditor.

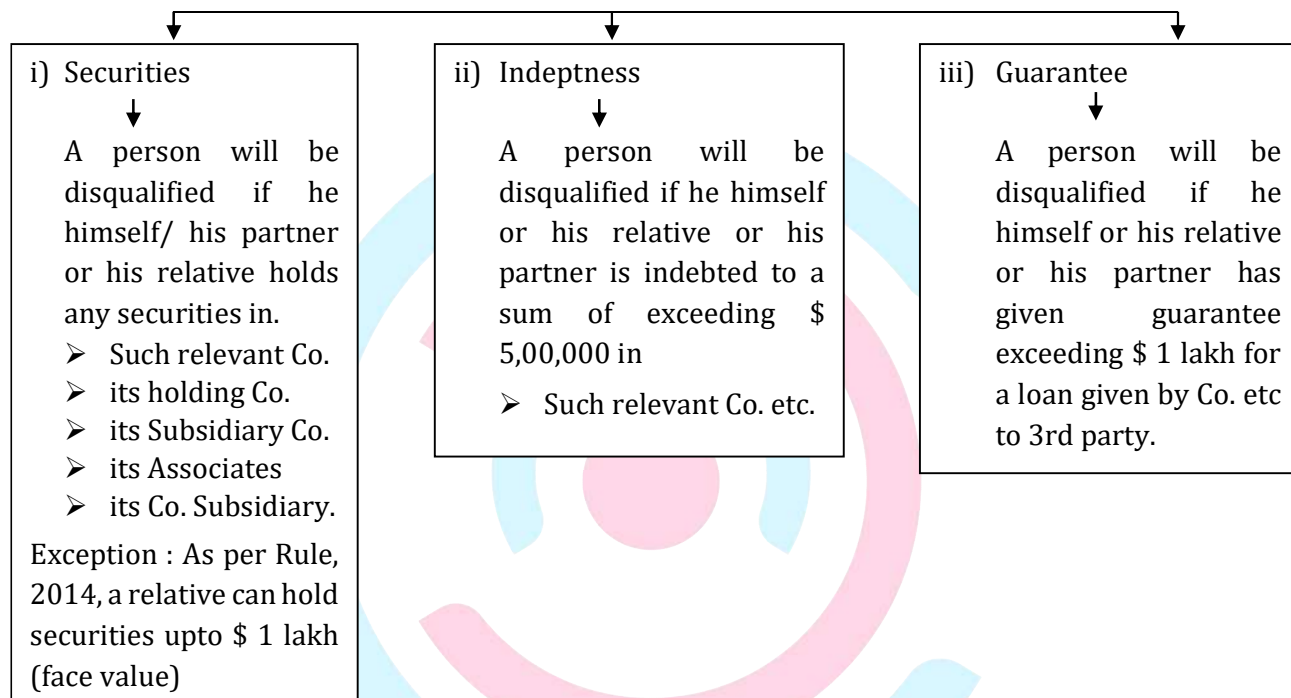


Mr. Chinta, is disqualified u/s (4)(3)(b)

c) Employee/ Partner of employee/ Officer [Sec-141(3)(c)] –

- A person who is in employment of (i.e. employee) or partner of employee of a Co. is disqualified.

d) SIG [Sec-141(3)(d)] –



e) Business – Relationship [Sec-141(3)(e)] –

A CA or his firm, will be disqualified, if he or his firm has any ‘Business Relation’ with the relevant Co. etc.

Exception – A CA will not be disqualified, if he has business relation in the ordinary course of business of the Co. at Arm’s length price like sale of products as a customer.

f) Relative of Director [Sec-141(3)(f)] –

- A person who is relative of
 - director or
 - KMP of } relevant company

g) Full time employment & Ceiling limit [Sec-141(3)(g)] –

- A person, who is in full time employment at anywhere.
- A person is an individual, already holds audit of 20 companies except audit of OPC, small Co. dormant Co. Pvt. Co. having paid uncapped less than \$ 100 cr. will be disqualified to be appointed as auditor in further Company.

h) Convicted person [Sec-141(3)(h)] –

↓
Guilty of fraud + 10 years (Period of Sentence).

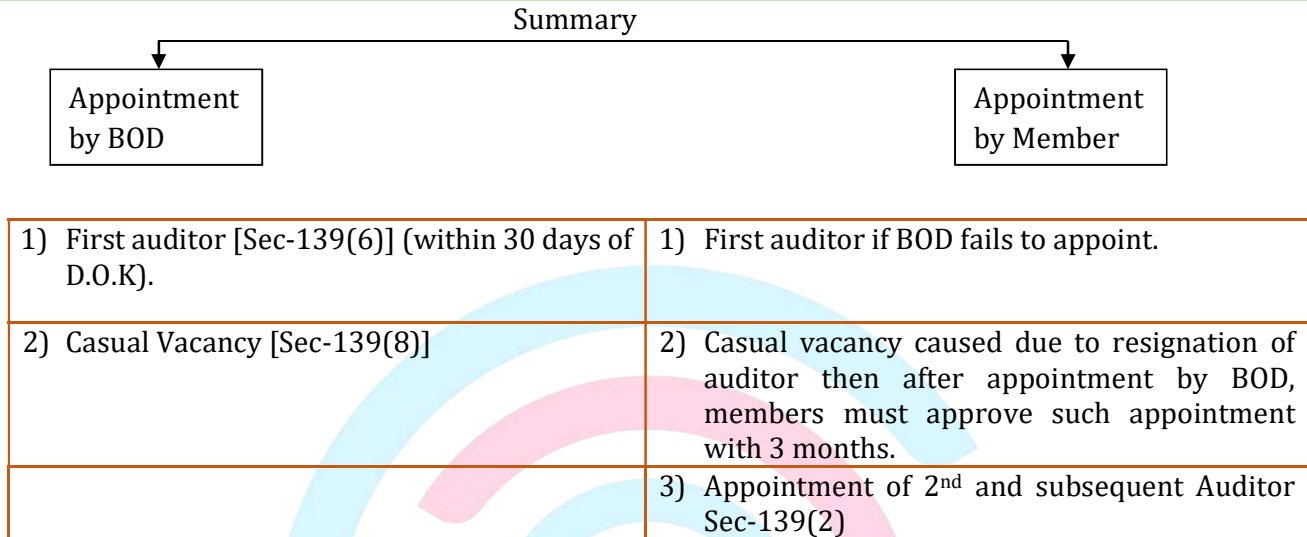
i) Rendering of prohibited & Services [Sec-141(3)(1)] –

- A person who is engaged in rendering of prohibited services to the Co. its holding or its subsidiary Co.

Note :- What services are covered into Sec-144?

Ans – A C A D E M I C

Concept – 3 : Appointment of Auditors



Concept – 4 : Appointment of First Auditor in case of Non-Govt Co. [Sec-139(6)]

i) Authority –

The first auditor is appointed by BOD within 30 days of D.O.R of Co.

ii) Failure by B.O.D –

If BOD fails to appoint the first auditor within 30 days then,

- The BOD shall inform the members about its failure. and
- Members will appoint the first auditor within 90 days.

iii) Tenure of Office of First Auditor –

- Upto the conclusion of first AGH.

Note :-

- i.) Naming First Auditor into AOA.
- ii.) Appointing first auditor by M.D.

Concept – 5 : Appointment of 2nd and Subsequent Auditor [Sec-139(1)]

i) Authority –

The 2nd and Subsequent auditor is appointed by members in AGM, by passing O/R.

ii) Tenure of 2nd and subsequent Auditor –

- The auditor appointed in AGM holds his office from the conclusion of first AGM till the conclusion of 6th AGM.

iii) Ratification of Appointment of Auditor –

- The appointment of 2nd and subsequent auditor shall be ratified (confirmed) in 2nd, 3rd, 4th and 5th AGM. If not confirmed by member then it will result into casual vacancy (Note- This requirement has been done away by companies (amendment) Act, 2017, date yet to be notified.

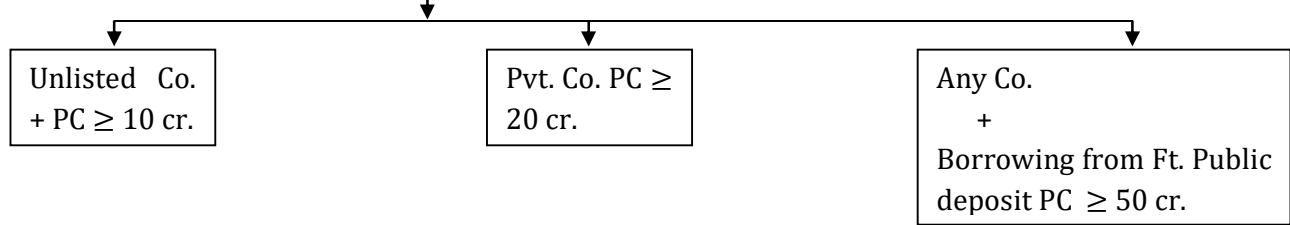
Concept – 6 : Rotation of Auditor [Sec-139(2)(3)(4)]

i) Meaning of Rotation of Auditor –

It means mandatory change in auditor due to operation of law.

ii) Applicability of Concept of Rotation of Auditor –

★ Listed Co. and Other Specified Class of Co.



Note :-

The concept of rotation or auditor doesn't apply upon,

- OPC
- Small Co.

iii) When Rotation will become Applicable –

➤ In case of Individual Auditor :

- After completion of 1 term of 5 years.

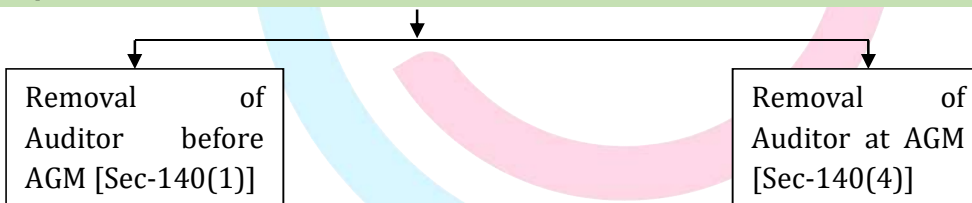
➤ In case of Firm :

- After completion of 2 terms of 5 years.

iv) Cooling Period –

An individual/ firm is covered under concept of rotation. He/ it will not be re-appointed till 5 years.

Concept – 7 : Removal of Auditor



Details -

❖ Removal of Auditor before AGM [Sec-140(1)] –

- Any auditor can be removed from his office before AGM, if following conditions are satisfied.
 - Pass Board resolution,
 - Give ROOBH to concerned auditor
 - Obtain approval of CG by applying in form ADT-2 (within 30 days).
 - Pass S/R within 60 days of obtaining approval.

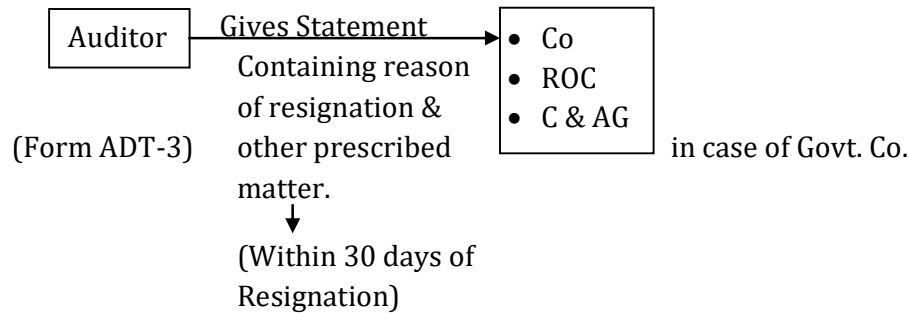
❖ Removal of Auditor at AGM [Sec-140(4)] –

- Eligible member → gives special notice the Co. → Forward it to auditor → written representation by auditor to Co. → It is the duty of the Co. to circulate the written representation among other members or to read in the AGM, such representation, if it is received too late.

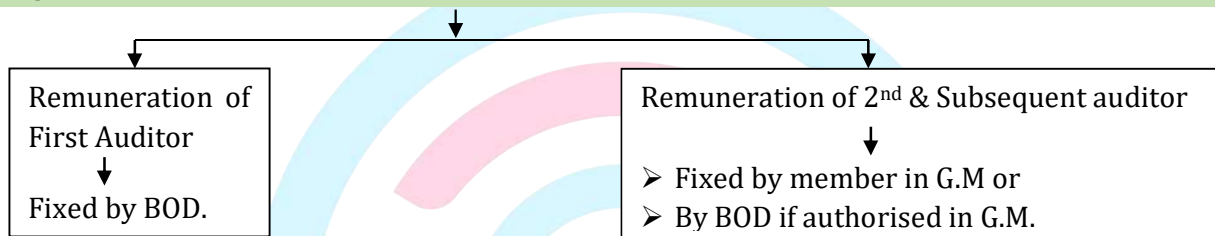
Passing of O/R – Costly, in the AGM, the Co. will pass O/R, for removal of auditor. If O/R is not passed then existing auditor will continue.

- ★ No need to circulate the copy of representation if,
 - a) It is received too late.
 - b) When auditor is abusing his right of representation (after order of NCLT).

Concept – 8 : Resignation by Auditor [Sec-140(2)(3)]



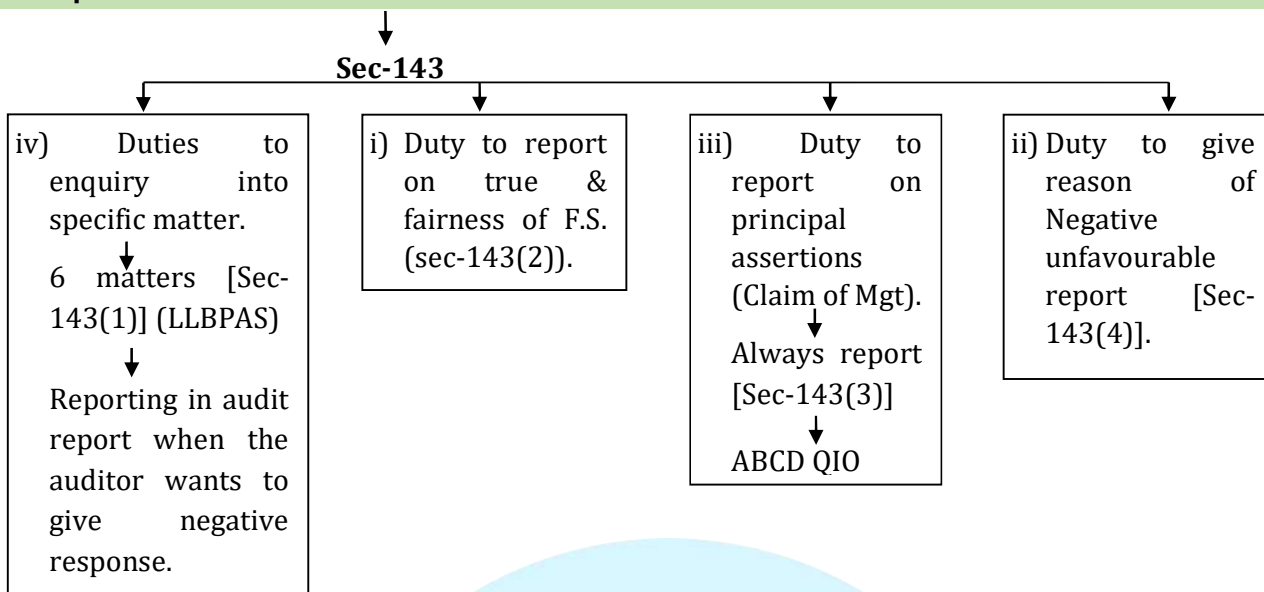
Concept – 9 : Remuneration of Auditor [Sec-142]



Concept – 10 : Rights of Auditor

- 1) **Access [Sec-143(1)] –**
 - The Co. auditor has right to access all books paper & voucher of the Co. including minute book of company.
- 2) **Obtain Explanation [Sec-143(1)] –**
 - The auditor can ask explanations from the officers of the company as it/ he thinks best for the purpose of the auditor.
- 3) **Right to visit Branch [Sec-143(8)] –**
 - The company auditor has right to visit branch and access the branch's books of accounts.
- 4) **Right to receive notice & duty to attend G.M (sec-146) –**
 - Right** → It is right of every Co. auditor to receive notice of G.M.
 - Duty** → It is duty of auditor (Unless exempted by BOD) to attend the G.M either.
 - himself for
 - through authorised representative who is qualified to become companies auditor.
- 5) Right to receive Remuneration (Sec-142)
- 6) **Right of lien over Books of Account (No Section) –**
 - The unpaid auditor can retain the books & paper of company subject to some conditions like:-
 - a) Books of accounts must belong to client.
 - b) The auditor has exercised labour & skills,
 - c) The book of accounts must come in the possession of auditor, into voluntary manner.

Concept – 11 : Duties of Auditor



Details –

i) Duty to report on 6 Specific matters [Sec-143(1)] –

➤ It is duty of auditor to inquiry into these 6 matters and report only, if found something negative: (UB Pass).

- a) **Loan & Advance** : Whether properly secured or not and its terms are prejudicial to the interest of the Co. & its members.
- b) **Loan & Advance** : Whether it shows as deposits.
- c) **B** = Whether any transaction merely represented by “Book-Entry” is prejudicial to the interest of the company.
- d) **P = Personal exps** : Where any personal exps. has been debited to company’s revenue accounts.
- e) **A** = Allotment of Securities, where actual cash was received when shares are allotted for cash.
- f) **S** = Sale of assets in the form of shares/ debentures. Where the reason of selling of securities at loss is justified?

ii) Duty to Report on the true and fairness of FS [Sec-143(2)] –

➤ It is primary duty of auditor to express his opinion on the view or truthfulness and fairness of F.S.

iii) Duty to report on Primary Ascertain –

(Positive Claim of management) [Sec-143(3)]

↓
[A B C D Q I O]

➤ Few matters on which auditor has to report are as follows :-

- a) **A** = Whether he bought and obtain all information and explanations necessary for audit?
- b) **B** → Books of A/c → properly maintained or not.
 → Branch Audit Report → Forward or not.
 → B/S :- In agreement with books of A/c.

iv) Duty to give reason for “negative Remarks” Sec-143(4) –

➤ It is duty of auditor to give reasons for every adverse remarks given in audit report.

v) Duty to comply with ‘Auditing Standards’ (Earlier known as SAS) Sec-143(3)(10) –

➤ It is duty of auditor to comply with “Standard on Auditing (SAS).

vi) **Duty to report fraud [Sec-143(12)(13)(15)] –**

➤ The auditor shall report about the fraud into following manner:-

- a) **Report to CG** : If the amount of fraud involving individual transaction is \$ 1 Cr. or more.
- b) **Report to audit Committee BOD** : If the fraud amount is less than 1 Cr.

Concept – 12 : Cost – Audit & Provisions [Sec-148]

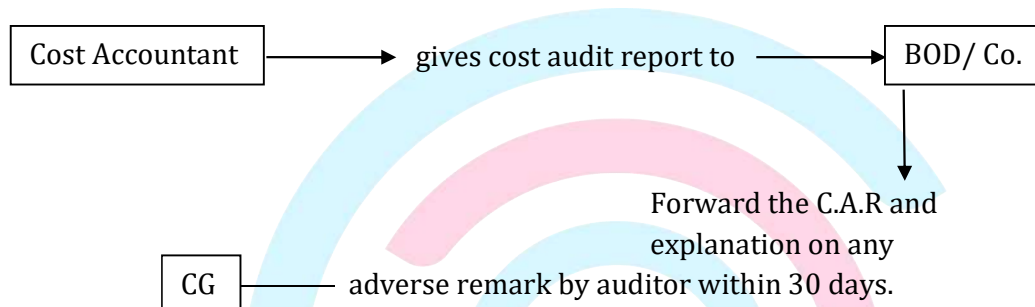
i) **Meaning** : Examination of Cost Records.

ii) **When Cost Audit becomes Mandatory:-**

- a) Co. is maintaining Cost records (+) (b) A direction from CG has come.

iii) **Who Conduct Cost Audit** : Only a Cost Accountant.

iv) **Flow/ Movement of “Cost Audit” Report –**



Note :- CG may also ask for additional information from the BOD.

Concept – 13 : Cost – Internal & Related Provisions [Sec-138]

i) **Meaning of I/A –**

It means an independent appraised (evaluation), of mgt’s decision, Internal Control System etc in the year.

ii) **Applicability of I/A –**

- a) Listed Co.
- b) Upon Unlisted Co., if any of these conditions are satisfied.
 - i.) D = Deposits (at any time) \geq \$ 25 Cr.
 - ii.) P = Paid up Capital \geq \$ 50 Cr.
 - iii.) L = Loan \geq \$ 100 Cr.
 - iv.) Turnover \geq \$ 200 Cr.

c) **Upon Pvt. Co. :-**

- i.) X
- ii.) X
- iii.) ✓
- iv.) ✓

iii) **Important point about I/A :-**

i) **Who can become I/A :-**

- Ca
- Cost Accountant,
- Any other Profession as decided by BOD.

ii) **No Substitute of Statutory Audit :-**

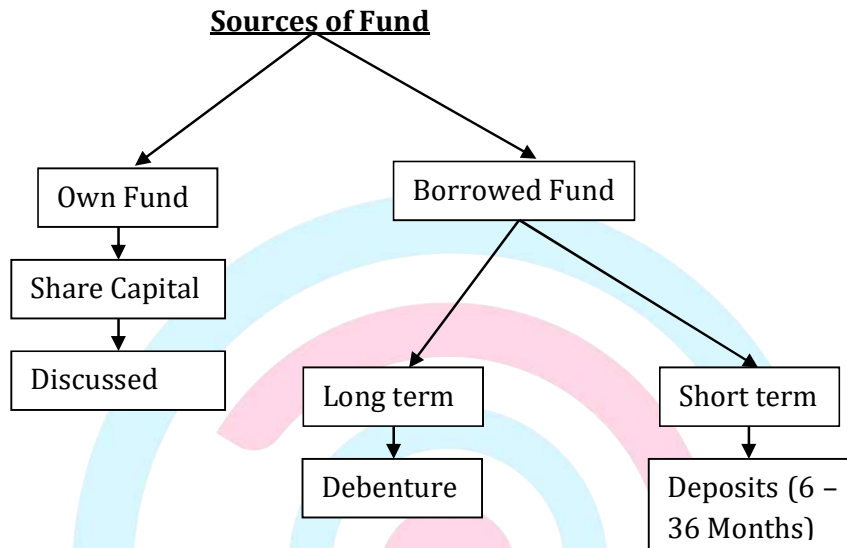
I/A is not a replacement of statutory Audit.



CHAPTER -11

DEBENTURES

- ⇒ **Section Used :** Sec-71 (of Ch-IV)
- ⇒ **Rule used :** Rule 18 of companies (Share capital & Debenture) Rules, 2014.
- ⇒ **Code :** SH



Concept – 1 : Debentures & its Features [Sec-2(30) + Sec-71(2)]

- i) **Meaning –**
“Debenture” means written acknowledgement of indebtedness of the company.
- ii) **Def. of Deb. [Sec-2(30)] –**



➤ Whether constituting a change on the Assets of the company or not.

- iii) **Features: -**
 - i.) Evidence of indebtedness: - It is a written proof of indebtedness of co.
 - ii.) Movable Property (Sec 44): - Just like shares deb. are also movable property.
 - iii.) No voting rights [Sec-71(2)]

Concept – 2 : Conditions for Issue of Secured Debenture

[Sec-71(3)]: -
+
Rule-18(1) of Companies (Sh. cap. & Deb) Rules 201

Tenure	Creation of charge	Appointment of debenture Trustees	Execution of Deeds
↓	↓	↓	↓

Maxm – 10yr. Exemption: in case of Co-erqaed in infra project maxm tenure maybe 30 years	The co. must create a charge by way of Mortgage Hypotrication and value of assets shall be sufficient	The Co-shall appoint “Debenture Truster” before issue of Prospectus	The Co-shall also execute D-T-D with a period of bodays from the date of allotment
---	---	---	--

DTD → Deb. Trustee Deed.

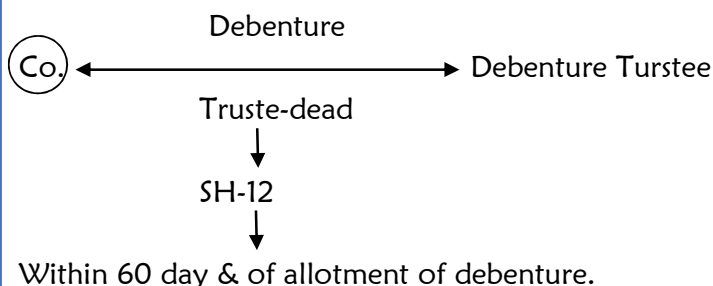
Concept – 3 : Debenture Trustee, disqualification, duties etc. [Sec 71 + Rule 18]

- 1. Meaning:** - It means an independent person, appointed by Co. for protection of Interest for debenture holder.
- 2. Applicability of Debenture – Trustee:** -
Appointment of D.T. is Mandatory in following cases: -
 - Public issue of debentures, by a public-co. through prospectus.
 - When debentures are offered to more than 500 persons.
 - When company wants to issue scoured debentures.
- 3. Timing of Appointment of Debenture Trustee:** -
The Co. shall appoint a debenture trustee before issue of
 - Prospectus or
 - Letter of offer.
- 4. Disqualification of Debenture Trustee:** - [Sec 71, Rule 18]
 - Beneficent owner of Shares in a co;
 - Promoter, Key managerial personal, Director, employee of the company.
 - Relative of P, K, D C (and not of Simplemployee)
 - Creditor
 - Debtor
 - Guarantor i.e. a person who has guaranteed the Repayment of debentures
 - Pecuniary Relation: - A person having Pecuniary Relation with the co. equal to or higher than, least of these two: -
 - 2% of Turnover or
Total income

OR

 - ₹ 50 lakhs.

Concept – 4: Provisions relating to D.T.D



Concept – 5: Rules relating to creation of D.R.R. [Sec 71(4) + Rule 18]

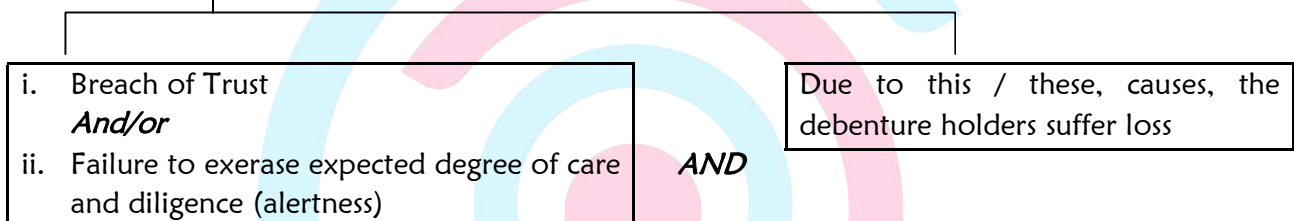
Following are the rules [Provisions relating to creation of D.R.R.]

- Sources out of Divisible Project:
- Minimum amount into DRR at least 25% of amount raised timing: - Before commencement of redemption.
- Minim investment: - at least 15%
Made: - (i) Deposit in scheduled bank
 (ii) Investment into Securities of CG/SG etc.
Timing: - up to 30th April of relevant F.4 in which redemption of debenture begins
- No need to create DRR: -
 → For fully convertible debentures.
 → For that part of PCD, which is convertible.
- End.

Miscellaneous Points: -

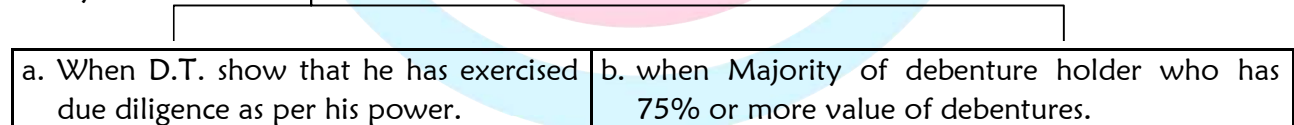
1. Liability of Debenture – Trustee [Sec 71(7)]: -

i. When liability arises: -



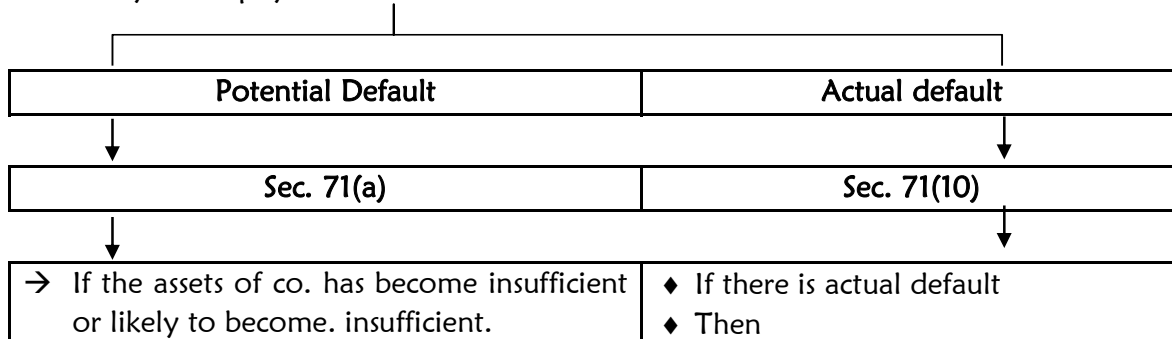
ii. No Indemnity / No exemption: - No clause of DTD, or any agreement can exempt the debenture Trustee from his liability-

iii. Exemption of Sec. 71(7): - In following 2 cases the debenture trustee will be exempted from his liability.



2. Failure to in to & redemption of debenture [Sec 71(8)- 71(11)]

- Duty of Co: - [Sec 71(8)]: - It is duty at Co. to pay in to and redeem debentures as per terms & Conditions of debentures.
- Default by co. In payment of in to or red. of debenture



→ at the end time of redemption of debentures
→ Then debenture -trustee may apply to NCLT for direction in the Interest of debenture holder.

→ D.T
or
→ Debenture holder.
◆ Shall apply to NCLT.

3. Pari- Passu clause: - Treating all the member of a class, equally by ignoring the date of becoming member of that class group.



CHAPTER -12

ACCEPTANCE OF DEPOSITS

Section used	Sec 73 – 76A of Ch B of companies Act, 2013.
Rules used	Companies C Acceptance of Deposits, rules, 2014.
Code of Forms	DPT

Concept – 1: Deposits & Excluded Category of Deposit [Sec. 2(31) + Rule (1) of Companies (AOD), Rules 2014]

i. Def. of Deposits: - [Sec. 2(31)]

Includes

any receipt of money (by a co.) by way of

- deposits
- loan, or
- any other form

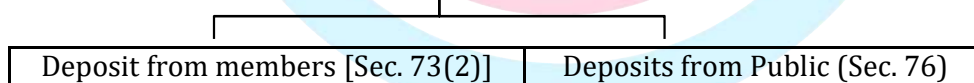
However, it doesn't include such – categories of amount as prescribed after consultation with RBI.

ii. Exclusion/Amount Not treated as deposits: -

- a. Loan from Govt & local authorities
- b. Loan from foreign Govt. or foreign/
- c. Loan from bank, Public financial instit.
- d. Loan from another co. (Inter Corporate loan)
- e. Secured – debentures
- f. A c/v. from customers like Booking amount for availing.

Concept – 2: Conditions for acceptance of Deposits from Members. [Sec 73(2)]

2 Types of Deposit



following are the basis conditions for acceptances of deposits from members.

- a) **O/R:** The co. has to pass “ordinary resolution” in its Genera Meeting.
- b) **Circular:** - The co. has Prepare a circular with Statements relating to flowing
 - i Financial Position of the co.
 - ii Credit rating (if any)
 - iii No. of existing depositor.
 - iv Amount due of existing deposits.
- c) **Filing of Circular to ROC:** - The Co. Shall file the circular to ROC, within 30 days before the date of issue of circular to members.

[Deposit Repayment Reserve]
- d) **Maintenance of DRR:** - The co. has to deposited at least 20% of sum total of deposits maturity during the current year & following F.4. (20% of C.F.4 + Next F.4.)
 - This amount shall be deposited up to 30th April of Current F.4.
- e) **Certification about no default:** - The co. has to certify that it has not defaulted into.

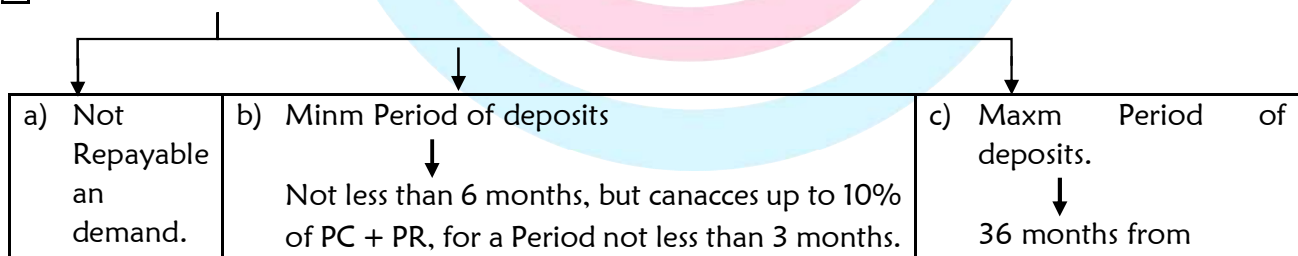
- ◆ Repayment of deposits
or/ and
 - ◆ Repayment of interest.
- f) Creation of Security: -
→ Only in case of Secured deposit accepted by the co.
- g) Other Condition: - In addition to above the co. has to satisfy other conditions as may be prescribed.

Concept – 3: Condition for acceptance of deposits from public [Sec 76]

- An eligible co. (Pub. co. + Net worth ₹ 100 cr. or more or Turnover ₹ 500 cr. or more)
 → May accept deposits of sec 73(2) as well as additional conditions of Sec. 76
 → These are additional condition u/s 76.
- i **Need of Credit rating:** - The eligible co. shall firstly obtain a rating from “Credit Rating Agency” recognised by SEBI.
- ◆ The eligible Co shall get it renewed every year.
- ii **Creation of charge:** - The eligible co. shall create a charge in favour of depositor. within 30 days from the date of acceptance of deposits.
- iii **Issue of circular in the newspaper:** -
- ◆ The “eligible Co.” shall circulate the circular in the form of “advertisement” in to newspapers English + Vernacular newspapers)
- iv **Additional – Points as per rule:** -
- ◆ The eligible co. shall also fulfil the conditions as prescribed in to company. (Acceptance of Deposits) Rule 2014.

Concept – 4: Common Conditions for Acceptance of Deposits as per Deposits Rules, 2014

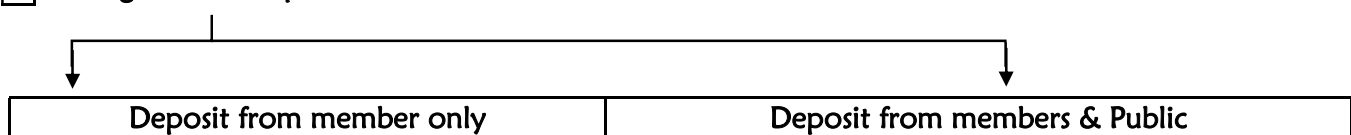
1. Prepaid of Deposit [Rule 3]



2. Rate of int & Brokerage: -

- A co. accepting
- a) Can offer interest on deposits not exceeding the rate notified by RBI for NBFC.
 - b) Can offer brokerage/ Commission at a rate not exceeding the rate of brokerage notified by RBI for NBFC.

3. Ceiling limit of Deposits: -



↓

Only co can accept deposits from members up to 35% of PC + FPT Securities Premium.
 Note: A private co. can valid by accept deposit up to 100% of its PC+ FR + SP*

↓

Only eligible, company accept deposits from members as well as public in this case break up of deposits will be as follow

- i up to 10% of PC + FR (Form of members).
- ii Up to 25% of PC + FR (Form of Public)

4. Issue of “circular” OR “circular in the form of Adut” [Rule 4]

- i **Format of Circular:** - The Format of circular or “circular in the from of Adut”, shall be in form No DPT-1.
- ii **Contents of circular:** - The circular shall contain the following.
 - a. Financial Position of the co.
 - b. Credit rating obtaining
 - c. No. of existing deposit or
 - d. Amount due towards previous deposits
 - e. Any other matter as per rules.
- iii **Filing or “circular” etc:** - (to ROC)
 → at least 30 days before the date of it issue.
- iv **Validity:** - 6 months from the end of relevant financial year or date of AGM whichever is earlier.

Trustee for Depositors (Rule 7, 8 & 9)

- i **Conditions for appointment:** - when company want to accept “Secured Deposits”
- ii **Written consent of “Depositor – Trustee”:** -
 Before writing the name of Depositor Trustee “into circular or “circular in the from of advt” the Co. shall obtain written consent of depositor trustee.
- iii **Execution of Deposit – Trustee Deed**
 The co. Shall execute – D-T-C in Form DPT -2 at least 7 days before issuing circular/ circular in the form Advt.
- iv **Duties/ Role/ Function of ‘Depositor Trustee: -**

To Protect the interest of depositors	To redress to grievors of depositor	to	To all the meting of depositors. on request of 10% or more (in value deposition) Default of conditions of deposits- trust deed.
---------------------------------------	-------------------------------------	----	--